



Department
for Education

The national pupil database

Agreement for the supply of data

Contents

1. Introduction	3
2. Definitions	3
3. Duration	7
4. Role of the data controller	7
5. Role of DfE	7
6. Licence	7
7. Supply of the NPD data	7
8. Data protection	7
9. Publication / reproduction of the NPD data	10
10. Warranties and indemnities	11
11. Requester as data controller	11
12. Exclusion of liability	12
13. Termination	12
14. Consequences of termination	13
15. Record of data release	13
16. Freedom of information requests	14
17. Alternative dispute resolution	14
18. Notices	14
19. General	15
20. Intellectual property rights - NPD data	16

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

BETWEEN:

- (1) **DEPARTMENT FOR EDUCATION** of Sanctuary Buildings, Great Smith Street London SW1P 3BT ("**DfE**")
 - (2) The **REQUESTER** whose details are specified in the Schedule
- together "**the Parties**"

1. Introduction

- 1.1 DfE is responsible for the collation and management of the National Pupil Database (NPD). For the purposes of this Agreement DfE is the Data Controller of the NPD Data.
- 1.2 It has been agreed that the NPD Data specified in the Schedule can be released to the Requester subject to the terms of this Agreement.

2. Definitions

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

Agreement	This agreement for the supply of NPD to the Requester, including the Schedule.
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 Controller	DfE is the data controller of the NPD Data.
Data Protection Legislation	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection and Privacy Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (21 2003/2426) and all other applicable laws and regulations relating to processing of personal data and privacy in effect in any relevant territory from time to time, including where applicable the guidance and codes of practice issued by the

Information Commissioner and any EU regulations not in existence at the time this Agreement was executed.

Individual Declaration A declaration (in the form specified by the Data Controller as amended from time to time) to be signed by each Permitted User before they may have access to the NPD Data and upon request of DfE.

Insolvency Event

- (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
- (b) A shareholders' meeting is convened for the purpose of considering a resolution to wind up (except for a members' voluntary liquidation exclusively for the purposes of a bona fide solvent reconstruction or amalgamation and where the resulting entity agrees to be bound by, or assumes, the obligations of such insolvent party under this Contract) a resolution to wind up is passed or a winding up order is made; or
- (c) A party to this agreement is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or;
- (d) An encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of either party's business or assets or any other similar process in any relevant jurisdiction which has a similar or analogous effect.

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.

Licence End Date	The anticipated end date of this Agreement as specified in the Schedule.
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.
NPD Data	Any information contained within or derived from the database known as the National Pupil Database.
Permitted Use	The purposes specified by the Requester for which the Requester and any Permitted User are authorised to use the NPD Data as set out in the Schedule.
Permitted User	A person who has been authorised by the Data Controller to have access to the NPD Data to process it for the Permitted Use and who has signed and returned to DfE an Individual Declaration.
Requester	The person or organisation to whom it has been agreed to supply the NPD Data under this Agreement, as specified in the Schedule.
Schedule	The schedule to this Agreement for the supply of NPD Data and signed by the Requester by way of acceptance of this Agreement.
Security Incident	An actual, suspected or threatened unauthorised exposure, access, disclosure, use, communication, deletion, revision, encryption, reproduction or transmission of any component of NPD Data or unauthorised access or attempted access or apparent attempted access (physical or otherwise) to any NPD Data or any systems on which such NPD Data is processed or stored.
Termination Date	The Licence End Date or such earlier date if the Agreement is terminated in accordance with Clause 13.

- 2.2 The terms “data controller”, “data processor”, “data subject“ “personal data”, “process”, “processing” and “sensitive personal data” shall have the meanings set out in the Data Protection Act 1998.
- 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.
- 2.12 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.
- 2.13 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.
- 2.14 If the Data Controller 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 Licence End Date, subject to earlier termination in accordance with Clause 13 (the earlier of these dates being the “Termination Date”).
- 3.2 The Licence End Date may be extended in response to a request by the Requester at the discretion of the Data Controller.

4. Role of the data controller

- 4.1 For the purposes of this Agreement the Data Controller shall determine the purposes for which and the manner in which their data is, or is to be, processed including:
 - 4.1.1 Whether their data shall be provided in response to a request and, if so, the data to be provided and the terms on which it will be shared.
 - 4.1.2 Any variations to the terms of this Agreement.

5. Role of DfE

- 5.1 DfE is the Data Controller of the NPD Data.

6. Licence

- 6.1 The Data Controller grants to the Requester a non-exclusive, non-transferable licence to receive and use the NPD Data for the Permitted Use up to the Termination Date.

7. Supply of the NPD data

- 7.1 DfE will supply the NPD Data to the Requester as soon as may be practicable after the Commencement Date. The Data Controller will not be liable for any delay in the supply of the NPD Data, however caused.

8. Data protection

- 8.1 The Requester shall ensure that the NPD data is held in strict confidence, held securely, that appropriate technical and organisational information security and processing procedures are established and maintained to ensure that all NPD Data provided in accordance with this Agreement are sufficiently protected against any unlawful or unauthorised processing. In ensuring the security of the NPD Data, the

Requester will restrict access to the NPD Data to the Permitted Users for the Permitted Use.

- 8.2 The Data Controller 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 to enable the Requester to comply with principle 7 of the Data Protection Act and has signed an Individual Declaration. 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 each year.
- 8.3 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 the provision of the Data Protection Legislation.
- 8.4 The Requester shall not use the NPD Data to identify individuals or to inform a decision to be made about any individual. The NPD Data 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.
- 8.5 The Requester shall fully co-operate with the Data Controller to ensure compliance with the Data Protection Legislation in respect of the NPD Data. The Requester shall notify the DfE upon receiving, and shall assist the Data Controller, in complying with and responding to:
 - 8.5.1 Requests for subject access from data subjects;
 - 8.5.2 An information notice, or any other notice (including in particular any de-registration, enforcement or transfer prohibition notice) served by the Information Commissioner;
 - 8.5.3 Complaints from data subjects; or
 - 8.5.4 Any investigation of any breach or alleged breach of the Data Protection legislation which relate to the NPD Data.
- 8.6 The Requester shall promptly report to the DfE any circumstance which they become aware of which:
 - 8.6.1 May mean that clause 8.1 has not been complied with;
 - 8.6.2 May cause any party to breach the Data Protection Legislation as a result of processing carried out in connection with this Agreement; or
 - 8.6.3 May mean that there has been unauthorised processing of any personal data derived from the NPD Data which is the subject of this Agreement.

- 8.6.4 Each party shall promptly report to the other parties if it becomes aware of any Security Incident affecting the NPD Data processed under this agreement.
- 8.7 The Data Controller 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 the Data Controller and its agents' access to premises, documents and equipment.
- 8.8 Without prejudice to any other rights or remedies which the Data Controller 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 Data Controller 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.
- 8.9 Immediately upon the Termination Date, the Requester undertakes to destroy all copies of the NPD Data and expunges it from any computer, word processor or other device or medium containing it (including all documents, material or copies of such documents or materials embodying any of such NPD Data), except that information derived from the NPD Data produced for the Permitted Use which does not include any personal data or sensitive personal data, which would enable the data subjects of the NPD Data to be identified, and which uses the Standard Disclosure Controls or an agreed alternative to prevent such identification may be retained. The Requester will provide the Data Controller with a written assurance that the NPD Data have been destroyed within 10 working days of the Termination Date.
- 8.10 The Requester will not transfer Personal Data or Sensitive Personal Data to any other country without the prior written approval of the Data Controller.
- 8.11 The Requester shall not link the NPD Data to any other data without the prior written approval of the Data Controller. Any application to link the NPD Data shall be made in writing to the Data Controller.

9. Publication / reproduction of the NPD data

- 9.1 The Requester shall not reproduce the NPD Data or include secondary analysis of the NPD Data within any publication without the prior written consent of the Data Controller unless such reproduction / publication is included within the Permitted Use.
- 9.2 Consent is only valid if given in writing, in advance of reproduction or publication of the NPD Data.
- 9.3 The Requester undertakes that whenever the NPD Data is reproduced or used in a publication by it or on its behalf an attribution and caveat are included on behalf of DfE in a form previously approved in writing by DfE. In any event, the caveat must list the Data Controller whose data has been used in the publication and state that they do not accept responsibility for any inferences or conclusions derived from the NPD Data by third parties.
- 9.4 For the avoidance of doubt, inclusion of the NPD Data on an internet website will be deemed to constitute publication for which the prior written consent of the Data Controller is required.
- 9.5 The Requester undertakes to ensure that all statistics published are at a level of anonymisation and aggregation which will ensure that no Personal Data or Sensitive Personal Data are published, and will thereby ensure the confidentiality of individuals. More specifically, the Requester undertakes to adhere to the Standard Disclosure Control set out below in any publication or reproduction of the NPD Data unless an alternative disclosure control mechanism has been agreed in writing in advance of publication by the Data Controller.

Standard Disclosure Control:

- 9.5.1 Any published NPD figure(s) at a local level must be based on no fewer than 3 cases or else suppressed (e.g. replaced with an X, with a note “* in this table means the figures have been suppressed due to small numbers”. Zero is allowed).
- 9.5.2 Any published NPD figure(s) at a school level from 2011 onwards must be based on no fewer than 6 cases or else suppressed (e.g. replaced with an X, with a note “* in this table means a figure less than 6”. Zero is allowed).
- 9.5.3 Any published figures at school level for years prior to 2011 must be based on no fewer than 11 cases or else suppressed (e.g. replaced with an X, with a note “* in this table means a figure less than 11”. Zero is allowed).
- 9.5.4 Even if only one cell requires cell suppression, you must suppress at least one other component cell (the next smallest) to avoid calculation of suppressed values from the totals.

10. Warranties and indemnities

- 10.1 No warranty is given by the Data Controller as to the quality or accuracy of the NPD Data.
- 10.2 The Requester warrants and undertakes to the Data Controller 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 more particularly that it will not make or permit or pursue any analyses which allow the identification of individuals.
- 10.3 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.
- 10.4 The Requester shall indemnify the Data Controller for any losses arising as a result of:
- 10.4.1 The Requester breaching the Data Protection Legislation.
 - 10.4.2 The Requester causing the Data Controller to be in breach of any of the Data Protection Legislation.
 - 10.4.3 The Requester breaching this Agreement.

11. Requester as data controller

- 11.1 The Requester in making an application for NPD Data has determined the purpose and manner in which the NPD Data shall be processed and therefore assumes all of the obligations of a sole data controller upon receipt of the NPD Data.
- 11.2 Should it be the case that the party referred to as the Data Controller in this Agreement is found to be in breach of the Data Protection legislation as a result of the Requester's use of the NPD Data, or should the Requester breach any of the terms of this Agreement, the Requester shall indemnify the Data Controller for any losses.
- 11.3 Should the Data Controller become aware that the Requester is in material breach of the Data Protection legislation for any processing of the NPD Data, the Data Controller may report any such breach to the Information Commissioner.

12. Exclusion of liability

- 12.1 The Data Controller 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.
- 12.2 The Data Controller shall not have any liability (however caused) for any loss of profit, business, contracts, revenues, increased costs or expenses or any indirect or consequential loss arising under this Agreement.
- 12.3 The Data Controller does not exclude or limit their liability to the Requester for:
- 12.3.1 Fraud or fraudulent misrepresentation;
 - 12.3.2 Death or personal injury caused by negligence;
 - 12.3.3 A breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - 12.3.4 Any matter for which it would be unlawful for the parties to exclude liability.

13. Termination

- 13.1 The Data Controller may terminate this Agreement if:
- 13.1.1 The Requester commits a material breach of this Agreement and in the reasonable opinion of the Data Controller this has not been properly remedied within 7 days of written notice of the breach being given on behalf of the Data Controller;
 - 13.1.2 An Insolvency Event occurs in relation to the Requester;
 - 13.1.3 The Requester is acting or has acted in a manner materially prejudicial to the Data Controller's goodwill and reputation.
- 13.2 The Requester may without liability terminate this Agreement immediately by written notice to the Data Controller if:
- 13.2.1 The Data Controller commits a material breach of this Agreement and, 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 on behalf of the Requester.
 - 13.2.2 The Requester no longer requires the NPD Data for the Permitted Purpose.

14. Consequences of termination

14.1 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

14.2 The following clauses shall survive the termination of this Agreement:

14.2.1 Definitions

14.2.2 Clause 3 - Duration

14.2.3 Clause 5 - Role of DfE

14.2.4 Clause 8 - Data Protection

14.2.5 Clause 9 - Publication / Reproduction of the NPD Data

14.2.6 Clause 10 - Warranties and Indemnities

14.2.7 Clause 11 - Requester as Data Controller

14.2.8 Clause 12 - Exclusion of Liability

14.2.9 Clause 13 - Termination

14.2.10 Clause 14 - Consequences of Termination

14.2.11 Clause 15 – Record of Data Release

14.2.11 Clause 16 - Freedom of Information Requests

14.2.12 Clause 17 - Alternative Dispute Resolution

14.2.13 Clause 18 - Notices

14.2.14 Clause 19 - General

14.2.15 Clause 20 - Intellectual Property Rights - NPD Data

15. Record of data release

15.1 The Requester consents to DfE publishing the following details on its website:

15.1.1 A description of the requested NPD data.

15.1.2 The name of the requester.

15.1.3 The Permitted Use.

15.1.4 Details of whether the request was partially approved or approved in full.

15.2 For the avoidance of doubt, no Personal Data will be published by DfE.

16. Freedom of information requests

16.1 The Requester acknowledges that DfE 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 to enable them to comply with their obligations under this legislation.

17. Alternative dispute resolution

17.1 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.

17.2 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.

17.3 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.

17.4 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.

18. Notices

18.1 Any notice to be given pursuant to this Agreement;

18.1.1 Shall be in writing; and

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

For the attention of the Head of Education Data Division

DEPARTMENT FOR EDUCATION

Sanctuary Buildings,

Great Smith Street London SW1P 3BT

The Requester: at its address stated in the Schedule

For the attention of the Contact

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

- (a) If delivered by hand, when delivered; or
- (b) On the second business day following the day of sending if sent by post or recorded delivery; or
- (c) On the date and at the time that the courier's delivery receipt is signed if sent by commercial courier.

19. General

- 19.1 This Agreement may not be assigned or otherwise transferred in whole or in part by the Requester without the prior written consent of the Data Controller.
- 19.2 The Requester shall not be entitled to sub-licence any of the rights granted to it by the Data Controller under this Agreement.
- 19.3 No variation to this Agreement shall take effect unless it is in writing and signed by all parties to this Agreement.
- 19.4 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.
- 19.5 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.
- 19.6 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 of any other provision.

19.7 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.

19.8 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.

19.9 This Agreement shall be governed by and construed in accordance with English Law and, to the extent disputes arising out of or relating to this Agreement are not settled under the procedures referred to in Clause 17, the Requester submits to the exclusive jurisdiction of the English Courts.

20. Intellectual property rights - NPD data

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



Department
for Education

© Crown copyright 2013

You may re-use this document / publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v2.0. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/version/2 or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at NPD.REQUESTS@education.gsi.gov.uk.

This document is available for download from our website at [NPD Online](#)

Reference: DFE-00259-2013