COG-UK DATA ACCESS AGREEMENT

|  |  |  |
| --- | --- | --- |
|  | **Provider** | **Covid-19 Genomics UK (COG-UK) consortium**  acting through The Chancellor, Masters and Scholars of the University of Cambridge of The Old Schools, Trinity Lane, Cambridge CB2 1TN, UK |
|  |  |  |
|  | **Recipient** | [INSERT RECIPIENT LEGAL ENTITY] of [INSERT ADDRESS] |
|  | **Recipient Scientist** | [INSERT RECIPIENT ACADEMIC] |
|  | **Data** | Defined in Annex A. |
|  | **Research Project** | Defined in Annex B. |
|  |  |  |
|  | **A** | The Recipient wishes to access and use the Data for the Research Project. |
|  | **B** | The Provider is willing to provide the Data to the Recipient for such purpose from the date of execution of this Agreement. |

The Provider agrees to provide and the Recipient agrees to receive and use the Data for the Research Project in accordance with the terms and conditions set out in this Agreement.

AGREED by the Parties through their authorised signatories:-

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| For and on behalf of  the **COG-UK consortium acting through The Chancellors, Masters and Scholars of the University of Cambridge** |  | For and on behalf of [INSERT RECIPIENT] |  | Read and understood by the[INSERT RECIPIENT SCIENTIST] |
|  |  |  |  |  |
| Signed |  | Signed |  | Signed |
|  |  |  |  |  |
| Print name |  | Print name |  | Print name |
|  |  |  |  |  |
| Title |  | Title |  | Title |
|  |  |  |  |  |
| Date |  | Date |  | Date |

# Terms and Conditions

1. **Definitions**
   1. **CLIMB**: means the cloud-based compute, storage and analysis tools for microbial bioinformatics funded by the Medical Research Council and known as the Cloud Infrastructure for Microbial Bioinformatics (CLIMB).
   2. **CLIMB-COVID**: means the part of CLIMB that is made available to COG-UK for the purpose of hosting the COG-UK Database and facilitating this Research Project.
   3. **Data Protection Legislation**: means the Data Protection Act 2018 as amended from time to time and any successor, subsidiary or accompanying legislation in the UK and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679 and any other directly applicable European Union regulation relating to data protection and privacy.
   4. **Personal Data**: will have the meaning given in the Data Protection Legislation.
   5. **Process**: will have the meaning given in the Data Protection Legislation.
   6. **Results**: means all information, techniques, data, results, design, technology, materials, inventions, algorithms and software identified or first reduced to practice or writing in the course of undertaking the Research Project.
   7. **Steering Group:** means the COG-UK steering group; which can be contacted by email at [kss48@medschl.cam.ac.uk](mailto:kss48@medschl.cam.ac.uk)

In this Agreement any words following the term “including” or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding that term.

1. **Use of Data**
2. The Provider confirms that it is entitled to grant the Recipient access to and use of the Data as described in this Agreement. Nothing in this Agreement will affect the ownership of the Data.
3. The Provider grants the Recipient a non-exclusive, non-transferable licence to access and use the Data on CLIMB-COVID solely for the Research Project in accordance with this Agreement. All other rights are reserved.
4. The Recipient undertakes:

2.3.1 to use the Data solely for the Research Project in accordance with this Agreement and all applicable laws;

2.3.2 to restrict access to the Data to the Recipient Scientist and the individuals working under the Recipient Scientist’s direct supervision, and to ensure that those individuals complete appropriate information governance training, for example the MRC eLearning package 'Research, GDPR and confidentiality – what you really need to know' (10 modules) and are aware of and comply with this Agreement;

2.3.3 to access and use the Data exclusively on CLIMB-COVID and not attempt to download, copy (electronically or physically), record, photograph or otherwise remove the Data in any manner whatsoever;

2.3.4 to keep the Data confidential and not to sub-licence, transfer, disclose or otherwise make the Data available in whole or in part to any third party;

2.3.5 to refer to the Provider any request for the Data from anyone other than the individuals working under the Recipient Scientist’s direct supervision;

2.3.6 keep the Data secure by implementing organisational and technological measures appropriate to the nature and sensitivity of the Data to protect against the unauthorised or accidental access, use or disclosure of the Data;

2.3.7 to notify the Provider as soon as reasonably practicable after becoming aware of any unauthorised or accidental access, use or disclosure of the Data and to cooperate with any investigation made by the Provider in connection with such access, use or disclosure;

2.3.8 not to attempt to identify any individual from the Data or to communicate with any individual identified from the Data, or to link or attempt to link the Data to other data or information if doing so might create Personal Data;

2.3.9 to the extent the Data includes any Personal Data, to Process such Personal Data in accordance with Data Protection Legislation and to comply with Annex C;

2.3.10 to comply with all CLIMB-COVID policies, regulations and procedures that are notified to the Recipient from time to time.

2.4 The Recipient acknowledges that activity on CLIMB-COVID is monitored and information about CLIMB-COVID users and their activities may be shared with members of the COG-UK consortium and their nominated representatives.

1. **Confidentiality & Publication**
2. The Recipient will not be in breach of any obligation to keep the Data confidential if and to the extent that it:
3. is or becomes publicly known without any breach of this Agreement or other undertaking to keep it confidential;
4. is required to be disclosed by law or order of court or competent authority, provided in all cases the Provider is notified as early as possible prior to disclosure.
5. The Recipient is free to publish the Results of the Research Project provided it does not disclose the Data and complies with COG-UK’s Publications Policy (which includes the required form of acknowledgement). The Recipient will ensure that any publication derived from the Data complies with the Anonymisation Standard for Publishing Health and Social Care Data (as may be updated or superseded from time to time): <https://digital.nhs.uk/data-and-information/information-standards/information-standards-and-data-collections-including-extractions/publications-and-notifications/standards-and-collections/isb1523-anonymisation-standard-for-publishing-health-and-social-care-data>. The Recipient Scientist will send the Steering Group a copy of any publication acknowledging use of the Data.
6. **Results**
7. The Recipient agrees and acknowledges that its Results may be uploaded to and for the purposes of the COG-UK Database, in which case use of the Results will be limited and subject to the terms of use of the COG-UK Database.
8. The Recipient may only use Results not uploaded in accordance with clause 4.1 for public health monitoring and public health monitoring research purposes approved by the Steering Group and relevant public health agencies.
9. The Recipient will not patent or use the Results for any commercial purpose without the prior written consent of the Provider.
10. **Termination**
    1. This Agreement will terminate on the earliest of the following dates: (a) completion of the Research Project; or (b) expiry of twenty-eight (28) days written notice from one Party to the other.
    2. Without prejudice to clause 5.1, the Provider may terminate this Agreement with immediate effect by written notice to the Recipient if the Recipient is in material breach of this Agreement and the breach: (a) cannot be remedied; or (b) can be remedied, but the Recipient fails to do so within twenty-eight (28) days starting on the day after receipt of written notice.
    3. Any provision of this Agreement that expressly or by implication is intended to survive termination of this Agreement including the Recipient’s obligations in clause 2.3.8 will remain in full force and effect.
11. **Liability**
    1. Except as provided in clause 2.1, the Provider provides the Data “as is” and makes no representation and gives no warranty of any kind either express or implied in relation to the Data, including warranties of accuracy or fitness for a particular purpose, or that the Data will not infringe any patent, copyright, trademark or other proprietary rights, accordingly the Provider will not be liable for any loss arising from any reliance placed on the Data by the Recipient.
    2. The Provider will not be liable to the Recipient for any use made of the Data by the Recipient, including any analysis, interpretations, conclusions or Results and any reports or publications of the Results. Subject to clause 2.1, the Recipient agrees to be liable for any loss, damage, claim and other liability of whatsoever kind or nature due to or arising from its use of the Data.
    3. Nothing in this Agreement limits or excludes either Party’s liability for (a) death or personal injury resulting directly from negligence, (b) fraud or fraudulent misrepresentation, or (c) for any other liability which by law cannot be limited or excluded.
    4. The liability of either Party for any breach of this Agreement will not extend to loss of business or profit or to any indirect or consequential loss or damage.
12. **General**
    1. **Costs:** The Data is provided at no cost.
    2. **No assignment:** The Recipient may not assign or transfer (in any manner whatsoever) the benefit of this Agreement (or any part thereof) or sub-contract or delegate (in any manner whatsoever) the performance of its obligations under this Agreement without the prior written consent of the Provider.
    3. **Entire Agreement:** This Agreement and its Annexes (which are incorporated into and made a part of this Agreement) constitute the entire agreement between the Parties and supersedes all negotiations, understandings or previous agreements between the Parties relating to its subject matter.
    4. **Third Party Rights:** Except as otherwise expressly stated in this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
    5. **Dispute Resolution:** If any dispute arises out of this Agreement the Parties will first attempt to resolve the matter informally through designated senior representatives of each Party to the dispute, who are not otherwise involved in the Research Project. A Party may litigate if the dispute has not been resolved informally within a reasonable time not exceeding two (2) months from the date the informal process is requested by notice in writing. Any Party may apply for an injunction, whether or not a dispute has been escalated under this clause.
    6. **Law:** This Agreement will be governed by the laws of England and Wales and the courts of England and Wales will (once the procedures set out in clause 7.5 above have been followed and exhausted) have exclusive jurisdiction to deal with any dispute which may arise out of or in connection with this Agreement.
    7. **Counterparts:** This Agreement may be executed in any number of counterparts each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed electronically using Docusign and delivered by email.

**Annex A – The Data**

[INSERT DETAILS OF THE DATA ITEMS FROM TABLE M1 AS APPROVED IN THE RELEVANT ANALYSIS PROPOSAL.]

**Annex B – The Research Project**

[INSERT DESCRIPTION OF THE RESEARCH PROJECT AS APPROVED IN THE RELEVANT ANALYSIS PROPOSAL.]

**Annex C – Personal Data** (additional security obligations on CLIMB-COVID users)

1. The Recipient will be clear about who is responsible for ensuring information security and other provisions for the protection of the Personal Data.
2. The Recipient will ensure that appropriate security measures including technical and organizational measures are in place at all times and backed up by robust policies and procedures to protect the Personal Data (copies to be provided to the Provider on request). Such measures will include without limitation:

* providing an appropriate level of information governance for all Personal Data;
* ensuring that the hardware and software used to Process the Personal Data are reliable and protected against all kinds of malicious software and viruses;
* using password protection on computer systems used to access Personal Data;
* taking reasonable steps to ensure the reliability of individuals who have access to the Personal Data, including but not limited to ensuring all such individuals understand the confidential nature of the Personal Data and the issues which arise if proper care is not taken in the use of the Personal Data and that all such individuals are properly trained in how to comply with Data Protection Laws prior to accessing the Personal Data;
* properly controlling remote access and ensuring that Personal Data is not downloaded.

1. The Recipient will have in place systems for swiftly and efficiently detecting, investigating and remedying Personal Data breaches (as defined in the Data Protection Legislation), and promptly reporting any such breaches to the Provider.