NWL Covid-19

Research Project Data Access Request Form

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| **Project Title:** |   |
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| **Project Lead/Principle Investigator (‘Requestor’) Details -** |  |  |  |  |  |  |  |
| **Title:** |   |
| **Name:** |   |
| **Email Address:** |   |
| **Phone Number:** |   |
| **Substantive Organisation:** |   |
|  |  |  |  |  |  |  |  |
| **Research Ethics Approval number:** |   |
|  |  |  |  |  |  |  |  |
| **Clinical Sponsor (‘Relevant Partner’):***The name of the Head of Service, Clinical Director or Divisional Director responsible for overseeing the project and ensuring that data use is appropriate and in line with the approval application. The clinical sponsor must hold a substantive or honorary contract with one of the data controllers within North West London sector and have a direct reporting line to the senior management team. Please note that a Clinical Sponsor must have an actual and active role in the treatment of actual patients.* |   |
| **Clinical Sponsor's Role:** |   |
| **Clinical Sponsor’s Organisation:** |  |
| **Clinical Sponsor's Email Address:** |   |
| **Please provide a statement of support from the Clinical Sponsor for this application (100 words max):** |
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| **Clinical Sponsor's Signature:** |  |
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| **Please tell us the main purpose of the research project for which you are requesting the data:** |
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| **Please specify the full dataset and data categories that you require having referenced the available metadata catalogue.** **Please confirm that the metadata catalogue has been accessed for reference Yes/No**  |
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| **Will any additional users other than the Project Lead/Principle Investigator be accessing this data?\***  | Yes |   |  |  |  |  |  |
| No |   |  |  |  |  |  |
| *\*Please note: anyone accessing data will need to complete mandatory Information Governance training and sign the relevant Terms of Use for Data* |
| **If yes, please list all users who will have access to the data:***(Please note, we are requesting that each project nominates no more than two researchers to access the data. If you are requesting access for more than two researchers, please provide the justification for this below. Additionally, please ensure that each researcher listed is proficient in using data analysis and programming tools such as SQL, R-Studio or Python)* |
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| **Is your study sponsored by any commercial company? \***  | Yes |   |
| No |   |

*\*If yes, a further discussion will need to be had regarding commercial Terms and Conditions*

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| **By signing this form I confirm that all information included in this form is accurate, that all users who will be accessing data are listed in the form have completed Information Governance training and have agreed to the terms and conditions listed below. The clinical sponsor must hold a substantive or honorary contract with one of the data controllers within North West London sector.** |
| **Name:** |   |
| **Signature:** |   |
| **Date:** |   |

Please email completed form to Nwlccgs.covid19IG@nhs.net by 5pm every Wednesday for consideration on Friday.

**TERMS AND CONDITIONS FOR USE OF NWL DE-IDENTIFIED DATA**

The Relevant Partner and the Requestor or the Requestor’s ‘Substantive Organisation’, named in the NWL Covid-19 Data Access Request Form, agree to the terms set out in this Agreement. The terms of this Agreement shall apply to the disclosure, use and outputs of the data specified in this document.

*Each party referred to singly as “a Party” or together as “the Parties”*

1. **The Agreement**
1.1 This Agreement incorporates the following documents by reference: The NWL De-identified Data Request Form and the WSIC/ICHT Data Access Contract and any other terms referenced within them (collectively, the “Agreement”). The Agreement is effective from the Effective Date.
**2. Interpretation**
2.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

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| **Agreement** | **has the meaning given in Clause 1.1;** |
| **Applicable Law** | means any court order or any common law, statute, statutory instrument, order or regulation issued by a governmental body with authority over any relevant Party, applicable to any relevant Party from time to time in the context of its relevant rights and obligations under this Agreement; |
| **Background Intellectual Property** | means any Intellectual Property created, devised, generated, owned or licensed by a Party or to which a Party has rights to, prior to the Effective Date; |
| **Data Privacy Law** | means the GDPR, DPA 2018, 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 Commissioners Office (ICO), Information Governance Alliance; |
| **Data Protection Legislation** | means Regulation (EU) 2016/679 (General Data Protection Regulation) (GDPR) and Data Protection Act 2018 (DPA 2018); |
| **Data Subject** | shall have the meaning given to it under section 3(5) of the DPA 2018; |
| **Effective Date** | means the date this Agreement was signed by the when the Parties respective rights and obligations hereunder shall be deemed binding; |
| **FOIA** | means the Freedom of Information Act 2000; |
| **FOIA Request** | means a request for information or an apparent request under FOIA; |
| **Imperial College Health Partners**  | means Imperial College Health Partners Limited, a private company limited by guarantee and incorporated in England and Wales under registered number 08109403, whose registered office is at Mills & Reeve LLP, 4th Floor, Monument Place, 24 Monument Street, London EC3R 8AJ; |
| **Intellectual Property** | means (i) patents, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, Know-How and confidential information, (ii) all other intellectual property rights, in each case whether registered or unregistered and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) all applications, renewals or extensions (including supplementary protection certificates) in relation to any such rights; |
| **ISS** | means the WSIC Interoperability Service Specification; |
| **Know-How** | shall means any technical and other information which is not in the public domain, including information comprising or relating to concepts, discoveries, data, designs, formulae, ideas, inventions, methods, models, assays, research plans, procedures, designs for experiments and tests and results of experimentation and testing (including results of research or development), processes (including manufacturing processes, specifications and techniques), laboratory records, chemical, pharmacological, toxicological, clinical, analytical and quality control data, trial data, case report forms, data analyses, reports, manufacturing data or summaries and information contained in submissions to and information from ethical committees and regulatory authorities and computer programs or algorithms. Know-How includes documents containing Know-How, including but not limited to any rights including trade secrets, copyright, database or design rights protecting such Know-How. The fact that an item is known to the public shall not be taken to preclude the possibility that a compilation including the item, and/or a development relating to the item, is not known to the public; |
| **Non-Commercial** | Shall mean anything which does not have a commercial objective and is not intended to make a profit; |
| **NW London Digital Information Governance Board** | shall mean the North West London Information Governing Group; |
| **NWL De-identified Data Request Form** | means the form setting out the Requestor's request for access of the WSIC/ICHT De-identified Data details of disclosure of the Digital North West London De-identified Data to the Requestor; |
| **Overall Purpose** | shall have the same meaning as set out in section 2 NWL De-identified Data Request Form; |
| **Party or Parties** | meaning the Relevant Partner and/or the Requestor individually being the two parties to this Agreement; |
| **Permitted Period of Retention** | shall initially mean the period set out in clause 4.1 and any extension granted per clause 4.2; |
| **Personal Data** | shall have the meaning given to it under section 3(2) of the DPA 2018; |
| **Project Intellectual Property** | means any Intellectual Property created, devised, or arising out of the Purpose which has relied on or any part of the WSIC/ICHT De-identified Data, including but not limited to the Requested Data; |
| **Purpose** | means the purposes the Requestor will use the WSIC/ICHT De-identified Data for, as expressly set out in the NWL De-identified Data Request Form, such purpose must be permitted by the ISS applicable to the Relevant Partner's organisation type and aligned to the Overall Purpose; |
| **Relevant Partner** | means an organisation which is a signatory to the WSIC/ICHT Interoperability Service Specification, named in section 1 NWL De-identified Data Request Form; who is permitted to disclose the WSIC/ICHT De-identified Dataset pursuant to the terms set out in this Agreement; |
| **Requestor** | means the organisation identified in the NWL De-identified Data Request Form as the one requesting access to the WSIC/ICHT De-identified Data; |
| **Terms and Conditions** | means the terms and conditions contained in this document comprising the terms and conditions applicable to the use and disclosure of the WSIC/ICHT De-identified Data; and |
| **VDI** | shall mean the virtual desktop infrastructure |
| **WSIC** | shall mean the Whole Systems Integrated Care platform; |
| **WSIC/ICHT De-identified Data** | means data from the shared electronic integrated care record governed by the ISS that has been De-identified in accordance with the provisions of the ISS. |

**2.2 Interpretation**
(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
(b) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
(c) A reference to writing or written includes email.
(d) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
(e) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

(f)Any obligation placed, agreement sought or warranty placed on the Requester, shall also include the Requester’s Substantive Organisation.

**3. INFORMATION TO BE ACCESSED**
**3.1** The Whole System’s Integrated Care (WSIC) team in conjunction with the Relevant Partner is disclosing the WSIC/ICHT De-identified Data to the Requestor.
**3.2** The Relevant Partner hereby agrees to provide the Requestor with access to the specific part of the WSIC/ICHT De-identified Data set out in section 2 of the NWL De-identified Data Request Form (the “Requested Data”).
**3.3** The Requestor acknowledges that the Requested Data is derived from the WSIC/ICHT De-identified Dataset and that the Relevant Partner is a signatory to the ISS under which the Relevant Partner agrees to only disclose data contained within the WSIC/ICHT De-identified Dataset to a third party engaged to act on behalf of the Relevant Partner, for the sole purpose of that third party acting on behalf or in collaboration with the Relevant Partner, and only where that third party is subject to contractual terms no less onerous than those imposed on the Relevant Partner by the ISS.
**3.4** The Requestor hereby acknowledges and agrees that it shall not perform its obligations under this Agreement in such a way as to cause the Relevant Partner to breach any of its obligations under the ISS.
**3.5** The Parties agree and acknowledge it is not intended for any Personal Data to be disclosed under this Agreement. If the Requestor receives any data from the Relevant Partner which it considers may constitute Personal Data or it could be used, couple with other information, to identify a patient or any person then, the Requestor will:
(a) immediately notify the Relevant Partner; and
(b) at the request of the Relevant Partner, destroy any information the Relevant Partner requests, including but not limited to, patient identifiable data and/or Personal Data.
**3.6** Prior to disclosure of the Requested Data, the Relevant Partner will inform the Requestor if there are any additional terms and conditions of use over and above those set out in this Agreement. If there are any additional terms and conditions of use, the Requestor must agree to them in writing in the final NWL De-identified Data Request Form before the Requested Data is shared and such terms shall be incorporated into this Agreement.
**3.7** No term of this Agreement shall oblige the Relevant Partner to disclose any WSIC/ICHT De-identified Data to the Requestor.
**3.8** While data quality is an important priority under the ISS, the Relevant Partner does not warrant and shall have no liability for the quality, accuracy, completeness and validity of the Requested Data.

**4. ACCESS TO INFORMATION**
**4.1** The Requested Data may only be accessed for 6 months. Note that all data will be retained within the WSIC/ICHT safe haven.
**4.2** If the Requestor requires an extension to the retention period, the Requestor will request an extension in writing no less than six (6) months prior to the expiry of the retention period. If the Permitted Period of Retention is less than 6 months, then the Requestor shall request an extension half-way through their Permitted Period of Retention.
**4.3** No term of this Agreement shall oblige the Relevant Partner to extend the Permitted Period of Retention and the Relevant Partner will determine solely at its own discretion whether to grant such a request and shall notify the Requestor of its decision as soon as reasonably practicable.

**5. CONDITIONS OF DISCLOSURE**
**5.1** Subject to Clause 5.2, the Parties acknowledge and agree that the Requested Data shall only be used for a Purpose permitted by the ISS and set out in Section 2 of the NWL De-identified Data Access Request Form as applicable to the Relevant Partner’s organisation type, these are as follows:
(a) a partner to the ISS which is a Clinical Commissioning Group may only use or allow any data contained within the WSIC/ICHT De-identified Dataset to be used in connection with that CCG Partners’ statutory functions as a commissioner of health care;
(b) a partner to the ISS which is a local authority may only use or allow any data contained within the WSIC/ICHT De-identified Dataset to be used in connection with that Partner’s statutory functions as a provider or commissioner of health and/or social care;
(c) a partner to the ISS who provides health or social care (other than a local authority) may only use or allow any data contained within the WSIC/ICHT De-identified Dataset to be used in connection with that Partner’s statutory functions as a provider of health and/or social care; and
(d) any partner, signatory to the ISS, may use the WSIC/ICHT De-identified Data for the purposes of research which must be considered as:
(i) translational research;
(ii) healthcare delivery; or
(iii) healthcare planning;
5.2 In return for the Relevant Partner making the Requested Data available to the Requestor, the Requestor warrants, represents and undertakes to the Relevant Partner that it:
(i) will only use the Requested Data for the Purpose and will ensure and prevent the Requested Data being used or exploited for any other purpose. For the avoidance of doubt, the Requestor warrants, represents and undertakes that it will not sell or otherwise exploit for commercial gain or reward any data contained in the Requested Data unless it brings benefits to service users/patients/NHS;
(ii) will not directly or indirectly disclose or make available any of the Requested Data in whole or in part to any person, except where expressly permitted by, and in accordance with, this Agreement;
(iii) will not seek to attempt to re-identify any Data Subject contained within the Requested Data or combine the Requested Data with other data in an attempt to identify any individual;
(iv) shall not use any of the Requested Data to take a decision about any specified individual or individuals;
(v) shall not link data in the Requested Data with any other dataset containing Personal Data;
(vi) shall comply with all Applicable Law in its use of the Requested Data and shall not perform its obligations under this Agreement in such a way as to cause the Relevant Partner to breach any of its legal obligations under Data Privacy Law;
(vii) shall ensure that any derived materials using the Requested Data attribute is attributed to the Relevant Partner and highlight the source of the information you have used; and
(viii) will fully co-operate with the Relevant Partner and/or the NW London Digital Information Governance Board to ensure the Relevant Partner’s compliance with its obligations under Data Privacy Law.
(ix) will ensure there is no forward transfer of data
(b) For the avoidance of doubt, references in this Agreement to the use of the WSIC/ICHT De-identified Data or Requested Data includes use and/or reproduction of any part of the WSIC/ICHT De-identified Data or Requested Data. “Use” includes any action which would constitute “Processing” as per section 3(4) of DPA 2018.

**6. SECURITY**
**6.1** The Requestor shall only access, store and make use the Requested Data on the VDI and shall not attempt to extract any of the Requested Data, whether in whole or in part, outside of the VDI.

**7. AUDITS**
**7.1** The Requestor agrees to the following:
(a) During the Agreement period, the Relevant Partner reserves the right at any time to undertake an audit in respect of the Requestor’s use and storage of the Requested Data is in compliance with the terms of the Agreement.

**8. RETURN OF THE DATA AND ADDITIONAL OBLIGATIONS**
The Requestor shall comply, in respect to the Requested Data, with any request from the Relevant Partner and/or the NW London Digital Governance Board requiring the Requestor to:
(i) securely return all or part of the Requested Data to the Relevant Partner and/or NW London Information Governance Board (as applicable); and/or
(ii) securely destroy all or part of the Requested Data;
within a timeframe specified by the Relevant Partner and/or NW London Digital Governance Board in accordance with any specified security measures.
**8.2** The Requestor shall not do anything that may materially damage the reputation of the Relevant Partner and/or the overarching WSIC/ICHT project.
**8.3** The Requestor shall not make, or permit any person, company or other body to make, any public announcement concerning this Agreement without the Relevant Partner’s prior written consent.

**9. FREEDOM OF INFORMATION**
**9.1** The Requestor acknowledges that the Relevant Partner is subject to the requirements of FOIA and shall assist and co-operate with the Relevant Partner to enable the Relevant Partner to comply with the FOIA disclosure requirements.
**9.2** The Requestor shall:
(a) transfer any FOIA Request to the Relevant Partner as soon as practicable after receipt and in any event within three (3) days of receiving a FOIA Request;
(b) provide the Relevant Partner with a copy of all Requested Data in its possession or power in the form that the Relevant Partner requires within seven (7) days (or such other period as the Relevant Partner may specify) of the Relevant Partner requesting the Requested Data; and
(c) provide all necessary assistance as reasonably requested by the Relevant Partner to enable the Relevant Partner to respond to a FOIA Request within the time for compliance set out in section 10 of FOIA.
**9.3** The Relevant Partner shall be responsible for determining at its absolute discretion whether the Requested Data:
(a) is exempt from disclosure in accordance with the provisions of FOIA; or
(b) is to be disclosed in response to a FOIA Request.
**9.4** The Requestor is prevented, under any circumstances, from responding directly to a FOIA Request, made in respect of the Requested Data, unless expressly authorised to do so by the Relevant Partner.
**9.5** If the Relevant Partner takes a decision to comply with the FOIA Request, it shall notify the Requestor of this decision not less than three (3) days in advance of the disclosure being made and provide the Requestor with a copy of the information that it intends to disclose.
**9.6** The terms of the Agreement shall not be deemed as confidential, but neither Party shall make any announcement which is calculated to or which does harm the reputation or legitimate interest of the other. This clause shall not prevent either Party from making comments in good faith on a matter of public interest, or from making disclosures required by the FOIA or any other legislative or regulatory requirement.
**9.7** For any other requests to release the Requested Data, the Requestor must obtain the written permission of the Relevant Partner prior to its release.

**10. Breach of conditions**
**10.1** Notification of breach
The Requestor must report any known or suspected breach of this Agreement to the Relevant Partner within twenty-four (24) hours.
**10.2** Consequences of breach
The breach of any term of this Agreement may, at the absolute discretion of the Relevant Partner, result in one or more of the following:
(a) the requirement for the Requestor to return all the Requested Data supplied under this Agreement; and/or
(b) immediate termination of this Agreement.

**11. Proprietary Rights in the Data**
**11.1** Nothing in this Agreement shall affect the ownership of any Background Intellectual Property owned by any Party.
**11.2** The Parties acknowledge and agree that nothing in this Agreement grants or shall be deemed to grant any right, title, or interest whatsoever (including any Intellectual Property rights whatsoever) in or to the Requested Data or any part thereof, except the limited right to use the Requested Data for the Purpose and performance of its obligations under, and in accordance with, the Agreement.
**11.3** All Project Intellectual Property created under this Agreement shall, subject to clause 11.4, be owned by ICHP. If applicable and where the Requestor is not an ICHP employee, this clause shall not affect the Requestor’s ‘Moral Rights’ as set out in the Copyright, Designs and Patents Act 1988.

**11.4** ICHP shall ensure that any use of the Projection Intellectual Property, which includes any subsequent assignment and/or licensing to a third party, is in line with United Kingdom Research Innovation’s ‘Principles of Participation’. Furthermore, ICHP shall also ensure that any assignment and/or license would not restrict the Requestor and/or North West London Collaboration from using the Project Intellectual Property for Non-Commercial purpose(s).

**12. Term and Termination**
**12.1** This Contract shall commence on the Effective Date and shall continue until the Requestor has ceased:
(a) to use the Requested Data for the Purpose; and
(b) to have any of the Requested Data in possession or control.
**12.2** The Agreement may be terminated by the Relevant Partner with immediate effect in the event the Information Governance Alliance makes any changes to its Code of Practice which would result in the terms of the Agreement to not be in compliance and/or at the request of the NW London Digital Information Governance Board.
**12.3** This Agreement may be terminated by the Relevant Partner with immediate effect if the Requestor:
(a) is in breach of any obligation under this Agreement;
(b) is made the subject of a winding up order or an administrator or receiver is appointed;
(c) ceases to trade in the UK; or
(d) is subject to a change of control.

**12.4** Termination of the Agreement, for any reason, shall not affect any rights, remedies, obligations or liabilities of either Party that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

**13. Indemnity**
**13.1** The Requestor shall indemnify the Relevant Partner fully and keep the Relevant Partner indemnified against all costs, regulatory fines, losses, charges, claims, proceedings, actions, damages, legal costs, expenses and any other liabilities which the Relevant Partner suffers or for which the Relevant Partner may become liable which are caused directly or indirectly by any breach of this Agreement by the Requestor.

**14. Assignment**
**14.1** Neither Party may assign, transfer, or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of the other Party.

**15. No waiver**
**15.1** No failure or delay by either Party to exercise any right or remedy provided under the Agreement or by law, shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such a right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**16. Severability**
**16.1** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification to or deletion of a provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
**16.2** If any provision or part-provision of the Agreement is deemed deleted under clause 16.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended result of the original provision.

**17. Status of the Parties**
**17.1** Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties or to authorise either Party to act as agent for the other and neither Party shall have authority to act in the name or on behalf of or otherwise bind the other in any way.

**18. Third parties**
**18.1** Nothing in this Agreement will be construed as conferring any rights or benefits on any person or legal entity who or which is not a Party to this Agreement. The Contracts (Rights of Third Parties) Act 1999 and any other legislation applicable to this Agreement that confers contractual rights on third parties, is hereby excluded to the fullest extent permitted by law.

**19. Variation**
**19.1** No variation or modification of this Agreement shall be valid unless in writing and signed by both Parties.

**20. Entire agreement**
**20.1** This Agreement constitutes the entire agreement and supersedes all previous verbal or written proposals and agreements between the Parties. Except as expressly stated in writing in this Agreement, neither Party has relied upon any statement or representation made by the other in agreeing to enter into this Agreement.

**21. Counterparts**
**21.1** This Contract may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.

**22. Governing law**
**22.1** This Agreement, all matters regarding the interpretation or enforcement of it, and any other matters or disputes arising in connection with it or its subject matter shall be governed by the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.