



**Agreement between the Higher Education Funding Council for England (HEFCE) and the Higher Education Statistics Agency (HESA) for the collection, processing and provision of data**

In witness of the agreement set out below, the parties have signed this Agreement on the dates shown.

Signed by and ]  
].....  
duly authorised by and on behalf of HEFCE ] Authorised Signatory  
]  
Name: Steve Egan ].....  
Position: Director of Finance and Corporate Resources, ] Date  
HEFCE

Signed by and ]  
].....  
duly authorised by and on behalf of HESA ] Authorised Signatory  
]  
Name: Professor Robin Sibson ].....  
Position: Chief Executive, HESA ] Date

<b>Contents</b>	<b>Page</b>
Preamble	4
Clause 1: Consideration	5
Clause 2: Duration	5
Clause 3: Nominees of the signatories of this Agreement	6
Clause 4: Variation and revision	6
Clause 5: Termination	6
Clause 6: Obligations of HESA and HEFCE	8
Clause 7: Remedies	9
Clause 8: Confidentiality	11
Clause 9: Intellectual Property	13
Clause 10: Force Majeure	13
Clause 11: Assignment	14
Clause 12: General	14
Clause 13: Alternative dispute resolution	15
Clause 14: Third party rights	15
Clause 15: Law	15
Clause 16: Jurisdiction	15

<b>Contents – Appendices</b>	<b>Page</b>	<b>Para- graphs</b>
Appendix 1: Definitions and terms	16	1-8
Appendix 2: Nominees of the signatories of this Agreement	20	
Appendix 3: The Data collection process	21	1-63
Section 1: Institutional coverage	21	1-9
Section 2: Data records	23	10-13
Section 3: Data quality assurance: Collection database	23	14-21
Section 4: Data quality assurance: Fixed database	25	22-28
Section 5: Data processing and transfer	27	29-33
Section 6: Data collection process schedules	27	34-46
Section 7: Revising the data collection process	29	47-63
Appendix 4: Minimum Data quality standards	32	1-7
Appendix 5: Timetables	33	
Table 1: Data collection timetable	33	
Table 2a: Revisions timetable - proposals	34	
Table 2b: Revisions timetable - agreement	35	
Appendix 6: Operational Documentation	36	
Appendix 7: Additional information agreement for change	37	
Section 1: Derived Fields	37	
Section 2: Opt-out information	37	
Appendix 8: Control of Data	38	1-48
Section 1: Data controllers	38	1-6
Section 2: Compliance with data protection legislation	39	7-25
Section 3: Provision of Data to other public bodies and their agencies	42	26-40
Section 4: Publications and database rights	44	41-48
Appendix 9: Governmental bodies acting as data controllers in common	46	
Appendix 10: HESA publications to be provided to HEFCE	47	

## Preamble

1. This Agreement is made between:

the Higher Education Funding Council for England (HEFCE) whose address for correspondence is Northavon House, Coldharbour Lane, Bristol, BS16 1QD and

the Higher Education Statistics Agency Limited (HESA) (a company limited by guarantee and not having a share capital, registered in England No. 2766993, registered charity number 1039709) whose registered office is at 95 Promenade, Cheltenham, GL50 1HZ.

2. Whereas:

- a. the Further and Higher Education (FHE) Act 1992 places an obligation upon publicly funded higher education institutions in England (EHEIs) to give HEFCE such information as it may require to carry out its functions, which include the allocation of funding, analysis for policy development, and the provision of information to the Secretary of State;
- b. HEFCE has decided to exercise these powers, in part, through the collection of the Data carried out by HESA as set out in this Agreement;
- c. in the Financial Memoranda the terms and conditions for the payment of funds by HEFCE to EHEIs have been set out with a requirement for the EHEIs to provide HESA with timely and accurate Data for HESA to collect and process on HEFCE's behalf;
- d. HESA agrees to collect, process and make available the Data to HEFCE to enable HEFCE to meet its statutory functions;
- e. HESA agrees to provide the Learning and Skills Council (LSC) with information about the data quality assurance processes employed in HESA's data collections to enable LSC to collect data relating to students on programmes of higher education at further education colleges which is of comparable quality to the Data collected by HESA under the terms of this Agreement;
- f. this Agreement does not cover other services that HESA may provide for HEFCE, and such additional services will be subject to separate agreements;
- g. this Agreement sets out the conditions that apply to HESA and HEFCE in respect of the publication of statistics based on the Data, and to supply the Data to other UK government departments, their agencies, the National Audit Office (NAO) and others;

- h. this Agreement replaces the provisions of the Service Level Agreement between HESA and HEFCE authorised by the Chief Executive of HESA on 5 January 1995 and by the Chief Executive of HEFCE on 9 January 1995;
- i. the terms and abbreviations defined in Appendix 1 will apply to this Agreement.

#### **Clause 1: Consideration**

- 1.1 In consideration of the payment to HESA by HEFCE of the sum of one pound (receipt of which is hereby acknowledged by HESA), HESA shall collect, process and transfer the Data in accordance with the terms of this Agreement.
- 1.2 In accordance with the terms of the Financial Memoranda, EHEIs must subscribe to HESA at the rates determined by the HESA Board from time to time.
- 1.3 In the event that HEFCE commissions HESA to undertake other services or projects on HEFCE's behalf, such services shall be subject to separate agreements between the parties.

#### **Clause 2: Duration**

- 2.1 This Agreement shall come into effect on 1 August 2005 (the "Effective Date") and (subject to earlier termination in accordance with clause 5 below) shall remain in effect up to the 31 July following a period of three years from such date (the "Term").
- 2.2 Subject to termination in accordance with clause 5 below, the parties shall meet to review this Agreement and the services which HESA provides on or before the date occurring two years prior to the end of the Term as defined under clause 2.1. At such meeting HEFCE shall indicate its intentions regarding the renewal of this Agreement following the expiry of the Term. If HEFCE wishes to extend the Term, the parties shall use all reasonable endeavours to finalise a revised agreement for signature on or before the date occurring eighteen months prior to the expiry of the Term.
- 2.3 If no new Agreement is signed in accordance with this clause 2, and no action to terminate the Agreement in accordance with clause 5 is taken, the Term will be automatically extended for a period of one year, and thereafter such extended term shall be further automatically extended by periods of one year from the date on which it would otherwise have expired if neither the signing of a new agreement nor action to terminate has taken place in accordance with the timetable set out in clause 2.2 above in relation to the extended term.
- 2.4 For the avoidance of doubt, in the event that the Term is extended in accordance with clause 2.3 above, the provisions set out in clause 2.2 shall apply to any such extended term, and any reference to "Term" in this Agreement shall mean such extended term.

### **Clause 3: Nominees of the signatories of this Agreement**

- 3.1 The nominees of the signatories to this Agreement (the “nominees”) are shown in Appendix 2. These shall be the contacts when, under the terms of this Agreement, either organisation is required to provide information to the other unless, for a specific purpose, a nominee indicates in writing that he has delegated a particular responsibility to another.
- 3.2 The nominees may make revisions to this Agreement as set out in clause 4.2 below.
- 3.3 In the event that a nominee is unavailable to act on behalf of a signatory, such signatory may appoint a deputy nominee in his place for such period of time as the signatory may decide by notice in writing to the other party.
- 3.4 The nominee of either organisation may be changed by the relevant Authorised Signatory to this Agreement, or his successor, of the organisation concerned, by writing to the other party with the name of the new nominee.

### **Clause 4: Variation and revision**

- 4.1 Either HEFCE or HESA may seek variation to the terms of this Agreement. Subject to clause 4.2 below, no variation to the Agreement shall take effect unless it is in writing and mutually endorsed by the Authorised Signatories to the Agreement on behalf of their organisations. Variations agreed shall come into effect on a date agreed by HEFCE and HESA. Variations may be agreed to, or rejected by, either party in its absolute discretion.
- 4.2 The nominees may agree revisions to the procedures set out in appendices 1, 3, 4, 5, 6, 7, 8, 9 and 10, as may be operationally necessary from time to time.

### **Clause 5: Termination**

- 5.1 Unless otherwise terminated under the conditions of this clause 5, this Agreement shall continue in force for the duration described in clause 2.
- 5.2 Either party may terminate this Agreement by giving notice to the other of their proposed withdrawal. Notice of withdrawal must be made in writing by 1 February, eighteen months before 1 August, the start of the academic year defining the Data that the withdrawal relates to.
- 5.3 HEFCE may immediately terminate this Agreement, without payment of compensation or other damages caused to HESA solely by reason of such termination, by giving notice in writing to HESA if any one or more of the following events occur:

- a. HESA commits a material breach of any of its obligations under this Agreement which is incapable of remedy; or
  - b. HESA fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under this Agreement, after having been required in writing to remedy or desist from such breach within 60 days; or
  - c. HESA commits or is subject to any act of insolvency, including but not limited to being unable to pay its debts as they fall due, appointment of an administrator, administrative receiver or receiver or the passing of any resolution or petition for winding up.
- 5.4 HESA may immediately terminate this Agreement, without payment of compensation or other damages caused to HEFCE solely by reason of such termination, by giving notice in writing to HEFCE if any one or more of the following events occur:
- a. HEFCE commits a material breach of any of its obligations under this Agreement which is incapable of remedy; or
  - b. HEFCE fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under this Agreement, after having been required in writing to remedy or desist from such breach within 60 days; or
  - c. HEFCE commits or is subject to any act of insolvency, including but not limited to being unable to pay its debts as they fall due, appointment of an administrator, administrative receiver or receiver or the passing of any resolution or petition for winding up; or
  - d. the terms of the Financial Memoranda are amended as set out in clause 6.12 below.
- 5.5 The termination of this Agreement shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 5.6 On termination of this Agreement for any reason:
- a. HESA shall provide to HEFCE, free of charge, such documentation as the parties shall reasonably deem necessary relating to the Data definitions, Data Quality Assurance Procedures and Data processing and transmission procedures to enable HEFCE to use the same following termination in accordance with the terms of this Agreement;
  - b. HESA shall cease to be under an obligation to supply the Data, the Collection Database and all other materials and documentation set out in this Agreement to HEFCE;

- c. should HEFCE terminate this Agreement, or were HESA to terminate this Agreement under the terms of clause 5.4 above, HEFCE would give consideration in its absolute discretion to claims by HESA for recompense towards the costs incurred as a result of this termination.

#### **Clause 6: Obligations of HESA and HEFCE**

- 6.1 This clause 6 and the accompanying appendices 3, 4, 5, 6, 7, 8, 9 and 10 set out the various obligations which HESA and HEFCE have agreed to undertake or meet during the Term.
- 6.2 Each party shall promptly notify the other in writing of any material failure by the other to properly, fully and effectively perform its obligations under this Agreement.
- 6.3 HESA shall establish and maintain adequate and effective accounting and other systems that cover all aspects of its business, assets, personnel and premises and maintain appropriate business continuity procedures.
- 6.4 HESA and HEFCE shall establish and maintain appropriate information security and processing procedures to ensure that all Data provided in accordance with this Agreement is sufficiently protected.
- 6.5 HESA shall provide HEFCE within 30 days of HESA's relevant AGM with copies of (i) its annual accounts (ii) internal and external audit reports and management letters and responses and (iii) a copy of the risk register in force at the time of such AGM. In the event that the HESA Board decides to reject any recommendation of the internal or external auditors, and that recommendation might in the HESA Board's reasonable opinion, have a material bearing on the ability of HESA to meet its delivery obligations under this Agreement, HESA shall promptly report the circumstances to HEFCE.
- 6.6 In the event that the annual accounts or audit reports, or the rejection of an internal or external audit recommendation, give HEFCE reasonable cause for concern over the financial integrity or ability of HESA to meet its obligations to HEFCE under this Agreement, or if HESA fails to produce the documentation set out in this clause 6 to HEFCE on a timely basis, or if in the reasonable opinion of HEFCE there has been a material breakdown of internal control within HESA, and/or a substantial non-performance of this Agreement, HEFCE shall have the right to make full written representations of those concerns to the HESA Board for consideration and formal response. In the event that such a response does not fully satisfy those concerns, HEFCE shall have the power to conduct such further investigations as the parties shall reasonably agree and HESA shall not unreasonably withhold any documentation or other information which those investigations may require.
- 6.7 HESA shall provide HEFCE with agendas, papers and minutes of the HESA Board. Details which, in HESA's reasonable opinion, relate purely to internal matters or

activity unrelated to the provision of Data to HEFCE may be omitted from these items.

- 6.8 Should the HESA Board have concerns over the financial stability of HESA, HEFCE shall be notified of the financial position, the circumstances which gave rise to the Board's concerns and the actions which the HESA Board proposes to take or is taking in response to such financial instability.
- 6.9 If in the reasonable opinion of HEFCE there has been a material decline in the quality of the Data or the Collection Database supplied by HESA in accordance with the terms of this Agreement, then HEFCE may make written representations to or meet with the HESA Board to discuss such decline and the remedial action that may be necessary.
- 6.10 The nominee and a senior member of the management of each party shall be available to the other upon reasonable notice to answer reasonable questions that may arise about the provision of the Data or any other matter covered under this Agreement.
- 6.11 The documents to be made available to HEFCE under this clause 6 shall be open to inspection by the Comptroller and Auditor General, as and when he requires, in order to discharge his statutory duties as auditor of HEFCE.
- 6.12 It is the intention of HEFCE that the obligations set out in the Financial Memoranda regarding (i) the supply by the EHEIs of timely and accurate Data to HESA and (ii) their subscription to HESA, shall be maintained during the Term. In the event that such obligations are changed in any way whatsoever, HEFCE shall immediately notify HESA of the same. If either or both of these obligations are removed from the Financial Memoranda or are amended in such a way which, in HESA's reasonable opinion, causes or could cause material financial loss to HESA or materially alters or could alter the timetable for collection and delivery of the Data, HESA may terminate this Agreement in accordance with clause 5.4 above.
- 6.13 In the event that any EHEIs do not pay all or part of any such subscriptions within 30 days of the relevant due date, HESA shall seek to recover such sums from the EHEIs concerned. If HESA fails to do so, HESA shall notify HEFCE of the same and HEFCE shall take such further action as it may, in its absolute discretion (acting reasonably), deem to be necessary in order to support and assist HESA in connection with recovering such sums.

#### **Clause 7: Remedies**

- 7.1 The parties acknowledge and agree that inaccurate or late delivery of Data supplied by HESA to HEFCE would cause HEFCE additional cost and expense and would hinder HEFCE in the discharge of its statutory functions.

- 7.2 The remedies in this clause 7 apply to the delivery of the Collection Databases of the different Data Streams by the guaranteed latest delivery dates as described in Appendices 3 and 5.
- 7.3 Where such Data contains material inaccuracies as set out in Appendix 4, or if the delivery to HEFCE of the Data is delayed until after the guaranteed delivery dates set out in this Agreement, and,
- a. these inaccuracies or delays are directly caused by HESA in processing the Data received from the EHEIs, or
  - b. these inaccuracies were identified by HESA through the Data Quality Assurance Procedures and were accepted without the agreement of HEFCE, or
  - c. HESA fails to notify HEFCE of delays

then HEFCE may seek remedies as set out in this clause 7.

- 7.4 If HESA fails to meet the requirements for accuracy set out in 7.3 above, then HESA will, subject to the formal procedures described in this clause 7, be liable to pay HEFCE up to £1,200 in respect of each EHEI where Data is so supplied.
- 7.5 If HESA fails to meet the requirements for timely delivery set out in 7.3 above, then HESA will, subject to the formal procedures described in this clause 7, be liable to pay HEFCE up to £1,200 per day in respect of the period from the date that such data was due to be supplied by HESA to HEFCE until the date that the Data was so supplied.
- 7.6 Except in respect of death or personal injury caused by HESA's negligence, HESA's liability under this clause 7 or otherwise in connection with this Agreement shall not exceed the sum of £100,000 in one Academic Year.
- 7.7 HESA shall not be liable in contract, tort, negligence or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by HEFCE of an indirect or consequential nature including, without limitation, any economic loss or loss of turnover, profits, business, contracts or goodwill, apart from those sums set out in this clause 7.
- 7.8 HEFCE may also be directed to impose the sanctions set out in clauses 7.4 and 7.5 above by the Department for Education and Skills (DfES) if HESA fails to meet the deadlines set out in the Agreement between the DfES and HESA and may be requested to do so by a funding body in another administration with which HESA has an agreement for the supply of data, in the event that HESA is in breach of such an agreement.

- 7.9 In the event that HESA is in breach of any of its obligations to HEFCE in respect of the delivery to HEFCE of data relating to publicly funded higher education institutions in another administration then HEFCE may request that such relevant funding body in the relevant administration seek the remedies set out in the agreement between such body and HESA.
- 7.10 If HESA fails to meet its obligations in such a way that under this clause 7 HESA could become liable to pay a remedy, the procedure shall follow two stages:
- a. in the first instance, HEFCE shall write to HESA, stating the exact nature of the breach, and seek an explanation as to why the service was not supplied in accordance with this Agreement. If possible, the letter should specify revised timescales or remedial measures expected of HESA with a view to resolving the issue;
  - b. if the issue cannot be satisfactorily resolved as described above and following any failure to resolve the issue in accordance with clause 13 below, HEFCE, on the authority of its Director of Finance and Corporate Resources, shall give written notice to HESA that a sanction is to be imposed. The letter must state the reasons why this course of action has proved necessary, and give details as to the nature and timing of the remedies required.
- 7.11 If any EHEI fails to deliver timely and accurate Data to HESA by the relevant Data Return Date, and HESA is required to collect and process Data after the Database Closure Date, HESA shall be entitled to exact a charge of 20% of the relevant EHEI's annual subscription for the individualised student and the Destination of Leavers from Higher Education (DLHE) records, and 10% for the individualised staff record, payable to HESA. HESA shall collect such charges from the relevant EHEI directly and HEFCE shall reasonably assist HESA in connection with the same as may, from time to time, be necessary. The parties acknowledge and agree that these charges reflect the additional costs that would be incurred by HESA if required to collect Data after the Database Closure Date.
- 7.12 HESA shall not be in breach of this Agreement for a failure to supply timely, complete and accurate Data to HEFCE if such breach occurs due to a failure by HEFCE to meet its obligations under this Agreement.

#### **Clause 8: Confidentiality**

- 8.1 "Confidential" information in this clause 8 means secret or confidential commercial, financial, marketing, technical or other information including, without limitation, information in or relating to, know-how, trade secrets, operations, plans, intentions, working methods, designs, market opportunities, transactions, affairs and/or business of the parties and/or their customers, suppliers or clients and other information in any form or medium, whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information

in any form or medium or any part(s) of this information. "Confidential" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available. The parties shall appropriately identify and label information which each considers to be confidential.

- 8.2 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 Agreement. Each party shall ensure that any such employee, consultant or agent enters into a deed of covenant with the other, in a form reasonably acceptable to the other, containing obligations equivalent to those set out in this clause 8. Each party shall use all reasonable endeavours to procure that any such employee, consultant or agent complies with such obligations. Each party shall be responsible to the other in respect of any disclosure or use of such confidential information by a person to whom disclosure is made.
- 8.3 The obligations of confidentiality and other obligations in this clause 8 shall not extend to any matter which each party can show:
- a. is lawfully in, or has become lawfully part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
  - b. in the case of disclosure by HEFCE, was independently disclosed to HEFCE by a third party, which, in HEFCE's reasonable opinion, was legally entitled to disclose the same, and in the case of disclosure by HESA, was independently disclosed to HESA by a third party, which, in HESA's reasonable opinion, was legally entitled to disclose the same; or
  - c. is required to be disclosed under any applicable law, including a valid request under the Freedom of Information Act, or by order of a court or governmental body or authority of competent jurisdiction.
- 8.4 The obligations of each of the parties under this clause 8 shall survive termination of this Agreement.
- 8.5 HEFCE is subject to the Freedom of Information Act 2000. To enable HEFCE to comply with its obligations under the FOI Act, HEFCE may disclose (i) written communications between the parties in connection with this Agreement and (ii) all or any relevant part of the Data and the databases supplied hereunder in the event that a relevant request in accordance with the FOI Act is made of HEFCE. HEFCE shall comply with any such requests in accordance with the FOI Act, all applicable laws and regulations including, for the avoidance of doubt, the DP Act, and its own internal policies from time to time.

## **Clause 9: Intellectual Property**

- 9.1 In view of the funding arrangements between HEFCE and the EHEIs, the obligations on such institutions to supply Data to HESA in accordance with their Financial Memoranda and the authority granted to HESA to collect and process such Data, all copyright and intellectual property rights in the Data and in the Collection Databases, Fixed Databases and any other databases produced by HESA in connection with the same shall be vested in HESA.
- 9.2 HESA hereby grants to HEFCE a perpetual non-exclusive, royalty free licence (including the right to sub-license) to Use such Data and databases (and "Use" has the meaning set out in clause 9.3 below"). For avoidance of doubt this Licence shall survive the termination of this agreement however caused.
- 9.3 HEFCE will use the licence granted in this clause 9 only to carry out analysis and provide information in pursuit of HEFCE's policy or executive interests, or in meeting its obligations under the Freedom of Information Act 2000.

## **Clause 10: Force Majeure**

- 10.1 "Force Majeure" in this clause 10 means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under this Agreement. It includes Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected party's own employees or others; and failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services.
- 10.2 If either party is affected by Force Majeure it shall immediately notify the other party in writing of the matters constituting the Force Majeure, and shall keep that party fully informed of their continuance and of any relevant change of circumstances while such Force Majeure continues.
- 10.3 The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under this Agreement.
- 10.4 Save as provided in this clause 10, Force Majeure shall not entitle either party to terminate this Agreement. Neither party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.
- 10.5 If the party affected by Force Majeure fails to comply with its obligations in this clause 10 then no relief for Force Majeure shall be available to it and the obligations of each party shall continue.

- 10.6 If the Force Majeure continues for longer than three months, either party may at any time while such Force Majeure continues terminate this Agreement forthwith by giving notice in writing to the other.

#### **Clause 11: Assignment**

- 11.1 This Agreement is personal to both parties. Neither party shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement.

#### **Clause 12: General**

- 12.1 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.
- 12.2 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 on the authority of its Authorised Signatories to this Agreement.
- 12.3 This Agreement including all schedules and appendices attached hereto together with all other documents referred to herein contains the entire agreement between the parties in relation to its subject matter. 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 whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 12.4 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.
- 12.5 If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement. 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.

**Clause 13: Alternative dispute resolution**

- 13.1 Before resorting to legal proceedings, in the event of any dispute arising out of or in connection with this Agreement, the parties will in good faith seek to resolve that dispute by negotiations between them. The parties further agree that (provided both parties consider that such negotiations would be assisted thereby) they will appoint a mediator by mutual agreement, or (failing such agreement) will apply to the President of the London Chamber of Commerce to appoint a mediator to assist them in such negotiations. Both parties agree to co-operate fully with such a mediator, to provide such assistance as is necessary to enable the mediator to discharge his duties and to bear equally between them the fees and expenses of the mediator.
- 13.2 If the matter has not been resolved by a mediator within 60 days of the initiation of such a procedure, the parties will be free to pursue their remedies without further reference to this clause 13.
- 13.3 Nothing in this clause 13 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.

**Clause 14: Third party rights**

- 14.1 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; but any third party right which exists or is available independently of that Act is preserved.

**Clause 15: Law**

- 15.1 This Agreement shall be governed by, and construed in accordance with, the laws of England.

**Clause 16: Jurisdiction**

- 16.1 All disputes arising out of or relating to this Agreement and not settled under the procedures referred to in clause 13 shall be subject to the exclusive jurisdiction of the English courts, to which the parties irrevocably submit.

## **Appendix 1: Definitions and terms**

1. The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
2. Words importing the singular shall include the plural and vice versa. Words importing a gender include every gender, and references to persons include an individual, company, corporation, firm or partnership.
3. The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
4. References to any statute or statutory provision shall include:
  - a. any subordinate legislation made under it;
  - b. any provision which it has modified or re-enacted (whether with or without modification); and
  - c. any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
5. References to HEFCE and HESA, and the bodies listed in Appendix 9, shall include their permitted successors.
6. References to clauses, schedules, appendices and tables shall be to clauses, schedules, appendices and tables to this Agreement.
7. References to “in writing” shall include notice served by facsimile and email.

## Acronyms and Abbreviations

DELNI	Department for Employment and Learning, Northern Ireland
DH	Department of Health
DP Act	Data Protection Act (1998)
DfES	Department for Education and Skills
DLHE	Destinations of Leavers from Higher Education
EHEI	Publicly funded Higher Education Institution in England
ELWa	Education and Learning Wales
FEC	Further Education College
FESR	Further Education Statistical Record
FHE Act	Further and Higher Education Act (1992)
FOI Act	Freedom of Information Act (2000)
FSR	Finance Statistics Record
FTE	Full-time equivalent
HEFCE	Higher Education Funding Council for England
HEFCW	Higher Education Funding Council for Wales
HESA	Higher Education Statistics Agency
LSC	Learning and Skills Council
NAO	National Audit Office
NHS	National Health Service – Health and Social Care Information Centre
RCs	Research Councils
SHEFC	Scottish Higher Education Funding Council
TTA	Teacher Training Agency
USR	Universities Statistical Record

## Definitions

8. In this Agreement the following expressions shall have the following meanings:

“Academic Year”	means the period 1 August to following 31 July inclusive;
“Agreement”	means this Agreement and all schedules and appendices attached to it;
“Authorised Signatory”	means, for HEFCE, the person holding the office of Director of Finance and Corporate Resources (or equivalent), for HESA, the person holding the office of Chief Executive;
“Board”	means the Board of Directors of HESA;

“Collection Database”	means the electronic record of Data which has been collected, compiled and quality assured by HESA, in accordance with the terms of this Agreement (as the same may be amended, extended or added to from time to time);
“Confidential” and “Confidentiality”	have the meaning set out in Clause 8;
“Constituency”	means the record of (i) all EHEIs from which Data is to be collected and (ii) all Data Streams to be collected by HESA from each such EHEI and processed in accordance with the terms of this Agreement;
“Credibility Checks”	means that part of the Data Quality Assurance Procedures in which a judgement is made about the quality of the submitted data;
“Data”	means data (however recorded) which relate, inter alia, to EHEI students, staff and finance statistics and data (however recorded) which is to any extent derived, directly or indirectly, from such data;
“Data Streams”	has the meaning set out in Appendix 3, section 2, paragraph 10;
“Database Closure Date”	has the meaning set out in Appendix 3, Section 6, paragraph 42;
“Data Quality Assurance Procedures”	means the data quality assurance procedures to be performed by HESA in respect of all Data collected as set out in the Operational Documentation 2004-2005;
“Data Quality Database”	means the electronic record prepared by HESA of all Data quality issues and queries in relation to the Collection Database;
“Data Return”	means the Data submitted by each EHEI to HESA for inclusion in the Collection Database;
“Derived Data”	means data derived directly or indirectly, from the Data;
“Discretionary Derived Fields”	means data derived directly or indirectly, from the Data, which are not required by this agreement, that is all derived fields not listed at Appendix 7, which HESA may supply;

“Effective Date”	has the meaning set out in clause 2;
“Financial Memorandum”	means the financial memorandum entered into between HEFCE and any EHEI in respect of the payment of funds by HEFCE to the EHEI and “Financial Memoranda” shall be construed accordingly;
“Final Amendments Date”	has the meaning set out in Appendix 3, Section 6, paragraph 45;
“Fixed Database”	means the database derived from the Collection Database through the incorporation of all resubmissions made by EHEIs prior to the Final Amendments Date;
“Force Majeure”	has the meaning set out in clause 10;
“Individualised Data”	has the meaning set out in Appendix 8, section 2;
“Metadata”	definitional data that provides information about or documentation of other data as described in Appendix 3, paragraph 30;
“Nominee(s)”	has the meaning set out in clause 3
“Operational Documentation 2004/05”	means the operational documentation in respect of the period from 1 August 2004 to 31 July 2005 as set out in Appendix 6;
“Term”	has the meaning set out in clause 2;
“Test Data Date”	has the meaning set out in Appendix 3, Section 6, paragraph 41; and
“Validation”	means that part of the Data Quality Assurance Procedures where hard checks are systematically applied to submitted data.

## **Appendix 2: Nominees of the signatories of this Agreement**

### **HESA Nominee**

Jane Wild  
Director of Operations  
HESA  
Tel: 01242 255577  
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### **HEFCE Nominee**

Richard Puttock  
Senior Analyst  
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## Appendix 3: The Data collection process

### Contents

	Page	Paragraphs
Section 1: Institutional coverage	21	1-9
Section 2: Data records	23	10-13
Section 3: Data quality assurance: Collection database	23	14-21
Section 4: Data quality assurance: Fixed database	25	22-28
Section 5: Data processing and transfer	27	29-33
Section 6: Data collection process schedules	27	34-46
Section 7: Revising the Data collection process	29	47-63

### Section 1: Institutional coverage

#### Publicly funded higher education institutions in England (EHEIs)

1. HESA will collect Data on behalf of HEFCE from (i) EHEIs in accordance with the terms of this Agreement, and (ii) from higher education institutions in Northern Ireland in accordance with the terms of the Agreement to be entered into by HESA with the Department for Employment and Learning, Northern Ireland (DELNI), to enable HEFCE to meet its statutory obligations with respect to EHEIs and the services it provides for the Department for Employment and Learning, Northern Ireland (DELNI) concerning higher education institutions in Northern Ireland. If HESA should collect Data from these institutions in addition to that specified by HEFCE from time to time in its Financial Memoranda or otherwise notified to such institutions and to HESA by HEFCE, HESA will make it clear that such data are not required by HEFCE and that such Financial Memoranda do not cover the provision of such data.

2. HESA will also provide to HEFCE, with the agreement of the other UK funding bodies, Data collected from higher education institutions in other parts of the United Kingdom. HEFCE also authorises HESA to supply the funding bodies, relevant government bodies and other statutory Data users in Scotland, Wales and Northern Ireland with the Data collected on behalf of HEFCE. (See Appendix 8, section 3 and Appendix 9.)

#### Non-Publicly Funded HEIs

3. When non-publicly funded higher education institutions based in the United Kingdom, seek to be included in the HESA Data collection process, HESA will use its reasonable endeavours to (i) request such institutions' consent and (ii) make the appropriate Data protection arrangements (as HESA and HEFCE shall, from time to time, reasonably agree), to enable HESA to pass the Data collected to HEFCE, the other funding bodies, relevant

government bodies and other statutory Data users. For the avoidance of doubt, the failure by HESA to obtain such consent or deliver such Data shall not amount to a breach of this Agreement.

#### Further education colleges (FECs)

4. The Learning and Skills Council (LSC) will supply data from further education colleges (FECs) to HEFCE. HEFCE will provide the LSC and HESA with definitions of the Data fields and codes that it requires. HESA will provide details of the quality assurance processes that are applied to the corresponding fields within the HESA record, so that the LSC is able to collect data with equivalent data quality assurance to that collected by HESA.

#### Changes to the HESA data collection Constituency

5. HEFCE will inform HESA by the date for “provision by HEFCE of constituency information” set out at Appendix 5, table 1, of any changes to the Constituency from which the collection of Data will be required in the academic year beginning on the following 1 August. Such changes could include:

- a. new EHEIs;
- b. changes in names of institutions;
- c. mergers between EHEIs;
- d. mergers between EHEIs and colleges or institutions outside the Constituency or with any other institutions;
- e. closure of EHEIs.

6. Mergers between EHEIs and colleges or institutions outside the Constituency or with any other institutions do not affect the formal definition of the Constituency, but may impact on Data collection and processing, (including, without limitation by affecting the year on year Credibility Checks made by HESA as part of its Data Quality Assurance Procedures).

7. If a change in the Constituency is confirmed after the relevant date shown in Table 1 of Appendix 5, HEFCE will inform HESA immediately. In such circumstances HESA will use its reasonable endeavours to reflect the change in the Data collection, but HEFCE acknowledges and agrees that this may not be possible and that any failure to do so shall not amount to a breach of this Agreement.

8. Where a change in the Constituency takes place within an academic year, HEFCE shall endeavour to ensure that the institutions involved return the Data as if the change took place on 1 August either preceding or following the formal date of the change.

### Changes to identified campuses

9. When a merger takes place, and the two parts of the merged institution remain distinct entities, or where a new campus is established, HEFCE will encourage institutions to identify staff and students as belonging to the different parts using the campus identifiers and to notify HESA of the same in writing as soon as possible. HEFCE will inform HESA about any newly identified campuses or modifications to pre-existing identified campuses, known to HEFCE, by the date set out in Appendix 5 table 1. HESA will incorporate these changes in the institutional campus record collection for the following year as set out in the Operational Documentation 2004/05 (Appendix 6).

### **Section 2: Data records**

10. The “Data Streams” to be collected by HESA annually for each academic year are:

- a. institutional campuses record;
- b. individualised student record;
- c. destinations of leavers from higher education record (DLHE);
- d. individualised staff record;
- e. institutional finance statistics return (FSR).

11. For the avoidance of doubt, not all Data Streams outlined above shall be collected from each EHEI. Those collected shall be as set out in the Constituency.

12. The coverage, fields and codes in respect of the Data are as described in this Section 2 of Appendix 3, and the Operational Documentation 2004/05 (Appendix 6), or as subsequently modified following the procedures described at Appendix 3, section 7.

13. Coding manuals containing definitions of coverage and all codes for all Data fields collected for all Data Streams, together with appropriate commentaries, explanations and notes of guidance, will be made available by HESA for all collections since 1994/95 via the internet at its website [www.hesa.ac.uk](http://www.hesa.ac.uk).

### **Section 3: Data quality assurance: Collection Database**

#### Collection Database

14. On receiving Data from each EHEI HESA will carry out the Data quality assurance processes set out in Appendix 6. Once HESA is satisfied that each return has been correctly completed by the EHEI, HESA shall inform the EHEI of the same and the EHEI shall formally

sign off its Data Return. Data Returns will be processed and consolidated into a Collection Database for each of the relevant Data Stream(s).

15. The production of the Collection Database concludes the standard Data collection and Data Quality Assurance Procedures performed by HESA. HESA shall supply HEFCE with a copy of the Collection Database in the form and manner set out in the Operational Documentation 2004/05 by the relevant date set out in Appendix 5. Exceptional further Data collection may be required after the production of the Collection Database. The conditions and procedures for such further Data collection are described in Section 4 of Appendix 3 below.

#### Validation checks

16. Data submissions that fail Validation checks should not normally be accepted. Exceptionally, due to unforeseen circumstances, HESA may decide that a check should be removed or reduced in severity for some or all EHEIs. In such cases HESA should contact the HEFCE nominee to determine whether such changes should be made. Any such agreed Validation changes should be documented and reported by HESA to HEFCE with the provision of the Collection Database.

#### Notification that Data quality is unfit for purpose

17. If, through Credibility Checks or other means, HESA determines or is informed that there are material Data quality issues which cannot be resolved before the Database Closure Date, HESA should contact the HEFCE nominee with details of the problem. HESA will not be in breach of this Agreement, and HEFCE will not have recourse to remedies under this Agreement with respect to the quality of valid Data, unless the Data quality is lower than the minimum set out at Appendix 4 and HEFCE have not been notified. In addition other Data deficiencies which cannot be rectified by the Database Closure Date that are not covered by Appendix 4 should also be referred to the HEFCE nominee when HESA judge the problem to be material or significant.

#### Processes when the Data quality has been determined to be unfit for purpose

18. When an EHEI makes a Data Return which:

- fails Validation check(s), apart from any Validation checks that HEFCE has previously agreed to waive, which cannot be resolved by the Database Closure Date, or
- there is a Data quality issue which cannot be resolved by the Database Closure Date that has been referred by HESA to HEFCE under the terms of paragraph 17 above, and HEFCE has confirmed that the problem is material or significant,

then, in discussions with HESA, HEFCE will determine whether to:

- a. accept the Data Return as it is, usually with an undertaking by the EHEI to correct the errors in such return for the following year, or
- b. decline to formally accept the Data Return. In such a case HESA shall provide HEFCE with any Data that had been returned by the EHEI, along with any Data Return that had been signed-off.

19. Where, as described above, HEFCE declines to accept the Data Return, the Data will be collected outside the standard Data collection timetable under the procedures described in Section 4 of Appendix 3.

#### Remedies

20. If any Data supplied to HEFCE as part of the Collection Database is
- a. not properly validated, or
  - b. contains material inaccuracies that have been identified through the Data Quality Assurance Procedures which mean that the Data quality is lower than the minimum set out at Appendix 4,

then unless HESA has previously notified HEFCE of the same and obtained HEFCE's prior consent as described in paragraph 18 of this Appendix 3, then HESA will be in breach of this Agreement.

#### Documentation of less serious errors

21. All errors in Data quality will be documented by HESA and recorded in the Data Quality Database which is provided to HEFCE. The inclusion of material errors in this database which would indicate that the Data quality is lower than that set out in Appendix 4, without bringing them to the notice of HEFCE as outlined above, would not be considered as satisfying the condition to notify HEFCE of such errors and obtaining the agreement of HEFCE as to which of the procedures set out at paragraph 18 of this Appendix 3 above should be adopted.

#### **Section 4: Data quality assurance: Fixed Database**

22. Following the production of the Collection Database as described in Section 3 of Appendix 3, it may be necessary, exceptionally, for further Data collection to take place. This can occur when:

- a. the EHEI fails to supply Data by the Database Closure Date, or
- b. the Data provided by an EHEI prior to the Database Closure Date is not properly validated or contains material inaccuracies, and HEFCE, following the

procedure described in Appendix 3, Section 3 above, has declined to formally accept the Data Return, or

c. in the course of using the Collection Database for the calculation of funding allocations and other purposes, HEFCE identifies material inaccuracies (that is, for example, inaccuracies that would lead to a change in the allocation of funds, or the publication of misleading information), or

d. in the course of using the Collection Database by HESA or other governmental bodies, material inaccuracies are identified (for example that would lead to the publication of misleading information).

23. When a requirement for an EHEI to return Data after the Database Closure Date is identified, HEFCE will inform both HESA and the EHEI in writing of the need for the EHEI to submit or resubmit Data to HESA. The EHEI will be liable to pay extra charges as described in Clause 7.

24. Should the EHEI fail to submit Data following the request from HEFCE, then HEFCE may then implement the provisions within the Financial Memorandum to carry out whatever investigations it deems necessary to collect the Data. All, or part, of the cost of such investigations may be deducted from the EHEI's recurrent grant.

25. On receiving Data from an EHEI under the terms of this Section 4 of Appendix 3, HESA will carry out the same Data quality assurance processes that apply for the standard collection leading to the production of the Collection Database. These post database closure submissions will only be accepted up to the Final Amendments Date, after which time the revised Collection Database shall be frozen and the Fixed Database produced by HESA.

26. During the submission of Data to the Fixed Database, the unprocessed Data will be accessible to HEFCE. This is necessary in order, for example, for HEFCE to resolve outstanding issues regarding the allocation of funding with the institution.

27. The consolidated Fixed Database incorporating the changes from all EHEIs making post database closure submissions will be prepared by HESA after the Final Amendments Date.

28. Should HEFCE discover material inaccuracies after the Final Amendments Date, HEFCE will make arrangements directly with the EHEI. No further amendments to the Fixed Database will be produced and no further services by HESA will be required under the terms of this Agreement.

## **Section 5: Data processing and transfer**

Transmission medium, data structure, metadata, check-digits, nomenclature, documentation, etc.

29. The form of the Data and method of transmission should follow that set out in the Operational Documentation 2004/05, along with any changes subsequently agreed between HEFCE and HESA, or in the case of Discretionary Derived Fields, with any changes that HESA has informed HEFCE about.

30. "The Metadata" covered in this Agreement includes the record and release description files, validating switch report files, files of labels and formats, and the methods of calculating the "full time equivalent" (FTE) and valid entry files.

31. The derived fields and derived tables, and the documentation describing such fields provided with the Data should include those supplied with the Operational Documentation 2004/05, along with any changes subsequently made and documented.

Unprocessed Data sets

32. HESA will supply complete sets of unprocessed Data as received from the institutions for each data stream.

Test Data sets

33. For each Data Stream, HESA will supply a sample of processed Data, Metadata, check digits, documentation, etc, following the format of the full processed Data on the Test Data Date. These data may relate to a small number of higher education institutions, so long as each file record type is included. The test Data sets will have passed Validation checks, but otherwise will not be quality assured and, in particular, may not have been signed-off by the higher education institutions.

## **Section 6: Data collection process schedules**

Timeliness of Data provision

34. The guaranteed dates for HESA's delivery of test, processed, unprocessed and Fixed Database Data to HEFCE are set out in Appendix 5, Table 1. Any failure to supply such Data and database by these dates shall be a breach of this Agreement (other than where the parties have previously agreed to extend such dates, or alter the terms, or reduce coverage in accordance with this Agreement). The target and intermediate dates, including, without limitation, the dates for Data submission and closure, are for information only.

35. HESA shall endeavour to prevent delay and shall do everything that is reasonably required to deliver Data to HEFCE according to the agreed schedules. If it becomes apparent that progress towards delivery of any Collection Database is, or is likely to be,

delayed beyond the dates contained in Appendix 5, Table 1, HESA shall forthwith give notice of the likely delay and its cause to HEFCE. At this stage HEFCE will determine whether the provision of such database should be delayed, or whether, for example, the agreed delivery schedule should be met with a reduced coverage in accordance with this Agreement.

36. If in HEFCE's reasonable opinion, it is decided that HESA should provide Data with a reduced coverage, HEFCE may in accordance with the provisions of its Financial Memoranda with EHEIs and in consultation with HESA, collect the Data.

#### Dates in the Data collection process

37. The key dates in the Data collection process are described below and listed in Appendix 5, Table 1.

38. Some points in the Data collection process have two dates: a target date and a guaranteed date. The "target" date is the date by which HESA expect to be able to have reached that stage of the collection process. This date does not include a contingency for unexpected delays. The "guaranteed" date is the latest date that HESA will deliver to HEFCE.

#### *Reference date*

39. All records (apart from the DLHE record) relate to activity within the academic year, from 1 August to 31 July. The DLHE record relates to the leavers' status at 15 January for those who leave between the previous 1 January and 31 July, and their status at 15 April for those who leave between the previous 1 August and 31 December.

#### *Latest dates for Data Return to HESA by EHEIs*

40. This is the date by which EHEIs should have made their complete and valid Data Return. Following Data Quality Assurance Procedures undertaken by HESA, this may entail the EHEI making modifications to its Data and further submissions.

#### *Dates for provision of test Data to HEFCE (guaranteed and target)*

41. The "Test Data Date" refers to the date for HEFCE to receive a sample of test Data from HESA in the format that will be supplied when the Collection Database is supplied.

#### *Database Closure Dates*

42. These are the latest dates by which institutions can revise their Data submissions within the standard Data collection timetable.

*Dates for provision of the Collection Database to HEFCE (guaranteed and target)*

43. These are the dates for HEFCE to receive from HESA the Collection Database with all the accompanying documentation.

*Dates for provision of unprocessed Data to HEFCE (guaranteed and target)*

44. These are the dates for HEFCE to receive the final Data files received by HESA from the EHEIs.

*Dates for Final amendments to Collection Databases*

45. The "Final Amendment Date" refers to the latest date for submission of Data to HESA for incorporation into the Fixed Databases.

*Dates for provision of Fixed Database to HEFCE (guaranteed and target)*

46. These are the dates for HEFCE to receive the consolidated and validated Fixed Databases.

### **Section 7: Revising the Data collection process**

47. The definitions and procedures set out in the Operational Documentation 2004/05 in relation to the collection of Data, Data definitions, Data Quality Assurance Procedures, and the Data processing and transfer of records, form part of this Agreement.

48. HEFCE must be informed about any proposals to make changes to these definitions and procedures as set out, along with the timetables for Data collection (Table 1, Appendix 5), the timetables for revising the arrangements (Tables 2a and 2b, Appendix 5), the list of non-discretionary derived fields (Appendix 7), the information to identify staff and students who opt-out (Appendix 7), and the list of publications to be provided to HEFCE (Appendix 10).

49. Revisions to these definitions and procedures, along with revisions to the timetables, the list of non-discretionary derived fields, and the list of publications to be provided to HEFCE, may only be made with the agreement of HEFCE, apart from:

- a. Discretionary Derived Fields provided;
- b. Data that are not required by HEFCE, and not covered by the Financial Memoranda with institutions. Examples include fields required by the other funding bodies for their own institutions, or Data collected by HESA on behalf of the HE sector.

### Derived fields

50. Most derived fields may be changed at the discretion of HESA. The exceptions are those “derived” fields which cannot be derived from the other Data supplied with the record. A list of the derived fields which cannot be changed without HEFCE’s agreement is given in Appendix 7.

51. Where HESA changes the definition of derived fields in a way that does not require HEFCE’s agreement, in addition to explicitly informing HEFCE, HESA must change the documentation and version numbers to reflect the change in definition.

### Documentation of revisions

52. All revisions, both those requiring HEFCE’s agreement and those for which HEFCE only needs to be informed, should be documented, and the changes signed by the Nominees of the signatories of this Agreement. These revisions will form appendices to this Agreement.

### Date for revision of Constituency information

53. Dates for revisions are set out in Appendix 5, Tables 2a and 2b.

### *Date for provision by HEFCE of Constituency information*

54. This is the latest date by which HEFCE will provide HESA with the Constituency information as set out in Appendix 3, paragraph 5.

### Dates for revisions to the Data collection process other than Constituency definitions

55. The revisions to the Data collection process involve two dates. The first is the latest date by which HEFCE or HESA may propose or inform the other party of a change (Appendix 5 table 2a), the second is the date by which such changes have to be agreed (Appendix 5, table 2b). HESA will also pass on to HEFCE all proposals for changes by other users of the Data no later than two weeks after the latest date for proposing changes (Appendix 5, table 2a). HESA may also pass on HEFCE’s proposals to other Data users.

### *Dates for revisions to the coverage, fields, or codes of the records*

56. For the student, staff and DLHE records, both HESA and HEFCE will endeavour to keep any changes to these records to the minimum, outside the changes introduced through periodic review of the records. The financial statistics return may have to be modified annually to ensure that it is consistent with changing guidelines for accountancy practice.

57. Major changes, introduced through a review of a record, will include a consultation exercise, and will typically start at least two and a half years before the relevant Data

collection. Minor revisions required to reflect changes in higher education may be introduced according to the timetables in Appendix 5, Tables 2a and 2b.

58. Some revisions will only entail new guidance for those providing Data. If necessary such revisions can be communicated at any time, but there will usually be a HESA Circular prior to each collection which will summarise any new or further guidance.

*Dates for revisions to the Validation rules*

59. There may be planned changes to the Validation rules. These may include new rules, changes to the severity of existing rules, or modification of existing rules. Exceptionally, Validation may be changed during the Data collection process.

*Dates for revisions to the Credibility Checks*

60. There may be changes to the summary Data produced to carry out Credibility Checks.

*Dates for revisions to Data processing and transfers*

61. This includes any changes to the medium by which the Data are transferred, and changes to the structure or format of the Data or Metadata, labels, valid entries or check digits provided to HEFCE.

*Dates for revisions of derived field specification documentation*

62. These changes include the introduction of new derived fields, the removal of previously derived fields as well as the modification of the definitions. HEFCE will not propose new derived fields and there is therefore no entry under Appendix 5 table 2a.

63. The latest dates by which HESA will supply HEFCE with the definitions which will enable HEFCE to create the derived fields are shown at Appendix 5 table 2b. For all derived fields apart from those listed at Appendix 7, HESA does not need to secure the agreement of HEFCE to make such changes.

#### **Appendix 4: Minimum Data quality standards**

1. The Data quality levels referred to in this Appendix are those established by HESA during the course of the Data collection. It is acknowledged that there may be other Data quality problems which have gone undetected, which only become apparent after database closure.
2. In the course of the Data collection process initial submissions of Data by institutions will often be found to have Data quality problems. HESA are not required to inform HEFCE about such problems unless it becomes clear that the institution is unable or unwilling to correct the Data by the Database Closure Date.

#### **Finance Record**

3. Where the values in the appropriate cells in the HESA return differ from the published accounts, they should be queried with the reporting institution to establish which is correct. Any identified variance between the figures in any of the tables in the HESA return and what is established to be correct should be reported to HEFCE.

#### **Student (Staff) Records**

4. The "Maximum Allowed Difference" between what has been established as the correct statistic and what is derived from the Data Return is given by:

Minimum (50, (Maximum (30, 5% of the statistic derived from Data Return))

5. If it is established that the count or FTE of students (staff) in any of the check document cells is incorrect by more than the Maximum Allowed Difference or 50 then the Data quality is below the minimum standard and should be reported to HEFCE.
6. If it is established that the number of incorrect values for any field exceeds the Maximum Allowed Difference of total for those records where a value is required then the Data quality is below the minimum standard and should be reported to HEFCE. "Unknown" values are to be categorised as correct in this evaluation.
7. For those student (staff) record fields included in the tabulation of unknown values, should any of these fields have a percentage unknown of 75% (student record), 90% (staff record), or more, then the Data quality is below the minimum standard and should be reported to HEFCE.

## Appendix 5: Timetables

1. The dates in tables 1, 2a and 2b in this appendix 5 are defined at Appendix 3 sections 6 and 7.

**Table 1: Data collection timetable for Data relating to activity in the year from 1 August Y1 to 31 July Y2**

**(Target dates shown in parenthesis and italics – where none shown the target date is the same as the guaranteed date.)**

Date	Campus	Student	Staff	FSR	DLHE
Reference	1/8/Y1 to 31/7/Y2				
Provision by HEFCE of Constituency information	31/3/Y1				
Provision by HEFCE of campus information	1/5/Y2	N/A	N/A	N/A	N/A
Data return to HESA by institutions	1/6/Y2	15/9/Y2	30/9/Y2	23/12/Y2	31/3/Y3
Provision of test Data to HEFCE	1/6/Y2	1/11/Y2 <i>(15/9/Y2)</i>	1/11/Y2 <i>(15/9/Y2)</i>	15/1/Y3	1/5/Y3
Database closure	23/6/Y2	17/11/Y2 <i>(10/11/Y2)</i>	1/12/Y2	3/2/Y3	15/5/Y3
Provision of Collection Database to HEFCE	30/6/Y2	1/12/Y2 <i>(24/11/Y2)</i>	15/12/Y2	10/2/Y3	1/6/Y3
Provision unprocessed Data to HEFCE	N/A	31/12/Y2	31/12/Y2	10/2/Y3	1/6/Y3
Final amendments to Collection Database	1/07/Y3	28/2/Y4	31/7/Y3	31/7/Y3	21/12/Y3
Provision of Fixed Database to HEFCE	31/07/Y3	31/3/Y4	1/9/Y3	1/9/Y3	1/2/Y4

**Table 2a: Revisions timetable for Data relating to activity in the year from 1 August (Y1) to 31 July (Y2)**

**Latest dates for provision of information or proposal of change by HEFCE to HESA**

<b>Type of revision</b>	<b>Campus</b>	<b>Student</b>	<b>Staff</b>	<b>FSR</b>	<b>DLHE</b>
Coverage, fields, codes of records	1/12/Y1	1/12/Y0	1/12/Y0	1/12/Y0	1/12/Y0
Guidance in pre-collection Circular	1/4/Y2	31/5/Y2	31/5/Y2	1/9/Y2	31/12/Y2
Validation rules	1/12/Y1	15/1/Y2	15/1/Y2	1/6/Y2	15/7/Y2
Credibility Checks	1/12/Y1	28/2/Y2	28/2/Y2	1/8/Y2	15/9/Y2
Data processing and transfers	1/4/Y2	31/5/Y2	31/5/Y2	30/9/Y2	30/11/Y2

**Table 2b: Revisions timetable for Data relating to activity in the year from 1 August (Y1) to 31 July (Y2).**

**Dates for final agreed changes or notification of changes to discretionary derived fields by HESA to HEFCE.**

<b>Type of revision</b>	<b>Campus</b>	<b>Student</b>	<b>Staff</b>	<b>FSR</b>	<b>DLHE</b>
Coverage, fields, codes of records	15/4/Y2	15/1/Y1	15/1/Y1	15/1/Y1	15/1/Y1
Guidance in pre-collection Circular	15/4/Y2	15/6/Y2	15/6/Y2	15/09/Y2	15/1/Y3
Validation rules	1/1/Y2	1/3/Y2	1/3/Y2	1/9/Y2	1/9/Y2
Credibility Checks	1/1/Y2	1/6/Y2	1/6/Y2	1/11/Y2	15/1/Y3
Data processing and transfers	1/5/Y2	30/6/Y2	30/6/Y2	31/10/Y2	15/1/Y3
Supply of derived field specification documentation to HEFCE	N/A	15/8/Y2	15/8/Y2	23/12/Y2	31/3/Y3

## **Appendix 6: Operational Documentation**

Current Media and File Formats document

### **Campus Record**

Specification of data as agreed to be published on HESA web for the 2005-06 collection.

### **Student Record**

Coding Manual - <http://www.hesa.ac.uk/manuals/srcm0405.htm>

Derived field documentation for C04011 collection

Check documentation

### **Staff Record**

Coding Manual - <http://www.hesa.ac.uk/manuals/ISR0405/staff.htm>

Derived field documentation for C04025 collection

Check documentation

### **Finance Record**

Coding Manual - <http://www.hesa.ac.uk/manuals/04031/fin0405.htm>

Derived field documentation for C04031 collection

Check documentation

### **DLHE Record**

Coding Manual - <http://www.hesa.ac.uk/manuals/04018/dlhe0405.htm>

Derived field documentation for C04018 collection

Check documentation

## **Appendix 7: Additional information requiring agreement for change**

### **Section 1: Derived Fields**

#### Student record

XPRC01  
XDOMUC01

#### Staff record

Nil

### **Section 2: Opt out information (students and staff)**

Requests to opt out from non-statutory processing are gathered throughout the year. They are applied to the HESA register of opt-outs from each student and staff dataset on a quarterly basis.

HESA will make available to HEFCE a file that contains the following information:

- the dataset identifier
- the year and quarter of the opt-out
- the primary key (STUKEY or PERKEY) that identifies the record that has been opted out of that dataset

HESA will indicate in publications when the analyses for that publication were prepared.

## Appendix 8: Control of Data

### Contents

	Page	Paragraphs
Section 1: Data controllers	38	1-6
Section 2: Compliance with data protection legislation	39	7-25
Section 3: Provision of Data to other bodies and their agencies	42	26-40
Section 4: Publications and database rights	44	41-48

### Section 1: Data controllers

1. A “data controller” is as defined in the Data Protection Act (1998) (DP Act).

#### Data collected by HESA

2. In collecting the Data required by HEFCE from EHEIs, HESA acts on behalf of HEFCE in the exercise of HEFCE’s powers under the Further and Higher Education Act 1992 (FHE Act). HESA and HEFCE are data controllers in common of these Data.
3. Part of the Data known as the individualised student record collected by HESA on behalf of both HEFCE and the Learning and Skills Council (LSC) includes records of students studying on courses leading to further education qualifications, or credits towards such qualifications. HESA, HEFCE and LSC are data controllers in common of these Data.
4. HESA may collect Data in addition to that required by HEFCE, but HESA should make clear to EHEIs, through its manuals and other publications, that providing these additional Data is not a requirement under their Financial Memoranda with HEFCE. HESA is a data controller in common of the Data together with all statutory customers to which such Data is supplied.

#### Historic data: USR and FESR

5. Data collected within the Universities Statistical Record (USR) relating to the period up to and including 31 July 1994, are held by HESA and HEFCE who are the data controllers in common of these data.
6. Data collected within the Further Education Statistical Record (FESR) relating to the period up to and including 31 July 1994, are held by HESA, HEFCE and the DfES. HESA, HEFCE and the DfES are data controllers in common of these data.

## **Section 2: Compliance with data protection legislation**

7. This section refers to that part of the Data known as the individualised student record and individualised staff record collected by HESA, the historic USR and FESR data, and to data derived from these Data that is aggregated at a sufficiently low level to potentially enable individuals to be identified (the “Individualised Data”). These Individualised Data are “personal data” as defined in the DP Act.

### Responsibilities of HEFCE and HESA

8. As data controllers in common of these Data HEFCE and HESA have legal obligations to ensure that the provisions of the DP Act are met.

9. HEFCE and HESA recognise that the Data collection process is strengthened if staff and students at EHEIs have confidence in the measures taken by HEFCE and HESA to ensure that the Individualised Data are not misused. In order to build this confidence, this Agreement sets out the measures taken by HEFCE and HESA to ensure that Individualised Data are used appropriately.

10. Given HEFCE’s statutory powers under the FHE Act, EHEIs do not need the consent of their students to pass on the information to HEFCE (or to HESA or any other agent acting on HEFCE’s behalf), unless this includes “sensitive” Individualised Data as defined under the DP Act. Where sensitive Individualised Data is requested and consent by the data subject is refused, such data collected shall be processed to the extent possible in compliance with the DP Act.

### *Collection notices*

11. Even though the consent of staff and students (the data subjects) is not required, in order to comply with the DP Act, EHEIs should satisfy themselves that prospective students and members of staff are aware that personal information may be provided to HEFCE and those other governmental bodies and their agencies set out at Section 3 of this Appendix 8, or to HESA acting as the agent for HEFCE and these other bodies. This may be performed by way of a collection notice which is prepared in consultation with HEFCE and those governmental bodies and their agencies set out in Section 3 below and supplied to EHEIs by HESA and distributed by EHEIs to all their data subjects. The collection notices give data subjects the chance to withdraw their consent to their data being used for non-statutory purposes (including, without limitation, academic research).

12. In the Financial Memoranda between HEFCE and EHEIs there is a requirement for EHEIs to co-operate with HEFCE as reasonably necessary to ensure that HEFCE and HESA are able to comply with the DP Act in processing information supplied by the institution. The HESA model collection notices are set out as good practice for what EHEIs should tell their staff and students in order to meet these obligations.

13. Data collection notices will be reviewed periodically, and revised in light of any further recommendations from legal advisers. In the event that HEFCE either changes in any way the purposes for which the personal information shall be put or becomes aware of any such change by a governmental body or agency, or should HEFCE collect or instruct other third parties to collect on its behalf data in addition to the Data which come within the scope of the collection notices, it shall notify HESA of the same at the earliest opportunity.

#### *Sensitive data*

14. The only sensitive Individualised Data under the terms of the DP Act that are currently collected by HESA are those relating to ethnicity, disability and, in the case of Northern Ireland students attending Northern Ireland Higher Education Institutions, religious information. Students and staff can refuse to provide the Individualised Data collected under all of these headings. It should be made clear that in providing the data they are also giving consent for it to be used by HEFCE and DELNI.

#### Conditions applying to HESA

15. The Individualised Data collected by HESA on behalf of HEFCE, may be used by HESA in preparing publications and providing information to EHEIs and other institutions and others with an interest in higher education. Such applications are not considered to be statutory purposes by HEFCE, and the data used must therefore exclude all Individualised Data relating to data subjects who have chosen to withdraw their consent for the data to be used for such purposes.

#### Conditions applying to HESA and HEFCE

16. HESA and HEFCE will comply with the DP Act.

17. In ensuring the security of the Individualised Data, HESA and HEFCE will restrict access to such data to a limited number of individuals. Within HESA this shall be restricted to only those persons who have received appropriate training regarding data protection and security and specifically in relation to information regarding names and salaries of data subjects, such information will only be disclosed to persons who need access to such information for the performance of their duties in connection with this Agreement. Within HEFCE, Individualised Data will only be accessible to the staff within the Analytical Services Group and specific named individuals within the Information Technology Systems Group and specifically in relation to information regarding names and salaries of data subjects, such information will only be disclosed to persons who need access to such information for the performance of their duties in connection with this Agreement.

18. HESA and HEFCE will ensure that all statistics published are at a level of anonymisation and aggregation which will ensure that no personal data (including sensitive data) are published, and thereby ensure the confidentiality of data subjects.

19. HESA and HEFCE will maintain personal data at all times in strict confidence.

20. HESA and HEFCE will take all necessary technical and organisational precautions and measures to preserve the integrity of the Data and prevent any unlawful or unauthorised processing.

21. HESA and HEFCE will only process the Data in accordance with the purposes set out in the collection notices, except in so far as permitted by the DP Act.

22. HESA and HEFCE will not transfer Individualised Data to any other country without suitable data protection safeguards.

#### Supplying Individualised Data to third parties

23. The supply of Individualised Data to other government departments and agencies, and the National Audit Office, is described in Appendix 8, Section 3. This Section 2 of Appendix 8 describes the conditions for supplying Individualised Data to other third parties, for example academic researchers.

24. When HESA or HEFCE supply Individualised Data (referred to in this paragraph as the “data supplier”), the third party in receipt of this Individualised Data (referred to in this paragraph as the “data receiver”) shall sign an agreement which will specify the purposes to which the Individualised Data are to be put. This agreement will ensure that:

- a. the data receiver agrees to abide by the conditions applying to HESA and HEFCE in paragraphs 15 to 22 of this Section 2 of Appendix 8;
- b. the data receiver will only process the Individualised Data in accordance with the specific purpose set out by the data supplier in the agreement to supply data, as subsequently instructed in writing by the supplier;
- c. after a date specified by the data supplier, the data receiver will destroy the Individualised Data (including all documents, materials or copies of such documents or materials embodying any of such data, except those publications arising from the same as authorised by the supplier). The data receiver will provide the data supplier with a written assurance that the Individualised Data have been destroyed;
- d. the data receiver shall not publicise any Individualised Data without the prior written consent of the data supplier;
- e. the data receiver will ensure that the Individualised Data are not disclosed to any third party without the prior written consent of the data supplier, save as required by law;
- f. the data receiver shall not assign or sub-contract the whole or any part of the processing of the Individualised Data to any third party without the prior written consent of the data supplier;

- g. the receiver must supply documentary evidence or assurances of technical and organisational security measures as compliant with the contract. Where the data receiver receives all data identifiers and specifically “sensitive data” as defined under the DP Act and is under contract as a “Data Processor” to either HEFCE or HESA they shall keep accurate records of their security measures. The data supplier and its agents shall be entitled to audit the data receiver’s contractual responsibilities in respect of technical and organisational security measures. This may include physical inspection and copying of records.
- h. the data receiver shall fully co-operate with the data supplier to ensure the data supplier’s compliance with its obligations under the DP Act and in connection with the Individualised Data, the data receiver will notify the data supplier immediately if it receives any of the following, and in any event will assist the data supplier, in complying or responding
  - i. requests for subject access from data subjects (as defined under the DP Act);
  - ii. an information notice, or any other notice (including in particular any deregistration, enforcement or transfer prohibition notice) served on the contractor by the Information Commissioner;
  - iii. complaints from data subjects;
  - iv. any investigation of any breach or alleged breach of the DP Act; and
  - v. the data receiver will not transfer Individualised Data to any other country without the explicit written consent of the data supplier.
- i. adequate provisions are included to determine how any breach of the terms of this paragraph 24 are dealt with by the data supplier and data receiver

25. HEFCE and HESA will log all provision of Individualised Data to third parties that they each provide; and will ensure that the agreements are complied with and that, in particular, Individualised Data are destroyed after the agreed period.

### **Section 3: Provision of Data to other public bodies and their agencies**

#### Bodies covered in this section

26. Under the terms of this Section 3 of Appendix 8 HESA will provide Data collected under HEFCE’s statutory powers to other funding bodies, relevant government or public bodies as set out in Appendix 9.

27. The National Audit Office (NAO) may require and request HEFCE to make available Data originally collected under HEFCE’s statutory powers. Should the NAO make such a request, and should HEFCE so request, it will be provided by HESA.

28. In all cases these receiving authorities are data controllers in common with HEFCE for the Data collected under HEFCE's statutory powers.

29. HESA will not provide personal data collected under HEFCE's statutory powers to other governmental or public bodies or their agencies, other than those set in Appendix 9, unless the data is provided under the conditions set out at paragraphs 23 to 25, Section 2, of Appendix 8. The list of public bodies included in Appendix 9 may be revised with the agreement of HEFCE.

#### Receipt of UK-wide data by HEFCE

30. HESA, through its Agreements with the other funding bodies (SHEFC, HEFCW, DELNI), will seek their agreement for HEFCE to receive data collected under their statutory powers.

31. With the agreement of the other funding bodies, HEFCE will act with them as data controllers in common of the data collected under their statutory powers.

#### Legal framework, agreements and memoranda with other public bodies and their agencies

##### *Distribution of UK-wide data*

32. The FHE Act 1992 states that any two or more funding bodies may exercise jointly any of their functions where it appears appropriate for them to do so. Many policy questions entail analysis using data relating to higher education institutions across the UK, for example in calculating participation rates, and can only be determined by the funding body acting jointly with respect to Data collection and provision.

##### *Teacher Training Agency (TTA) and the Learning and Skills Council (LSC)*

33. Under the FHE Act 1992 and the Education Act 1994, HEFCE, TTA and LSC may exercise jointly their powers to collect Data.

##### *Department for Education and Skills*

34. HEFCE is required under the FHE Act to provide the Secretary of State with such information or advice relating to higher education as he may from time to time require, and to provide him with such information or advice relating to such provision as HEFCE thinks fit. In each case the information is to be provided in the manner determined from time to time by the Secretary of State.

35. HEFCE will, in part, meet these obligations through the direct provision by HESA to the DfES of the Data covered in this Agreement. To this end, HESA has an agreement with the DfES which sets out the data to be provided, timetables and related matters.

*Department for Employment and Learning, Northern Ireland*

36. HEFCE has a Service Level Agreement (SLA) with DELNI, which includes an undertaking by HEFCE to collate statistical data on the Northern Ireland HEIs on the same basis as that undertaken for EHEIs. In order to provide this service, HEFCE also requires Data from higher education institutions in Northern Ireland.

37. In the event that there is any change in legislation or there are amendments to any agreement or SLA between HEFCE and DELNI which impact on the terms of this Agreement, HEFCE shall or shall procure that the relevant government department shall immediately inform HESA of the same.

*Department of Health and the Research Councils*

38. The duty of HEFCE to provide the Secretary of State with information under the FHE Act is usually taken to mean the Secretary of State for Education and Skills. However, the Secretary of State is not defined within the Act itself. The Interpretation Act (1978) defines Secretary of State as "one of her Majesty's Principal Secretaries of State".

39. Following this interpretation, under section 69 of the FHE Act HEFCE authorises HESA to provide the Department of Health and the Research Councils, the latter as agencies of the Office of Science and Technology, with Data. To this end, HESA has agreements in place with the Department of Health and the Research Councils which set out the data to be provided, timetables and related matters.

*The National Audit Office*

40. The National Audit Office (NAO) has the same powers under the FHE Act as HEFCE to obtain data from higher education institutions.

**Section 4: Publications and database rights**

41. It is agreed that HESA may provide information to third parties and publish information and analysis derived from the Data it collects. Such publications, when produced by HESA in its own right, will exclude Data relating to subjects that have withdrawn their consent under the provisions of the DP Act. Where HESA publishes in support of a statutory function, for example for those publications falling within the National Statistics framework, or in publishing the Performance Indicators on behalf of the funding bodies, HESA can include data subjects that have withdrawn their consent under the provisions of the DP Act.

42. HESA will provide HEFCE with 20 copies of the publications listed in Appendix 10. Any additional copies shall be supplied by HESA at a price to be agreed between the parties.

43. HESA will provide HEFCE with full definitions used in the publications listed in Appendix 10, discretionary and non-Discretionary Derived Fields and data subject opt-out lists sufficient for HEFCE to be able to recreate the published tables.

44. HESA agrees that it will permit HEFCE, without charge, to make any use of any database created from the Data covered under this Agreement which HEFCE or HESA itself could make at the time of this Agreement or any time thereafter.

45. In so far as HESA generates any material protected by copyright whilst performing or in connection with its functions under this Agreement (including, for the avoidance of doubt, material partly connected to this Agreement and partly consisting of additional materials not so connected), HEFCE shall be granted a non-exclusive perpetual royalty free licence, including the right to sub-licence, to use such material in accordance with clause 9.3 above, provided only that the copyright of HESA shall be acknowledged.

46. All information and analysis published by HEFCE, or by third parties working in collaboration with HEFCE, will clearly state when one of the sources was HESA Data. Such publications will also make clear that the computation and analysis was by HEFCE or a third party, and will indicate whether, and if so how, Data definitions differed from those used by HESA.

47. HESA and HEFCE will ensure that in their publications, and publications resulting from collaboration with third parties, confidentiality is maintained as required under the DP Act.

48. HEFCE shall refer to HESA any external requests for information which can be met from Data supplied by HESA except when HEFCE has a policy or executive interest in supplying the information itself, or where HEFCE make the information available as a result of its policy in relation to the FOI Act.

## Appendix 9: Governmental bodies acting as data controllers in common

1. Data collected on behalf of HEFCE by HESA will also be made available by the following public bodies who will act as data controllers in common:

The Scottish Higher Education Funding Council (SHEFC),  
 The Higher Education Funding Council for Wales (HEFCW),  
 The Learning and Skills Council (LSC),  
 The Department for Employment and Learning, Northern Ireland (DELNI),  
 The Teacher Training Agency (TTA),  
 The Department for Education and Skills (DfES),  
 The Scottish Executive Enterprise, Transport and Lifelong Learning Department (SEETLLD),  
 The National Assembly for Wales (NAW),  
 The National Council for Education & Training for Wales (ELWa)  
 The Department of Health,  
 The National Health Service – Health and Social Care Information Centre (NHS)  
 The Research Councils.

2. As outlined in Appendix 1, references to the bodies listed above shall include their permitted successors. The above bodies and names applied at the time of the signing of this agreement. The following changes were expected:-

Body at July 2005	Successor Body	Planned change month
The Scottish Higher Education Funding Council (SHEFC)	The Scottish Further and Higher Education Funding Council (SFHEFC)	October 2005
The Teacher Training Agency (TTA)	Training Development Agency (TDA)	September 2005
The National Council for Education & Training for Wales (ELWa)	To be absorbed within The National Assembly for Wales (NAW)	April 2006

**Appendix 10: HESA publications to be provided to HEFCE**

Student Reference Volume  
Resources Reference Volume  
UKHE Volume  
DLHE Reference Volume