

HESA Reference Number:

Agreement for the Supply of Information Services

MAIN AGREEMENT: SPECIFIC CONDITIONS

This document is the main agreement recording the nature of the Deliverables to be supplied by HESA Services to the Client and associated terms and conditions specific to those Deliverables. These Specific Conditions are valid and effective only in conjunction with the Standard Terms and Conditions set out in the Schedule. Terms not defined within this part of the Agreement shall be interpreted as provided for in clause 1 of the Standard Terms and Conditions.

1.	Client:	
2.	Client contact name:	
3.	Client telephone:	
4.	Client address:	
5.	Invoicing address:	
6.	Delivery email address and arrangements:	Deliverables will be supplied by HESA Services using an encrypted secure file transfer system.
7.	HESA Data location:	
8.	Commencement Date:	The date on which the last party to sign, signs the Agreement.
9.	Licence End Date:	
10.	Review of data retention:	
11.	Payment(s)(£) Excluding VAT:	
12.	Deliverable(s):	
13.	Personal Data within the Deliverable(s), including any data which is to be treated as Personal Data in accordance with clause 6.2 of the Standard Conditions:	
14.	HE Provider Preview:	
15.	Timescale for delivery:	

<p>16.</p>	<p>Use of Deliverables and Derived Materials: general provisions:</p> <p>This Condition sets out the important rules which apply to your use of HESA Data. Please read them carefully in full.</p> <p>It is particularly important that you understand the fundamental conditions on use of data relating to individuals. In summary, these are:</p> <p>Unrounded HESA Data relating to individuals must:</p> <ul style="list-style-type: none"> • never be shared with anyone else who is not permitted to process the data under this agreement; • never be used to make decisions or enable any decisions to be made about an individual; • never be used to contact an individual or enable them to be contacted for any reason or purpose whatsoever; • only be processed if it is necessary for the Permitted Uses set out within this Agreement; • where it contains data relating to disability or ethnicity, only be used for purposes relating to promoting, maintaining or monitoring equality of opportunity in accordance with equalities legislation; • only be reproduced, published or disclosed externally in a form which complies with the HESA Services Standard Rounding Methodology. 	<p>(a) For the avoidance of doubt, references in this condition and in the Permitted Purposes to the use of Deliverables or Derived Materials include the use or reproduction of any part thereof and the use or reproduction of any HESA Data within Deliverables and Derived Materials. "Use" includes any action which would constitute "processing" under the DP Act.</p> <p>(b) The Client shall produce Derived Materials only as provided for in the Permitted Purposes and in accordance with this condition 16 and clause 6 of the Standard Terms and Conditions. This includes the use of HESA Data to produce Derived Materials.</p> <p>(c) The Client shall use the Deliverables and any Derived Materials only in accordance with clause 6 of the Standard Terms and Conditions, this condition 16 and the Permitted Purposes in condition 17.</p> <p>(d) The Client shall not use the Deliverables or any Derived Materials to identify or enable identification of individuals or to inform a decision to be made about any individual or to contact an individual.</p> <p>(e) For the avoidance of doubt and without prejudice to the generality of sub-conditions (b), (c) and (d), save to the extent that permission is expressly given in the Permitted Purposes the Client shall not at any time:</p> <ul style="list-style-type: none"> i. Link the HESA Data to any other data; ii. Use the Deliverables or any Derived Materials to publish or
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		<p>share with any third party comparisons between any aspect of different higher education providers or comment (otherwise than internally within the Client organisation) on any one or more named or otherwise identifiable higher education providers without the prior permission of HESA Services. The Client accepts that the conduct of HE Provider Preview is likely to be a condition of any permission given for such comparisons to be carried out and published or shared.</p> <p>(f) Any data within the HESA Data or Derived Materials which provides any information as to the ethnicity or any disability of an individual shall only be used for the purposes of monitoring, promoting and maintaining equality of opportunity in accordance with the Equality Act 2010 or equivalent subsequent legislation. Such data may not be cross- tabulated in any analyses or extracts of information which the Client is permitted to provide to a third party under this condition and the Permitted Purposes.</p> <p>(g) Where a review date is specified in condition 10, by the specified date the Client must carry out a review to determine whether HESA Data within the relevant Deliverables is still required for the Permitted Purposes. The Client must retain a record of the review and its determination as to whether retention of the Data is required. If the outcome of the review is that the Data is no longer required for the Permitted Purposes, then sub- condition 16(i) applies. If the outcome of</p>
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		<p>the review is that the Data is still required for the Permitted Purposes but that the Client may cease to need it for those purposes within a significant period prior to the Licence End Date, the Client shall set another review date around the point of the anticipated change in requirement and by that date shall carry out a further review in accordance with this sub-condition (g).</p> <p>(h) Condition 16(i) becomes applicable in relation to a Deliverable:</p> <ul style="list-style-type: none"> i. on the Licence End Date specified in condition 9 in relation to that Deliverable; ii. where the outcome of a review under condition 16(g) is that the HESA Data within that Deliverable is no longer required for the Permitted Purposes; iii. where the Client otherwise determines that the HESA Data within a Deliverable is no longer required for the Permitted Purposes; or iv. where the Client's licence to use the Deliverable is otherwise terminated through termination of this Agreement under clause 10 of the Standard Terms and Conditions. <p>(i) Where this condition applies, the Client shall destroy or procure the destruction of all HESA Data provided within the Deliverable. "Destroy" means permanently destroy all hard and electronic copies of such Data and</p>
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		<p>permanently expunge the Data from all computers, file or document management systems and networks within the control of the Client or any third parties to whom the Data has been passed within the Permitted Purposes.</p> <p>(j) The Client shall not use, reproduce, pass on, publish, permit the use by or otherwise make available to any third party (on a commercial basis or otherwise) the Deliverables or any part thereof including any HESA Data or any Derived Materials, save:</p> <ul style="list-style-type: none"> i. as expressly provided for within the Permitted Purposes in relation to the relevant data fields or types of Derived Material; ii. as required by law; or iii. with HESA Services' explicit prior written consent. <p>For the avoidance of doubt, "publication" shall include both publication in hard copy form and inclusion of material on an internet website, intranet, extranet or other method of accessing information electronically.</p> <p>(k) Grant of the consent of HESA Services for further use of the Deliverables or Derived Materials as referred to in sub-condition 16(j) shall be at the absolute discretion of HESA Services. Such consent may be granted subject to the acceptance by the Client of additional contractual conditions including conditions requiring an increase in the Payment, conditions as to the</p>
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		<p>format in which Deliverables or Derived Material shall be made available or conditions requiring the use of the HE Provider Preview process prior to provision or use of the Deliverables or Derived Materials. Consents are only valid if given in writing, in advance of the relevant use of the Deliverables or Derived Materials.</p> <p>(l) This condition applies to any publication or reproduction of HESA Data by the Client or any other actions by which the Client makes HESA Data available to third parties, including any use of HESA Data in Derived Materials. Without prejudice to any other provision in this Agreement, the Client shall ensure that HESA Data used in a manner to which this clause applies is in an anonymised and aggregated form which does not allow a third party to identify individuals or derive information about identifiable individuals. In particular no HESA Data shall be published, reproduced or shared with third parties unless the HESA Services Standard Rounding Methodology (or any alternative methodology for rounding, suppressing or aggregating data to prevent identification of individuals or individual records which is specified in the Permitted Purposes in respect of particular HESA Data) has been applied to it.</p> <p>(m) The Client undertakes that whenever Deliverables are used, reproduced or referenced in a publication by it or on its behalf an attribution and caveat will be included on behalf of HESA in</p>
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		<p>the form set out in condition 18 or otherwise previously approved in writing by HESA Services.</p> <p>(n) The Client shall inform HESA Services immediately in the event that it considers that, or it becomes aware of any circumstances which mean or may mean that, the Deliverables, Derived Materials or any HESA Data have been used otherwise than in accordance with this condition 16 and the Permitted Purposes.</p> <p>(o) HESA Data within the Deliverables shall not be transferred out of or processed outside the United Kingdom without the prior explicit consent of HESA Services.</p>
17.	<p>Permitted Purposes</p> <p>This clause states the Permitted Purposes i.e. the purposes for which the Deliverables and Derived Materials may be used. These permissions are subject to the restrictions set out in this Agreement. If the Client is in any doubt as to what is permitted, they must contact HESA to request clarification and/or permission for any use beyond these terms.</p>	<p>Permission for use of the Deliverables and Derived Materials, including HESA Data, is only granted as set out below. Unless explicitly stated otherwise, the permissions in this condition 17 are subject to the terms and conditions specified in condition 16. Where HESA Data is specified in condition 13 as being required to be treated as Personal Data, these permissions are also limited by clause 6 of the Standard Terms and Conditions. In the event of any doubt as to its meaning this condition shall be interpreted restrictively.</p> <p>[List of Permitted Purposes].</p>



18.	Publication caveats/data attribution to be given as required under condition 16(m):	<p>Source(s):</p> <p>Copyright Higher Education Statistics Agency Limited. Neither the Higher Education Statistics Agency Limited nor HESA Services Limited can accept responsibility for any inferences or conclusions derived by third parties from data or other information supplied by HESA Services.</p>
19.	Persons authorised to vary this agreement as provided for in clause 14.6 of the Schedule:	<p>For HESA: Director of Information & Analysis or Head of Information Services (or such other person as HESA Service shall appoint from time to time).</p> <p>For the Client: [Job title] (or such other person as Client should appoint from time to time).</p>

SIGNATURE PAGE

This document (Main Agreement: Specific Conditions) must be read together with the Schedule (Standard Terms and Conditions). The Agreement between the parties is made up of both the Standard and the Specific Terms and Conditions. In signing this document, the parties are agreeing to the terms and conditions in both the main Agreement and the Schedule.

If a Purchase Order number will be required for payment by the Client of any invoice issued by HESA Services Limited under this Agreement then the Purchase Order number must be inserted in the space provided below prior to signature on behalf of the Client.

Signed for the Client:

Name:

Position:

Date:

Client Purchase Order Number:

Signed for HESA Services Limited:

Name:

Position:

Date:

Agreement for the Supply of Information Services

SCHEDULE: STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

1.1. In this Agreement, the following terms shall have the following meanings:

"Agreement"	This agreement for the supply of Deliverables to the Client, comprising the Specific Conditions and these Standard Terms and Conditions.
"Client"	The organisation specified in the Specific Conditions.
"Commencement Date"	The commencement date of this Agreement as specified in the Specific Conditions.
"Data Controller"	As defined in the DP Act.
"Data Processor"	As defined in the DP Act.
"Deliverable"	Any set of HESA Data, data analysis, report or other output, product or service specified in the Specific Conditions as required to be delivered to the Client by HESA Services under this Agreement.
"Derived Materials"	Any dataset, analysis, report or other output which the Client produces using one or more Deliverables or any HESA Data, other data or material within a Deliverable.
"DP Act"	The Data Protection Act 1998 or any subsequent Data Protection Legislation which amends or replaces the Data Protection Act 1998.
"Fixed Database"	A database for collection of data from higher education providers which may open following the closure of a standard HESA data collection process to enable one or more higher education providers to make amendments to data they have previously submitted to HESA in order that errors or omissions in that data can be rectified.
"HESA"	Higher Education Statistics Agency Limited (Registered Company No 2766993).
"HESA Data"	Data of which HESA is the Data Controller which is supplied to the Client under the terms of the Agreement.
"HESA Services"	HESA Services Limited (Registered Company No 03109219).

"HESA Services Standard Rounding Methodology"	<p>The application of the following processes to data or statistics relating to individuals or such other processes as may be notified by HESA Services from time to time:</p> <ul style="list-style-type: none"> • 0, 1, 2 are rounded to 0. • All other numbers are rounded to the nearest multiple of 5. • Percentages based on fewer than 22.5. Individuals are suppressed. • Averages based on 7 or fewer individuals are suppressed. • The above requirements relate to headcounts, FPE and FTE data.
"High Profile Use"	<p>Any use of a Deliverable, Derived Material or HESA Data which involves national media publication of HESA Data or other reference to HESA Data which is likely to result in media, sector or government comment on the activities or performance of HESA, HESA Services, central government, regulators, individual higher education providers or other organisations within the higher education sector. It includes any use of data to produce league tables or other means of comparing institutions/providers.</p>
"Insolvency Event"	<ul style="list-style-type: none"> (i) a winding up petition is presented or an application is made for the appointment of a provisional liquidator or an administrator or a receiver, or a notice of intention to appoint an administrator is filed at court, or a provisional liquidator or an administrator or an administrative receiver or a receiver, is appointed, or a scheme of arrangement or a voluntary arrangement is proposed, or any moratorium comes into effect; (ii) a shareholders' meeting is convened for the purpose of considering a resolution to wind up (except for a members' voluntary liquidation exclusively for the purposes of a bona fide solvent reconstruction or amalgamation and where the resulting entity agrees to be bound by, or assumes, the obligations of such insolvent party under this Agreement) a resolution to wind up is passed or a winding up order is made; (iii) a party to this Agreement is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or (iv) an encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of a party's business or assets or any other similar process in any relevant jurisdiction which has a similar or analogous effect.

"HE Provider Preview"	The process by which HESA Services notifies higher education providers and provides them with a preview of the proposed supply of the Deliverables to the Client for the Permitted Purposes, prior to the supply of the Deliverables, as further described in clause 4.7.
"Licence End Date"	As specified in the Specific Conditions.
"Parties"	HESA Services and the Client.
"Payment"	The payment(s) to be made by the Client to HESA Services as specified in condition 11 of the Specific Conditions.
"Permitted Purposes"	The purposes for which the Client is authorised to use the Deliverables as specified in the Specific Conditions.
"Personal Data"	As defined in the DP Act, provided that for the purposes of this Agreement it shall also be interpreted in accordance with clause 6.2 and condition 13 of the Specific Conditions.
"Quality Assurance Process"	The current quality assurance process applied by HESA and HESA Services as published on HESA's website at the time at which the Deliverables are produced and provided to the Client.
"Rounded Data"	HESA Data to which the HESA Services Standard Rounding Methodology has been applied.
"Specific Conditions"	The details of the Deliverables to be supplied to the Client and other terms and conditions, being the main agreement to which these Standard Terms and Conditions are the Schedule. References in this Agreement to "conditions" are to the numbered conditions within the Specific Conditions.
"Standard Terms and Conditions"	The terms and conditions for supply of the Deliverables to the Client which are set out in this Schedule to the Specific Conditions. References in this Agreement to "clauses" are to the numbered clauses within the Standard Terms and Conditions.
"Term"	The period between the Commencement Date and the later of: <ol style="list-style-type: none"> 1. The date on which the final Deliverable is delivered to the Client; or 2. The latest Licence End Date specified in the Specific Conditions.
"Termination Date"	The Licence End Date or any earlier date on which termination takes effect if the Agreement is terminated in accordance with clause 10.

"Unrounded Data"	HESA Data containing data at an individualised level to which the HESA Services Standard Rounding Methodology has not been applied and which may contain Personal or Sensitive Personal Data.
"Working Day"	Any day which is not a Saturday, a Sunday or a public holiday or bank holiday in England or Wales.



2. DURATION

- 2.1. This Agreement shall commence on the Commencement Date and end on the expiry of the Term, subject to earlier termination in accordance with clause 10 (the earlier of these dates being the "Termination Date").

3. PAYMENT

- 3.1. The Client shall pay to HESA Services the Payment specified in condition 11 of the Specific Conditions (plus VAT) as a fee for the provision of the Deliverables in accordance with this Agreement and the licensing and use of the Deliverables and Derivative Materials within the Permitted Purposes. Where condition 11 of the Specific Conditions specifies that the Payment shall be made in instalments, these must be paid by the Client on the basis and frequency set out in that condition 11.
- 3.2. All payments made by the Client under this Agreement shall be paid by the Client within 30 days of the date of the invoice for the Payment or the relevant instalment.

4. SUPPLY OF DELIVERABLES

- 4.1. HESA Services will supply the Deliverables to the Client on or as soon as may be practicable after the dates specified in condition 15 of the Specific Conditions. HESA Services will not be liable for any delay in the supply of the Deliverables, however caused.
- 4.2. HESA Services shall supply all Deliverables to the Client in the format and to the specification set out in the Specific Conditions, provided that HESA Services shall be entitled at its absolute discretion to alter the specification and/or to provide data in HESA Services' standard format if such alterations are deemed necessary as a result of the Quality Assurance Process.
- 4.3. HESA Services shall notify the Client as soon as is reasonably practical of any decision taken within clause 4.2 to alter the specification or format of any Deliverables as a result of the Quality Assurance Process.
- 4.4. The Client acknowledges that the content of HESA Data is determined by the third parties submitting data to HESA. The Client further acknowledges and agrees that the HESA Data to be supplied under this Agreement shall be the data held by HESA for the fields specified in condition 12 of the Specific Conditions at the date of signature of this Agreement. Where a Fixed Database relating to any of the data fields specified in condition 12 of the Specific Conditions is opened either before or after the date of signature of this Agreement:
 - 4.4.1. the reference in this clause to "data held by HESA at the date of signature of this Agreement" may not include any data which has been submitted to a Fixed Database collection by that date; and
 - 4.4.2. the Client shall not be entitled under this Agreement subsequently to receive any amended version of HESA Data which is generated through the Fixed Database process.

- 4.5. It is the responsibility of the Client to satisfy itself that the Deliverables are fully specified within the Specific Conditions and shall be appropriate and sufficient to meet its requirements. No refund or other remedy shall be due to the Client in the event that any aspect of the Deliverables are not in accordance with the Client's expectations or needs or in the event that the Client does not use any of the data, materials or services comprised in the Deliverables, provided that the Deliverables have been provided as described in the Specific Conditions.
- 4.6. Where the Permitted Purposes include High Profile Use or where HESA Services in its absolute discretion otherwise determines that it is appropriate, HE Provider Preview shall be carried out prior to the supply of the Deliverables to the Client. The need for HE Provider Preview to be carried out shall be confirmed in condition 14 of the Specific Conditions.
- 4.7. HE Provider Preview shall include provision of a copy of their data as it would be included in the Deliverables to all higher education providers who have contributed such data. Those providers shall be given two weeks to review that data and make a request for some or all of that data not to be included in the Deliverables. HESA Services shall comply with all such requests received in that period and the description of the Deliverables set out in the Specific Conditions shall be interpreted so as to give effect to such requests. No reduction in the Payment or other form of compensation shall be due to the Client for any reductions in the data or any changes to the scope of Deliverables to be supplied which follow from the conduct of HE Provider Preview.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. All intellectual property rights in the Deliverables to the extent that they constitute or contain HESA Data and all intellectual property rights in any database containing any HESA Data compiled by HESA Services or HESA are vested and shall remain vested in HESA Services and/or HESA. The Client acknowledges that HESA Data is derived from databases compiled and owned by HESA and that HESA retains all rights in any HESA Data and such databases under the Copyright Rights in Databases Regulations 1997.
- 5.2. In consideration of the Client making the Payment to HESA Services in accordance with clause 3 and subject to this Agreement HESA Services grants to the Client a non-exclusive, non-transferable licence to receive and use the HESA Data in the Deliverables as specified in the Specific Conditions for the Permitted Purposes during the relevant Licence Period.
- 5.3. HESA Services, to the extent that it or HESA is the author of any Deliverables, hereby asserts its and/or HESA's right to be identified as the author of such materials in accordance with s.78(2) of the Copyright, Designs and Patents Act 1988 where the Deliverable or any part thereof is reproduced in its original form.



- 5.4. In relation to the content of any Deliverable not within clause 5.1, in consideration of the Client making the Payment to HESA Services in accordance with clause 3 and subject to clause 5.3 and the remainder of this Agreement, HESA Services acknowledges the right of the Client to use and reproduce the Deliverable for the Permitted Purposes, subject to the limitations in clause 6 of these Standard Terms and Conditions and conditions 16 and 17 of the Specific Conditions.

6. DATA PROTECTION AND DATA SECURITY

- 6.1. Each party acknowledges the need to manage data security and risks around use of data appropriately, both to protect the rights of individual data subjects and to avoid reputational, relationship and commercial risks to HESA and HESA Services arising from any perceived breach or inadequacy in the protection and security of data collected by HESA which could impede the ability of HESA, HESA Services and their customers to access data in the future.
- 6.2. Each party therefore agrees that where condition 13 of the Specific Conditions identifies any Deliverable or HESA Data within any Deliverable as being Personal Data, such Deliverable or HESA Data shall be treated as Personal Data as defined in the DP Act and as subject to this clause 6, regardless of whether either party considers that identification of any particular individual from that Data by the Client or any other person is possible or likely to be possible. In this Agreement the term Personal Data shall be interpreted accordingly.
- 6.3. Each party agrees that in connection with the provision or use of the Deliverables (as appropriate) it will at all times:
- 6.3.1. comply with the DP Act including without limitation (to the extent relevant) the obligations as to registration as a Data Controller and the data protection principles set out in the DP Act;
 - 6.3.2. fully co-operate with each other to enable the other party to comply with the DP Act.
- 6.4. In particular, without prejudice to the generality of clause 6.3, the Client shall:
- 6.4.1. fully co-operate with HESA Services and HESA as reasonably required to ensure HESA Services' and HESA's compliance with the DP Act;
 - 6.4.2. in connection with any Personal Data or Sensitive Personal Data within the Deliverables, notify HESA Services immediately if it receives any of the following, and in any event assist HESA Services in complying with or responding to:
 - 6.4.2.1. requests for subject access from data subjects;
 - 6.4.2.2. an information notice, or any other notice (including in particular any deregistration, enforcement or transfer prohibition notice) served on the Client by the Information Commissioner;

- 6.4.2.3. any complaints from data subjects; and
- 6.4.2.4. any investigation of any breach or alleged breach of the DP Act.
- 6.4.3. ensure that any HESA Data it holds is held in strict confidence and securely and that appropriate technical and organisational information security and processing procedures are established and maintained to ensure that all Data provided in accordance with this Agreement are sufficiently protected against any unlawful or unauthorised processing, including in the disposal or destruction of Data or equipment on which Data is stored or accessed. In ensuring the security of the HESA Data, the Client will restrict access to Personal Data or Sensitive Personal Data to a limited number of expressly authorised individuals for the Permitted Purposes who have received appropriate training regarding data protection and security.
- 6.4.4. without prejudice to the generality of clause 6.4.3, where at HESA's request the Client has completed an information security questionnaire or provided any other written information regarding its information security arrangements prior to entering into this Agreement, the Client shall promptly notify HESA of any changes to the matters covered by the questionnaire or other written information which materially alter the nature or scope of the systems and arrangements for data security which are in place within the Client organisation.
- 6.4.5. promptly report to HESA Services any circumstance that it becomes aware of which:
 - 6.4.5.1. mean or may mean that clause 6.3.1 or 6.4.3 has not been complied with;
 - 6.4.5.2. cause or may cause any party to breach the DP Act as a result of processing carried out in connection with this Agreement; or
 - 6.4.5.3. mean or may mean that there has been unauthorised processing of personal data in connection with this Agreement.

7. INVESTIGATION OF POTENTIAL BREACH

- 7.1. The Client shall provide such evidence of its compliance with the obligations under clause 6 and conditions 16 and 17 of the Specific Conditions as HESA may reasonably request.
- 7.2. Without prejudice to the generality of clause 7.1, where the Client reports a matter to HESA under clause 6.4.5 or condition 16(n) of the Specific Conditions or HESA has otherwise has reasonable grounds for believing that there has or may have been a breach by the Client of clause 6 or conditions 16 or 17 of the Specific Conditions, the Client shall immediately provide all reasonable co-operation to HESA to enable HESA to determine as far as possible:

- 7.2.1. whether such a breach has taken place, the scope of any breach and the cause of any breach; and
- 7.2.2. action which is appropriate for HESA or the Client to take to remedy or mitigate the impact of any such breach.
- 7.3. Reasonable co-operation under clause 7.2 shall include but not be limited to the provision of documents and information and provision of access to personnel, premises and systems on request within reasonable timescales specified by HESA.
- 7.4. Without prejudice to HESA Services' rights under clause 10.1, where HESA Services investigates a potential breach under this clause 7 and reasonably determines that a breach of clause 6 or conditions 16 or 17 of the Specific Conditions has taken place, the Client shall promptly carry out any reasonable steps which HESA specifies to the Client as required to remedy or mitigate the impact of the breach.

8. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 8.1. “Confidential Information” in this clause 8 means secret or confidential commercial, financial, marketing, technical or other information including, without limitation, information in or relating to, know-how, trade secrets, operations, plans, intentions, working methods, designs, market opportunities, transactions, affairs and/or business of the parties and/or their customers, suppliers or clients and other information in any form or medium, whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of this information. “Confidential” means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available. The parties shall seek to appropriately identify and label information which each considers to be confidential, but their failure to do so will not in itself mean such information is not Confidential Information.
- 8.2. Subject to clauses 8.3 and 8.4, each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other disclosed or obtained as a result of the relationship of the parties under this Agreement. Each party shall not use nor disclose the same, save for the purposes of the proper performance of this Agreement or with the prior written consent of the other. Where disclosure is made to any employee, consultant or agent, it shall be done subject to obligations equivalent to those set out in this clause. Each party shall ensure that any such employee, consultant or agent enters into an information security agreement with the other, containing obligations equivalent to those set out in this clause 8. Each party shall use all reasonable endeavours to procure that any such employee, consultant or agent complies with such obligations. Each party shall be responsible to the other in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 8.3. The obligations of confidentiality and other obligations in this clause 8 shall not extend to any matter which the relevant party can show:

- 8.3.1. is lawfully in, or has become lawfully part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
 - 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; or
 - 8.3.3. is required to be disclosed under any applicable law, including a valid request under the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002, the Environmental Information Regulations 2004 or the Environmental Information (Scotland) Regulations 2004, or by order of a court or governmental or regulatory body or authority of competent jurisdiction; or
 - 8.3.4. was known to the receiving party before the information was disclosed to it by the disclosing party.
- 8.4. The Client consents to HESA or HESA Services informing third parties of the supply by HESA Services of the Deliverables to the Client, including a description of the Deliverables, the name and address of the Client, the name of the recipient of the Deliverables at the Client, the Permitted Purposes, the date of supply and any other conditions imposed on the supply of Deliverables as set out in this Agreement to the following extent:
 - 8.4.1. HESA or HESA Services may in its absolute discretion disclose such information at any time to UK government departments including the Department for Business, Innovation and Skills, the Department for Education and the Department for Education and Learning in Northern Ireland, the UK higher education funding councils, the Welsh Government, the Scottish Government and representative bodies of higher education providers; and
 - 8.4.2. HESA or HESA Services may disclose such information to higher education providers as it considers necessary for the purposes of exercising its rights under this Agreement under clauses 4.6 and 4.7 and otherwise and for the purposes of ensuring compliance by itself and others with the DP Act.
- 8.5 This clause applies if the Client is a public authority to which 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 applies. If the Client receives a request for disclosure of information under any of this legislation which relates to information about this Agreement or any information which has been provided to the Client by HESA Services pursuant to this Agreement (whether within a Deliverable or otherwise) the Client shall notify HESA Services of the request and the Client's proposed response to the request (including the date on which the Client intends to send its response to the request) within a reasonable period after receipt of the request and before any disclosure is made in response to the request. The Client

shall reasonably consider any representations made by HESA or HESA Services with regard to the disclosure of information referred to in this clause, including any representations as to the impact of disclosure on HESA or HESA Services or third parties and as to the applicability of any exemptions in the relevant legislation.

9. LIABILITY, WARRANTIES AND INDEMNITIES

- 9.1. 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.
- 9.2. HESA Services warrants and undertakes that the Quality Assurance Process has been completed with respect to the HESA Data.
- 9.3. Subject to clause 9.2 no warranty is given by HESA Services as to the quality or accuracy of the Deliverables. HESA Services does not accept any liability for any inferences or conclusions derived from the Deliverables by the Client or any third party.
- 9.4. The Client warrants and undertakes on a continuing basis that it will comply with the provisions of the DP Act so far as such provisions apply to it in respect of this Agreement and that it will procure that its employees, agents and contractors observe the provisions of the DP Act and the terms of this Agreement.
- 9.5. Without prejudice to the generality of clause 9.4 and conditions 16 and 17 of the Specific Conditions, the Client warrants and undertakes on a continuing basis that:
 - 9.5.1. it shall use the Deliverables, Derived Materials and HESA Data only in accordance with the Data Protection Legislation;
 - 9.5.2. in particular and without prejudice to the generality of clause 9.5.1, where the Permitted Purposes include the linking of HESA Data to data from any other source, there is a lawful basis for this processing of the other data and in particular it will not contravene the DP Act or any legal duty of confidentiality;
 - 9.5.3. where the Client has provided information about its arrangements to ensure security of information at HESA Service's request prior to entering into this Agreement, that such information is and continues to be correct and accurate;
 - 9.5.4. it shall use the Deliverables, Derived Materials and HESA Data only in accordance with the Permitted Purposes and clause 16 of the Specific Conditions;

- 9.5.5. it has complied with any advice, undertaking or enforcement notice issued to it by the Information Commissioner following:
- 9.5.5.1. any audit by the Information Commissioner; or
 - 9.5.5.2. any notification of a data security breach or any other breach of the data protection legislation by the Client;
- 9.5.6. it will not make or permit or pursue any analyses which allow the identification of individuals or which permit or enable any other person to identify individuals.
- 9.6. Subject to clause 9.7, the Client shall indemnify and keep indemnified HESA Services and HESA against all damages, costs and expenses suffered by HESA Services or HESA arising from any breach of this Agreement by the Client.
- 9.7. Subject to clause 9.9, the maximum liability of the Client to HESA Services for any loss or damage of any kind arising from this Agreement shall not in any event exceed the sum of £100,000.
- 9.8. Subject to clause 9.9:
- 9.8.1. HESA Services has no obligations to the Client, whether in contract, tort, breach of statutory duty or otherwise, beyond its obligations expressly set out in this Agreement;
 - 9.8.2. HESA Services has no liability (however caused) for any loss of profit, business, contracts, revenues, increased costs or expenses or any indirect or consequential loss arising under this Agreement or otherwise in respect of any Deliverable supplied by HESA Services to the Client;
 - 9.8.3. the maximum liability of HESA Services to the Client for any loss or damage of any kind arising from this Agreement shall not in any event exceed the lesser of:
 - 9.8.3.1. where the full Payment is less than £10,000: 50% of the Payment and where the full Payment is more than £10,000: the sum of £5,000; and
 - 9.8.3.2. 50% of the aggregate amount actually received by HESA Services from the Client under this Agreement.
- 9.9. Neither party excludes or limits its liability to the other party for:
- 9.9.1. fraud or fraudulent misrepresentation;
 - 9.9.2. death or personal injury caused by negligence;

- 9.9.3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 or subsequent legislation which replaces these provisions; or
- 9.9.4. any matter for which it would be unlawful for the parties to exclude liability.
- 9.10. Without prejudice to any other rights or remedies which HESA Services may have, the Client acknowledges and agrees that damages would not be an adequate remedy for any breach of the provisions of this Agreement and HESA Services shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any provision of this Agreement by the Client.
- 9.11. The Client shall at all times have appropriate insurance cover in respect of its liabilities and potential liabilities under this Agreement, including each of professional indemnity cover, employer's liability cover and public liability cover to the extent that these are relevant and appropriate in light of the Client's activities and the Permitted Purposes. The Client shall provide HESA Services with such evidence of compliance with this clause 9.11 as HESA Services may reasonably request.

10. TERMINATION

- 10.1. HESA Services may without liability terminate this Agreement immediately by written notice to the Client if:
 - 10.1.1. HESA Services determines, in its own absolute discretion, that the Client is in material breach of any of its obligations under this Agreement. For the avoidance of doubt, any breach of clauses 3, 6.2 to 6.4, 7.2 to 7.4 or 8.2 or conditions 16 or 17 of the Specific Conditions will always be considered to be a material breach; or
 - 10.1.2. HESA Services determines, in its own absolute discretion, that the Client is acting or has acted in a manner materially prejudicial to HESA Services' or HESA's goodwill and reputation or to the detriment of HESA's relationship with government departments, funding councils, one or more higher education institutions or providers, academic institutions or higher education representative bodies; or
 - 10.1.3. HESA Services is unable to supply the Services to the Client within 60 days of the Commencement Date; or
 - 10.1.4. an Insolvency Event occurs in relation to the Client; or
 - 10.1.5. the Client ceases, or threatens to cease, to carry out business; or

- 10.1.6. HESA Services reasonably apprehends that any of the events referred to in clauses 10.1.1 to 10.1.5 is about to occur in relation to the Client and notifies the Client accordingly.
- 10.2. The Client may without liability terminate this Agreement immediately by written notice to HESA Services if HESA Services is in material breach of its obligations to the Client under this Agreement.
- 10.3. Clauses 3, 5, 6, 7, 8, 9, 11 and this clause 10 and conditions 16 and 17 of the Specific Conditions shall survive termination or expiration of this Agreement.
- 10.4. Termination shall be without prejudice to the rights of the parties accrued up to the Termination Date provided that upon the Termination Date all Payments due from the Client to HESA Services shall become immediately payable.

11. ALTERNATIVE DISPUTE RESOLUTION

- 11.1. This clause 11 applies to any dispute arising between the Client and HESA Services in connection with this Agreement, including for the avoidance of doubt any dispute as to whether HESA Services has complied with a duty under this Agreement to act reasonably.
- 11.2. Where a dispute as referred to in clause 11.1 arises from a concern or complaint on the part of the Client, the Client shall refer the matter to be considered within HESA's complaints process as published on its website and as amended from time to time. If the Customer remains dissatisfied with HESA Services' position following completion of this process, the provisions of clauses 11.3 to 11.5 shall apply.
- 11.3. This paragraph 11.3 and, if applicable, paragraphs 11.4 and 11.5, apply either where a dispute as referred to in paragraph 11.1 arises from a concern or complaint on the part of HESA Services, or where the Client remains dissatisfied with HESA Services' position following completion of HESA's complaints process under paragraph 11.2. Directors or other senior representatives of each party with authority to settle the dispute will, within 10 working days of a written request from one party to the others, meet in a good faith effort to resolve the dispute.
- 11.4. If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other parties to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 20 working days after the date of the ADR notice.

- 11.5. No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation in accordance with this clause 11 and either the mediation has terminated or one of the other parties has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 11.6. Nothing in this clause 11 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.

12. NOTICES

12.1. Any notice to be given pursuant to this Agreement:

12.1.1. shall be in writing; and

12.1.2. shall be delivered by hand or sent by first class post, recorded delivery or by commercial courier to the party due to receive such notice at its address set out below or such other address or addressee as any party may notify to the other from time to time:

HESA Services: For the attention of the Director of
Information and Analysis HESA Services
Limited,
95 Promenade
Cheltenham
GL50 1HZ

The Client: The individual and address stated in conditions 2 and 4 of the Specific Conditions.

12.1.3. In the absence of evidence of earlier receipt any such notice shall be deemed to have been given or received:

12.1.3.1. if delivered by hand, when delivered; or

12.1.3.2. on the second business day following the day of sending if sent by post or recorded delivery; or

12.1.3.3. on the date and at the time that the courier's delivery receipt is signed if sent by commercial courier.

13. FORCE MAJEURE

- 13.1. HESA Services shall not be deemed to be in breach of this Agreement or otherwise liable to the Client for a failure to perform any obligation to which it is subject under this Agreement to the extent that it is prevented from performing the relevant obligation by any event or circumstance beyond its reasonable control (“an Event of Force Majeure”). Where an Event of Force Majeure occurs or arises, HESA Services shall as soon as may be practical give notice of this event to the Client and the time for HESA Services’ performance of the relevant obligation shall be deemed to be extended by a period equal to the duration of the Event of Force Majeure.

14. GENERAL

- 14.1. This Agreement comprises the Specific Conditions and the Standard Terms and Conditions. Neither the Specific Conditions nor the Standard Terms and Conditions are to be interpreted or applied separately from the other.
- 14.2. This Agreement including the Main Agreement and this Schedule together with all other documents referred to herein contains the entire agreement between the parties in relation to its subject matter. It supersedes any prior written or oral agreement between them in relation to its subject matter and shall not be superseded subsequently by any communication by one party of proposed alternative terms or variations which is not agreed in the manner provided for in clauses 14.6 and 14.7.
- 14.3. The parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement. Each of the parties irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 14.4. This Agreement may not be assigned or otherwise transferred in whole or in part by the Client without the prior written consent of HESA Services.
- 14.5. The Client shall not be entitled to sub-licence any of the rights granted to it nor to sub-contract any of the obligations imposed on it by HESA Services under this Agreement.
- 14.6. Variations to the following provisions of this Agreement shall take effect following an exchange of emails between the authorised individuals named in condition 19 of the Specific Conditions in which an authorised individual of one party sets out the terms of the variation and an authorised individual representing the other party explicitly confirms the agreement of that variation without stating any qualification, caveat or condition:
- 14.6.1. the length of any Licence Period;

- 14.6.2. the addition of further data fields to any datasets specified in condition 12 of the Specific Conditions at the date of signature of this Agreement;
- 14.6.3. the scope of permitted use and the identity of permitted users within the Permitted Purposes;
- 14.6.4. variations to the Payment which directly reflect any variations falling within clauses 14.6.1, 14.6.2 or 14.6.3 or the grant of any consent(s) under condition 16(j)(iii) of the Specific Conditions.
- 14.7. Save as provided for in clause 14.6, no variation to this Agreement shall take effect unless it is in writing and signed by all parties to this Agreement.
- 14.8. For the purpose of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any terms of this Agreement to be enforced by any third parties with the exception of HESA; but any third party right which exists or is available independently of that Act is preserved.
- 14.9. Each party shall not pledge the credit of the other nor represent itself as being the other nor a partner, agent, employee or representative of the other. Each party shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other. Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties; and no employee of either party shall be deemed to be or have become an employee of the other.
- 14.10. Each party shall not, either by its actions or by its public statements, commit or purport to commit the other to any action, other than those actions which are explicitly covered by this Agreement, except with the written consent of the other party.
- 14.11. In particular, and without prejudice to the generality of clauses 14.9 and 14.10, the Client shall refer to HESA Services any request made to it for provision of HESA Data to a third party unless such provision to that third party is within the Permitted Purposes, and the Client shall not without the prior written agreement of HESA Services:
- 14.11.1. either by its actions or its public statements, describe itself as being an official source of HESA Data, as being supported by HESA or HESA Services, as having a special relationship or partnership with either HESA or HESA Services with regard to enabling access to HESA Data or as having any right or permission to sub-license or otherwise provide access to HESA Data other than as specified in the Permitted Purposes;
- 14.11.2. use the logo or name of either HESA or HESA Services save as required to comply with condition 18 of the Specific Conditions.

- 14.12. The rights and remedies of either party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by one party to the other; nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision, and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 14.13. If at any time any part of this Agreement is held to be or becomes illegal, void or otherwise unenforceable for any reason under any applicable law, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the parties original intention. The validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 14.14. The headings in this Agreement are included for convenience or reference only and shall not affect the interpretation of this Agreement.
- 14.15. References in this Agreement to the singular include the plural and vice versa and references to one gender includes the other gender.

15. GOVERNING LAW

- 15.1. This Agreement shall be governed by and construed in accordance with English Law and, to the extent disputes arising out of or relating to this Agreement are not settled under the procedures referred to in clause 11, the Client submits to the exclusive jurisdiction of the English Courts.

16. EXECUTION OF THIS AGREEMENT

- 16.1. This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 16.2. Transmission of an executed counterpart of this agreement or the executed signature page of a counterpart of this agreement through a digital signature programme or other similar system shall take effect as delivery of an executed counterpart of this agreement.
- 16.3. No counterpart shall be effective until each party has executed and delivered at least one counterpart or the executed signature page of a counterpart.
- 16.4. Each party shall be entitled to assume that the signatory on behalf of the other has full authority to enter into this agreement.

- 16.5. The Client acknowledges and accepts that the digital signature system used by HESA Services 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 or HESA Services, only for the purposes of monitoring progress towards signature of this Agreement and for standard records management and audit. The Client shall be responsible for notifying the retention and use of such Personal Data to individuals employed or engaged by it as necessary to ensure compliance with the fair processing requirements within the DP Act.

