

Alternative Provider Organisational Agreement for Access to Heidi Plus – Student and Destination Data

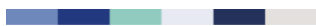
Main Agreement

This document records the identity of the parties to this Agreement for access to the Heidi Plus system and key contact details for the parties. This document, the Main Agreement, is valid and effective only in conjunction with the Terms and Conditions set out in Schedule 1. Terms not defined within this Main Agreement shall be interpreted as provided for in clause 1 of the Terms and Conditions.

1.	HESA Services	HESA Services Limited (Registered Company No 3109219), which is authorised by HESA to offer licences for access to and use of Heidi Plus under the terms set out in this Agreement and the Authorised User Agreements
2.	Organisation	<i>[Insert Name of Organisation – include registered company number for any company]</i>
3.	Organisation address	<i>[Insert Full postal address to which communications about the contract should be sent]</i>
4.	Commencement Date	The date on which the last party to sign, signs the Agreement
5.	Lead Contact	<i>[Name (1)]</i> <i>[Name (2) (if applicable)]</i>
6.	Lead Contact telephone number	<i>[Insert Name and Tel No for Name (1)]</i> <i>[Insert Name and Tel No Name (2) (if applicable)]</i>
7.	Persons authorised to vary this Agreement as provided for in clause 18.5 of the Schedule	For HESA Services: Director of Information & Analysis or Head of Information Services (or such other persons as HESA Services shall appoint from time to time) For the Organisation:
8.	Maximum number of Authorised Users (if required: This is only applicable to Organisations which are not HESA AP Subscribers)	<i>Not applicable</i>

9.	Payment (This is not applicable to Organisations which are not HESA AP Subscribers) £ plus VAT	<i>Not applicable</i>
----	--	-----------------------

EXAMPLE



SIGNATURE PAGE

This document must be read together with Schedule 1 (Terms and Conditions). The Agreement between the parties is made up of both the Main Agreement and the Terms and Conditions. In signing this document, the parties are agreeing to the terms and conditions in both the Main Agreement and Schedule 1.

Signed on behalf of Organisation:

Name:

Position:

Date:

Signed on behalf of HESA Services Limited:

Name:

Position:

Date:

Alternative Provider Organisational Agreement for Access to Heidi Plus – Student and Destination Data

Schedule 1: Terms and Conditions

1. Definitions

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

"Agreement"	This agreement for access to Student and Destination Data within Heidi Plus, comprising the Main Agreement and these Terms and Conditions.
"Authorised Users"	A Staff Member who is granted permission to be a Bronze User, Gold User or Lead Contact and who has completed a corresponding Authorised User Agreement.
"Authorised User Agreements"	The Bronze User, Gold User and Lead Contact Agreements, being agreements in the form of, or substantially in the same form as, the precedents attached to this Agreement as Schedules 2, 3, and 4 respectively.
"Bronze User"	A Staff Member of the Organisation who is assessed by a Lead Contact as having a legitimate reason for accessing specific tables and dashboards within Heidi Plus which have in built privacy and who has completed a Bronze User Agreement.
"Bronze User Agreement"	An agreement in the form of, or substantially in the same form as, the agreement set out in Schedule 2.
"Commencement Date"	The commencement date of this Agreement as specified in the Main Agreement.
"Data Controller"	As defined in the DP Legislation.
"Data Processor"	As defined in the DP Legislation.
"DP Legislation"	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the EU Privacy and Electronic Communications Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all other

	<p>applicable laws and regulations relating to the processing of Personal Data and privacy in effect in any relevant territory from time to time, including where applicable the guidance and codes of practice issued by the Information Commissioner and any EU regulations not in existence at the time this Agreement was executed. For the avoidance of doubt, from 25 May 2018 onwards this definition shall include the General Data Protection Regulation and the Privacy and Electronic Communications (EC Directive) Regulations to the extent that they are in force in the UK, including any law based on or seeking to enact any essentially equivalent provisions in the United Kingdom to the GDPR and any applicable guidance or codes of practice issued by the European Data Protection Board or Information Commissioner from time to time (all as amended, updated or re-enacted from time to time).</p>
<p>"Frascati Manual 2015"</p>	<p>The manual of standard practice for surveys on research and experimental development published by the Organisation for Economic Co-operation and Development which can be accessed at www.oecd.org/sti/frascatimanual</p>
<p>"Freedom of Information Legislation"</p>	<p>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.</p>
<p>"General Data Protection Regulation" or "GDPR"</p>	<p>Regulation (EU) 2016/679</p>
<p>"Gold User"</p>	<p>A Staff Member based in the United Kingdom who is assessed by a Lead Contact as having a legitimate need to have full access to any Heidi Plus Data (including Unrounded Data relating to individuals which may be Personal Data) for the Permitted Uses and who has signed a Gold User Agreement. References to Gold Users in this Agreement shall include Lead Contacts unless the contrary is stated in the relevant provision.</p>
<p>"Gold User Agreement"</p>	<p>An agreement in the form of, or substantially in the same form as, the agreement set out in Schedule 3.</p>
<p>"HEIDI"</p>	<p>The Higher Education Information Database for Institutions. HEIDI is a web-based management information system available prior to the date on</p>

	<p>which this Agreement was signed that has been developed to ease the burden for staff in higher education providers of accessing extracting and manipulating data for essential planning and reporting.</p>
<p>"Heidi Plus"</p>	<p>The web-based information system developed and managed by HESA and HESA Services created to replace HEIDI and to provide a wider range of data content, increased functionality, and new analyses and visualisations.</p>
<p>"Heidi Plus Data"</p>	<p>All Student and Destination Data contained within or extracted from Heidi Plus, provided that this includes Organisation Data only when it has been formally accepted as such by HESA Services under terms and conditions issued pursuant to clause 6.4, and made available generally through Heidi Plus to users other than those from the Organisation.</p>
<p>"Heidi Plus Fee Notice"</p>	<p>The notice to be published annually by HESA Services which will set out the fees payable under this Agreement by organisations who are not HESA AP Subscribers.</p>
<p>"Heidi Plus Rounding Methodology"</p>	<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 and published in the Heidi Plus Operational Documentation:</p> <p>All numbers must be rounded to the nearest multiple of 5</p> <p>Any number lower than 2.5 must be rounded to 0</p> <p>Halves must be rounded upwards (e.g. 2.5 must be rounded to 5)</p> <p>Percentages based on fewer than 22.5 individuals must be suppressed</p> <p>Averages based on 7 or fewer individuals must be suppressed</p> <p>The above requirements relate to headcounts, Full Person Equivalent and Full Time Equivalent data.</p>

"Heidi Plus Documentation"	Operational	The information published on the Heidi Plus Website (through the website address and user account details to be notified to the Organisation following signature of this Agreement) as updated from time to time with regard to the processes and policies followed in operating Heidi Plus.
"Heidi Plus Website"		https://www.hesa.ac.uk/services/heidi-plus
"HESA"		Higher Education Statistics Agency Limited (Registered Company No 2766993).
"HESA Data"		Any information contained within or derived from data collected by HESA.
"HESA AP Subscriber"		An organisation which has agreed to subscribe to HESA as either an AP UNISTATS Subscriber, an AP Designated & UNISTATS Subscriber, or an equivalent subscription type established by HESA following its appointment as the designated data body under the Higher Education and Research Act 2017.
"Information Security Questionnaire"		A questionnaire for completion by the Organisation about its information security arrangements and processes, in a format requested by HESA Services.
"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

	<p>of section 123 of the Insolvency Act 1986; or</p> <p>(iv) an encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of a party's business or assets or any other similar process in any relevant jurisdiction which has a similar or analogous effect.</p>
"Lead Contact"	A Staff Member based in the United Kingdom who is identified in clause 5 of the Main Agreement who has a need to access Gold User data for their role in the Organisation and who has signed a Lead Contact Agreement.
"Lead Contact Agreement"	An agreement in the form of, or substantially in the same form as, the agreement set out in Schedule 4.
"Main Agreement"	The document to which these Terms and Conditions are Schedule 1.
"Organisation"	The organisation specified in clause 2 of the Main Agreement.
"Organisation Data"	Data relating to the Organisation which has been uploaded to Heidi Plus by or on behalf of the Organisation using HESA and HESA Services' tableau servers to enable HESA Services to provide a service to the Organisation having received the specific agreement of HESA Services.
"Parties"	HESA Services and the Organisation.
"Payment"	The annual payment to be made by the Organisation for access to and use of Heidi Plus in accordance with clause 3.
"Permitted Uses"	The uses for which permission to access Heidi Plus may be given to any Bronze User, Gold User or Lead Contact, as specified in the relevant Authorised User Agreement.
"Personal Data"	As defined in the DP Legislation.
"Renewal Date"	1 st August in each year after the Commencement Date.
"Rounded Data"	Heidi Plus Data to which the Heidi Plus Rounding Methodology has been applied.

"Sensitive Personal Data"	As defined in the DP Legislation. References to Sensitive Personal Data shall be read as referring to any equivalent defined term contained in legislation which replaces the Data Protection Act 1998. In particular, when and to the extent that the GDPR is in force, references to Sensitive Personal Data shall be read as references to Special Categories of Personal Data as defined in the GDPR.
"Staff Member"	An individual who is an employee of the Organisation.
"Student and Destination Data"	Data relating to students and graduates which is from time to time added to Heidi Plus and authorised by HESA Services to be made available under this Agreement.
"Tableau Software"	The software platform created and supplied by Tableau which is used within Heidi Plus to provide the displays and visualisations through which data is accessed and viewed.
"Terms and Conditions"	The terms and conditions for access to Heidi Plus which are set out in this Schedule 1 to the Main Agreement.
"Term"	The period starting on the Commencement Date and ending on the Termination Date.
"Termination Date"	The date on which this Agreement is terminated either under clause 2 or clause 12.
"Unrounded Data"	Heidi Plus Data to which the Heidi Plus Rounding Methodology has not been applied.

2. Duration

- 2.1. This Agreement shall commence on the Commencement Date and shall remain in force for as long as the Organisation remains a HESA AP Subscriber unless this Agreement is terminated in accordance with clause 12.

3. Payment

- 3.1 As the Organisation is a HESA AP Subscriber, the Payment for access to Heidi Plus under this Agreement is included within the annual HESA AP Subscriber subscription fee paid by the Organisation to HESA.

4. Obligations of HESA Services Limited: Access to Heidi Plus and Associated Services

- 4.1. In consideration of the Payment as described in clause 3 and subject in particular to the limitations, conditions and restrictions set out in the remainder of this clause 4 and in clauses 5 to 8, HESA Services shall provide the Organisation's Authorised Users with access to the Heidi Plus Data in accordance with the terms of the relevant Authorised User Agreements.
- 4.2. Access to Heidi Plus shall enable Authorised Users to access the Heidi Plus Data at the level of access provided for in the relevant Authorised User Agreements.
- 4.3. The Organisation acknowledges and accepts that:
 - 4.3.1. Heidi Plus is subject to ongoing development and improvement;
 - 4.3.2. HESA Services makes no warranty, guarantee or commitment as to the accuracy of the Heidi Plus Data and from time to time changes may be made to the Heidi Plus Data to enable errors or omissions to be corrected; and
 - 4.3.3. HESA Services excludes any other warranties, guarantees or commitments as to the content and performance of Heidi Plus as further stated in clause 11.
- 4.4. The obligations on HESA Services under clauses 4.1 and 4.2 are subject to the following rights of HESA Services to suspend or terminate access to Heidi Plus:
 - 4.4.1. The rights provided for in clauses 23-25 of the Bronze User Agreement, clauses 4.14, 4.15 and 7 of the Gold User Agreement and clause 5.14, 5.15 and 9 of the Lead Contact Agreement to suspend or terminate the access of any individual Authorised User.
 - 4.4.2. Where HESA Services has identified a breach or potential breach of this Agreement or any Authorised User Agreement and HESA Services determines in its absolute discretion that the nature of that breach or potential breach is such that such suspension of this Agreement is justified in order to avoid the risk of unauthorised access to or use of Heidi Plus Data, HESA Services may suspend the access of all or some of the Organisations' Authorised Users to Heidi Plus until such time as HESA Services is reasonably satisfied that it is appropriate to re-instate access to Heidi Plus.
 - 4.4.3. Where the Organisation has failed to pay all or part of any HESA AP Subscriber subscription fee due to HESA within 30 days of receipt of the relevant invoice, HESA Services may suspend the access of all of the Organisations' Authorised Users to Heidi Plus until such time as the invoice has been settled in full.
 - 4.4.4. If HESA Services determines that it is appropriate to reinstate access to some of the Organisations' Authorised Users, it has the absolute discretion to determine that access should remain suspended or be terminated in respect of specific Authorised Users.

- 4.5. HESA Services shall from time to time specify:
- 4.5.1. Mandatory training to be provided by HESA Services and undertaken by all intended Lead Contacts before they authorise any new Authorised Users under clause 5.3;
 - 4.5.2. Mandatory training to be provided by HESA Services and undertaken by all existing Lead Contacts annually approximately a year after completion of training under clause 4.5.1 or a year after completing previous training under this clause 4.5.2. After the date which occurs one year after completion of their last training session under clause 4.5.1 or 4.5.2, Lead Contacts shall not approve any further new Authorised Users under clause 5.3 until they have completed a further training session under this clause 4.5.2;
 - 4.5.3. Any additional mandatory training to be provided by HESA Services which HESA Services considers is necessary for some or all intended or existing Lead Contacts to undertake in order to ensure compliance with data protection and information security requirements in relation to Heidi Plus. Where such training is specified for particular Lead Contacts, those Lead Contacts shall not approve any new Authorised Users under clause 5.3 until they have completed the training;
 - 4.5.4. Mandatory information security and data protection training to be made available by the Organisation to all Gold Users. Such training must be undertaken by each Gold User before they access Heidi Plus for the first time and once in every other year thereafter; and
 - 4.5.5. The Organisation shall keep a record of all information security and data protection training undertaken by Authorised Users.
- 4.6. HESA Services shall make available training materials which must be used in the course of providing training to Gold Users in accordance with clause 4.5.4 unless compliance with clause 4.5.4 is secured through Gold Users accessing training through the programme referred to in clause 4.7.
- 4.7. HESA Services shall also publish in the Heidi Plus Operational Documentation a programme of interactive webinars which HESA Services intends to deliver, completion of which by a Gold User would constitute compliance with the mandatory training requirements specified in clause 4.5.4. The Organisation may but is not required to use these webinars to fulfil its duty under clause 4.5.4 to make available training to Gold Users. Participation in these webinars will be subject to an additional fee.
- 4.8. HESA Services will make reasonable endeavours to comply with the published service standards set out in the Heidi Plus Operational Documentation. However, HESA Services provides no warranty as to its ability to meet those standards or as to the ability of Authorised Users to access Heidi Plus with full functionality or otherwise at particular times or over particular periods.
- 4.9. HESA Services shall use the Heidi Plus Website to provide Authorised Users with:

- 4.9.1. reasonable notice of any periods of planned interruption to the availability of Heidi Plus for the purposes of maintenance, development and improvement of Heidi Plus and responding to faults or technical issues experienced by Authorised Users;
- 4.9.2. reasonable information as to faults reported or identified which will or may materially affect the access or user experience of Authorised Users and as to the steps being taken or to be taken by HESA Services to correct such faults.
- 4.10. The decision to prevent or restrict access to Heidi Plus for the purposes of enabling maintenance, resolution of technical problems or developmental work in relation to Heidi Plus or any supporting or ancillary systems or frameworks shall be at HESA Services' absolute and sole discretion.
- 4.11. The current contact details to be used by the Organisation or any Authorised User to notify HESA Services of any fault or technical issue experienced in the use of Heidi Plus shall be published in the Heidi Plus Operational Documentation.

5. Obligations of the Organisation: Conditions on Access to and Use of Heidi Plus Data

- 5.1. Access and continuing access to Heidi Plus and use of Heidi Plus Data for the Organisation and its Staff Members shall be subject always to the conditions and restrictions set out in this Agreement and in particular compliance with this clause 5 and clauses 7 and 8. In addition to only using Heidi Plus Data for the Permitted Uses the following fundamental conditions and requirements on the use of Heidi Plus Data must be observed by the Organisation and all of its Authorised Users:
 - 5.1.1. Unrounded Data relating to individuals must never be:
 - 5.1.1.1. shared with anyone other than Gold Users and Lead Contacts of the Organisation (whether through reproduction, publication or any other method of sharing or disclosure);
 - 5.1.1.2. used to make decisions or enable any decisions to be made about an individual; or
 - 5.1.1.3. used to contact an individual or enable them to be contacted; for any reason or purpose whatsoever.
 - 5.1.2. Unrounded Data relating to individuals must only be accessed, extracted from Heidi Plus or used where and to the extent that this is necessary and proportionate for the Permitted Uses set out in the Authorised User Agreements.
 - 5.1.3. Heidi Plus Data relating to disability or ethnicity must only be used for purposes relating to promoting, maintaining or monitoring equality of opportunity in accordance with equalities legislation.

- 5.1.4. Heidi Plus Data can only be reproduced, published or disclosed externally in a form which complies with the Heidi Plus Rounding Methodology.
- 5.1.5. Access to Heidi Plus for Gold User or Lead Contact User levels should only be granted to individuals wholly or mainly located within the United Kingdom and Heidi Plus should not be accessed by such Authorised Users whilst they are outside the United Kingdom.
- 5.1.6. Where Authorised Users extract Heidi Plus Data from Heidi Plus, they must not process such data or permit it to be processed outside the United Kingdom unless all of the relevant conditions specified in clause 5.5.4 are satisfied.

This summary of key conditions shall be interpreted in accordance with more detailed relevant provisions within this Agreement.

- 5.2. Access to Heidi Plus shall only be made available to an individual following completion of the application and approval process specified in the Lead Contact Agreement and completion by that individual of the appropriate Authorised User Agreement.
- 5.3. The Organisation shall identify and appoint two individuals or, if HESA Services expressly agrees, a single individual, to be Lead Contacts. Lead Contacts shall be responsible for:
 - 5.3.1. managing access to Heidi Plus within the Organisation through authorising applications to become Authorised Users where this is required by HESA Services' process for authenticating and accepting requests to become an Authorised User;
 - 5.3.2. notifying the Organisation (and where appropriate HESA Services) of any breach or suspected breach of this Agreement or an Authorised User Agreement, investigating such breach or suspected breach and otherwise complying with the duties set out in clause 4.5 of the Lead Contact Agreement; and
 - 5.3.3. fulfilling all other responsibilities of the Lead Contact set out in the Lead Contact Agreement or any guidance on the role of the Lead Contact that may be issued by HESA Services from time to time.
- 5.4. Where HESA Services identifies a reasonable basis for concern about the suitability of an individual to fulfil the role of Lead Contact, whether on first appointment of a Lead Contact under this Agreement, on appointment of any additional or replacement Lead Contact or in light of any matters occurring after the appointment of the Lead Contact, it shall inform the Organisation and the Organisation shall appoint another individual acceptable to HESA Services. A reasonable basis for concern about suitability may include a view that the individual is insufficiently senior or does not have sufficient relevant experience to enable them to fulfil the role of Lead Contact effectively.
- 5.5. The Organisation shall take all reasonable steps, through its Lead Contacts or the creation of appropriate policies or protocols or otherwise, to ensure that:

- 5.5.1. Access to Heidi Plus is not made available to anyone other than the Authorised Users;
- 5.5.2. Access to Heidi Plus, other than as an Authorised User at Bronze User level, is not made available to any Authorised User not based in the United Kingdom or carrying out a role in the Organisation which is wholly or mainly located in the United Kingdom;
- 5.5.3. Heidi Plus is not accessed by any Gold User or Lead Contact User while they are located in a country other than the United Kingdom;
- 5.5.4. Heidi Plus Data extracted by Authorised Users is not processed by them outside the United Kingdom unless it is necessary for and proportionate to a Permitted Use and:
 - 5.5.4.1. Heidi Plus Data relating to individuals has been rounded in accordance with the Heidi Plus Rounding Methodology; and
 - 5.5.4.2. Heidi Plus Data which does not relate to individuals is only processed to the extent it is proportionate for that particular Permitted Use i.e. it is adequate, relevant and not excessive for the necessary Permitted Use; or
 - 5.5.4.3. Specific written consent has been provided in advance of any proposed processing outside the United Kingdom by HESA Services. Requests for consent should be sent to Heidi.Plus@hesa.ac.uk.
- 5.5.5. Heidi Plus is not used by an Authorised User or any other person for any purposes other than the Permitted Uses covered by the relevant Authorised User Agreement. This includes but is not limited to a requirement to take all reasonable steps to ensure that Heidi Plus Data is not used for the purposes of direct commercial gain;
- 5.5.6. Its Authorised Users comply with the terms of the Bronze User Agreement, Gold User Agreement or Lead Contact Agreement as applicable;
- 5.5.7. Its Lead Contacts undertake the training specified by HESA Services under clause 4.5.1 and (as applicable) under clauses 4.5.2 and 4.5.3 before the Lead Contacts approve any Authorised Users under clause 5.3.1. So far as reasonably practicable the Organisation shall ensure that at any one time it has in place at least one Lead Contact who has undertaken all training required by clauses 4.5.1, 4.5.2 and 4.5.3;
- 5.5.8. Its Gold Users are able to access and undertake such training as is specified under clause 4.5.4 before they obtain access to Heidi Plus; and
- 5.5.9. Its Lead Contacts are able to carry out their obligations as set out in clause 4 of the Lead Contact Agreement. In relation to the obligations in clause 4.5 of that Agreement, reasonable steps shall include putting in place a protocol which specifies the process to be followed and the steps to be taken by the Lead Contacts or others to respond, investigate

and report on a breach or suspected breach which falls within that clause 4.5.

- 5.6. In the event that a Lead Contact identified in clause 5.3 of the Main Agreement leaves the Organisation or is otherwise no longer available to perform the role of Lead Contact, or in the event that either the Organisation or HESA Services (acting in accordance with clause 5.4) deems an individual not to be suitable to act as Lead Contact, the Organisation shall promptly identify a replacement as Lead Contact and notify HESA Services of the change.
- 5.7. The Organisation shall inform HESA Services immediately in the event that it considers, or it becomes aware of any circumstances which would reasonably be interpreted as meaning, that through the Organisation's systems, premises or Staff Members Heidi Plus Data has been obtained by any individual other than an Authorised User or accessed or used in a manner otherwise than in accordance with this Agreement and an applicable Authorised User Agreement.
- 5.8. Whenever HESA Data are used, reproduced or referenced in a publication by the Organisation or on its behalf, it will include an attribution and caveat on behalf of HESA or HESA Services in the format specified in the Heidi Plus Operational Documentation for the relevant source of data.

6. Organisation Data

- 6.1. Subject only to the provisions of clauses 6.2 to 6.3, no data shall be uploaded to Heidi Plus by the Organisation. HESA Services shall be entitled to permanently delete, without prior notice to the Organisation or any Authorised User, any data which is uploaded to Heidi Plus otherwise than in accordance with clauses 6.2 to 6.3.
- 6.2. Organisation Data may be uploaded to Heidi Plus by the Organisation. For the avoidance of doubt, no item of data shall be regarded as Organisation Data unless:
 - 6.2.1. specific written permission to upload that item of data has been explicitly granted by HESA Services in advance of the uploading. To enable HESA Services to consider such a request for permission under this clause the Organisation must notify HESA of the legal basis on which it is proposing to process any personal data within the data; and
 - 6.2.2. the data is being uploaded to enable HESA Services to provide a specific, identified service to the Organisation.
- 6.3. The Organisation is the sole Data Controller of any Organisation Data, unless the terms and conditions referred to in clause 6.4 below provide otherwise. It is therefore the sole responsibility of the Organisation to ensure that there is a fair and lawful basis for the processing of Organisation Data, including for the processing through uploading such data to Heidi Plus. This includes ensuring that where Organisation Data is processed on the basis of consent, the requirements of Article 7 of the GDPR have been and continue to be complied with.

- 6.4. Terms and conditions as to the basis on which HESA Services will process Organisation Data for the Organisation, and as to the circumstances in which Organisation Data may be accepted as HESA Data or Heidi Plus Data, shall be specified to the Organisation at the time that written permission for upload of Organisation Data is given under clause 6.2.1. Except where such terms and conditions provide otherwise:
- 6.4.1. the conditions on access to and use of Heidi Plus Data set out in clause 5 of this Agreement do not apply to Organisation Data; and
- 6.4.2. any reference in this Agreement to HESA Data or Heidi Plus Data does not include Organisation Data.

7. Intellectual Property Rights

- 7.1. Subject to clauses 7.5 and 7.6, all intellectual property rights in Heidi Plus, Heidi Plus Data and any data derived from Heidi Plus Data are vested and shall remain vested in HESA Services and/or HESA. The Organisation acknowledges that Heidi Plus Data is derived from databases compiled and owned by HESA and/or HESA Services and that HESA and/or HESA Services retains all rights in any Heidi Plus Data and such databases under the Copyright Rights in Databases Regulations 1997.
- 7.2. In consideration of the Organisation making the Payment in accordance with clause 3 and subject to this Agreement, HESA Services grants to the Organisation a non-exclusive, non-transferable licence to use Heidi Plus and to receive and use the Heidi Plus Data for the Permitted Uses during the Term. HESA Services confirms that it is authorised by HESA to grant access to Heidi Plus and Heidi Plus Data on the terms set out in this Agreement.
- 7.3. HESA Services, to the extent that it or HESA is the author of any HESA Data, 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 data available on Heidi Plus or any part thereof is reproduced in its original form.
- 7.4. In relation to the content of any Heidi Plus Data not within clause 7.1, in consideration of the Organisation making the Payment in accordance with clause 3 and subject to clause 7.3 and the remainder of this Agreement, HESA Services acknowledges the right of the Organisation to use and reproduce that Heidi Plus Data for the Permitted Uses, subject to the limitations in this Agreement, the Bronze User Agreement, the Gold User Agreement and/ or the Lead Contact Agreement.
- 7.5. The ownership of some intellectual property rights in some Heidi Plus Data may vest in third parties. Where this is the case, the nature and extent of those rights shall be set out in the Heidi Plus Operational Documentation.
- 7.6. The Organisation acknowledges that visualisations and dashboards within Heidi Plus are provided using Tableau Software under a licence agreement between HESA and Tableau. The Organisation agrees that:

- 7.6.1. The Organisation shall access or use Tableau Software and associated elements of display or functionality only for the purposes of using Heidi Plus in accordance with this Agreement;
 - 7.6.2. In particular but without limitation to the generality of clause 7.6.1, the Organisation shall not, and shall not attempt to:
 - 7.6.2.1. decompile, disassemble or otherwise reverse engineer the Tableau Software;
 - 7.6.2.2. attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Tableau Software;
 - 7.6.2.3. modify any part of the Tableau Software or create any derivative work from or version of the Tableau Software;
- and
- 7.6.3. Tableau shall have no warranty, support or other obligation or liability to the Organisation.
- 7.7. The Organisation shall comply with any restrictions arising from the ownership of Heidi Plus Data which is not HESA Data which are set out in the Heidi Plus Operational Documentation.

8. Data Protection and Data Security

- 8.1. Subject to clause 6.3, the parties acknowledge that the Organisation and HESA are Data Controllers in common of any personal data within Heidi Plus which is accessible to the Organisation or its Authorised Users. 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.
- 8.2. Each party agrees that in connection with the provision or use of Heidi Plus it has a separate responsibility to, and will at all times:
 - 8.2.1. Comply with the DP Legislation including without limitation (to the extent relevant and as set out in the DP Legislation) any obligations as to registration as a Data Controller, principles and requirements for data protection and restrictions on processing of personal data, and requirements as to notification of data breaches.
 - 8.2.2. Fully co-operate with each other to enable the other party to comply with the DP Legislation.
- 8.3. In particular, without prejudice to the generality of clause 8.2, the Organisation shall:

- 8.3.1. Fully co-operate with HESA Services and HESA as reasonably required to ensure HESA Services' and HESA's compliance with the DP Legislation;
- 8.3.2. Take all reasonable steps to ensure its Authorised Users and its other Staff Members, affiliates, agents and contractors comply with the DP Legislation and this Agreement in respect of Heidi Plus and Heidi Plus Data;
- 8.3.3. Not use Heidi Plus Data, nor permit its Authorised Users or any other person, to use Heidi Plus Data to identify any individual, contact any individual or take any decisions in relation to an individual;
- 8.3.4. Only use and only permit its Authorised Users or any other person to use, Heidi Plus Data relating to disability or ethnicity for purposes relating to promoting, maintaining or monitoring equality of opportunity in accordance with equalities legislation;
- 8.3.5. Not share or permit its Authorised Users to share Heidi Plus Data with anyone including Staff Members that are outside the United Kingdom unless it is necessary for a Permitted Use and:
 - 8.3.5.1. Heidi Plus Data relating to individuals is rounded in accordance with the Heidi Plus Rounding Methodology; and
 - 8.3.5.2. Heidi Plus Data which does not relate to individuals is only shared to the extent it is proportionate for that particular Permitted Use i.e. adequate, relevant and not excessive for the necessary Permitted Use; or
 - 8.3.5.3. Specific written consent has been provided in advance of any proposed sharing by HESA Services. Requests for consent should be sent to Heidi.Plus@hesa.ac.uk.
- 8.3.6. In relation to Unrounded Data relating to individuals, ensure that it, and its Authorised Users:
 - 8.3.6.1. Only use or extract from Heidi Plus, and are only permitted to use or extract, such Heidi Plus Data where this is necessary for the Permitted Uses;
 - 8.3.6.2. Do not and are not permitted to share such Unrounded Data relating to individuals with any person other than the Organisation's Gold Users and Lead Contacts. For the avoidance of doubt, Heidi Plus Data can only be reproduced, published or disclosed to any person other than the Organisation's Gold Users and Lead Contacts in a form which complies with the Heidi Plus Rounding Methodology;
- 8.3.7. In connection with any Unrounded Data relating to individuals, notify HESA Services immediately if it receives any of the following, and in any event co-operate with HESA Services and comply with any reasonable direction from HESA Services with regard to complying with or responding to:

- 8.3.7.1. an information notice, or any other notice served on the Organisation by the Information Commissioner;
 - 8.3.7.2. any formal complaint from a Data Subject, including any exercise or purported exercise by a Data Subject of their rights under articles 15, 16, 17, 18 and 21 of the GDPR to access, rectification, erasure, restriction of processing or objection to processing of Heidi Plus Data; and
 - 8.3.7.3. any investigation of any breach or alleged breach of the DP Legislation;
- 8.3.8. The Parties agree that all uses of Heidi Plus Data are for statistical purposes in accordance with article 89 of the GDPR and anticipate that any legislation based on the Data Protection Bill which had its first reading in the House of Lords on 13 September 2017 will contain derogations from the requirements of articles 15, 16, 18 and 21 of the GDPR. The Parties recognise that article 17 of the GDPR already includes an exemption for processing for statistical purposes. HESA Services shall include within the Heidi Plus Operational Documentation guidance on responding to requests to exercise a right under articles 15,16,17,18 or 21 in respect of Heidi Plus Data and the Organisation shall have regard to the Heidi Plus Operational Documentation in determining how to respond to a request to exercise a right under articles 15,16,17,18 or 21.
- 8.3.9. Ensure that Unrounded Data relating to individuals is used only in accordance with clauses 8.3.2 to 8.3.6, 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 Unrounded Data relating to individuals processed under this Agreement are sufficiently protected against any unlawful or unauthorised processing, including in the disposal or destruction of equipment on which Unrounded Data relating to individuals is stored or accessed.
- 8.3.10. Without prejudice to the generality of clause 8.3.10, in ensuring the security of Unrounded Data relating to individuals the Organisation shall:
- 8.3.10.1. restrict access to Gold Users and Lead Contact Users who satisfy a Lead Contact that they require access to such data for Permitted Uses and who agree to the terms of use in the Gold User Agreement or the Lead Contact Agreement (as appropriate) and undertake relevant training provided in accordance with clause 4.5 above;
 - 8.3.10.2. take all reasonable steps to facilitate and assist compliance by Gold Users and Lead Contact Users with their obligations with regard to secure and appropriate use of Heidi Plus Data, data security and deletion of data, in particular the obligations set out in clauses 4.1.1, 4.7 and 5.3 of the Gold User Agreement and clauses 5.1.1, 5.7 and 6.3 of the Lead Contact Use Agreement; and

8.3.10.3. provide prompt and accurate information to HESA Services about its information security arrangements and processes, including by:

8.3.10.3.1. completing an Information Security Questionnaire prior to entering into this Agreement;

8.3.10.3.2. during the life of this Agreement, promptly notifying HESA Services of any changes to the matters covered by the Information Security Questionnaire which materially alter the nature or scope of the systems and arrangements for data security which the Organisation has in place in respect of Unrounded Data relating to individuals; and

8.3.10.3.3. responding to such questions as HESA Services may ask from time to time with regard to its information security arrangements and processes.

8.3.11. Promptly report to HESA Services any circumstance that it becomes aware of which:

8.3.11.1. mean or would reasonably be regarded as meaning that any of clauses 8.2.1, 8.3.1 to 8.3.7, 8.3.9 or 8.3.10 have not been complied with;

8.3.11.2. cause or would reasonably be regarded as causing any party to breach the DP Legislation as a result of processing carried out in connection with this Agreement; or

8.3.11.3. mean or would reasonably be regarded as meaning that there has been unauthorised processing of personal data in connection with this Agreement.

8.4. With regard to the storage and retention of Unrounded Data relating to individuals:

8.4.1. the parties acknowledge that the purposes for which the Organisation and its Authorised Users process Heidi Plus Data include purposes within section 33 of the Data Protection Act 1998 and Article 89 of the GDPR, including the carrying out of statistical analysis to identify trends and developments over long time periods, and purposes relating to the public tasks of the Organisation and the wider public interest. In addition, the terms of this Agreement and the Authorised User Agreements permit repeated access to Heidi Plus Data for the duration of those Agreements. Therefore, it may be lawful and appropriate for the Organisation's Authorised Users to retain Heidi Plus Data constituting Unrounded Data relating to individuals over long periods of time Accordingly no fixed retention period or destruction date is specified under this Agreement in respect of Unrounded Data relating to individuals;

- 8.4.2. the Organisation acknowledges that Unrounded Data relating to individuals should only be accessed and retained (whether electronically or in hard copy form) to the extent necessary and proportionate for the Permitted Uses pursued by an Authorised User, and must be held securely;
- 8.4.3. without prejudice to the obligations stated in this clause 8, the Organisation shall make appropriate arrangements for monitoring the steps taken by Authorised Users as required by the Authorised User Agreements to review the need to retain Unrounded Data relating to individuals; to destroy or delete any such Unrounded Data which is no longer needed for the Permitted Uses; and to ensure that any such Unrounded Data which is extracted from Heidi Plus and held either electronically or in hard copy form is held securely subject to appropriate technical and organisational measures for data security.

9. Investigation of Potential Breach

- 9.1. The Organisation shall provide such evidence of its compliance with the obligations under clauses 5, 6, 7 and 8 of these Terms and Conditions as HESA Services may reasonably request.
- 9.2. Without prejudice to the generality of clause 9.1, where the Organisation reports a matter to HESA Services under any of clauses 5.7, 8.3.7 or 8.3.11 or HESA Services otherwise has reasonable grounds for believing that there has or may have been a breach by the Organisation of clauses 5, 6, 7 or 8 of these Terms and Conditions or a breach by an Authorised User of their Authorised User Agreement, the Organisation shall immediately provide all reasonable co-operation to HESA Services to enable HESA Services to determine as far as possible:
 - 9.2.1. Whether such a breach has taken place, the scope of any breach and the cause of any breach; and
 - 9.2.2. Action which it is appropriate for HESA, HESA Services or the Organisation to take to remedy or mitigate the impact of any such breach.
- 9.3. Reasonable co-operation under clause 9.2 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 Services.
- 9.4. Without prejudice to HESA Services' rights under clauses 12 and 13, where HESA Services investigates a potential breach under this clause 9 and reasonably determines that a breach of clauses 5, 6, 7 or 8 of these Terms and Conditions or a breach by an Authorised User of their Authorised User Agreement has taken place, the Organisation shall promptly carry out any reasonable steps which HESA Services specifies to the Organisation as required to remedy or mitigate the impact of the breach.

10. Confidentiality and Freedom of Information

- 10.1. "Confidential Information" in this clause 10 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.
- 10.2. Subject to clauses 10.3, 10.4 and 10.5, 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 it containing, or is otherwise subject to, obligations equivalent to those set out in this clause 10. 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.
- 10.3. The obligations of confidentiality and other obligations in this clause 10 shall not extend to any matter which the relevant party can show:
- 10.3.1. 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;
 - 10.3.2. 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;
 - 10.3.3. Is required to be disclosed under any applicable law, including a valid request under the Freedom of Information Legislation, or by order of a court or governmental or regulatory body or authority of competent jurisdiction;
 - 10.3.4. Was known to the receiving party before the information was disclosed to it by the disclosing party.
- 10.4. The Organisation consents to HESA or HESA Services informing government departments, funding councils, academic institutions and higher education representative bodies of the provision by HESA Services to the Organisation of access to Heidi Plus, including the name and address of the Organisation,

the Permitted Uses, the Commencement Date and any other conditions imposed in or under this Agreement.

- 10.5. This clause applies if the Organisation is a public authority to which the Freedom of Information Legislation applies. If the Organisation receives a request for disclosure of information under the Freedom of Information Legislation which relates to information about this Agreement or any information which has been provided or made accessible to the Organisation by HESA Services pursuant to this Agreement, the Organisation shall:
- 10.5.1. notify HESA Services of the request within a reasonable period after receipt of the request and before any disclosure is made in response to the request; and
 - 10.5.2. provide a draft of the Organisation's proposed response to the request (including the date on which the Organisation intends to send its response to the request); and
 - 10.5.3. reasonably consider any representations made by HESA Services with regard to the disclosure of information referred to in this clause 10.5, including any representations as to the impact of disclosure on HESA, HESA Services or third parties and as to the applicability of any exemptions in the Freedom of Information Legislation.

11. Liability, Warranties and Indemnities

- 11.1. 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.
- 11.2. No warranty is given by HESA or HESA Services as to the quality or accuracy of Heidi Plus Data or Heidi Plus, the performance of Heidi Plus including the level and timing of access to Heidi Plus or the technical capacity or the suitability of Heidi Plus for any specific task or activity within the Permitted Uses.
- 11.3. HESA and HESA Services do not accept any liability for any inferences or conclusions derived from Heidi Plus Data by the Organisation or any third party.
- 11.4. In particular but without prejudice to the generality of clause 11.2, no warranty is given as to the availability of Heidi Plus at any particular time or the level, extent or timing of any work undertaken for the purposes of maintenance, resolution of technical problems or developmental work in relation to Heidi Plus or any supporting or ancillary systems or frameworks whether or not notified in advance to the Organisation. The Organisation shall not be entitled to any refund or compensation payment in respect of any lack or loss of access to Heidi Plus for such reasons or any other reasons.
- 11.5. The Organisation warrants and undertakes on a continuing basis that it will comply with the provisions of the DP Legislation so far as such provisions apply to it in respect of this Agreement and that it will procure that its Authorised Users observe the provisions of the DP Legislation and the terms of this

Agreement and that individuals who are not Authorised Users do not access Heidi Plus or Unrounded Data.

- 11.6. Without prejudice to the generality of clauses 5, 8 and 11.5 of these Terms and Conditions, the Organisation warrants and undertakes on a continuing basis that:
 - 11.6.1. It shall access Heidi Plus and use Heidi Plus Data relating to individuals only in accordance with the Data Protection Legislation;
 - 11.6.2. It is in compliance with clause 8.3.2;
 - 11.6.3. It is in compliance with clause 8.3.3;
 - 11.6.4. It is in compliance with clause 8.3.4;
 - 11.6.5. It is in compliance with clause 8.3.5;
 - 11.6.6. It is in compliance with clause 8.3.6;
 - 11.6.7. It is in compliance with clause 8.3.8;
 - 11.6.8. It is in compliance with clauses 8.3.10.1 and 8.3.10.2;
 - 11.6.9. Any information provided to HESA Services under clause 8.3.10.3 is correct and accurately reflects the systems and arrangements in place within the Organisation;
 - 11.6.10. It is in compliance with clauses 8.4;
 - 11.6.11. It has complied with clause 5.5.7 and 5.5.8; and
 - 11.6.12. It has complied with any advice, undertaking or enforcement notice issued to it by the Information Commissioner following:
 - 11.6.12.1. any audit by the Information Commissioner; or
 - 11.6.12.2. any notification of a data security breach or any other breach of the Data Protection Legislation by the Organisation;
- 11.7. Subject to clause 11.10, the Organisation shall indemnify and keep indemnified HESA Services and HESA against all damages, costs and expenses suffered by them arising from any breach of this Agreement or a breach of an Authorised User Agreement by the Organisation or its Authorised Users.
- 11.8. Subject to clause 11.10, the maximum liability of the Organisation to HESA and HESA Services for any loss or damage of any kind arising from this Agreement shall not in any event exceed the sum of £50,000.
- 11.9. Subject to clause 11.10, HESA and HESA Services:
 - 11.9.1. have no obligations to the Organisation, whether in contract, tort, breach of statutory duty or otherwise, beyond its obligations expressly set out in this Agreement;

- 11.9.2. have no liability (however caused) for any loss of profit, business, contracts, revenues, increased costs or expenses or any indirect or consequential loss arising under this Agreement;
 - 11.9.3. the maximum liability of HESA and HESA Services to the Organisation for any loss or damage of any kind arising from this Agreement shall not in any event exceed £1,000.
- 11.10. Neither party excludes or limits its liability to the other party for:
- 11.10.1. fraud or fraudulent misrepresentation;
 - 11.10.2. death or personal injury caused by negligence;
 - 11.10.3. any matter for which it would be unlawful for the parties to exclude liability.
- 11.11. Without prejudice to any other rights or remedies which HESA or HESA Services may have, the Organisation acknowledges and agrees that damages would not be an adequate remedy for any breach of the provisions of this Agreement and HESA 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 Organisation.
- 11.12. The Organisation 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 Organisation's activities. The Organisation shall provide HESA Services with such evidence of compliance with this clause 11.12 as HESA Services may reasonably request.

12. Termination

- 12.1. HESA Services may without liability terminate this Agreement immediately by written notice to the Organisation if:
- 12.1.1. HESA Services determines, in its own absolute discretion, that the Organisation is in material breach of any of its obligations under this Agreement. For the avoidance of doubt, any breach of clauses 3, 5.2, 5.5, 5.7, 6.1, 7.6, 7.7, 8.2, 8.3, 9.1, 9.2, 9.4 and 10.2 will always be considered to be a material breach;
 - 12.1.2. HESA Services determines, in its own absolute discretion, that the Organisation 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
 - 12.1.3. The Organisation fails to pay any subscription fee due to HESA as a result of being a HESA AP Subscriber;
 - 12.1.4. an Insolvency Event occurs in relation to the Organisation; or

- 12.1.5. the Organisation ceases, or threatens to cease, to carry out business;
or
- 12.1.6. HESA Services reasonably apprehends that any of the events referred to in clauses 12.1.1 to 12.1.5 is about to occur in relation to the Organisation and notifies the Organisation accordingly.
- 12.2. Each party may without liability terminate this Agreement with effect from the next Renewal Date by giving written notice to the other party, such notice to be given not less than one month prior to the next Renewal Date.
- 12.3. The Organisation 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 Organisation under this Agreement.
- 12.4. Termination shall be without prejudice to the rights of the parties accrued up to the Termination Date. For the avoidance of doubt, termination shall have effect only in respect of access to and use of Heidi Plus under this Agreement and the Organisation shall not be entitled to any refund or reduction in the HESA AP Subscriber subscription fee due to HESA for the period either before or after the Termination Date.

13. Consequences of Breach

- 13.1. Without prejudice to HESA Services' rights under clause 12, the parties acknowledge and agree that any material breach of this Agreement by the Organisation or any material breach of clauses 4, 5 or 6 of the Gold User Agreement, clauses 3, 5 or 8 to 15 of the Bronze User Agreement or clauses 4, 5, 6 or 7 of the Lead Contact Agreement shall have such of the following consequences as HESA Services shall in its absolute discretion determine to be appropriate in the circumstances:
- 13.1.1. Suspension of access to Heidi Plus for some or all of the Organisation's Authorised Users as provided for in clause 4;
- 13.1.2. The specification by HESA Services of any other steps to remedy or mitigate a breach as provided for in clause 9.4;
- 13.1.3. HESA Services seeking an injunction to prevent any improper access to Heidi Plus or use of Heidi Plus Data;
- 13.1.4. HESA Services imposing a requirement on the Organisation and/or on individual Authorised Users to delete or destroy any Unrounded Data, whether held in hard copy or electronic form; and
- 13.1.5. HESA or HESA Services taking other legal action to secure an appropriate remedy, including compensation, for the breach.
- 13.2. The Organisation shall indemnify HESA and HESA Services for all costs reasonably incurred by them in obtaining legal advice regarding the matters constituting the breach, the status and consequences of the breach and in taking any action on behalf of HESA or HESA Services' behalf with respect to the breach and the matters referred to in clause 13.1. For the avoidance of doubt this indemnity is included in the £50,000 cap as stated in clause 11.8.

14. Consequences of Termination

- 14.1. Clauses 1, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19 of these Terms and Conditions shall survive termination or expiration of this Agreement.
- 14.2. On termination of this Agreement the Organisation shall, and shall ensure that all individuals who were at the Termination Date Authorised Users under this Agreement shall, delete or destroy any Unrounded Data relating to individuals which has been extracted from Heidi Plus, whether held in hard copy or electronic form.

15. Alternative Dispute Resolution

- 15.1. This clause 15 applies to any dispute arising between the Organisation 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.
- 15.2. Where a dispute as referred to in clause 15.1 arises from a concern or complaint on the part of the Organisation, the Organisation 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 Organisation remains dissatisfied with HESA Services' position following completion of this process, the provisions of clauses 15.3 to 15.5 shall apply.
- 15.3. This clause 15.3 and, if applicable, clauses 15.4 and 15.5, apply either where a dispute as referred to in clause 15.1 arises from a concern or complaint on the part of HESA Services, or where the Organisation remains dissatisfied with HESA Services' position following completion of HESA's complaints process under clause 15.2. 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.
- 15.4. 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.
- 15.5. 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 15 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.
- 15.6. Nothing in this clause 15 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.

16. Notices

16.1. Any notice to be given pursuant to this Agreement;

16.1.1. shall be in writing; and

16.1.2. 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 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 Organisation: The individual and address stated in clauses 2, 3 and 5 of the Main Agreement.

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

16.1.3.1. if delivered by hand, when delivered; or

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

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

17. Force Majeure

17.1. HESA Services shall not be deemed to be in breach of this Agreement or otherwise liable to the Organisation 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 Organisation and the time for performance of the relevant obligation shall be deemed to be extended by a period equal to the duration of the Event of Force Majeure.

18. General

18.1. This Agreement comprises the Main Agreement and the Terms and Conditions. Neither the Main Agreement nor the Terms and Conditions are to be interpreted or applied separately from the other.

18.2. This Agreement, including the Main Agreement and the Terms and Conditions together with all other documents referred to herein, contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and 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.

- 18.3. This Agreement may not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party, save that HESA Services may assign this Agreement or transfer any of its rights and obligations under this Agreement to HESA without the prior consent of the Organisation. If HESA Services makes any such assignment or transfer, it shall notify the Organisation as soon as practicable thereafter.
- 18.4. The Organisation 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.
- 18.5. No variation to this Agreement shall take effect unless it is in writing and signed on behalf of the parties to this Agreement by the individuals specified in clause 7 of the Main Agreement.
- 18.6. 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.
- 18.7. Each party shall not pledge the credit of the other nor represent itself as being the other nor a partner, 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.
- 18.8. 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.
- 18.9. In particular, and without prejudice to the generality of clauses 18.7 and 18.8, the Organisation shall not without the prior written agreement of HESA Services:
 - 18.9.1. 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-licence or otherwise provide access to HESA Data other than as specified in the Permitted Uses;
 - 18.9.2. use the logo or name of either HESA, HESA Services or Heidi Plus save as required to comply with clause 5.8.

- 18.10. 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.
- 18.11. 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.
- 18.12. The headings in this Agreement are included for convenience or reference only and shall not affect the interpretation of this Agreement.
- 18.13. References in this Agreement to the singular include the plural and vice versa and references to one gender includes the other gender.

19. Governing Law

- 19.1. 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 15, the Organisation submits to the exclusive jurisdiction of the English Courts.

20. Execution

- 20.1. This agreement shall be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but both the counterparts shall together constitute the one agreement.
- 20.2. The following shall take effect as delivery of an executed counterpart of this agreement:
- 20.2.1 this agreement or a counterpart of this agreement; or
 - 20.2.2 the signature page of this agreement or of a counterpart of this agreement;
- where it is transmitted through a digital signature programme to a party to this agreement following electronic signature by another party using that digital signature programme.
- 20.3. No counterpart shall be effective until both the Organisation and HESA Services has executed and delivered at least one counterpart.
- 20.4. Where digital signatures are used by the parties each party shall be entitled to assume that the signatory on behalf of the other party has full authority to enter into this Agreement; and

- 20.5. The Organisation acknowledges and accepts that the digital signature system will track and retain their Personal Data. 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.

EXAMPLE



Schedule 2: Bronze User Agreement

Bronze User Agreement: Access to Heidi Plus - Student and Destination Data

I confirm that I understand that:

1. This Agreement is supplemental to an Alternative Provider Organisational Agreement for Access to Heidi Plus – Student and Destination Data (“the Organisational Agreement”) which has been entered into between HESA Services Limited (“HESA Services”) and my employing organisation (“the Organisation”) to access Heidi Plus.
2. A copy of the Organisational Agreement is published at https://www.hesa.ac.uk/files/organisational_agreement_AP_Student_and_Destination_s.pdf and that any defined terms within this Agreement shall have the meaning specified in Schedule 1 of the Organisational Agreement.
3. Under this Agreement I am being given access only to HESA Services created dashboards containing Student and Destination Data which is Rounded Data. I will not attempt to access any Unrounded Data relating to individuals through Heidi Plus.
4. The Organisation and HESA Services 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 the Organisation and HESA and HESA Services arising from any perceived breach or inadequacy in the protection and security of data collected by HESA and accessed through Heidi Plus.
5. Heidi Plus Data relating to individuals should therefore only be used in accordance with the DP Legislation and the Heidi Plus Data must not be used to identify or contact individuals or to enable them to be identified or contacted by others, or to inform any decision to be made about an individual.
6. Under this Agreement I do not acquire any intellectual property rights other than a non-exclusive, non-transferable licence to use the Heidi Plus Data in accordance with this Agreement.
7. If I breach the terms of this Agreement or cause my employer to breach the terms of the Organisational Agreement:
 - a. this may constitute a breach of the DP Legislation;
 - b. this may constitute a breach of the Organisational Agreement which could result in some or all access to Heidi Plus for the Organisation and its Authorised Users being suspended or terminated;
 - c. my own access to Heidi Plus may be suspended or terminated permanently.

I agree:

8. Not to allow any other individual to access Heidi Plus using my log-in details and to take all reasonable steps to preserve the security of Heidi Plus and Heidi Plus Data.

9. To respect the intellectual property rights of HESA Services and third parties in relation to Heidi Plus which are set out in the Heidi Plus Operational Documentation, including by complying with any restrictions arising from the ownership of intellectual property rights which are set out in the Heidi Plus Operational Documentation.
10. To use Heidi Plus, Heidi Plus Data and the Tableau interfaces only for the Permitted Uses in the Appendix to this Agreement.
11. Not to alter or seek to alter any element of the underlying software or functionality of Heidi Plus or Tableau Software whether as described in clause 7.6.2 of the Organisational Agreement or in any other way.
12. Where the Permitted Uses allow me to include Heidi Plus Data in any internal report or paper or any material published externally:
 - a. only to refer to or reproduce Rounded Data relating to individuals from Heidi Plus; and
 - b. to include in any external publication which uses, reproduces or references Heidi Plus Data an attribution and caveat as to the source of the Heidi Plus Data in the form specified in the Heidi Plus Operational Documentation.
13. To inform the Organisation promptly of any actions that risk breaching this Agreement or the Organisational Agreement.
14. To seek advice from the Lead Contact at the Organisation if I am unsure as to whether any proposed action is within the terms of this Agreement.
15. If requested to do so by HESA Services, whether on termination of this Agreement or otherwise, to immediately and permanently destroy any Heidi Plus Data in my possession, whether in electronic or hard copy form, which HESA Services in its absolute discretion determines was obtained by or in breach of this Agreement, the Organisational Agreement or any other Authorised User Agreement.

I acknowledge and accept that:

16. Heidi Plus is subject to ongoing development and improvement.
17. HESA Services makes no warranty, guarantee or commitment as to the accuracy of the Heidi Plus Data and from time to time changes may be made to the Heidi Plus Data to enable errors or omissions to be corrected.
18. HESA Services will use reasonable endeavours to comply with the published service standards set out in the Heidi Plus Operational Documentation. However, HESA Services provides no warranty as to its ability to meet those standards or as to the ability of the Authorised User to access Heidi Plus with full functionality or otherwise at particular times or over particular periods.
19. HESA Services also excludes any other warranties, guarantees or commitments as to the content and performance of Heidi Plus and Tableau excludes any warranty, support or other obligation to me as an Authorised User of Heidi Plus.
20. HESA Services shall use the Heidi Plus Website to provide the Authorised User with:

- a. reasonable notice of any periods of planned interruption to the availability of Heidi Plus for the purposes of maintenance, development and improvement of Heidi Plus and responding to faults or technical issues experienced by Authorised Users; and
 - b. reasonable information as to faults reported or identified which will or may materially affect the access or user experience of Authorised Users and as to the steps being taken or to be taken by HESA Services to correct such faults.
21. HESA Services may, in its absolute and sole discretion, decide to prevent or restrict access to Heidi Plus for the purposes of enabling maintenance, resolution of technical problems or developmental work in relation to Heidi Plus or any supporting or ancillary systems or frameworks.
22. The current contact details to be used by the Organisation or any Authorised User to notify HESA Services of any fault or technical issue experienced in the use of Heidi Plus shall be published in the Heidi Plus Operational Documentation.
23. My right of access to Heidi Plus and the Heidi Plus Data may be suspended without notice if:
 - a. HESA Services has identified a breach or potential breach of this Agreement, the Organisational Agreement or any Authorised User Agreement with any other Authorised User from the Organisation; and
 - b. HESA Services determines in its absolute discretion that the nature of that breach or potential breach is such that such suspension of this Agreement is justified in order to avoid the risk of unauthorised access to or use of Heidi Plus Data; or
 - c. the Organisation has failed to pay all or part of any HESA AP Subscriber subscription fee due to HESA within 30 days of receipt of the relevant invoice.
24. The timing of any reinstatement of my access to Heidi Plus following any suspension under clause 23 is at the discretion of HESA Services. I accept that suspension may be followed by termination of this Agreement under clause 25 if it applies.
25. This Agreement and my access to Heidi Plus and the Heidi Plus Data will terminate:
 - a. on the request of my Organisation; or
 - b. when the Organisational Agreement terminates; or
 - c. when I cease to be a Staff Member of the Organisation; or
 - d. if I am suspended from my role as a Staff Member of the Organisation; or
 - e. if HESA Services determines in its absolute discretion that I have materially breached any provision of this Agreement or may have materially breached any provision of this Agreement.
26. HESA Services may assign this Agreement or transfer any of its rights and obligations under this Agreement to HESA without the prior consent of the Organisation.

27. This Agreement shall be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but both the counterparts shall together constitute the one agreement.
28. Transmission of an executed counterpart of this Agreement in electronic form through a digital signature programme shall take effect as delivery of an executed counterpart of this agreement.
29. No counterpart shall be effective until both HESA Services and I have executed and delivered at least one counterpart.
30. I understand that the digital signature system will track and retain my Personal Data. 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.



SIGNATURE PAGE

The Agreement between the parties is made up of both the Agreement and the Appendix. In signing this document, the parties are agreeing to the terms and conditions in both the Agreement and the Appendix.

Signed by [Name of Authorised User]: Organisation:

Position:

Date:

Signed on behalf of HESA Services Limited:

Name:

Position:

Date:

Appendix: Permitted Uses

1.1. Subject to paragraph 1.2, the Authorised User may use the Heidi Plus Data on behalf of their Organisation only for the following purposes:

1.1.1. Academic research within the definition of research and development in the Frascati Manual 2015;

1.1.2. Providing information to:

1.1.2.1. prospective students to help them select their course;

1.1.2.2. current students to enable them to improve the outcomes of their education;

1.1.2.3. NUS officials to enable them to understand the characteristics of the Organisation's student population in order to provide more appropriate and effective services;

1.1.2.4. those with responsibility for setting and maintaining standards and assuring and enhancing quality both within the Organisation and externally to discharge their duties effectively;

provided always that the Heidi Plus Rounding Methodology must be applied to such information before it is published, reproduced or otherwise shared with such third parties;

1.1.3. Review of data submitted by their Organisation to HESA including identifying anomalies and continuing to improve the quality of data submitted to HESA;

1.1.4. Identifying and making improvements to organisational planning, efficiency performance, and the experience of students at the Organisation;

1.1.5. Benchmarking to optimise the Organisation's use of public funds;

1.1.6. Complying with Public Sector Equality Duty (Equality Act 2010) through review of data and publication of necessary information, provided always that the Heidi Plus Rounding Methodology must be applied to such information before it is published, reproduced or otherwise shared with third parties;

1.1.7. Monitoring of fair access to the Organisation and compliance with the Organisation's duties under the Equality Act 2010 or its successor legislation including publication of information derived from the Heidi Plus Data in accordance with the Heidi Plus Rounding Methodology;

provided always that any provision of such information under paragraphs 1.1.1 to 1.1.7 is subject to the requirement to apply the Heidi Plus Rounding Methodology to any Unrounded Data relating to individuals which is to be published, reproduced or otherwise shared with such third parties.

- 1.2. Any Heidi Plus Data processed for the purposes set out in paragraph 1.1 is subject to the following conditions:
 - 1.2.1. Any provision of information in accordance with paragraph 1.1 is subject to the requirement to apply the Heidi Plus Rounding Methodology to any Unrounded Data relating to individuals which is to be published, reproduced or otherwise shared with such third parties;
 - 1.2.2. No permission is given for Heidi Plus Data to be used for direct commercial gain. The uses prohibited by this clause include the provision of any data or information in return for a fee or other commercial gain or advantage, or on terms permitting the recipient to charge a fee to any third party in respect of further uses or provision of data or information. For the avoidance of doubt, this prohibition includes the use of Heidi Plus Data for the production or publication of league tables of higher education providers or any similar rating or comparison of providers;
 - 1.2.3. The Authorised User shall not publish or otherwise share externally any report, paper, article or other material which contain any comparisons between any aspect of different higher education providers which are derived from or referenced to Heidi Plus Data unless written permission has been obtained from HESA Services before the material is published or shared. For the avoidance of doubt, this prohibition includes the publication or sharing of league tables of higher education providers or any similar rating or comparison of providers, whether generated for commercial gain or otherwise;
 - 1.2.4. Whenever Heidi Plus Data are used, reproduced or referenced in a publication or other shared material made by the Organisation or on its behalf an attribution and caveat will be included in the form specified in the Heidi Plus Operational Documentation; and
 - 1.2.5. The Authorised User may refer to or reproduce Rounded Data relating to individuals in any report or paper produced for internal use within the Organisation and any report or article published externally provided that such reports, papers or articles and the publication thereof are solely for the purposes specified in clause 1.1 above.

Schedule 3: Gold User Agreement

Gold User Agreement: Access to Heidi Plus – Student and Destination Data

This document records the Gold User terms of access to Heidi Plus and is made in accordance with the terms of the Alternative Provider - Organisational Agreement for Access to Heidi Plus – Student and Destination Data (“Organisational Agreement”). Terms used in this Agreement shall have the meaning specified in Schedule 1 of the Organisational Agreement or be interpreted in accordance with Schedule 1. A copy of the Organisational Agreement may be found at:

https://www.hesa.ac.uk/files/organisational_agreement_AP_Student_and_Destinations.pdf

1. Parties

1.	Authorised User	Name: Job Title: Employer Organisation: Address: Email: Telephone Number:
2.	HESA Services Ltd	Contact Name: Address: Email: Telephone Number:
3.	Gold User Commencement Date	The date on which the last party to sign signs this Agreement

2. Duration

- 2.1. This Agreement shall commence on the Gold User Commencement Date and shall remain in force for the Term, being the shorter of:
- 2.1.1. the period between the Gold User Commencement Date and the date of termination of the Organisational Agreement; or
 - 2.1.2. the period between the Gold User Commencement Date and termination of this Agreement in accordance with clause 8 of this Agreement.
- 2.2. The Termination Date shall be the date of termination referred to in clause 2.1.1 or clause 2.1.2 as appropriate of this Agreement.

3. Obligations of HESA Services Limited

- 3.1. In consideration of the Authorised User agreeing to abide by the terms of this Agreement and of the consideration specified in the Organisational Agreement, and subject to the restrictions and conditions in the Organisational Agreement and this Agreement, HESA Services will provide access to Heidi Plus to enable the Authorised User to access Heidi Plus Data including Rounded Data and Unrounded Data.
- 3.2. The Authorised User acknowledges and accepts that:
 - 3.2.1. Heidi Plus is subject to ongoing development and improvement;
 - 3.2.2. HESA Services makes no warranty, guarantee or commitment as to the accuracy of the Heidi Plus Data and from time to time changes may be made to the Heidi Plus Data to enable errors or omissions to be corrected; and
 - 3.2.3. HESA Services excludes any other warranties, guarantees or commitments as to the content and performance of Heidi Plus.
- 3.3. HESA Services will make reasonable endeavours to comply with the published service standards set out in the Heidi Plus Operational Documentation. However HESA Services provides no warranty as to its ability to meet those standards or as to the ability of the Authorised User to access Heidi Plus with full functionality or otherwise at particular times or over particular periods.
- 3.4. HESA Services shall use the Heidi Plus Website to provide the Authorised User with:
 - 3.4.1. reasonable notice of any periods of planned interruption to the availability of Heidi Plus for the purposes of maintenance, development and improvement of Heidi Plus and responding to faults or technical issues experienced by Authorised Users; and
 - 3.4.2. reasonable information as to faults reported or identified which will or may materially affect the access or user experience of Authorised Users and as to the steps being taken or to be taken by HESA Services to correct such faults.
- 3.5. The decision to prevent or restrict access to Heidi Plus for the purposes of enabling maintenance, resolution of technical problems or developmental work in relation to Heidi Plus or any supporting or ancillary systems or frameworks shall be at HESA Services' absolute and sole discretion.
- 3.6. The current contact details to be used by the Organisation or any Authorised User to notify HESA Services of any fault or technical issue experienced in the use of Heidi Plus shall be published in the Heidi Plus Operational Documentation.

4. Permitted Uses

- 4.1. The Authorised User may use the Heidi Plus Data only for the Permitted Uses and in accordance with the conditions and restrictions set out in this Agreement. The

following **fundamental conditions and requirements** on the use of HEIDI Plus Data must be observed by the Organisation and all of its Authorised Users:

- 4.1.1. Unrounded Data relating to individuals must never be:
 - 4.1.1.1. shared with anyone else who is not also a Gold User or Lead Contact in your Organisation (whether through reproduction, publication or any other method of sharing or disclosure);
 - 4.1.1.2. used to make decisions or enable any decisions to be made about an individual;
 - 4.1.1.3. used to contact an individual or enable them to be contacted;for any reason or purpose whatsoever;
- 4.1.2. The Authorised User can only access, extract and use Unrounded Data relating to individuals where this is necessary for the Permitted Uses set out below and those uses fall within the Authorised User's role in the Organisation;
- 4.1.3. The Authorised User must only use data relating to disability or ethnicity for purposes relating to promoting, maintaining or monitoring equality of opportunity in accordance with equalities legislation;
- 4.1.4. Heidi Plus Data can only be reproduced, published or disclosed externally in a form which complies with the Heidi Plus Rounding Methodology;
- 4.1.5. The Authorised User must only access Heidi Plus when located in the United Kingdom; and
- 4.1.6. The Authorised User must not process or permit the processing of Heidi Plus Data extracted from Heidi Plus outside the United Kingdom unless it is necessary for a Permitted Use and all of the relevant conditions specified in clause 4.7.9 are met.

This summary of key conditions shall be interpreted in accordance with any more detailed relevant provisions within this Agreement.

Permitted Uses

- 4.2. Subject to clause 4.3, the Authorised User may use the Heidi Plus Data on behalf of their Organisation only for the following Permitted Uses:
 - 4.2.1. Academic research within the definition of research and development in the Frascati Manual 2015;
 - 4.2.2. Providing information to:
 - 4.2.2.1. prospective students to help them select their course;
 - 4.2.2.2. current students to enable them to improve the outcomes of their education;

4.2.2.3. NUS officials to enable them to understand the characteristics of the Organisation's student population in order to provide more appropriate and effective services;

4.2.2.4. those with responsibility for setting and maintaining standards and assuring and enhancing quality both within the Organisation and externally to discharge their duties effectively;

provided always that the Heidi Plus Rounding Methodology must be applied to such information before it is published, reproduced or otherwise shared with such third parties;

4.2.3. Review of data submitted by their Organisation to HESA including identifying anomalies and continuing to improve the quality of data submitted to HESA;

4.2.4. Identifying and making improvements to organisational planning, efficiency performance, and the experience of students at the Organisation;

4.2.5. Benchmarking to optimise the Organisation's use of public funds;

4.2.6. Complying with Public Sector Equality Duty (Equality Act 2010) through review of data and publication of necessary information, provided always that the Heidi Plus Rounding Methodology must be applied to such information before it is published, reproduced or otherwise shared with third parties;

4.2.7. Monitoring of fair access to the Organisation and compliance with the Organisation's duties under the Equality Act 2010 or its successor legislation including publication of information derived from the Heidi Plus Data in accordance with the Heidi Plus Rounding Methodology;

provided always that any provision of such information under clauses 4.2.1 to 4.2.7 is subject to the requirements in clause 4.7.5 to apply the Heidi Plus Rounding Methodology to any Unrounded Data relating to individuals which is to be published, reproduced or otherwise shared with such third parties.

4.3. Any processing of Heidi Plus Data for the purposes set out in clause 4.2 is subject to the following conditions:

4.3.1. Any provision of information in accordance with clause 4.2 is subject to the requirements in clause 4.7.5 to apply the Heidi Plus Rounding Methodology to any Unrounded Data relating to individuals which is to be published, reproduced or otherwise shared with such third parties;

4.3.2. No permission is given for Heidi Plus Data to be used for direct commercial gain. The uses prohibited by this clause include the provision of any data or information in return for a fee or other commercial gain or advantage, or on terms permitting the recipient to charge a fee to any third party in respect of further uses or provision of data or information. For the avoidance of doubt, this prohibition includes the use of Heidi Plus Data for the production or publication of league tables of higher education providers or any similar rating or comparison of providers;

- 4.3.3. The Authorised User shall not publish or otherwise share externally any report, paper, article or other material which contain any comparisons between any aspect of different higher education providers which are derived from or referenced to Heidi Plus Data unless written permission has been obtained from HESA Services before the material is published or shared. For the avoidance of doubt, this prohibition includes the publication or sharing of league tables of higher education providers or any similar rating or comparison of providers, whether generated for commercial gain or otherwise;
- 4.3.4. Whenever Heidi Plus Data are used, reproduced or referenced in a publication or other shared material made by the Organisation or on its behalf an attribution and caveat will be included in the form specified in the Heidi Plus Operational Documentation; and
- 4.3.5. The Authorised User may refer to or reproduce Rounded Data relating to individuals in any report or paper produced for internal use within the Organisation and any report or article published externally provided that such reports, papers or articles and the publication thereof are solely for the Permitted Uses specified in clause 4.2 above.

Conditions and restrictions on use for the Permitted Uses

- 4.4. By signing this Agreement, the Authorised User confirms that their intended and actual use of the Heidi Plus Data is and shall be only for activities within the Permitted Uses and that Unrounded Data relating to individuals shall be accessed and used only to the extent that this is necessary for the Authorised User to undertake tasks within the Permitted Uses as part of their role as a Staff Member of the Organisation.
- 4.5. The Authorised User warrants that any information provided to HESA, HESA Services, the Organisation or its Lead Contact as part of the process of approving or authenticating the Authorised User as a Gold User (including but not limited to any information regarding his/her role or status as a Staff Member in the Organisation) is complete and accurate.
- 4.6. The Authorised User acknowledges and accepts that:
 - 4.6.1. Subject to clause 4.6.3, all intellectual property rights in Heidi Plus, Heidi Plus Data and any data derived from Heidi Plus Data are vested and shall remain vested in HESA Services and/or HESA;
 - 4.6.2. Under this Agreement the Authorised User acquires no intellectual property rights other than a non-exclusive, non-transferable licence to use the Heidi Plus Data in accordance with this clause 4 and the remainder of this Agreement; and
 - 4.6.3. The Authorised User will respect restrictions on the use of intellectual property rights of third parties in relation to:
 - 4.6.3.1. Heidi Plus Data which is not HESA Data, to the extent that these are specified in the Heidi Plus Operational Documentation; and

4.6.3.2. the Tableau Software as specified in clause 7 of the Organisational Agreement.

4.7. The Authorised User shall not at any time:

4.7.1. Allow any other person to access Heidi Plus using his account or the individualised log-on details required to enable him to access Heidi Plus, nor allow any other person to access those log-on details;

4.7.2. Alter or seek to alter any element of the underlying software or functionality of Heidi Plus or Tableau Software;

4.7.3. Access or attempt to view or extract Heidi Plus Data other than for the Permitted Uses;

4.7.4. Access or use Unrounded Data relating to individuals or disclose Unrounded Data relating to individuals to the Organisation's Gold Users or any other Lead Contact of the Organisation, if this is not necessary for an activity within the Permitted Uses;

4.7.5. Reproduce, publish, disclose or otherwise share any Unrounded Data relating to individuals with any person except the Organisation's Gold Users or any other Lead Contact of the Organisation. For the avoidance of doubt, no other permission is given for the sharing or publication of Unrounded Data relating to individuals, whether in the form or for the purposes described in clause 4.2 or otherwise, and the Heidi Plus Rounding Methodology must be applied to such data before any such sharing or publication;

4.7.6. Use or seek to use Heidi Plus Data to identify or enable identification of individuals or to inform a decision to be made about any individual;

4.7.7. Use, reproduce, pass on, publish, permit the use by or otherwise make available to any third party (on a commercial basis or otherwise) Heidi Plus Data save:

4.7.7.1. as permitted in this clause 4;

4.7.7.2. as required by law; or

4.7.7.3. with HESA Services' explicit prior written consent.

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;

4.7.8. Access Heidi Plus while located outside the United Kingdom; or

4.7.9. Process or permit the processing of Heidi Plus Data extracted from Heidi Plus outside the United Kingdom unless it is necessary for a Permitted Use and:

4.7.9.1. Heidi Plus Data relating to individuals has been rounded in accordance with the Heidi Plus Rounding Methodology; and

- 4.7.9.2. Heidi Plus Data which does not relate to individuals is only processed to the extent it is proportionate for that particular Permitted Use i.e. it is adequate, relevant and not excessive for the necessary Permitted Use; or
 - 4.7.9.3. specific written consent has been provided in advance of any proposed processing outside the United Kingdom by HESA Services. Requests for consent should be sent to Heidi.Plus@hesa.ac.uk.
- 4.8. Prior to gaining access to Heidi Plus, the Authorised User must have completed all training required under clause 4.5.4 of the Organisational Agreement. It is the responsibility of the Authorised User not to access Heidi Plus unless and until such training has been undertaken and completed to the satisfaction of the Organisation.
- 4.9. The Authorised User shall not upload any data to Heidi Plus other than Organisation Data, which is data relating to the Organisation which is being uploaded to enable HESA Services to provide a specific identified service to the Organisation. Data shall not be regarded as Organisation Data unless permission to upload it has been expressly granted in writing by HESA Services prior to the data being uploaded. The Authorised User acknowledges and agrees that HESA Services may permanently delete any data other than Organisation Data uploaded to Heidi Plus.
- 4.10. Organisation Data shall not be regarded or treated as Heidi Plus Data unless or until it is accepted as such by HESA Services pursuant to any terms and conditions issued under clause 6.4 of the Organisational Agreement.
- 4.11. It is the responsibility of the Authorised User to ascertain the status of any data before uploading it to Heidi Plus or using it.
- 4.12. In uploading Organisation Data to Heidi Plus the Authorised User acknowledges and accepts that:
- 4.12.1. Once submitted the Organisation Data will be visible to the Organisation's Gold Users and Lead Contacts; and
 - 4.12.2. If accepted by HESA Services pursuant to terms and conditions issued under clause 6.4 of the Organisational Agreement, the Organisation Data may be visible to Gold Users and Lead Contacts of Heidi Plus from the Organisation and to staff from other organisations who have signed agreements for access to Heidi Plus.
- 4.13. The Authorised User agrees that in relation to Organisation Data they will:
- 4.13.1. Take all reasonable steps to ensure that the Organisation Data does not include any defamatory material or other information liable to cause offence to a reasonable person; and
 - 4.13.2. In the event that any information falling within clause 4.13.1 is found to be within Organisation Data, take immediate action to remove that Organisation Data from Heidi Plus or take action with a view to ensuring this is done by the Organisation.

- 4.14. The Authorised User's right of access to Heidi Plus and Heidi Plus Data may be suspended without notice if:
- 4.14.1. HESA Services has identified a breach or potential breach of this Agreement, the Organisational Agreement or any Authorised User Agreement with any other Authorised User from the Organisation; and
 - 4.14.2. HESA Services determines in its absolute discretion that the nature of that breach or potential breach is such that such suspension of this Agreement is justified in order to avoid the risk of unauthorised access to or use of Heidi Plus Data.
- 4.15. The timing of any reinstatement of the Authorised User's access to Heidi Plus following any suspension under clause 4.14 is at the discretion of HESA Services. Suspension may be followed by termination of this Agreement if any provision of clause 8 applies and, at HESA Services' absolute discretion, an offer to enter into a Bronze User Agreement in place of this Agreement.

5. Data Protection and Data Security

- 5.1. The Authorised User 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, HESA Services and the Organisation 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 the Organisation to access data in the future.
- 5.2. The Authorised User agrees that in connection with the provision or use of Heidi Plus Data which relates to individuals it will at all times:
- 5.2.1. Comply with the DP Legislation including without limitation the data protection principles set out in the DP Legislation; and
 - 5.2.2. Fully co-operate with HESA, HESA Services and the Organisation to enable HESA, HESA Services and/or the Organisation to comply with their obligations under the DP Legislation.
- 5.3. The Authorised User is referred to clause 8 of the Organisational Agreement and is required to comply with all restrictions in that clause or notified to it by the Organisation for the purposes of ensuring compliance with that clause.
- 5.3.1. The Authorised User is required to take reasonable steps to prevent access to Heidi Plus Data being obtained by unauthorised individuals (being individuals who are not authorised through an Authorised User Agreement to access the relevant type or level of Heidi Plus Data). In particular, the Authorised User will ensure that they log out or lock devices through which they are accessing Heidi Plus when not present and keep information extracted from Heidi Plus and printed materials generated from Heidi Plus secure.
 - 5.3.2. In relation to Unrounded Data extracted and held by the Authorised User either in electronic or in hard copy form, maintain appropriate security measures with a view to preventing those materials from being accessed

or viewed by unauthorised individuals (whether deliberately or inadvertently). Such measures will include but are not limited to:

- 5.3.2.1. only generating and retaining such extracts or copies of Heidi Plus Data to the extent necessary and proportionate for the Permitted Uses;
 - 5.3.2.2. keeping under regular review the continuing need to retain such extracts or copies for the Permitted Uses and promptly ensuring the permanent secure deletion or destruction of such extracts or copies when the Authorised User determines that retention is no longer necessary or proportionate for the Permitted Uses;
 - 5.3.2.3. not leaving such information or materials unattended on the Authorised User's desk or in any other area which is open to or readily accessible by unauthorised individuals;
 - 5.3.2.4. ensuring that electronic copies or extracts of Heidi Plus Data are held within a system or on hardware which is subject to appropriate data security protections, in accordance with the DP Legislation and the Organisation's information security policies, and in a manner which restricts access only to the Organisation's Gold Users and Lead Contact Users who need to access the Unrounded Data for the Permitted Uses; and
 - 5.3.2.5. ensuring that such information or materials and are not visible or readily accessible during transportation.
- 5.3.3. The Authorised User has a duty to inform the Lead Contact immediately of any breach or possible breach of this Agreement, in particular any breach of clause 4 or this clause 5.
- 5.3.4. The Authorised User understands that HESA, HESA Services and the Organisation will use their Personal Data for the purposes of administering this Agreement and monitoring or ensuring compliance with this Agreement and the DP Legislation.

6. Investigation of Potential Breach

- 6.1. The Authorised User shall provide such evidence of his compliance with the obligations under this Agreement as HESA Services and/or the Organisation may reasonably request.
- 6.2. Without prejudice to the generality of clause 6.1, where a breach has been reported to HESA Services by the Organisation or HESA Services otherwise has reasonable grounds for believing that there has or may have been a breach by the Authorised User of this Agreement, the Authorised User shall immediately provide all reasonable co-operation to HESA Services to enable HESA Services to determine as far as possible:
 - 6.2.1. Whether such a breach has taken place, the scope of any breach and the cause of any breach; and

- 6.2.2. Action which it is appropriate for HESA, HESA Services or the Organisation to take to remedy or mitigate the impact of any such breach.
- 6.3. Reasonable co-operation under clause 6.2 shall include but not be limited to the provision of documents and information on request within reasonable timescales specified by HESA Services.
- 6.4. Where HESA Services investigates a potential breach under this clause 6 and reasonably determines that a breach of this Agreement has taken place, the Authorised User shall promptly carry out any reasonable steps which HESA Services and/or the Organisation specifies to the Authorised User as required to remedy or mitigate the impact of the breach and to prevent future breaches from occurring. In these circumstances, HESA Services may at its absolute discretion offer the Authorised User the opportunity to become a Bronze User in place of this Agreement but there is no requirement or obligation on HESA Services to do so.

7. Consequences of Breach

- 7.1. Without prejudice to HESA Services' rights under clause 8, the Authorised User acknowledges and agrees that any material breach of this Agreement by the Authorised User shall have such of the following consequences as HESA Services shall in its absolute discretion determine to be appropriate in the circumstances:
- 7.1.1. Suspension of the Authorised User's access to Heidi Plus until such time as either HESA Services determines that it will exercise its rights under clause 8.1 or HESA Services is satisfied that the breach has ended and been remedied as far as possible, and that all reasonable steps, including any steps specified under clause 6.4, have been taken to prevent another similar breach in the future;
- 7.1.2. The specification by HESA Services of any other steps to remedy or mitigate a breach as provided for in clause 6.4;
- 7.1.3. HESA Services seeking an injunction to prevent any improper access to Heidi Plus or use of Heidi Plus Data;
- 7.1.4. HESA Services imposing a requirement on the Authorised User to immediately and permanently delete or destroy:
- 7.1.4.1. any Heidi Plus Data which HESA Services reasonably identifies as having been obtained in breach of this Agreement; and
- 7.1.4.2. any Unrounded Data relating to individuals to the extent that HESA Services determines in its absolute discretion that this is appropriate having regard to the nature of the breach and the nature of the data in the Authorised User's possession;
- whether such data is held in hard copy or electronic form outside of Heidi Plus; and
- 7.1.5. HESA Services taking other legal action to secure an appropriate remedy, including compensation, for the breach.

- 7.2. Where HESA Services determines that the Authorised User is or has been in breach of this Agreement, HESA Services reserves the right to terminate this Agreement under clause 8.2 and to refuse the Authorised User future access to Heidi Plus if, in HESA Services' sole discretion, it is not satisfied that the Authorised User will comply with the terms of the Agreement in future.

8. Termination

- 8.1. This Agreement shall be automatically terminated with immediate effect in the event that:
 - 8.1.1. The Organisational Agreement terminates; or
 - 8.1.2. The Authorised User ceases to be a Staff Member of the Organisation or is suspended from their role with the Organisation.
- 8.2. HESA Services may terminate this Agreement without notice and with immediate effect in the event that:
 - 8.2.1. HESA Services determines in its absolute discretion that the Authorised User has been in material breach of this Agreement; or
 - 8.2.2. The Organisation so requests.
- 8.3. The Authorised User may terminate this Agreement with immediate effect by giving notice of termination to the Lead Contact.
- 8.4. Clauses 4, 5, 6, 7.2 and this clause 8 of this Agreement shall survive termination or expiration of this Agreement.
- 8.5. Where the Agreement is terminated under this clause 8 the Authorised User shall immediately and permanently ensure the secure destruction or deletion of all Unrounded Data relating to individuals which it has extracted from Heidi Plus, whether held in electronic or hard copy format.

9. Execution

- 9.1. This Agreement shall be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but both the counterparts shall together constitute the one agreement.
- 9.2. Transmission of an executed counterpart of this Agreement in electronic form through a digital signature programme shall take effect as delivery of an executed counterpart of this agreement.
- 9.3. No counterpart shall be effective until both the Authorised User and HESA Services has executed and delivered at least one counterpart.
- 9.4. The Authorised User acknowledges and accepts that the digital signature system will track and retain their Personal Data. 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.

10. General Provisions

10.1. The provisions set out in Schedule 1 of this Agreement shall apply.

EXAMPLE

SIGNATURE PAGE

The Agreement between the parties is made up of both the Agreement and the Schedule. In signing this document, the parties are agreeing to the terms and conditions in both the Agreement and the Schedule.

Signed by [Name of Authorised User]:

Organisation:

Position:

Date:

Signed on behalf of HESA Services Limited:

Name:

Position:

Date:

Schedule 1: General Provisions

1. HESA Services shall not be deemed to be in breach of this Agreement or otherwise liable to the Authorised User 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 Authorised User and the time for performance of the relevant obligation shall be deemed to be extended by a period equal to the duration of the Event of Force Majeure.
2. This Agreement contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and 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.
3. This Agreement may not be assigned or otherwise transferred in whole or in part by either party without the prior consent of the Authorised User, save that HESA Services may assign this Agreement or transfer any of its rights and obligations under this Agreement to HESA without the consent of the Authorised User.
4. The Authorised User 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.
5. No variation to this Agreement shall take effect unless it is in writing and signed by all parties to this Agreement, provided only that the parties may agree variations to the Permitted Uses specified in clause 4 of this Agreement through exchange of emails between the Authorised User and the HESA Services contact specified in clause 7 of the Main Agreement of the Organisational Agreement.
6. 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.
7. 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.
8. 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.

9. 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 through discussion between the parties, the Authorised User submits to the exclusive jurisdiction of the English Courts.

EXAMPLE

Schedule 4: Lead Contact Agreement

Lead Contact Agreement: Access to Heidi Plus – Student and Destination Data

This document records the responsibilities of the Lead Contact and the terms on which Lead Contacts access Heidi Plus. This Agreement is made in accordance with the terms of the Alternative Provider Organisational Agreement – Student and Destination Data (“Organisational Agreement”). Terms used in this Agreement shall have the meaning specified in Schedule 1 of the Organisational Agreement or be interpreted in accordance with Schedule 1. A copy of the Organisational Agreement may be found at: https://www.hesa.ac.uk/files/organisational_agreement_AP_Student_and_Destinations.pdf

1. Parties

1.	Lead Contact	Name: Job Title: Employer Organisation: Address: Email: Telephone Number:
2.	HESA <u>Services</u> <u>Ltd</u>	Contact Name: Address: Email: Telephone Number:
3.	Lead Contact Commencement Date	The date on which the last party to sign signs the Agreement

2. Duration

- 2.1. This Agreement shall commence on the Lead Contact Commencement Date and shall remain in force for the Term, being the shorter of:
- 2.1.1. The period between the Lead Contact Commencement Date and the date of termination of the Organisational Agreement; or
 - 2.1.2. The period between the Lead Contact Commencement Date and termination of this Agreement in accordance with clause 9 of this Agreement.
- 2.2. The Termination Date shall be the date of termination referred to in clause 2.1.1 or clause 2.1.2 as appropriate.

3. Obligations of HESA Services Limited

- 3.1. In consideration of the Lead Contact agreeing to abide by the terms of this Agreement and of the consideration specified in the Organisational Agreement, and subject to the restrictions and conditions in the Organisational Agreement and this Agreement, HESA Services will provide access to Heidi Plus to enable the Lead Contact to access Heidi Plus Data including Rounded Data and Unrounded Data.
- 3.2. The Lead Contact acknowledges and accepts that:
 - 3.2.1. Heidi Plus is subject to ongoing development and improvement;
 - 3.2.2. HESA Services makes no warranty, guarantee or commitment as to the accuracy of the Heidi Plus Data and from time to time changes may be made to the Heidi Plus Data to enable errors or omissions to be corrected;
 - 3.2.3. HESA Services excludes any other warranties, guarantees or commitments as to the content and performance of Heidi Plus.
- 3.3. HESA Services will make reasonable endeavours to comply with the published service standards set out in the Heidi Plus Operational Documentation. However, HESA Services provides no warranty as to its ability to meet those standards or as to the ability of the Lead Contact to access Heidi Plus with full functionality or otherwise at particular times or over particular periods.
- 3.4. HESA Services shall use the Heidi Plus Website to provide the Lead Contact with:
 - 3.4.1. Reasonable notice of any periods of planned interruption to the availability of Heidi Plus for the purposes of maintenance, development and improvement of Heidi Plus and responding to faults or technical issues experienced by Authorised Users; and
 - 3.4.2. Reasonable information as to faults reported or identified which will or may materially affect the access or user experience of Authorised Users and as to the steps being taken or to be taken by HESA Services to correct such faults.
- 3.5. The decision to prevent or restrict access to Heidi Plus for the purposes of enabling maintenance, resolution of technical problems or developmental work in relation to Heidi Plus or any supporting or ancillary systems or frameworks shall be at HESA Services' absolute and sole discretion.
- 3.6. The current contact details to be used by the Organisation or any Authorised User to notify HESA Services of any fault or technical issue experienced in the use of Heidi Plus shall be published in the Heidi Plus Operational Documentation.

4. Obligations of the Authorised User as Lead Contact

- 4.1. In signing this Agreement, the Lead Contact:
 - 4.1.1. Confirms that they are a Staff Member of the Organisation; and
 - 4.1.2. Agrees to act as a Lead Contact, fulfilling the role and responsibilities specified in this clause 4 in addition to their responsibilities as a Gold User.

- 4.2. The Lead Contact must undertake the training for Lead Contacts specified by HESA Services under clauses 4.5.1, 4.5.2 and 4.5.3 of the Organisational Agreement. The Lead Contact must not approve any individual to become an Authorised User prior to completing the training referred to in clause 4.5.1 of the Organisational Agreement, and (where applicable) prior to completing the further training referred to in clauses 4.5.2 and 4.5.3 of the Organisational Agreement.
- 4.3. The role of the Lead Contact is to have overall responsibility, jointly with any other Lead Contact appointed by the Organisation, for administering and monitoring user access to Heidi Plus by Staff Members of the Organisation. HESA Services may issue guidance regarding the role of the Lead Contact and how the Lead Contact's responsibilities should be fulfilled. Such guidance may include guidance as to the relative roles of the Lead Contact and the Organisation in ensuring that the Organisation complies with its responsibilities under the Organisational Agreement.
- 4.4. In particular, the role of the Lead Contact is to:
 - 4.4.1. Follow and apply all such policies and processes put in place by the Organisation to ensure that it meets its obligations under clauses 5.1 to 5.5 and 5.7 to 5.8 of the Organisational Agreement;
 - 4.4.2. Assess the eligibility of Staff Members of the Organisation to become Authorised Users; manage the process by which Staff Members of the Organisation may be approved as Authorised Users and enter into Authorised User Agreements with HESA Services; and monitor the compliance of Authorised Users in the Organisation with the terms of the relevant Authorised User Agreements;
 - 4.4.3. Make arrangements for the Gold Users to undertake the training specified by HESA Services under clause 4.5.4 of the Organisational Agreement before they are given access to Heidi Plus and monitor whether they undertake and complete that training;
 - 4.4.4. Pass on to Authorised Users or prospective Authorised Users in the Organisation such information as HESA Services may reasonably request; and
 - 4.4.5. Respond to any breach or suspected breach of any Authorised User Agreement in place for Staff Members of the Organisation in accordance with clause 4.5.
- 4.5. Where the Lead Contact becomes aware of or suspects a breach of this Agreement, the Organisational Agreement or any Authorised User Agreement in place for Staff Members of the Organisation (including for the avoidance of doubt any suspected unauthorised access to Heidi Plus or Heidi Plus Data by a third party), acting in accordance with the protocol to be put in place by the Organisation under clause 5.5 of the Organisational Agreement they shall:
 - 4.5.1. Report the breach or suspected breach to the Organisation;
 - 4.5.2. Take such steps (or ensure that such steps are taken by others) as are required and reasonably practicable to enable the Organisation:

- 4.5.2.1. to determine whether the Organisation has an obligation to report the matter to HESA Services under clauses 5.7, 8.3.7 or 8.3.11 of the Organisational Agreement;
 - 4.5.2.2. to make any such reports; and
 - 4.5.2.3. to comply with the Organisation's obligations under clause 9 of the Organisational Agreement (Investigation of Breach);
- and
- 4.5.3. On reasonable request provide reports to the Organisation and HESA Services on the steps taken under clause 4.5.2 and any information or views obtained through those steps.

5. Permitted Uses

- 5.1. The Lead Contact may use the Heidi Plus Data only for the Permitted Uses and in accordance with the conditions and restrictions set out in this Agreement. The following fundamental conditions and requirements on the use of Heidi Plus Data must be observed by the Organisation and all of its Authorised Users:
 - 5.1.1. Unrounded Data relating to individuals must never be:
 - 5.1.1.1. shared with anyone else who is not also a Gold User or Lead Contact in the Lead Contact's Organisation (whether through reproduction, publication or any other method of sharing or disclosure);
 - 5.1.1.2. used to make decisions or enable any decisions to be made about an individual; or
 - 5.1.1.3. used to contact an individual or enable them to be contacted; for any reason or purpose whatsoever.
 - 5.1.2. The Lead Contact can only access, extract and use Unrounded Data relating to individuals where this is necessary for the Permitted Uses set out below and those uses fall within the Lead Contact's role in the Organisation;
 - 5.1.3. The Lead Contact must only use data relating to disability or ethnicity for purposes relating to promoting, maintaining or monitoring equality of opportunity in accordance with equalities legislation;
 - 5.1.4. Heidi Plus Data can only be reproduced, published or disclosed externally in a form which complies with the Heidi Plus Rounding Methodology;
 - 5.1.5. The Lead Contact must only access Heidi Plus when located in the United Kingdom and Gold User, or Lead Contact User access should only be granted to individuals wholly or mainly located within the United Kingdom.
 - 5.1.6. The Lead Contact must not process or permit the processing of Heidi Plus Data extracted from Heidi Plus outside the United Kingdom unless it is necessary for a Permitted Use and all of the relevant conditions specified in clause 5.7.9 are met.

This summary of key conditions shall be interpreted in accordance with any more detailed relevant provisions within this Agreement.

Permitted Uses

5.2. Subject to clause 5.3, the Lead Contact may use the Heidi Plus Data on behalf of their Organisation only for the following purposes:

5.2.1. Academic research within the definition of research and development in the Frascati Manual 2015.

5.2.2. Providing information to:

5.2.2.1. prospective students to help them select their course;

5.2.2.2. current students to enable them to improve the outcomes of their education;

5.2.2.3. NUS officials to enable them to understand the characteristics of the Organisation's student population in order to provide more appropriate and effective services;

5.2.2.4. those with responsibility for setting and maintaining standards and assuring and enhancing quality both within the Organisation and externally to discharge their duties effectively;

provided always that the Heidi Plus Rounding Methodology must be applied to such information before it is published, reproduced or otherwise shared with such third parties.

5.2.3. Review of data submitted by their Organisation to HESA including identifying anomalies and continuing to improve the quality of data submitted to HESA;

5.2.4. Identifying and making improvements to organisational planning, efficiency performance, and the experience of students at the Organisation;

5.2.5. Benchmarking to optimise the Organisation's use of public funds;

5.2.6. Complying with Public Sector Equality Duty (Equality Act 2010) through review of data and publication of necessary information, provided always that the Heidi Plus Rounding Methodology must be applied to such information before it is published, reproduced or otherwise shared with third parties;

5.2.7. Monitoring of fair access to the Organisation and compliance with the Organisation's duties under the Equality Act 2010 or its successor legislation including publication of information derived from the Heidi Plus Data in accordance with the Heidi Plus Rounding Methodology;

provided always that any provision of such information under clauses 5.2.1 to 5.2.7 is subject to the requirements in clause 5.7.5 to apply the Heidi Plus Rounding Methodology to any Unrounded Data relating to individuals which is to be published, reproduced or otherwise shared with such third parties.

5.3. Any processing of Heidi Plus Data for the purposes set out in clause 5.2 is subject to the following conditions:

5.3.1. Any provision of information in accordance with clause 5.2 is subject to the requirements in clause 5.7.5 to apply the Heidi Plus Rounding Methodology to any Unrounded Data relating to individuals which is to be published, reproduced or otherwise shared with such third parties;

5.3.2. No permission is given for Heidi Plus Data to be used for direct commercial gain. The uses prohibited by this clause include the provision of any data or information in return for a fee or other commercial gain or advantage, or on terms permitting the recipient to charge a fee to any third party in respect of further uses or provision of data or information. For the avoidance of doubt, this prohibition includes the use of Heidi Plus Data for the production or publication of league tables of higher education providers or any similar rating or comparison of providers;

5.3.3. The Lead Contact shall not publish or otherwise share externally any report, paper, article or other material which contain any comparisons between any aspect of different higher education providers which are derived from or referenced to Heidi Plus Data unless written permission has been obtained from HESA Services before the material is published or shared. For the avoidance of doubt, this prohibition includes the publication or sharing of league tables of higher education providers or any similar rating or comparison of providers, whether generated for commercial gain or otherwise;

5.3.4. Whenever Heidi Plus Data are used, reproduced or referenced in a publication or other shared material made by the Organisation or on its behalf an attribution and caveat will be included in the form specified in the Heidi Plus Operational Documentation; and

The Lead Contact may refer to or reproduce Rounded Data relating to individuals in any report or paper produced for internal use within the Organisation and any report or article published externally provided that such reports, papers or articles and the publication thereof are solely for the purposes specified in clause 5.2 above.

5.4. By signing this Agreement, the Lead Contact confirms that its intended and actual use is and shall be only for activities within the Permitted Uses and that Unrounded Data relating to individuals shall be accessed and used only to the extent that this is necessary for the Lead Contact to do so in order to undertake tasks within the Permitted Uses as part of their role as a Staff Member of the Organisation.

5.5. The Lead Contact warrants that any information provided to HESA, HESA Services, or the Organisation or any other Lead Contact at the Organisation as part of the process of approving or authenticating the Lead Contact as a Lead Contact and Gold User (including but not limited to any information regarding his role or status as a Staff Member in the Organisation) is complete and accurate.

5.6. The Lead Contact acknowledges and accepts that:

- 5.6.1. Subject to clause 5.6.3, all intellectual property rights in Heidi Plus, Heidi Plus Data and any data derived from Heidi Plus Data are vested and shall remain vested in HESA Services and/or HESA;
- 5.6.2. Under this Agreement the Lead Contact acquires no intellectual property rights other than a non-exclusive, non-transferable licence to use the Heidi Plus Data in accordance with this clause 5 and the remainder of this Agreement; and
- 5.6.3. The Lead Contact will respect restrictions on the use of intellectual property rights of third parties in relation to:
 - 5.6.3.1. Heidi Plus Data which is not HESA Data, to the extent that these are specified in the Heidi Plus Operational Documentation; and
 - 5.6.3.2. The Tableau Software as specified in clause 7 of the Organisational Agreement.
- 5.7. The Lead Contact shall not at any time:
 - 5.7.1. Allow any other person to access Heidi Plus using his account or the individualised log-on details required to enable him to access Heidi Plus, nor allow any other person to access those log-on details;
 - 5.7.2. Alter or seek to alter any element of the underlying software or functionality of Heidi Plus or Tableau Software;
 - 5.7.3. Access or attempt to view or extract Heidi Plus Data other than for the Permitted Uses;
 - 5.7.4. Access or use Unrounded Data relating to individuals or disclose Unrounded Data relating to individuals to the Organisation's Gold Users or any other Lead Contact of the Organisation, if this is not necessary for an activity within the Permitted Uses;
 - 5.7.5. Reproduce, publish, disclose or otherwise share any Unrounded Data relating to individuals with any person except the Organisation's Gold Users or any other Lead Contact of the Organisation. For the avoidance of doubt, no other permission is given for the sharing or publication of Unrounded Data relating to individuals, whether in the form or for the purposes described in clause 5.2 or otherwise, and the Heidi Plus Rounding Methodology must be applied to such data before any such sharing or publication;
 - 5.7.6. Use or seek to use Heidi Plus Data to identify or enable identification of individuals or to inform a decision to be made about any individual;
 - 5.7.7. Use, reproduce, pass on, publish, permit the use by or otherwise make available to any third party (on a commercial basis or otherwise) Heidi Plus Data save:
 - 5.7.7.1. as permitted in this clause 5;
 - 5.7.7.2. as required by law; or

5.7.7.3. with HESA Services explicit prior written consent.

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.

5.7.8. Access Heidi Plus while located outside the United Kingdom; or

5.7.9. Process or permit the processing of Heidi Plus Data extracted from Heidi Plus outside the United Kingdom unless it is necessary for a Permitted Use and:

5.7.9.1. Heidi Plus Data relating to individuals has been rounded in accordance with the Heidi Plus Rounding Methodology; or

5.7.9.2. Specific written consent has been provided in advance of any proposed processing outside the United Kingdom by HESA Services. Requests for consent should be sent to Heidi.Plus@hesa.ac.uk.

5.8. Prior to gaining access to Heidi Plus, the Lead Contact must have completed all training required under clause 4.5.1 and (where applicable) clauses 4.5.2 and 4.5.3 of the Organisational Agreement. It is the responsibility of the Lead Contact not to access Heidi Plus unless and until such training has been undertaken and completed to the satisfaction of the Organisation.

5.9. The Lead Contact shall not upload any data to Heidi Plus other than Organisation Data, which is data relating to the Organisation which is being uploaded to enable HESA Services to provide a specific identified service to the Organisation. Data shall not be regarded as Organisation Data unless permission to upload it has been expressly granted in writing by HESA Services prior to the data being uploaded. The Lead Contact acknowledges and agrees that HESA Services may permanently delete any data other than Organisation Data uploaded to Heidi Plus.

5.10. Organisation Data shall not be regarded or treated as Heidi Plus Data unless or until it is accepted as such by HESA Services pursuant to any terms and conditions issued under clause 6.4 of the Organisational Agreement.

5.11. It is the responsibility of the Lead Contact to ascertain the status of any data before uploading it to Heidi Plus or using it.

5.12. In uploading Organisation Data to Heidi Plus the Lead Contact acknowledges and accepts that:

5.12.1. Once submitted, the Organisation Data will be visible to the Organisation's Gold Users and Lead Contacts; and

5.12.2. If accepted by HESA Services pursuant to terms and conditions issued under clause 6.4 of the Organisational Agreement, the Organisation Data may be visible to Gold Users and Lead Contacts from the Organisation and by staff from other organisations who have signed agreements for access to Heidi Plus.

5.12.3. The Lead Contact agrees that in relation to Organisation Data they will:

- 5.12.4. Take all reasonable steps to ensure that the Organisation Data does not include any defamatory material or other information liable to cause offence to a reasonable person; and
 - 5.12.5. In the event that any information falling within clause 5.13.1 is found to be within Organisation Data, take immediate action to remove that Organisation Data from Heidi Plus or take action with a view to ensuring this is done by the Organisation.
- 5.13. The Lead Contact's right of access to Heidi Plus and Heidi Plus Data may be suspended without notice if:
- 5.13.1. HESA Services has identified a breach or potential breach of this Agreement, the Organisational Agreement or any Authorised User Agreement with any other Authorised User from the Organisation; and
 - 5.13.2. HESA Services determines in its absolute discretion that the nature of that breach or potential breach is such that such suspension of this Agreement is justified in order to avoid the risk of unauthorised access to or use of Heidi Plus Data.
 - 5.13.3. Where the Organisation has failed to pay all or part of any HESA AP Subscriber subscription fee due to HESA within 30 days of receipt of the relevant invoice.
- 5.14. The timing of any reinstatement of the Lead Contact's access to Heidi Plus following any suspension under clause 5.14 is at the discretion of HESA Services. Suspension may be followed by termination of this Agreement if any provision of clause 9 applies and, at HESA Services' absolute discretion, an offer to enter into a Bronze User Agreement in place of this Agreement.

6. Data Protection and Data Security

- 6.1. The Lead Contact 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, HESA Services and the Organisation 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 the Organisation to access data in the future.
- 6.2. The Lead Contact agrees that in connection with the provision or use of Heidi Plus Data which relates to individuals it will at all times:
- 6.2.1. Comply with the DP Legislation including without limitation the data protection principles set out in the DP Legislation; and
 - 6.2.2. Fully co-operate with HESA, HESA Services and the Organisation to enable HESA, HESA Services and/or the Organisation to comply with their obligations under the DP Legislation.

- 6.3. The Lead Contact is referred to clause 8 of the Organisational Agreement and is required to comply with all restrictions in that clause or notified to it by the Organisation for the purposes of ensuring compliance with that clause.
- 6.3.1. The Lead Contact is required to take reasonable steps to prevent access to Heidi Plus Data being obtained by unauthorised individuals (being individuals who are not authorised through an Authorised User Agreement to access the relevant type or level of Heidi Plus Data). In particular, the Lead Contact will in relation to Unrounded Data extracted and held by the Lead Contact either in electronic or in hard copy form, maintain appropriate security measures with a view to preventing those materials from being accessed or viewed by unauthorised individuals (whether deliberately or inadvertently). Such measures will include but are not limited to:
- 6.3.1.1 only generating and retaining such extracts or copies of Heidi Plus Data to the extent necessary and proportionate for the Permitted Uses;
 - 6.3.1.2 keeping under regular review the continuing need to retain such extracts or copies for the Permitted Uses and promptly ensuring the permanent secure deletion or destruction of such extracts or copies when the Lead Contact determines that retention is no longer necessary or proportionate for the Permitted Uses;
 - 6.3.1.3 not leaving such information or materials unattended on the Lead Contact's desk or in any other area which is open to or readily accessible by unauthorised individuals;
 - 6.3.1.4 ensuring that electronic copies or extracts of Heidi Plus Data are held within a system or on hardware which is subject to appropriate data security protections, in accordance with the DP Legislation and the Organisation's information security policies, and in a manner which restricts access only to the Organisation's Gold Users and Lead Contact Users who need to access the Data for the Permitted Uses; and
 - 6.3.1.5 ensuring that such information or materials are not visible or readily accessible during transportation.
- 6.3.2. The Lead Contact will ensure that they log out or lock devices through which they are accessing Heidi Plus when not present and keep information extracted from Heidi Plus and printed materials generated from Heidi Plus secure.
- 6.3.3. The Lead Contact has a duty to inform the Organisation's other Lead Contact immediately of any breach or possible breach of this Agreement, in particular any breach of clause 5 or this clause 6.
- 6.3.4. By entering into this Agreement, the Lead Contact gives HESA, HESA Services and the Organisation consent to use their Personal Data for the purposes of administering this Agreement and the purposes of monitoring or ensuring compliance with this Agreement and the DP Legislation.

7. Investigation of Potential Breach

- 7.1. The Lead Contact shall provide such evidence of his compliance with the obligations under this Agreement as HESA Services and/or the Organisation may reasonably request.
- 7.2. Without prejudice to the generality of clause 7.1, where a breach has been reported to HESA Services by the Organisation or HESA Services otherwise has reasonable grounds for believing that there has or may have been a breach by the Lead Contact of this Agreement, the Lead Contact shall immediately provide all reasonable co-operation to HESA Services to enable HESA Services 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 it is appropriate for HESA, HESA Services or the Organisation 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 on request within reasonable timescales specified by HESA Services.
- 7.4. Where HESA Services investigates a potential breach under this clause 7 and reasonably determines that a breach of this Agreement has taken place, the Lead Contact shall promptly carry out any reasonable steps which HESA Services and/or the Organisation specifies to the Lead Contact as required to remedy or mitigate the impact of the breach and to prevent future breaches from occurring. In these circumstances HESA Services may at its absolute discretion offer the Lead Contact the opportunity to become a Bronze, or Gold User in place of this Agreement but there is no requirement or obligation on HESA Services to do so.

8. Consequences of Breach

- 8.1. Without prejudice to HESA Services' rights under clause 9, the Lead Contact acknowledges and agrees that any material breach of this Agreement by the Lead Contact shall have such of the following consequences as HESA Services shall in its absolute discretion determine to be appropriate in the circumstances:
 - 8.1.1. Suspension of the Lead Contact's access to Heidi Plus until such time as either HESA Services determines that it will exercise its rights under clause 9.1 or HESA Services is satisfied that the breach has ended and been remedied as far as possible, and that all reasonable steps, including any steps specified under clause 7.4, have been taken to prevent another similar breach in the future;
 - 8.1.2. The specification by HESA Services of any other steps to remedy or mitigate a breach as provided for in clause 7.4;
 - 8.1.3. HESA Services seeking an injunction to prevent any improper access to Heidi Plus or use of Heidi Plus Data;

- 8.1.4. HESA Services imposing a requirement on the Lead Contact to immediately and permanently delete or destroy:
 - 8.1.4.1 any Heidi Plus Data which HESA Services reasonably identifies as having been obtained in breach of this Agreement; and
 - 8.1.4.2 any Unrounded Data relating to individuals to the extent that HESA Services determines in its absolute discretion that this is appropriate having regard to the nature of the breach and the nature of the data in the Lead Contact's possession;

whether such data is held in hard copy or electronic form outside of Heidi Plus; and
- 8.1.5. HESA Services taking other legal action to secure an appropriate remedy, including compensation, for the breach.
- 8.2. Where HESA Services determines that the Lead Contact is or has been in breach of this Agreement, HESA Services reserves the right to terminate this Agreement under clause 9.2 and to refuse the Lead Contact future access to Heidi Plus if, in HESA Services' sole discretion, it is not satisfied that the Lead Contact will comply with the terms of the Agreement in future.

9. Termination

- 9.1. This Agreement shall be automatically terminated with immediate effect in the event that:
 - 9.1.1. the Organisational Agreement terminates;
 - 9.1.2. the Lead Contact ceases to be a Staff Member of the Organisation or is suspended from their role with the Organisation; or
 - 9.1.3. HESA Services notifies the Organisation that it does not consider the Lead Contact to be suitable to fulfil the role of Lead Contact, as provided for in clause 5.4 of the Organisational Agreement. In these circumstances HESA Services may at its absolute discretion offer the Lead Contact the opportunity to become a Bronze, or Gold User in place of this Agreement but there is no requirement or obligation on HESA Services to do so.
- 9.2. HESA Services may terminate this Agreement without notice and with immediate effect in the event that:
 - 9.2.1. HESA Services determines in its absolute discretion that the Lead Contact has been in material breach of this Agreement; or
 - 9.2.2. the Organisation so requests.
- 9.3. The Lead Contact may terminate this Agreement with immediate effect by giving notice of termination to the Lead Contact.
- 9.4. Clauses 4, 5, 6, 7, 8 and this clause 9 of this Agreement shall survive termination or expiration of this Agreement.

- 9.5. Where this Agreement is terminated under clause 9, the Lead Contact shall immediately and permanently ensure the secure destruction or deletion of all Unrounded Data relating to individuals which it has extracted from Heidi Plus, whether held in electronic or hard copy format.

10. Execution

- 10.1. This Agreement shall be executed in counterparts, each of which when executed and delivered shall constitute a duplicate original, but both the counterparts shall together constitute the one agreement.
- 10.2. Transmission of an executed counterpart of this Agreement in electronic form through a digital signature programme shall take effect as delivery of an executed counterpart of this Agreement.
- 10.3. No counterpart shall be effective until both the Lead Contact and HESA Services has executed and delivered at least one counterpart.
- 10.4. The Lead Contact acknowledges and accepts that the digital signature system will track and retain their Personal Data. 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.

11. General Provisions

- 11.1. The provisions set out in Schedule 1 of this Agreement shall apply.

SIGNATURE PAGE

The Agreement between the parties is made up of both the Agreement and the Schedule. In signing this document, the parties are agreeing to the terms and conditions in both the Agreement and the Schedule.

Signed by [Name of Lead Contact]:

Organisation:

Position:

Date:

Signed on behalf of HESA Services Limited:

Name:

Position:

Date:

Schedule 1: General Provisions

1. HESA Services shall not be deemed to be in breach of this Agreement or otherwise liable to the Lead Contact 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 Lead Contact and the time for performance of the relevant obligation shall be deemed to be extended by a period equal to the duration of the Event of Force Majeure.
2. This Agreement contains the whole agreement between the parties and supersedes any prior written or oral agreement between them in relation to its subject matter and 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.
3. This Agreement may not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party, save that HESA Services may assign this Agreement or transfer any of its rights and obligations under this Agreement to HESA without the prior consent of the Lead Contact.
4. The Lead Contact 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.
5. No variation to this Agreement shall take effect unless it is in writing and signed by all parties to this Agreement, provided only that the parties may agree variations to the Permitted Uses specified in clause 5 of this Agreement through exchange of emails between the Lead Contact and the HESA Services contact specified in clause 7 of the Main Agreement of the Organisational Agreement.
6. 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.
7. 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.
8. 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.

9. 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 through discussion between the parties, the Lead Contact submits to the exclusive jurisdiction of the English Courts.

EXAMPLE