

NOVEL CORONAVIRUS DATA PLATFORM
DATA SHARING AGREEMENT (DSA)
TERMS OF DATA SUBMISSION

BACKGROUND:

- (A) The Novel Coronavirus (NCoV) Data Platform (NCoVDP) is a global data sharing initiative which aims to develop a standardised, secure, curated and legally compliant data repository.
- (B) The International Severe Acute Respiratory and emerging Infection Consortium (ISARIC), based at the University of Oxford, hosts the NCoVDP.
- (C) The Contributor wishes to submit the Data to the NCoVDP for the purpose of curation and secure storage.

1. DEFINITIONS

In this Agreement:

“Applicable Regulations” means all laws, regulations, regulatory requirements and authorisations, decisions and guidance of regulatory authorities or other requirements applicable in the context of this Agreement in any jurisdiction, including those jurisdictions in which the Raw Data was collected or from which the Raw Data otherwise originates;

“Confidential Information” means any and all information disclosed by or on behalf of Contributor at any time that would be regarded as confidential by a reasonable person or information which is identified as being confidential or otherwise designated to show expressly that it is imparted in confidence;

“Curated Data” means the dataset created by ISARIC following completion of Curation;

“Curation” or “curate” means the process by which ISARIC, usually in partnership with data managers in the countries where data were collected, securely anonymise (if not already anonymised), clean and standardise the data to a harmonised format;

“Data Access Committee” or “DAC” means the data access committee of the NCoVDP, which is comprised of all Data Contributors and Platform Parties;

“Data” means the Raw Data and Curated Data;

“NCoV Data Platform” or “NCoVDP” means the platform developed and maintained by ISARIC on which data concerning NCoV contributed by a variety of data contributors is collated and curated on behalf of the Platform Parties;

“Intellectual Property Rights” or “IPRs” means any and all patents, copyright, registered designs, design rights, trade marks, database rights, regulatory rights in data exclusivity and market exclusivity (including under Directive 2001/83/EC and any national implementing legislation), know how and any other intellectual property rights anywhere in the world in each case whether registered or unregistered, including any and all applications for such rights and the right to make such applications and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Platform Parties” means the organisations represented on the Steering Committee from time to time, which includes, as at the date of this Agreement:

- (a) The Chancellor Masters and Scholars of the University of Oxford; and
- (b) Wellcome Trust;
- (c) Representatives of Data Contributors

“Raw Data” means any data submitted to the NCOVDP;

“Schedule” means a schedule to this Agreement;

“Steering Committee” means the steering committee of the NCOVDP;

“Third Party” means any entity or person other than the Parties.

2. DATA TRANSFER

- 2.1 Contributor hereby grants ISARIC a limited, non-exclusive licence to use the Data for the sole purposes of curating the Raw Data.
- 2.2 Contributor shall transfer the Raw Data to the NCOVDP following execution of this Agreement and following receipt by Contributor of the log-in credentials required to access the NCoVDP.
- 2.3 ISARIC acknowledges that it shall have no rights in or to the Data other than the right to use it in accordance with the express terms of this Agreement.
- 2.4 Nothing in this Agreement shall prevent the Data Contributor from being able to use the Data for any purpose, including but not limited to publication of the Data or distribution of the Data to Third Parties for research purposes.

3. CONTRIBUTOR OBLIGATIONS

- 3.1 The Contributor warrants to ISARIC and the Platform Parties that:
 - 3.1.1 it has obtained all necessary licences, permits and/or consents necessary for use of the Data as permitted by this Agreement;
 - 3.1.2 the submission falls under pre-existing regulatory or ethics approvals or it has obtained any regulatory and/or ethics committee approvals required to submit the data to the NCoVDP;
 - 3.1.3 the Data was collected in compliance with all Applicable Regulations; and
 - 3.1.4 it has the right to enter into this Agreement.
- 3.2 The Parties acknowledge and agree that the intention is that the Contributor shall use reasonable efforts not to transfer, disclose or otherwise make available any personal data to ISARIC. Notwithstanding, the Contributor shall notify ISARIC and the Data Access Committee prior to transferring the Raw Data to the NCOVDP if it reasonably believes that the Raw Data contains personal data.
- 3.3 The Parties acknowledge and agree that, in the event that the Raw Data submitted to the NCOVDP contains any personal data, ISARIC shall process such personal data as a data processor for the sole purpose of anonymizing the data and only in respect of anonymising such personal data ISARIC shall:
 - 3.3.1 process the personal data only in accordance with the written instructions of the Contributor as data controller unless required to do so by law and subject to notifying

- the Contributor (save where by law ISARIC is prohibited from so notifying the Contributor);
- 3.3.2 take reasonable steps to ensure the reliability of its employees, staff, officers and agents who may have access to, or be involved in, the processing of the personal data;
 - 3.3.3 ensure that the ISARIC personnel who have access to and/or process the personal data are obliged to keep it confidential or are under an appropriate statutory obligation of confidentiality;
 - 3.3.4 not permit third parties to process the personal data without obtaining Contributor's prior written consent;
 - 3.3.5 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against loss or destruction of, or damage to, personal data, appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 3.3.6 assist the Contributor, by having appropriate technical and organisational measures, in responding to any request from a data subject;
 - 3.3.7 assist the Contributor in its compliance with data protection legislation by:
 - (a) keeping the personal data secure;
 - (b) notifying the Contributor promptly and in any event within 24 hours of any personal data breaches so the Contributor can notify the supervisory authorities and advise data subjects;
 - (c) conducting data protection impact assessments; and
 - (d) supporting the Contributor's interaction with supervisory authorities or regulators where the data protection risk assessment indicates that there is a high risk to the processing;
 - 3.3.8 at the written direction of the Contributor, delete or return personal data and copies thereof to the Contributor on termination or expiry of this Agreement unless ISARIC is required to store the personal data by law.
 - 3.3.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 3.3 and shall allow Contributor at reasonable times and from time to time to audit and review ISARIC's compliance with this clause 3.3;
 - 3.3.10 inform the Contributor immediately if (in ISARIC's opinion) an instruction for the processing of personal data given by the Contributor infringes data protection legislation;
 - 3.3.11 not transfer the personal data outside the European Economic Area without first obtaining the Contributor's written consent and, notwithstanding the Contributor giving that consent, not transfer the personal data except in accordance with data protection legislation, e.g. by entering into the European Commission's standard contractual clauses for the transfer of personal data to third countries adopted pursuant to Decision 2004/915/EC; and

- 3.3.12 agree to any reasonable amendment to this clause 3.3 necessary to bring this clause 3.3 and ISARIC's obligations in respect of the processing of personal data into line with any applicable data protection legislation.

4. DATA CURATION

- 4.1 ISARIC shall Curate the Raw Data following submission of the Raw Data to the NCOVDP and following any anonymisation in accordance with any timeframes agreed between the Parties at data submission. Without prejudice to Clause 3.2, ISARIC shall permanently and irrevocably anonymize any personal data contained within the Raw Data as part of the data curation process. For the avoidance of doubt, ISARIC shall not use the Raw Data for any purpose other than Curation.
- 4.2 On completion of Curation, ISARIC shall provide Contributor with a copy of the Curated Data via secure electronic transfer.

5. PERMITTED USE OF THE DATA

- 5.1 ISARIC shall not:
- 5.1.1 use, attempt to use or permit use of the Data to re-identify or contact any individual (living or deceased), community or medical institution associated with the Data; or
 - 5.1.2 link, attempt to link or permit a Third Party to link the Data with any other data in a manner that may enable re-identification of individuals (living or deceased), communities or medical institutions associated with the data; or
 - 5.1.3 during the term of this Agreement or at any time thereafter disclose Confidential Information or the Data to any persons, except:
 - (a) ISARIC may disclose Confidential Information and/or the Data to its officers and employees who are under appropriate obligations of confidentiality and who need to access the Confidential Information and/or Data for the purposes described in this Agreement;
 - (b) ISARIC may disclose Confidential Information and/or Curated Data to a Third Party provided that: (i) the analysis which that Third Party wishes to conduct has been approved by the DAC in writing; and (ii) ISARIC and that Third Party have signed a Data Transfer Agreement ("**Data Recipient**");
- 5.2 ISARIC shall:
- 5.2.1 Provide reasonable assistance to any Contributor who wishes to enforce the terms of a Data Transfer Agreement which relates to Data contributed by the Contributor;
 - 5.2.2 promptly notify Contributor if there are any known breaches of the terms of its Data Transfer Agreement;
 - 5.2.3 ensure the Data is used in compliance with all Applicable Regulations at all times;
 - 5.2.4 be responsible for obtaining all ethical, regulatory and legal approvals applicable in the United Kingdom that are necessary to manage and operate the NCOVDP;
 - 5.2.5 observe the highest standards of ethics and integrity in the course of use of the Data in order to promote respect for human rights, human dignity and privacy; and

5.2.6 comply with any reasonable instructions or restrictions with respect to use of the Data that Contributor may notify to ISARIC from time to time.

5.3 Notwithstanding Clause 5.1.3, ISARIC may disclose Confidential Information and/or the Data to the minimum extent required by an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body of competent jurisdiction provided that prior to any such disclosure, ISARIC shall to the extent permitted by law use all reasonable endeavours to give Contributor as much notice of this disclosure as possible. Where notice is given, ISARIC shall take into account the reasonable requests of Contributor in relation to the content of the disclosure.

5.4 The provisions of Clause 5.1.3 shall not apply to Confidential Information which ISARIC can demonstrate by reasonable written evidence was, prior to its receipt by ISARIC, in its possession and at its free disposal, or subsequently disclosed to ISARIC by a third party without any obligations of confidence, or is or becomes available to the public through no act or default of ISARIC, or is independently developed, discovered or acquired by ISARIC without reference to any Confidential Information.

6. SECURITY

6.1 ISARIC shall:

6.1.1 implement appropriate technical and organisational security measures having regard to the state of the art to protect the Data from unauthorised access and/or disclosure. In particular ISARIC shall store the Data only on encrypted, access-limited, password-protected computers and/or servers. Any duplication of the Curated Data must be fully documented such that all versions can be deleted on request or on termination of this Agreement; and

6.1.2 notify Contributor immediately upon becoming aware of any unauthorised use or disclosure of, or access to, the Data and ISARIC shall promptly take such action to remediate the same (which may include implementation of security measures to prevent the incident from recurring).

7. INTELLECTUAL PROPERTY

7.1 The Data (including Curated Data) shall remain the exclusive property of the Contributor and nothing in this Agreement transfers, or is intended to transfer, title to the Data (including Curated Data) or any IPRs relating thereto to ISARIC or any Third Party.

7.2 To the extent that any IPRs in the Curated Data do not vest automatically in Contributor, ISARIC hereby assigns (by way of present and future assignment) with full title guarantee all IPRs in the Curated Data to Data Contributor and shall procure that each employee waives such rights (including moral rights) as are not capable of being assigned.

8. LIMITATIONS AND EXCLUSIONS

8.1 Nothing in this Agreement excludes or limits the liability of either Party:

8.1.1 for death or personal injury caused by that Party's negligence; or

8.1.2 for fraud or fraudulent misrepresentation; or

8.1.3 to the extent that such liability cannot be limited or excluded by law.

- 8.2 Subject to Clause 8.1, in no event will the Contributor be liable for any use of the Data by ISARIC, the Platform Parties or any Data Recipient, whether in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising.
- 8.3 ISARIC acknowledges that the Data is provided “as is” and Contributor hereby excludes all terms, conditions and warranties which, by virtue of statute, common law or otherwise, may, in the absence of this Clause, be implied into this Agreement with respect to the Data to the fullest extent possible.
- 8.4 Subject to Clauses 8.1 to 8.3 (inclusive) and insofar as any liability may not be limited or excluded by law, the total liability of Contributor, ISARIC and the Platform Parties whether in contract, delict or otherwise, arising from or otherwise in connection with this Agreement shall not exceed one thousand pounds sterling (£1,000) in aggregate.
- 8.5 ISARIC warrants and undertakes that it has in effect, and will maintain in effect during the term of this Agreement and for a period of five (5) years thereafter, valid and enforceable insurance policies with reputable insurers appropriate to the nature of ISARIC’s obligations under this Agreement or as may be required by applicable law from time to time.

9. DURATION AND TERMINATION

- 9.1 This Agreement shall commence on the date on which it is executed by the Data Contributor and shall continue in force until terminated in accordance with this Clause 11.
- 9.2 Each Party may give notice to terminate this Agreement at any time without cause and without liability by giving notice in writing to the other Party, such notice to take effect as specified therein.
- 9.3 If a decision is made by the Steering Committee to close the NCOVDP, this Agreement shall automatically terminate.
- 9.4 Upon termination of this Agreement, all licences of the Data granted pursuant to this Agreement will automatically terminate and ISARIC shall (and, where appropriate, shall procure that each Data Recipient shall) securely destroy the Data and all Confidential Information in its (or their) possession or control and shall certify in writing to Contributor that it has (and they have) done so. Compliance with this Clause shall not require ISARIC to procure the withdrawal of any publicly available Publications as at the date of termination.
- 9.5 The termination or expiry of this Agreement shall not prejudice or affect any accrued rights or liabilities of any of the Parties.
- 9.6 Upon termination of this Agreement for any reason the provisions of Clauses 1 (*Definitions*), 2.3 to 2.4 (inclusive) (*Data Transfer*), 4.1 (*Data Curation*), 5.1 to 5.4 (inclusive) (*Permitted Uses*), , 6 (*Security*), 7 (*Intellectual Property*), , 8 (*Limitations and Exclusions*), 9 (*Duration and Termination*), 10 (*Third Party Rights*), 11 (*General*), 12 (*Notices*), 13 (*Interpretation*), 14 (*Disputes*) and 15 (*Governing Law*) shall remain in force.

10. THIRD PARTY RIGHTS

- 10.1 Contributor acknowledges that the Platform Parties benefit from, and are entitled to enforce, the terms of this Agreement.
- 10.2 Except as expressly provided in Clause 10.1, this Agreement does not create any right enforceable by any person who is not a party to it.

11. GENERAL

- 11.1 This Agreement may only be amended in writing signed by duly authorised representatives of ISARIC and Contributor.
- 11.2 ISARIC shall not assign, mortgage, charge or otherwise transfer or deal with any rights or obligations under this Agreement without the prior written consent of Contributor not to be unreasonably withheld, conditioned or delayed.
- 11.3 No failure or delay on the part of either Party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such or any other right or remedy.
- 11.4 If any provision or part of this Agreement is held to be invalid, amendments to this Agreement may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this Agreement to the maximum extent permissible under applicable law.
- 11.5 Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- 11.6 Each Party shall at all times comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and corruption and shall have and maintain appropriate policies and procedures to ensure compliance with such requirements (which it shall enforce where appropriate). Each Party shall immediately notify the other Party of any demand for any undue financial or other advantage of any kind received by it in connection with the subject matter of this Agreement.
- 11.7 This Agreement, including its schedules, sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral or written agreements (including Prior Agreements), arrangements or understandings between them relating to such subject matter. The Parties acknowledge that they are not relying on any representation, agreement, term or condition which is not set out in this Agreement.

12. NOTICES

- 12.1 All notices to be given and other documentation to be sent under the terms of this Agreement may be delivered personally or via email to the following:
- 12.1.1 in the case of ISARIC and the DAC: NCoV@ISARIC.org
- 12.1.2 in the case of Contributor: the email address provided by the Contributor accepting this Agreement on the NCOVDP
- 12.2 Notices sent as above shall be deemed to have been received: if delivered personally, to such other address as may be notified to the other party in writing; or if sent by email, on the date the confirmation copy was deemed to have been received.

13. INTERPRETATION

In this Agreement:

- 13.1.1 references to "persons" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignee;

- 13.1.2 references to the singular include the plural and vice versa;
- 13.1.3 where the word “including” is used it shall be understood as meaning “including without limitation”; and
- 13.1.4 any reference to any English law term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English law term.

14. DISPUTES

- 14.1 In the event that any dispute arises out of or in connection with this Agreement (“**Dispute**”), the Parties shall attempt to resolve such Dispute in the first instance informally through discussion between suitably qualified individuals nominated by each Party and notified to the other in writing for this purpose from time to time. If within fifteen (15) business days of the Dispute having been referred to such individuals no agreement has been reached, the dispute resolution procedure shall be deemed to have been exhausted and each Party shall be free to bring proceedings in accordance with Clause 18.
- 14.2 Notwithstanding anything to the contrary in this Agreement, each Party shall be entitled at any time to seek injunctive or other urgent relief in any court in any jurisdiction in connection with this Agreement.

15. GOVERNING LAW

- 15.1 The validity, construction and performance of this Agreement, and any contractual and non-contractual claims arising hereunder, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties hereby submit.

These Terms of Submission apply to any data submitted to the NCOVDP. By clicking Accept on the NCOVDP, you confirm that you have read and agreed to the Terms of Submission, and that you are authorised to agree to the Terms of Submission for and on behalf of the organization on whose behalf you submit data to the NCOVDP.