



Department
for Education

Agreement to make DfE Data Extracts available in a Secure Environment

**(DfE = Controller; Requester=Controller,
ONS = DfE Processor)**

THIS AGREEMENT is made on the date specified in the Schedule.

BETWEEN:

- (1) The **DEPARTMENT FOR EDUCATION** whose details are specified in the Schedule
- (2) The **REQUESTER** whose details are specified in the Schedule

who together are known as "**the Parties**"

1. INTRODUCTION

- 1.1. DfE is responsible for the collation and management of many databases including the National Pupil Database (NPD), Individual Learner Record (ILR), Children in Need (CIN), Children Looked After (CLA), Schools Workforce (SWF) data etc. DfE is also responsible for linking DfE databases such as NPD and ILR to create longitudinal datasets and the supply of DfE Data Extracts from the Longitudinal Education Outcomes (LEO) database or the Feasibility All Education Dataset England.
- 1.2. For the purposes of this Agreement, DfE is the controller of DfE Data Extracts from all of these databases described in clause 1.1. The Requester in making an application for DfE Data Extracts has determined the purpose and manner in which the DfE Data Extracts shall be processed and therefore assumes all of the obligations of a controller. DfE is proposing to share DfE Data Extracts with the Requester who will process the DfE Data Extract for its Permitted Use as an independent controller.
- 1.3. This Agreement documents that the DfE Data Extracts specified in the Schedule can be processed by the Requester in a Secure Environment subject to the terms of this Agreement.
- 1.4. This Agreement sets out the details of DfE Data Extracts, versions and estimated timings of data transfer.
- 1.5. This Agreement is entered into for the purpose of ensuring compliance with the Data Protection Legislation.
- 1.6. This Agreement may not be amended except in writing using the email address data.sharing@education.gov.uk and signed by authorised representatives of both the DfE and the Requester in accordance with clause 16.
- 1.7. The DfE has satisfied itself prior to entering into this Agreement that it has a legal basis for sharing the DfE Data Extracts as specified in the Schedule.

2. DEFINITIONS

- 2.1 In this Agreement, the following terms shall have the following meanings:

Agreement	This Agreement together with its Schedule.
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Clearance Process	This process is operated by the Secure Environment Provider and details of the process will be provided to the Requester by the Secure Environment Provider.
Commencement Date	The commencement date of this Agreement as specified in the Schedule.
Commissioner	The Information Commissioner as defined in the Freedom of Information Act 2000.
Data Destruction Date	The date that the DfE Data Extracts, including the Requester's Analysis, will be destroyed by the Secure Environment Provider.
Data Loss Event	Any event that results, or may result, in unauthorised access, disclosure or use of the DfE Data Extracts held by the Requester under this Agreement, and/or any actual or potential loss and/or destruction of personal data in breach of this Agreement, including any personal data breach.
Data Protection Legislation	<ul style="list-style-type: none"> (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law relating to the processing of personal data and privacy.
Data Subject Request	A request made by or on behalf of a data subject in accordance with rights granted pursuant to the Data Protection Legislation.
DPA 2018	Data Protection Act 2018
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679))
Destroy	Means permanently destroy all hard and electronic copies of the DfE Data Extracts and permanently expunge DfE Data Extracts from the Secure Environment. For the avoidance of doubt, DfE Data Extracts will not be recoverable from the Secure Environment Provider after the Data Destruction Date.
DfE Data Extracts	Any information contained within or derived from DfE databases in the form of "bespoke DfE Data Extracts" or "standard DfE Data Extracts"

Grace Period	The period between the Licence End Date and the Data Destruction Date during which the DfE Data Extracts and the Requester's Analysis will be archived by the Secure Environment Provider. The Requester can request the DfE to authorise the Secure Environment Provider to grant additional access to the DfE Data Extracts and the Requester's Analysis archived in the Secure Environment.
Individual Declaration	A declaration (in the form specified by the DfE as amended from time to time) to be signed by each Permitted User before they may have access to the DfE Data Extracts and thereafter upon request of DfE.
Insolvency Event	<p>Means in respect of the Requester, any or all of the following:</p> <p>a) a winding up petition is presented or an application is made for the appointment of a provisional liquidator or an administrator or a receiver, or a notice of intention to appoint an administrator is filed at court, or a provisional liquidator or an administrator or an administrative receiver or a receiver, is appointed, or a scheme of arrangement or a voluntary arrangement is proposed, or any moratorium comes into effect; or</p> <p>b) a shareholders' meeting is convened for the purpose of considering a resolution to wind up (except for a members' voluntary liquidation exclusively for the purposes of a bona fide solvent reconstruction or amalgamation and where the resulting entity agrees to be bound by, or assumes, the obligations of the Requester under this Agreement) a resolution to wind up is passed or a winding up order is made; or</p> <p>c) the Requester is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>d) an encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of the Requester's business or assets or any other similar process in any relevant jurisdiction which has a similar or analogous effect.</p>
Intellectual Property Rights	Copyrights and related rights, design rights, database rights, patents, rights to inventions, know-how or trade secrets (whether patentable or not), trade and domain and business names, logos and devices, trade and service marks, moral rights or similar intellectual property rights (whether registered or unregistered and wherever in the world enforceable) together with any extensions, revivals or renewals thereof,

	and all pending applications therefore and rights to apply for any of the foregoing in each case as may now or in the future exist anywhere in the world.
Law	Any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which either Party is bound to comply.
LED	Law Enforcement Directive (Directive (EU) 2016/680).
Licence End Date	The date that the Secure Environment Provider will terminate access to the Secure Environment and archive the DfE Data Extracts and the Requester's Analysis for the Grace Period.
Losses	Means any and all losses, liabilities, costs, claims, proceedings, actions, judgments, damages and expenses including (without limitation) any awards and/or penalties or fines imposed by any regulator including the Information Commissioner to the extent recoverable at law (and any associated costs thereto) and any legal and other professional fees, consultancy fees and expenses on a full indemnity basis.
ONS Accredited Organisation Status	The status granted by the Secure Environment Provider to a researcher once a researcher has passed the Secure Environment Provider's security and connectivity requirements and is authorised to access the Secure Research Service from their own premises.
ONS Approved Researcher Status	The status granted by the Secure Environment Provider (Office for National Statistics Secure Research Service) once a researcher has agreed to all terms and conditions required by the Office for National Statistics Secure Research Service and completed all of the specified training.
Permitted Intended Outputs	The permitted outputs from the Permitted Use as set out in the Schedule
Permitted Use	The purposes for which the Requester (including any Permitted Users) are authorised by the DfE to use the DfE Data Extracts, including the Permitted Intended Outputs, as set out in the Schedule.
Permitted User	An individual who has been authorised by the DfE to have access to the DfE Data Extracts within the Secure Environment and to process it for the Permitted Use and who has signed and returned to DfE an Individual Declaration Form.
Requester	The person or organisation to whom it has been agreed to make available the DfE Data Extracts in a Secure

	Environment under this Agreement, as specified in the Schedule.
Requester's Analysis	The analysis of the DfE Data Extracts generated by the Requester and saved within the Secure Environment.
Requester Primary Contact	The primary contact of the Requester as specified in the Schedule or such alternate as is notified by the Requester to DfE.
Requester Secondary Contact	The secondary contact of the Requester as specified in the Schedule or such alternate as is notified by the Requester to DfE.
Schedule	The Schedule of this Agreement.
Secure Environment Provider	The organisation who will provide the Secure Environment for the purposes of this Agreement being the Office for National Statistics Secure Research Service
Termination Date	The Data Destruction Date or such earlier date if the Agreement is terminated in accordance with clause 11.
Working Days	A day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

- 2.2 The terms "controller", "processor", "data subject", "personal data", "processing" (and "process" and "processes" shall be construed accordingly), "personal data breach", "data protection officer" and "special categories of personal data" shall have the meanings set out in the Data Protection Legislation.
- 2.3 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.
- 2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.10 References to clauses and schedules are to the Clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

- 2.11 Any words following the terms “including”, “include”, “in particular” or “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 2.12 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the Schedule, the provision in the Schedule to this Agreement shall take precedence.
- 2.13 If the DfE is replaced by a successor body or have their relevant powers and responsibilities transferred to another body, then references to them in this Agreement shall be taken to apply to their successors until such time as this Agreement can conveniently be updated to reflect the change.

3. DURATION

- 3.1 This Agreement will commence with effect from the Commencement Date and end on the Data Destruction Date, subject to earlier termination in accordance with clause 11 (the earlier of these dates being the Termination Date).
- 3.2 The Licence End Date and Data Destruction Date may be extended in response to a request by the Requester at the discretion of the DfE. Requests to extend the Licence End Date and or the Data Destruction Date should be made in writing to DfE using the email address data.sharing@education.gov.uk.
- 3.3 Permitted Users will not be granted access to the Secure Environment and/or the Linked Data unless they achieve/continue to hold ONS Approved or Accredited Researcher Status.

4. DATA PROTECTION ROLES

- 4.1 The Parties agree that each of them acts as an independent controller in connection with their processing of the DfE Data Extracts and that nothing in this Agreement is intended to construe either Party as:
- 4.1.1 the processor of the other; or
 - 4.1.2 joint controllers with one another,
- with respect to the DfE Data Extracts.
- 4.2 For the purposes of this Agreement the DfE shall determine the purposes for which, and the manner in which their data is, or is to be, processed including:
- 4.2.1 Whether their data is made available in response to a request and, if so, which data is to be made available and the terms on which it will be shared.
 - 4.2.2 Any variations to the terms of this Agreement.
 - 4.2.3 Any consultation which occurs between the DfE and the Requester is not to be interpreted as the taking of a joint decision in respect of the release of the DfE Data Extracts.

- 4.3 DfE and the Requester agree that DfE may vary the terms of this Agreement with the Requester by exchange of email provided that the emails are exchanged between the Requester Primary Contact and the DfE Contact as specified in the Schedule or such other individuals as the Parties may notify to the other from time to time. Copies of the email exchange shall be retained by DfE. All applications to DfE should be sent by email using the email address data.sharing@education.gov.uk
- 4.4 For the purposes of this Agreement, the Secure Environment Provider, in agreeing to provide a secure environment for the DfE Data Extracts to be made available to the Requester and operating the Clearance Process, is acting as a processor for DfE.
- 4.5 The Requester will agree to all terms and conditions, clearance policies and instructions, (including any conditions set out in any Security Operating Procedures (SyOPs)) notified by the Secure Environment Provider in relation to the use of the Secure Environment.
- 4.6 In the event that a Requester becomes concerned that there is a conflict between the terms of this Agreement and the terms and conditions, instructions, and /or policies produced by the Secure Environment Provider the concern should be raised by the Requester with DfE who will discuss the issue with the Secure Environment Provider on a case by case basis and notify the Requester of their shared position.

5. LICENCE

- 5.1 In consideration of the Requester agreeing to comply with its obligations under this Agreement, the DfE grants to the Requester a non-exclusive, non-transferable licence to use the DfE Data Extracts in the Secure Environment for the Permitted Use until the Licence End Date and subject to successfully completing the Clearance Process and applying the Statistical Disclosure Control to use data derived from the DfE Data Extracts in the Permitted Outputs.
- 5.2 If the Requester wishes to use the DfE Data Extracts for any purpose which is not specified in the Permitted Use, the Requester shall submit a written request for a new use of the DfE Data Extracts for the DfE's consideration.

6. MAKING DfE DATA EXTRACTS AVAILABLE IN ONS SRS

- 6.1 DfE will make available the DfE Data Extracts specified in the Schedule to the Requester so that it can be accessed by the Requester after the dates specified in the Schedule. The DfE will not be liable for any Losses arising out of or in connection with the accuracy of the DfE Data Extracts or any delay in making the DfE Data Extracts available in the ONS SRS, however caused or any failure of the Permitted Users to access the data where they are unable to acquire or lose the status of ONS Approved Researcher. No other form of compensation shall be due to the Requester as a result of one or more Permitted Users not being able to achieve ONS Approved Researcher Status.
- 6.2 The Requester acknowledges that the data held by DfE from which the DfE Data Extracts is produced may not be the most up to date DfE data as changes may need to be made to the source DfE databases.

- 6.3 For the avoidance of doubt, the terms of this Agreement shall apply to all data supplied in connection with it regardless of whether the individual data items are listed in the Schedule.
- 6.4 To access the DfE Data Extracts, the Requester must agree with DfE and the Secure Environment Provider as to the most appropriate accredited physical location from which to access the Secure Environment. The Parties agree that this may change during the Licence Period. If the Requester's organisation has been awarded ONS Accredited Organisation Status DfE may permit access to the Secure Environment from the Requester's premises.

7. DATA PROTECTION

- 7.1 The Parties agree that data within the DfE Data Extracts includes data which may be personally identifiable, and shall be treated as personal data, and where appropriate as special categories of personal data (and therefore as being subject to the provisions of this clause), regardless of whether the Requester, or any third party, considers that there is a risk of any particular individual being identified from that data.
- 7.2 The Requester shall ensure that its processing of the DfE Data Extracts complies with the instructions provided by the Secure Environment Provider to assist the Secure Environment Provider in ensuring that the data is held in strict confidence and securely and that appropriate technical and organisational information security and processing procedures are established and maintained to ensure that all DfE Data Extracts made available in accordance with this Agreement are sufficiently protected against any Data Loss Event and to comply with the requirements of Article 32 of the GDPR. In ensuring the security of the DfE Data Extracts, the Requester shall restrict access to the DfE Data Extracts to the Permitted Users for the Permitted Use and ensure that all Permitted Users have received appropriate training regarding data protection and security.
- 7.3 Where the DfE Data Extracts contains information relating to the racial or ethnic origin, physical or mental health, sexual orientation, gender identity, religion/belief, biometric information, trade union membership, political or philosophical beliefs of an individual these are special categories of personal data or are required to be treated as special categories of personal data under this Agreement.
- 7.4 The DfE will consider on a case by case basis the Requester's proposed Permitted Users. The Requester shall ensure that each proposed Permitted User receives appropriate training regarding data protection and security including all training specified by the Secure Environment Provider. Where the Requester has been granted a Licence Period in excess of one year, the Requester shall ensure that on DfE's request the Permitted Users sign and return to DfE a new Individual Declaration within 30 Working Days.
- 7.5 The Parties shall comply with the provisions of the Data Protection Legislation so far as such provisions apply to processing carried out under this Agreement and the Requester shall procure that its Permitted Users observe and comply with the provisions of the Data Protection Legislation.
- 7.6 The Requester shall only process the DfE Data Extracts solely for the Permitted Use and shall not use the DfE Data Extracts to identify or enable identification of individuals or to inform a decision to be made about any individual. The DfE Data Extracts may not be reproduced by the Requester in a form that would allow a third party to identify or derive

information about individuals who are the data subjects without the prior written approval of the DfE. No steps will be taken to contact any individual identified in the DfE Data Extracts unless under the written instruction or authorisation of the DfE. No information derived from the DfE Data Extracts may be removed from the Secure Environment unless it has successfully completed the Clearance Process.

7.7 The Requester shall fully co-operate with the DfE to ensure compliance with the Data Protection Legislation in respect of the DfE Data Extracts. The Requester shall assist the DfE, in complying with and responding to:

- 7.7.1 Data Subject Requests (or purported Data Subject Request);
- 7.7.2 requests from data subjects for the rectification or erasure of personal data or restriction of processing;
- 7.7.3 an information notice, or any other notice (including particular any de-registration, enforcement or transfer prohibition notices) served by the Commissioner;
- 7.7.4 any other request, complaints or communication relating to either Paty's obligations under the Data Protection Legislation (whether from data subjects or otherwise);
- 7.7.5 any investigation of any breach or alleged breach of the Data Protection Legislation which relate to the DfE Data Extracts.

7.8 The Requester shall promptly report to the DfE email address data.sharing@education.gov.uk, any circumstance which the Requester becomes aware which:

- 7.8.1 may mean that this Agreement has not been complied with;
- 7.8.2 may cause any Party to breach the Data Protection Legislation as a result of processing carried out in connection with this Agreement;
- 7.8.3 may mean that there has been unauthorised processing of any personal data derived from the DfE Data Extracts which is the subject of this Agreement;

7.9 Where the Requester reports a matter to DfE under 7.8, and DfE has reasonable grounds for believing that there has or may have been a breach by the Requester of clause 7, the Requester shall immediately provide all reasonable co-operation to DfE to enable the DfE to determine as far as possible:

- 7.9.1 whether such a breach has taken place, the scope of any breach and the cause of any breach; and
- 7.9.2 action which is appropriate for the DfE or the Requester to take to remedy or mitigate the impact of any such breach.

7.10 Reasonable co-operation under clause 7.9 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 timescales specified by the DfE.

- 7.11 Without prejudice to the DfE rights under clause 7, where DfE investigates a potential breach under this clause 7 and determines that a breach of clause 7 has taken place, the Requester shall promptly carry out any reasonable steps which DfE specify to the Requester as required to remedy or mitigate the impact of the breach.
- 7.12 DfE, and their agents, shall be entitled to audit the Requester's compliance with its responsibilities under this Agreement in respect of technical and organisational security measures. This may include physical inspection and copying of records. The Requester and its Permitted Users shall co-operate fully in allowing DfE, and their agents, access to premises, documents and equipment.
- 7.13 Without prejudice to any other rights or remedies which the DfE may have, the Requester acknowledges and agrees that damages would not be an adequate remedy for any breach by the Requester and/or the Permitted Users of the provisions of this Agreement and the DfE 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 Requester and/or the Permitted Users.
- 7.14 The Requester will not transfer or permit the transfer of the DfE Data Extracts to any other country without the prior written consent of the DfE.
- 7.15 The Requester shall not link the DfE Data Extracts to any other data without the prior written approval of the DfE unless such linking is included within the Permitted Use as specified in the Schedule. Any application to link the DfE Data Extracts to other data shall be made in writing to the DfE in accordance with clause 4.3

8. PUBLICATION / REPRODUCTION OF THE DfE DATA EXTRACTS

- 8.1 The Requester shall not reproduce DfE Data Extract or include secondary analysis of the DfE Data Extracts (including for the avoidance of doubt, data that has successfully completed the Clearance Process) without the prior written consent of the DfE unless such reproduction / publication is expressly permitted by the Permitted Use.
- 8.2 Consent is only valid if given in writing, in advance of reproduction or publication of the DfE Data Extracts. The Requester must request permission to publish research, and/or analysis, no less than 2 Working Days prior to publication being released. Consent will only be given within 2 Working Days in exceptional circumstances at the DfE's sole discretion.
- 8.3 The Requester undertakes that whenever information derived from the DfE Data Extracts is reproduced or used in a publication by it or on its behalf an attribution and caveat are included on behalf of the DfE in a form previously approved in writing by DfE. In any event, the caveat must name the DfE as the organisation whose data has been used in the publication and state that the DfE does not accept responsibility for any inferences or conclusions derived from the DfE Data Extracts by third parties.
- 8.4 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, for which the prior written consent of the DfE is expressly permitted by the Intended Permitted Outputs.

- 8.5 The Requester undertakes to ensure that all statistics published are at a level of anonymisation and aggregation to ensure that no personal data or special categories of personal data are taken out of the Secure Environment, and will thereby ensure the confidentiality and privacy of individuals. More specifically, the Requester undertakes to complete the Office for National Statistics Secure Research Service Clearance Process unless an alternative disclosure control mechanism has been agreed in the Schedule or in writing in advance of publication by DfE.

9. WARRANTIES AND INDEMNITIES

- 9.1 No warranty is given by the DfE as to the quality or accuracy of the DfE Data Extracts.
- 9.2 The Requester warrants and represents to the DfE that at all material times it will comply with the provisions of the Data Protection Legislation so far as such provisions apply to it in respect of this Agreement and that it will procure that its employees, agents and contractors observe the provisions of the Data Protection Legislation and the terms of this Agreement.
- 9.3 The Requester warrants and represents to the DfE that at all material times it will comply with the provisions of the Data Protection Legislation such that:
- 9.3.1 it shall use the DfE Data Extracts only in accordance with the Data Protection Legislation;
 - 9.3.2 in particular and without prejudice to the generality of clause 7, where the Permitted Use include the linking of the DfE Data Extracts to data from any other source, there is a lawful basis for this processing of the other data and in particular it will not contravene the Data Protection Legislation or any legal duty of confidentiality;
 - 9.3.3 where the Requester has provided information about its arrangements to ensure security of information prior to entering into this Agreement, that such information is and continues to be correct and accurate;
 - 9.3.4 it shall use the DfE Data Extracts only in accordance with the Permitted Use and the terms of this Agreement;
 - 9.3.5 it has complied with any advice, undertaking or enforcement notice issued to it by the Information Commissioner following:
 - 9.3.5.1 any audit by the Information Commissioner; or
 - 9.3.5.2 any notification of a data security breach or any other breach of the DP Legislation by the Requester; and
 - 9.3.6 it will not make or permit or pursue any analyses which allow the identification of individuals or which permit or enable any other person to identify individuals.
- 9.4 Each Party warrants and undertakes that it has the capacity and full legal authority to enter into this Agreement, this Agreement has been executed by its duly authorised representative, the making of this Agreement does not conflict with any of its existing

obligations and once signed, this Agreement shall constitute its legal, valid and binding obligations.

9.5 The Requester indemnifies on demand and holds harmless the DfE against any Losses suffered or incurred by the DfE arising out of or in connection with:

9.5.1 any breach by the Requester of the Data Protection Legislation;

9.5.2 the Requester causing the DfE to be in breach of any of the Data Protection Legislation; and

9.5.3 the Requester breaching this Agreement.

10. EXCLUSION OF LIABILITY

10.1 The DfE does not have any obligations to the Requester, whether in contract, tort, breach of statutory duty or otherwise, beyond their obligations expressly set out in this Agreement.

10.2 The DfE shall not have any liability (however caused) for any loss of profit, business, contracts, damage to reputation, revenues, increased costs or expenses or any indirect or consequential loss arising under or in connection with this Agreement.

10.3 Nothing in this Agreement shall operate to exclude or limit the liability of either Party to the other for:

10.3.1 fraud or fraudulent misrepresentation;

10.3.2 death or personal injury caused by negligence of that Party;

10.3.3 any matter for which it would be unlawful for the Parties to exclude liability.

11. TERMINATION

11.1 In the event that either Party wishes to exit from this Agreement, that Party shall serve a notice by e-mail to the named primary and secondary contacts of the other Party (as set out in the Schedule) of a date not less than 30 days from the date of the said notice on which the Party proposes to exit this Agreement.

11.2 DfE may without liability terminate this Agreement immediately by written notice to the Requester, if:

11.2.1 the Requester commits a material breach of this Agreement and, where such breach is capable of remedy, if in the reasonable opinion of DfE, this has not been properly remedied within 7 days of written notice of the breach being given by or on behalf of the DfE;

11.2.2 the Requester is acting, or has acted, in a manner materially prejudicial to the DfE's goodwill and reputation or to the detriment of the DfE's relationship with other government departments and public organisations;

- 11.2.3 the DfE no longer requires this Agreement where this Agreement has been replaced by a subsequent agreement and the Parties have agreed to terminate this Agreement;
- 11.2.4 the Requester suffers an Insolvency Event;
- 11.3 The Requester may, without liability, terminate this Agreement immediately by written notice to the DfE if:
 - 11.3.1 the DfE commits a material breach of this Agreement and, where such breach is capable of remedy, if in the reasonable opinion of the Requester, this has not been properly remedied within 7 days of written notice of the breach being given by or on behalf of the Requester.
 - 11.3.2 the Requester no longer requires the DfE Data Extracts for the Permitted Use.
- 11.4 This Agreement will otherwise terminate at the Destruction End Date, as specified in the Schedule.

12. CONSEQUENCES OF TERMINATION

- 12.1 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 12.2 The following clauses shall survive the termination of this Agreement:
 - 12.2.1 Definitions
 - 12.2.2 Clause 3 – Duration
 - 12.2.3 Clause 4 – Data Protection Roles
 - 12.2.4 Clause 6 – Making DfE Data Extracts Available in ONS SRS
 - 12.2.5 Clause 7 – Data Protection
 - 12.2.6 Clause 8 – Publication/Reproduction of the DfE Data Extracts
 - 12.2.7 Clause 9 – Warranties and Indemnities
 - 12.2.8 Clause 10 – Exclusion of Liability
 - 12.2.9 Clause 11 – Termination
 - 12.2.10 Clause 12 – Consequences of Termination
 - 12.2.11 Clause 13 – Publication of Agreement Details
 - 12.2.12 Clause 14 – Information Requests
 - 12.2.13 Clause 15 – Alternative Dispute Resolution
 - 12.2.14 Clause 16 – Notices
 - 12.2.15 Clause 17 – General
 - 12.2.16 Clause 18 – Intellectual Property Rights - DfE Data Extracts

13. PUBLICATION OF AGREEMENT DETAILS

- 13.1 The Requester consents to DfE publishing the following details on GOV.UK:
 - 13.1.1 A brief description (150 words) of the Permitted Use.
 - 13.1.2 The name of the Requester
 - 13.1.3 The classification of the data

- 13.1.4 Licence End Date
- 13.1.5 Frequency of the data share
- 13.1.6 Delivery mechanism (via secure transfer mechanism or a Secure Environment)

14. INFORMATION REQUESTS

- 14.1 The Requester acknowledges that DfE and the Secure Environment Provider are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and agrees to provide all necessary assistance as required by DfE and the Secure Environment Provider to enable them to comply with its obligations under this legislation.

15. ALTERNATIVE DISPUTE RESOLUTION

- 15.1 If any dispute arises in connection with this Agreement, 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.
- 15.2 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 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.
- 15.3 No Party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or one of the other Parties has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 15.4 Nothing in this clause 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.
- 15.5 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 above procedures, the Requester submits to the exclusive jurisdiction of the English Courts.

16. NOTICES

- 16.1 Any notice to be given pursuant to this Agreement;
 - 16.1.1 shall be in writing; and
 - 16.1.2 sent by email to:

- DfE at data.sharing@education.gov.uk.
- the Requester at the email address specified as the Requester Primary Contact in the Schedule
- or such other email addresses as may be notified by the Parties from time to time.

16.1.3 In the absence of evidence of earlier receipt any such notice shall be deemed to have been given or received on the second business day following the day of sending the email.

17. GENERAL

- 17.1 This Agreement may not be assigned, or otherwise transferred, in whole, or in part, by the Requester without the prior written consent of the DfE.
- 17.2 Subject to clause 4.2 no variation to this Agreement shall take effect unless it is in writing and agreed by all Parties to this Agreement. DfE will have the final say on any proposed variation to this Agreement.
- 17.3 No amendment or variation to this Agreement, or any revocation or extension of this Agreement, shall be effective unless it is made in writing and signed by the Parties.
- 17.4 At any time the DfE may, with 30 Working Days notice in writing to the Requester, change the Agreement to ensure it complies with guidance issued by the Commissioner.
- 17.5 The Requester shall not be entitled to sub-licence any of the rights granted to it by the DfE under this Agreement.
- 17.6 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; but any third party right which exists or is available independently of that Act is preserved.
- 17.7 This Agreement, and the Individual Declarations contain the whole agreement between the Parties and supersede 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 other than those contained within the DfE Data Extracts Request Application Form and the Information Security Questionnaire.
- 17.8 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.

17.9 Any provision of this Agreement which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.

17.10 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same contract. No counterpart shall be effective until each Party has executed at least one counterpart.

18. INTELLECTUAL PROPERTY RIGHTS - DfE DATA EXTRACTS

18.1 All Intellectual Property Rights in the DfE Data Extracts and in any database containing DfE Data compiled by DfE are vested and shall remain vested in DfE. The Requester acknowledges that the DfE Data Extracts is derived from databases compiled and owned by DfE and that DfE retains all rights in the DfE Data Extracts and such databases under the Copyright Rights in Databases Regulations 1997.



Department
for Education

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Any enquiries regarding this document should be sent to us at data.sharing@education.gov.uk