

(Concept-Draft (annotated))

## **Pandemic Non-Proliferation Agreement**

### **PREAMBLE**

The States Parties to this Agreement,

Recognizing that pathogenic, highly infective and transmittable diseases, such as (SARS-CoV-2), are a threat to the global human community;

Determined to mitigate the threat of pathogenic, highly infective and transmittable diseases through cooperative international measures, including those that facilitate multilateral efforts to identify, isolate, mitigate and eradicate these diseases;

Determined for the sake of humankind to implement through legislation or other legal means the laws, regulations or other authorities required to facilitate mitigation of pathogenetic, infective and transmittable diseases through implementation of this Agreement, to include allowing immediate access by specialists to the area of the disease outbreak, sharing of information concerning the disease, working cooperatively to isolate the outbreak, and other measures,

Have agreed as follows:

### **ARTICLE I**

#### **GENERAL OBLIGATIONS**

1. **Notification of Health Event.** Each State Party will provide immediate Notification to all other State Parties on identification of a pathogenetic, infective and transmittable disease (“Health Event”) within its jurisdiction/territory or areas under its control.
2. **Permitted Access.** Each State Party will allow members of a designated Response Team established pursuant to this Agreement immediate access to the area(s) where the State Party identified the Health Event, as well as other areas to which the Response Team requests access, as well as to Public Health Facilities of the State Party to allow Response Team members to assist with public health officials of that State Party with identification, isolation, mitigation and remediation of the Health Event in a manner consistent with this Agreement.

3. **Assistance and Cooperation.** Each State Party will provide all reasonable assistance to and cooperation with Response Team members as may be required for their safe fulfillment of objectives and obligations of this Agreement.<sup>1</sup>
4. **Ratification and Implementation.** Each State Party as soon as possible but no later than one (1) year of signing this Agreement will ratify this Agreement per its constitutional processes or otherwise take measures required to subject itself to terms of this Agreement and enact laws, regulations or other authorities necessary to fulfill its commitments under this Agreement.<sup>2</sup>

## ARTICLE II

### RESPONSE TEAM

1. **Nomination of Response Team Members.** Each State Party will provide the Director-General of the World Health Organization (WHO) and all other State Parties within thirty (30) days of executing this Agreement names of professionals who, in the estimation of the State Party, would be qualified to serve on a Response Team established per this Agreement and to provide other names from time-to-time and in this same manner of qualified individuals who are identified by the State Party.
2. **Review of Roster of Proposed Response Team Members.** Each State Party will review a roster of proposed members of a Response Team selected by the Director-General of the World Health Organization (WHO) from those persons nominated by State Parties and others identified by the WHO Director-General. The roster will be up-dated at the discretion of the Director-General with immediate Notification of up-dates provided to State Parties.
3. **Objection to Proposed Response Team Member.** Each State Party will provide Notification to all other State Parties and the WHO Director-General of any objection to any proposed Response Team member within thirty (30) days of receipt of the roster or a roster up-date that identifies that proposed Response Team member.
4. **Permitted Access.** Absent objection to any particular proposed Response Team member(s) pursuant to Article II, Section 3, each State Party agrees to allow immediate access to its jurisdiction or areas under its control in a manner consistent with its obligations of this Agreement by any person identified on the roster and designated by

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<sup>1</sup> This provision anticipates that some Health Events will occur in areas with high security risks. The “reasonable assistance” required for safe fulfillment of duties may include provision of security services.

<sup>2</sup> These “measures” may include those required for provisory implementation pending ratification or other legal actions.

the WHO Director-General to be a member of a Response Team assembled to respond to a Health Event.<sup>3</sup>

5. **Importation of Devices and Materials.** Each State Party agrees to allow free and unrestricted importation into its jurisdiction or areas under its control of devices and materials determined by the WHO Director-General in consultation with Response Team members to be necessary for the fulfillment of their tasks under this Agreement.
6. **Non-Disclosure/Confidentiality/Deployment Management Agreement.** Each State Party will review the Non-Disclosure/Confidentiality agreement and amendments to same provided by the WHO Director-General that will govern Response Team members and provide Notification of any objection to all other State Parties and the WHO Director-General within thirty (30) days of receipt. Absent objection pursuant to this provision to any governing Non-Disclosure/Confidentiality/Deployment Management Agreement and/or amendment(s) to same, each State Party will allow any person designated on the roster and subject to the Non-Disclosure/Confidentiality/Deployment Management Agreement immediate access to its jurisdiction or areas under its control in a manner consistent with this Agreement.<sup>4</sup>
7. **Authorization of Response Team.** Each State Party will permit Response Team members to conduct activities and travel within its jurisdiction and areas under its control, such activities and travel being determined by the WHO Director-General in consultation with Response Team members as necessary for fulfillment of obligations under this Agreement and consistent with the Non-Disclosure/Confidentiality/Deployment Management Agreement.
8. **Direct, Open and Confidential Communication.** Each State Party will permit Response Team members direct, open and confidential communication with the WHO Director-General and State Party Designees.<sup>5</sup>
9. **Inspection and Recommended Remediation.** Each State Party will facilitate and permit Inspection and Remediation considered by the Response Team members to be necessary for their tasks under this Agreement in a manner prescribed by Response

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<sup>3</sup> This is to give the Director-General flexibility to draw from the roster those professionals with relevant experience and/or expertise.

<sup>4</sup> This provision is designed, in part, to prevent the risk of Team members speaking to the press or other third parties during or after their response to a Health Event. All information from Team members will be shared with State Parties who can elect how to disseminate that information.

<sup>5</sup> This provision anticipates that in some States the government controls internet and other methods of communication.

Team members, all such collection and export of materials and/or data being subject to the Non-Disclosure/Confidentiality/Deployment Management Agreement.<sup>6</sup>

10. **Re-entry and Length of Stay.** Each State Party will permit designated Response Team members to stay and carry out activities authorized by this Agreement within its jurisdiction or areas under its control for as long as deemed necessary by the WHO General-Director in consultation with Response Team members and to permit these Response Team members to exit and re-enter the jurisdiction of the State Party as deemed necessary by the WHO General-Director in consultation with Response Team members.
11. **Immunity of Response Team Members.** Each State Party agrees that Response Team members will enjoy full diplomatic immunity while in the State Party's jurisdiction/territory or areas under its control when deployed to that State Party per this Agreement.
12. **Costs of Response Team Deployment.** Each State Party within ninety (90) days of Notification by the WHO Director-General of such costs will pay its share of costs associated with deployment of any Response Team, such costs being allocated to all State Parties in an equal fashion, absent agreement by all State Parties as to a different allocation to accommodate State Parties with a limited ability to pay.

### ARTICLE III

#### FUNDING

1. **Reserve Fund for Response Team.** Each State Party will deposit with the WHO Director-General within thirty (30) days of executing this Agreement funds equal to [to be determined] US dollars, such funds to be held in reserve by the WHO Director-General to pay expenses of Response Team deployment prior to reimbursement of these expenses by State Parties pursuant to this Agreement.

### ARTICLE IV

#### ENTRY INTO FORCE, DESIGNEE AND WITHDRAWAL

1. **Open for Signature.** Each State Party agrees that this Agreement will remain open for signature by any other country wanting to become a State Party to the Agreement.

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<sup>6</sup> The laboratories to which the samples and data might be sent after export are intentionally not specified in this Agreement. The limited objective of the Agreement is immediate notification and access, not management of analyses, attribution of the pathogen or other measures.

2. **Entry into Force at Execution.** Each State Party acknowledges that this Agreement is effective as to that individual State Party upon its execution, with the proviso that a minimum of six (6) State Parties is required for the Agreement to come into force.
3. **Designee.** Each State Party agrees to provide Notification to all other State Parties and the WHO Director-General of that State Party's Designee for purposes of this Agreement.
4. **Unlimited Duration.** Each State Party acknowledges that this Agreement is of unlimited duration.
5. **Withdrawal.** Each State Party can withdraw from this Agreement on providing Notification to all other State Parties, such withdrawal being effective ninety (90) days after such Notification, with the proviso that no State Party can withdraw from the Agreement during the pendency of a Health Event within the jurisdiction/territory or areas of control of that State Party.

## **ARTICLE V**

### **ENFORCEMENT**

1. **Non-Compliance.** Each State Party reserves the right to take measures individually or jointly with other State Parties to respond to non-compliance by any State Party. These measures may be any action allowed under national and international law to include without limitation economic sanctions, travel restrictions, punitive tariffs, non-tariff barriers, such as export and import controls, and requests for sanctions from the United Nations.<sup>7</sup>
2. **Compensation for Non-Compliance.** Each State Party reserves the right to pursue individually or jointly with other State Parties economic compensation for damages suffered as the result of another State Party's non-compliance with this Agreement.<sup>8</sup>

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<sup>7</sup> Public and political pressure is likely to be more effective than potential enforcement measures to cause a State Party to become compliant, but an explicit reservation of these potential sanctions adds an element of consequence to the Agreement. Disputes generated by application of trade sanctions or other measures under this provision would be governed by applicable trade agreements, such as World Trade Organization agreements and other multi-lateral or bi-lateral agreements governing trade disputes between the parties.

<sup>8</sup> This provision anticipates that States will try to pursue damages from negligent actors as a means of remedying injury and encouraging compliance.

## ARTICLE VI

### GENERAL RESERVATION

1. **Reservation of Unilateral Action.** Each State Party agrees that nothing express or implied by this Agreement restricts in any manner the ability of any other State Party to take unilateral or join in multilateral measures in response to any Health Event, to include, without limitation, restrictions or actions relative to travel, health, immigration and security.

### DEFINITIONS

The State Parties agree that the following definitions govern terms of this Agreement.

**Health Event.** For purposes of this Agreement, a Health Event is an infectious, transmittable pathogen expressed in a number of cases that exceeds normal expectations in a given population. This definition does not include pathogens that are subject to the Biological Weapons Agreement.

**Inspection and Remediation.** Inspection and Remediation means collection and examination by Response Team members of biological and/or viral materials and/or informative data (e.g., gene sequencing, sensor data, other measurements) and access to area(s) deemed relevant by the Response Team to its duties under this Agreement and the provision of recommended remedial steps to the State Party.

**Non-Disclosure/Confidentiality/Deployment Management Agreement.** A Non-Disclosure/Confidentiality/Deployment Management Agreement is that agreement provided by the WHO Director-General that governs Response Team members with respect to deployment, communication of findings, remedial or other recommendations or other matters, as per Annex A.

**Notification.** Notification consistent with this Agreement is a writing sent electronically or otherwise and received by the WHO Director-General and all State Party Designees.

**Public Health Facilities.** Public Health Facilities are institutions or facilities within a State Party's jurisdiction that the State Party employs to comply with its Public Health Standards.

**Response Team.** A Response Team is that person or persons designated by the WHO Director-General to respond to a Health Event in a manner consistent with this Agreement.

**State Party.** A State Party is a country that has signed this Agreement.

## ANNEX A

### NON-DISCLOSURE/CONFIDENTIALITY/DEPLOYMENT MANAGEMENT AGREEMENT

In consideration for being selected to be a potential Response Team member per the International Pandemic Non-proliferation Agreement (“Agreement”), I agree to the following:

1. As a Response Team member, I may have access to materials, samples, data and other information concerning a Health Event as defined by the Agreement. In fulfilling my tasks as a Response Team member under the Agreement, I may also provide recommendations or other communications concerning a Health Event.
2. In accordance with the Agreement, I agree that I will provide or transmit materials, samples, data, other information and recommendations or other communications only to State Party Designees or otherwise per the direction of the WHO Director-General after consultation with State Party Designees. I agree that I will relay information concerning a Health event to third parties only with the approval of the WHO Director-General after consultation with State Party Designees.<sup>9</sup>
3. As a Response Team member, I may gain access to the jurisdiction/territory or areas under control of a State Party, as well as Public Health Facilities of that State Party. I agree that the scope of my permitted activities and travel will be subject to restriction(s) and budgets as may be decided by the WHO Director-General in consultation with Response Team members.<sup>10</sup> I agree to comply with those restrictions.
4. I understand that the budget for any deployment will cover travel, incidental costs, as well as insurance relative to health and other risks.

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<sup>9</sup> This minimizes the risk that a Team member will be the source of unwanted disclosure to the public. Every State Party will receive all information from Response Teams, allowing each State Party at its discretion to disclose the information. It is expected that information about a Health Event will be disseminated broadly to facilitate responses by other countries not part of the Agreement and contribute to research efforts.

<sup>10</sup> It is anticipated that the Director General would discuss with the State Party restrictions of access that may be reasonably required, such as those applicable to military installations.