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## **Chair's text<sup>1</sup>**

### **Draft**

#### **PANDEMIC INFLUENZA PREPAREDNESS FRAMEWORK<sup>2</sup> FOR THE SHARING OF INFLUENZA VIRUSES AND ACCESS TO VACCINES AND OTHER BENEFITS**

	<b>Page</b>
1. PRINCIPLES .....	3
2. OBJECTIVE .....	5
3. SCOPE .....	6
4. DEFINITIONS AND USE OF TERMS .....	7
4.1 Scientific terms .....	7
4.2 Institutions, organizations and entities .....	8
4.3 Other terms .....	9
5. PANDEMIC INFLUENZA PREPAREDNESS SYSTEM FOR SHARING OF H5N1 AND OTHER INFLUENZA VIRUSES WITH HUMAN PANDEMIC POTENTIAL	
5.1 General .....	10
5.2 Traceability and reporting mechanisms .....	11
5.3 Standard Material Transfer Agreement .....	11
General .....	11
Execution of the Standard Material Transfer Agreement .....	12

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<sup>1</sup> NOTE ON USE OF SQUARE BRACKETS AND FOOTNOTES: This Chair's text is presented as a draft for consideration by the resumed Open-ended Working Group of the Intergovernmental Meeting. As a draft, all the text should be read as if it were in square brackets. Square brackets and footnotes have been used within the text to indicate sections of text where options need to be considered and choices made.

<sup>2</sup> A proposal has been made for the use of the term 'Guidelines' in place of 'Framework' throughout this text. Proposals have also been made for the use of the terms 'Multilateral Framework' or 'International Framework' and/or 'Global sharing'.

6.	PANDEMIC INFLUENZA PREPAREDNESS BENEFIT SHARING SYSTEM	
6.1	General.....	13
6.2	Pandemic risk assessment.....	13
6.3	Provision of diagnostic tests and materials.....	14
6.4	Laboratory capacity building.....	14
6.5	Regulatory capacity building.....	14
6.6	WHO antivirals stockpile.....	15
6.7	WHO PIP influenza vaccine stockpile.....	15
6.8	Access to vaccines for developing and least developed country use.....	16
6.9	Pandemic influenza vaccines.....	16
6.10	[Tiered][Affordable] pricing.....	16
6.11	Technology transfer.....	17
6.12	Sustainable financing mechanism.....	17
6.13	Innovative financing mechanisms for national vaccine requirements.....	18
7.	GOVERNANCE AND REVIEW	
7.1	General.....	20
7.2	Advisory Mechanism.....	20
7.3	Dispute resolution.....	21
7.4	Terms of Reference for [WHO Network] laboratories.....	21
7.5	Review of Framework.....	21
	ANNEXES	
Annex 1	Standard Material Transfer Agreement.....	23
Annex 2	Terms of Reference of the Advisory Mechanism.....	29
Annex 3	Terms of Reference of the WHO Collaborating Centres on Influenza, the WHO H5 Reference Laboratories and the National Influenza Centres.....	30

## 1. PRINCIPLES

1.1 In relation to Pandemic Influenza Preparedness: Sharing of Influenza Viruses and Access to Vaccines and Other Benefits, WHO Member States:

(PP1) Recall World Health Assembly resolution WHA60.28 on Pandemic influenza preparedness: sharing of influenza viruses and access to vaccines and other benefits;

(PP2) Note the continuing risk of an influenza pandemic with potentially devastating health, economic and social impacts;

(PP3) Recall the “WHO Global Influenza Preparedness Plan: The role of WHO and recommendations for national measures before and during pandemics”;<sup>1</sup>

(PP4) Recall the need for rapid, systematic sharing of H5N1 and other influenza viruses with human pandemic potential with WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories as a contribution to assessment of pandemic risk, development of pandemic vaccines, updating of diagnostic reagents and test kits, and surveillance for resistance to antiviral medicines;

(PP5) Recognize that the benefits arising from the sharing of H5N1 and other influenza viruses with human pandemic potential should be shared with all Member States based on public health need;

(PP6) Recognize the need for a fair, transparent, equitable and efficient framework for the sharing of H5N1 and other influenza viruses with human pandemic potential and the benefits arising from their use;

(PP7) Recognize the sovereign right of States over their biological resources and the importance of collective action to mitigate public health risks;

(PP8) Recall the global strategy on public health, innovation and intellectual property, adopted in resolution WHA61.21, which provides that “Intellectual property rights are an important incentive for the development of new health-care products” and that “the elements of the global strategy, which are designed to promote innovation, build capacity, improve access and mobilize resources, will encourage and support the application and management of intellectual property in a manner that maximizes health-related innovation, especially to meet the research and development needs of developing countries, protects public health and promotes access to medicines for all”;

(PP9) Recall Article 3 of the Doha Declaration on the TRIPS Agreement and Public Health as well as the Global strategy on public health, innovation and intellectual property, adopted in resolution WHA61.21, which provides that “intellectual property rights are an important incentive for the development of new health-care products” and that “the elements of the global strategy, which are designed to promote innovation, build capacity, improve access and mobilize resources, will

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<sup>1</sup> Document WHO/CDS/CSR/GIP/2005.5;  
[http://www.who.int/csr/resources/publications/influenza/WHO\\_CDS\\_CSR\\_GIP\\_2005\\_5/en/](http://www.who.int/csr/resources/publications/influenza/WHO_CDS_CSR_GIP_2005_5/en/).

encourage and support the application and management of intellectual property in a manner that maximizes health-related innovation, especially to meet the research and development needs of developing countries, protects public health and promotes access to medicines for all”;

(PP10) Recall that resolutions WHA60.28 and WHA61.21 recognize that “intellectual property rights do not and should not prevent Member States from taking measures to protect public health”;

(PP11) Reaffirm obligations of States Parties under the International Health Regulations (2005);<sup>1</sup>

(PP12) Note that the rapid and systematic sharing of H5N1 and other influenza viruses with human pandemic potential and the sharing of benefits resulting from their use enables the World Health Organization Secretariat and Member States to ensure that the world’s best expertise and collective action is brought to bear in assessing the global risk of an influenza pandemic and allows the World Health Organization Secretariat and Member States to take actions to reduce the risk of the emergence of a pandemic and to facilitate the development and production of the vaccines, diagnostic materials and other pharmaceuticals that can assist in rapidly responding to and containing an emerging pandemic;

(PP13) Note with serious concern that the distribution of global influenza vaccine manufacturing capacity is insufficient to meet demand in a pandemic and that in the absence of a system of benefit sharing, some Member States, particularly developing countries, can neither develop, produce, afford nor access the vaccines and other benefits resulting from the system of virus sharing;

(PP14) Reaffirm the WHO Global pandemic influenza action plan to increase vaccine supply (GAP)<sup>2</sup> and its goal of reducing the gap between potential vaccine demand and supply during an influenza pandemic, by expanding the global capacity to produce influenza vaccine, including in developing countries;

(PP15) Recognize the importance of influenza vaccine, diagnostic and pharmaceutical manufacturers making specific efforts to transfer these technologies to Member States who do not currently have access to these technologies, particularly developing countries, in a manner consistent with national and international laws, regulations and obligations, including those relating to property rights and access, and consistent with the capacity of Member States over time to receive those technologies.

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<sup>1</sup> <http://www.who.int/csr/ihr/en/>.

<sup>2</sup> Document WHO/CDS/EPR/GIP/2006.1;  
[http://www.who.int/csr/resources/publications/influenza/CDS\\_EPR\\_GIP\\_2006\\_1.pdf](http://www.who.int/csr/resources/publications/influenza/CDS_EPR_GIP_2006_1.pdf).

## 2. OBJECTIVE

2.1 The objective of this Pandemic Influenza Preparedness Framework is to improve pandemic influenza preparedness and strengthen the protection against the international spread of pandemic influenza by [reforming the Global Influenza Surveillance Network as the [WHO Network<sup>1</sup>]]/[improving and strengthening the Global Influenza Surveillance Network] and implementing a fairer, and more transparent, equitable and efficient system for:

- (i) the sharing of H5N1 and other influenza viruses with human pandemic potential; and
- (ii) the sharing of the benefits arising from the use of H5N1 and other influenza viruses with human pandemic potential including the generation of information, diagnostics, medicines, vaccines and other technologies.

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<sup>1</sup> The term [WHO Network] has been used throughout this draft chair's text as neutral terminology. Proposals have been made to retain the use of the term 'Global Influenza Surveillance Network' or to use the term 'WHO Influenza Network' in its place.

### **3. SCOPE**

3.1 This Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits covers the sharing of H5N1 and other influenza viruses with human pandemic potential.

3.2 This Framework does not apply to seasonal influenza viruses or the benefits arising from their use. The current system for the sharing of seasonal influenza viruses and the production of seasonal influenza vaccines should continue in accordance with the relevant WHO guidance.

3.3 This Framework does not cover the non-influenza pathogens or biological materials that may be contained in clinical specimens shared under this Framework.

## 4. DEFINITIONS AND USE OF TERMS

For the purpose of this Framework, the following terms have the meanings assigned to them below.

### 4.1 Scientific terms

[**“Pandemic Influenza Preparedness biological materials”** or **“PIP biological materials”** under this Framework designates any original clinical specimen believed to contain H5N1 or other influenza virus with human pandemic potential provided for the purposes of influenza testing and any material generated from that specimen by a [WHO Network] laboratory, including virus isolates or related hybrid viruses created through laboratory techniques or resulting from laboratory techniques used on the clinical specimen, virus nucleic acid, virus protein and other parts of the virus, genes, gene sequence information, peptides, cells and cell parts and derivatives, functional subunits of the materials, expression products of the materials, purified or fractionated subsets of the materials, clones and sub clones derived from the materials, and antibodies, proteins and other biological materials derived, synthesized or otherwise obtained from the materials.]

OR

[**“Pandemic Influenza Preparedness biological materials”** or **“PIP biological materials”** under this Framework designates “clinical specimens”, “wild-type influenza viruses”, “influenza reference viruses and related strains”, “WHO-recommended influenza viruses for vaccine use”, and “pandemic influenza preparedness vaccine virus” originating from H5N1 or other influenza virus with human pandemic potential.]<sup>1</sup>

The terms “Pandemic Influenza Preparedness biological materials” and “PIP biological materials” specifically do not include influenza vaccines, diagnostics or pharmaceutical products generated from the use of the PIP biological materials.

**“Influenza virus with human pandemic potential”** designates any influenza virus that has been found to infect a human and that has a haemagglutinin antigen that is distinct from those in seasonal influenza viruses so as to indicate that the virus has potential to be associated with pandemic spread within human populations.

**“Pandemic Influenza Preparedness vaccine virus”** or **“PIP vaccine virus”** designates any high-growth reassortant virus or any influenza reference virus, WHO-recommended influenza virus for vaccine use or other influenza virus material generated, including by new and emerging technologies, from H5N1 or other **influenza virus with human pandemic potential** that is provided to influenza vaccine manufacturers for the purposes of developing a prototype pandemic, pre-pandemic, pandemic or other influenza vaccine against H5N1 or other influenza virus with human pandemic potential.

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<sup>1</sup> These two definitions are provided as alternatives for discussion. Both would carry the caveat of the following paragraph: that they specifically do not include influenza vaccines, diagnostics or pharmaceutical products generated from the use of the PIP biological materials.

**“Clinical specimens”** means materials collected from humans, generally for examination, diagnostic confirmation, study or analysis. For influenza, most commonly, clinical specimens are taken from the respiratory tract (for example, swabs and aspirated fluid) but they can be from other locations.

**“High-growth reassortant influenza viruses”** means influenza viruses that have been genetically modified to grow better in eggs for optimal influenza vaccine production.

**“Influenza reference viruses”** means wild-type influenza viruses of human or animal origin that WHO has selected as representative of important groups of influenza viruses on the basis of extensive antigenic and genetic studies and comparisons with influenza viruses from many countries. As the influenza viruses evolve in nature, new influenza reference viruses are selected.

**“WHO-recommended influenza viruses for vaccine use”** means wild-type influenza viruses that are recommended by WHO as the basis for an influenza vaccine.

**“Wild-type influenza viruses or influenza virus isolates”** means influenza viruses that have been cultured either in eggs or cells (i.e. isolated) directly from clinical specimens or subsequent culture passages and have not been purposefully modified.

## 4.2 Institutions, organizations and entities

**“Essential regulatory laboratories”** means influenza laboratories, located in national regulatory agencies, and which have a critical role at the global level for developing, regulating and standardizing influenza vaccines. In this capacity they work closely with WHO and industry.

**“Influenza vaccine manufacturers”** means public or private entities that develop and produce human influenza vaccines.

**“Influenza vaccine, diagnostic and pharmaceutical manufacturers”** means public or private entities that develop and produce human influenza vaccines and other biological products derived from H5N1 or other influenza viruses of human pandemic potential.

**“National Influenza Centres”** or **“NICs”** means influenza laboratories designated by a Member State and authorized by the Member State to provide PIP biological materials to the [WHO Network]. NICs are recognized by WHO and, participate in the [WHO Network] in accordance with Terms of Reference.

**“Other authorized laboratory”** means influenza laboratories authorized by a Member State to provide PIP biological materials to the [WHO Network], and is intended to cover those Member States which do not have a National Influenza Centre.

**“Public health researchers”** means researchers at universities and other academic institutions whose primary research focus is public health.

**“WHO Collaborating Centres on Influenza”** or **“WHO CCs”** means animal or human influenza laboratories designated by WHO and fully supported by national authorities to perform certain roles within the [WHO Network], and which have accepted formal Terms of Reference from WHO. In general, they differ from National Influenza Centres and WHO H5 Reference Laboratories in having global responsibilities and more extensive technical capacities. As of May 2008, WHO CCs included the WHO Collaborating Centres for Reference and Research on Influenza in London, Melbourne and



Tokyo, the WHO Collaborating Centre for the Surveillance, Epidemiology and Control of Influenza in Atlanta and the WHO Collaborating Centre for Studies on the Ecology of Influenza in Animals in Memphis.

**“WHO H5 Reference Laboratories”** means influenza laboratories that have been designated by WHO in order to strengthen national and regional capacity for reliably diagnosing H5 virus infection until this capacity is more widespread.

[**“WHO Network”**] means the international network of influenza laboratories, coordinated by WHO, that conduct year-round surveillance of influenza, assessing the risk of pandemic influenza and assisting in preparedness measures. The [WHO Network] comprises National Influenza Centres, WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and essential regulatory laboratories.

### **4.3 Other terms**

**“Advisory Mechanism”** means the mechanism referred to in paragraph 7.2 of this Framework. The Advisory Mechanism includes the Advisory Group.

**“Affected country”** means countries with laboratory confirmed cases of H5N1, or other influenza viruses with human pandemic potential, in humans or in animals.

**“Director-General”** means the Director-General of the World Health Organization.

**“Least developed country”** means those countries that represent the poorest and weakest segment of the international community, as defined by the UN Committee for Development Policy.

**“Originating laboratory”** means the laboratory where the PIP biological materials were first collected, obtained and/or developed.

**“Originating Member State”** means the Member State where the PIP biological materials were first collected, obtained and/or developed.

**“Pandemic Influenza Preparedness Framework”** means this Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits.

**“Pandemic Influenza Preparedness Traceability Mechanism”** or **“PIP Traceability Mechanism”** means the traceability mechanism referred to in paragraphs 5.2 and 7.2.4 and in paragraphs 1.1 and 1.2 in Annex 1 to this Framework.

**“WHO antivirals stockpile”** is the stockpile of antiviral medicines referred to in paragraph 6.6 of this Framework.

**“WHO Member States”** means the States party to the WHO Constitution.

**“WHO pandemic influenza preparedness vaccine stockpile”** or **“PIP vaccine stockpile”** is the stockpile of vaccines for H5N1 or other influenza viruses with human pandemic potential referred to in paragraph 6.7 of this Framework.

**“WHO Secretariat”** has the meaning assigned to it in the WHO Constitution.

## **5. PANDEMIC INFLUENZA PREPAREDNESS SYSTEM FOR SHARING OF H5N1 AND OTHER INFLUENZA VIRUSES WITH HUMAN PANDEMIC POTENTIAL**

### **5.1 General**

(PP1) With the objective of improving pandemic influenza preparedness and strengthening public health; and

(PP2) Noting the parallel Pandemic Influenza Preparedness System for the Sharing of Benefits arising from the use of H5N1 and other influenza viruses with human pandemic potential established under this Framework.

5.1.1 Member States, through their National Influenza Centres and Other authorized laboratories, should rapidly and systematically provide clinical specimens or viruses from [all][relevant] human cases of H5N1 and other influenza viruses with human pandemic potential:

- (i) to the WHO Collaborating Centre on Influenza or WHO H5 Reference Laboratory of the originating Member State's choice, and
- (ii) through those laboratories to other WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories, Essential Regulatory Laboratories, National Influenza Centres and Other authorized laboratories, influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers, for the purposes of: full virus characterization, pandemic risk assessment, the development and validation of diagnostics and pharmaceuticals, the development of pandemic influenza preparedness vaccine viruses and the development and production of vaccines.

5.1.2 By providing clinical specimens and/or viruses from National Influenza Centres and Other authorized laboratories to WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories as set out in paragraph 5.1.1(i) above, Member States provide their prior informed consent for the onward transfer of PIP biological materials to the institutions, organizations and other bodies.

5.1.3 National Influenza Centres and Other authorized laboratories will make efforts to ensure that clinical specimens or viruses from human cases of H5N1 and other influenza viruses with human pandemic potential that they provide to WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories:

- (i) contain viable material; and
- (ii) are accompanied by as much information as possible about the specimens and the epidemiology of the case.

[5.1.4A Member States may also provide [clinical specimens or viruses from human cases of H5N1 and other influenza viruses of human pandemic potential][PIP biological materials] directly to any

other party or body on a bilateral basis provided that this does not preclude the same materials being provided to the WHO Collaborating Centres and/or H5 reference laboratories under this Framework.]

OR

[5.1.4B Member States should give priority to the Pandemic Influenza Preparedness Framework and should not provide clinical specimens or viruses from human cases of H5N1 and other influenza viruses of human pandemic potential directly to any other party or body on a bilateral basis.]<sup>1</sup>

## **5.2 Traceability and reporting mechanisms**

5.2.1 The Director-General, in consultation with the Advisory<sup>2</sup> Mechanism, will put in place in a timely manner a transparent traceability mechanism that uses an electronic system in order to track in real time the movement of PIP biological materials from National Influenza Centres and Other authorized laboratories to WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and essential regulatory laboratories, among the [WHO Network] laboratories and from the [WHO Network] laboratories to influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers.

5.2.2 To ensure that timely feedback is provided to Originating laboratories and Member States, the Director-General will also include in the traceability mechanism and associated electronic reporting systems a requirement that WHO Collaborating Centres and H5 Reference Laboratories provide all [relevant] [available] information about the clinical specimens and viruses received to the Originating laboratories in a timely manner.

5.2.3 Pending the further development and functioning of subsequent versions of the transparent traceability mechanism, the WHO Secretariat will operate and maintain the current interim system, providing full disclosure of information on the transfer and movement of PIP biological materials from National Influenza Centres and Other authorized laboratories to WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and essential regulatory laboratories, among the [WHO Network] laboratories and from the [WHO Network] laboratories to influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers.

## **5.3 Standard Material Transfer Agreement<sup>3</sup>**

### **General**

5.3.1 Member States should require that [WHO Network] laboratories use the Standard Material Transfer Agreement at Annex 1 to this Framework to cover all transfers of PIP biological materials from National Influenza Centres and Other authorized laboratories to WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and essential regulatory laboratories, among the [WHO

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<sup>1</sup> Paragraphs 5.1.4A and 5.1.4B proposed as alternatives for consideration.

<sup>2</sup> At the November 2007 session of the IGM, the term 'advisory mechanism' was substituted for the term 'oversight mechanism' used in resolution WHA60.28.

<sup>3</sup> Standard Material Transfer Agreement is being used in place of the term 'standard terms and conditions' used in resolution WHA60.28.

Network] laboratories and from the [WHO Network] laboratories to influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers, as a mandatory condition.

5.3.2 The Standard Material Transfer Agreement will be standardized, universal and globally applicable to all transfers of PIP biological materials and not subject to further negotiation.

5.3.3 Member States and the WHO Secretariat should ensure that the Standard Material Transfer Agreement is used as outlined in paragraphs 5.3.1 and 5.3.2 above.

#### **Execution of the Standard Materials Transfer Agreement**

[5.3.4A [The Standard Materials Transfer Agreement will be self-executed in relation to transfers of PIP biological materials from National Influenza Centres and authorized laboratories to WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories and in relation to transfers of PIP biological materials within the WHO Network.]

[WHO Network] laboratories transferring PIP biological materials to influenza vaccine, diagnostic and pharmaceutical manufacturers or public health researchers will ensure that those institutions, organizations and entities agree in writing to comply with the Standard Material Transfer Agreement.]

OR

[5.3.4B The Standard Material Transfer Agreement will be executed by exchange of email or of signed letters faxed between the institution, organization or entity sending the PIP biological materials and the institution, organization or entity receiving the PIP biological materials.]<sup>1</sup>

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<sup>1</sup> These two approaches presented as alternatives.

## **6. PANDEMIC INFLUENZA PREPAREDNESS BENEFIT SHARING SYSTEM**

### **6.1 General**

(PP1) Recognizing the contribution of countries affected by H5N1 and other influenza viruses with human pandemic potential, particularly developing countries, in sharing clinical specimens and viruses with WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories;

(PP2) Recognizing the global and indivisible nature of the pandemic threat; and

(PP3) Recognizing that short-term, medium-term and long-term approaches will be needed to build capacity for pandemic preparedness and response;

6.1.1 Member States, influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers should, working with the WHO Secretariat, contribute to a Pandemic Influenza Preparedness Benefit Sharing System for the sharing of benefits arising from the use of H5N1 and other influenza viruses with human pandemic potential.

6.1.2 The PIP Benefit Sharing System will operate to:

(i) provide certain benefits, including pandemic surveillance, risk assessment and early warning information and services, to all Member States;

(ii) prioritize important benefits, including antiviral medicines and H5N1 influenza vaccines, to developing and least developed countries, particularly affected countries, according to public health needs and particularly where those countries do not have their own capacity to produce influenza vaccines, diagnostics and pharmaceuticals. Prioritisation will be based on an expert assessment of risk and need, within transparent guidelines;

(iii) provide certain benefits over time, including technology transfer and expanded influenza vaccine production capacity, according to the capacity of the receiving country.

6.1.3 The Pandemic Influenza Preparedness Benefit Sharing System will include the elements set out in the remainder of this part.

### **6.2 Pandemic risk assessment**

6.2.1 [WHO Network] laboratories will make available to the WHO Secretariat and the originating Member State, in a rapid and systematic way, all information derived from their examination of the PIP biological materials.

6.2.2 The WHO Secretariat will make available to all Member States, in a rapid and systematic way, pandemic risk assessments based on that information.

6.2.3 WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories and the WHO Secretariat will provide technical assistance to Member States to enhance research and surveillance capacity, including staff training, with the objective of assuring national work on pandemic risk assessment.

### **6.3 Provision of diagnostic tests and materials**

[6.3.1A WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and Essential Regulatory Laboratories, working with the WHO Secretariat, will make available to National Influenza Centres and Other authorized laboratories, without charge, supplies of noncommercial diagnostic test materials and reagents for the identification and characterization of clinical specimens of influenza.]

OR

[6.3.1B WHO Collaborating Centres in Influenza, WHO H5 Reference Laboratories and essential regulatory laboratories will routinely provide PIP biological materials including influenza reference viruses, antibody panels, and primers to National Influenza Centres and Other authorized laboratories.]

6.3.2 Influenza diagnostic manufacturers receiving PIP biological materials are urged to make available to [WHO Network] laboratories, without charge or at concessional rates, supplies of diagnostic test materials and reagents for the identification and characterization of clinical specimens of influenza.

### **6.4 Laboratory capacity building**

6.4.1 Upon request, Member States with advanced laboratory and influenza surveillance capacity should work with WHO and developing countries to develop national laboratory and influenza surveillance capacity, including:

- (i) to conduct isolation and characterization of viruses;
- (ii) to participate in pandemic risk assessment and response;
- (iii) to develop research capacity related to influenza;
- (iv) to achieve technical qualifications for consideration of laboratories as National Influenza Centres, WHO H5 Reference Laboratories and WHO Collaborating Centres on Influenza.

### **6.5 Regulatory capacity building**

6.5.1 Upon request, Member States with advanced regulatory capacity should work with WHO and developing and least developed countries to strengthen the capacity of regulatory authorities to carry out the necessary measures for the rapid approval of safe and effective influenza vaccines, diagnostics and pharmaceutical products developed from the use of PIP biological materials, especially those derived from new subtypes of influenza viruses.

6.5.2 Member States should ensure, consistent with national and international laws, regulations and obligations, that information related to applications and approvals of influenza vaccines, diagnostics

and pharmaceutical products developed from the use of PIP biological materials is made available through the WHO Secretariat to all Member States.

## **6.6 WHO antivirals stockpile**

6.6.1 The WHO Secretariat will, with voluntary contributions from pharmaceutical manufacturers and Member States or other entities, maintain and further develop a stockpile of antiviral medicines and associated equipment for use in containment of outbreaks of H5N1 and other influenza viruses with human pandemic potential.

6.6.2 The WHO Secretariat will seek the guidance of expert advice in determining the size, composition, replenishment, operational use and deployment procedures for use of the WHO antivirals stockpile.<sup>1</sup>

## **6.7 WHO pandemic influenza preparedness vaccine stockpile**

6.7.1 The WHO Secretariat will establish and maintain a stockpile of vaccines for H5N1 and other influenza viruses with human pandemic potential and associated equipment, including syringes, needles and applicators, consistent with expert guidance. The WHO stockpile will initially include 150 million doses of H5N1 vaccine for use in accordance with expert guidance. Indicatively:

- (i) 50 million doses will be for use in Affected countries, according to public health need, to assist in containing the first outbreak or outbreaks of an emerging pandemic; and
- (ii) 100 million doses will be for distribution, once a pandemic begins, to least developed and developing countries that have no or inadequate access to H5N1 influenza vaccines, on a per capita basis, with use to be determined by those countries.

6.7.2 The WHO Secretariat will seek the guidance of experts in determining the size, composition, replenishment and operational use of the vaccines in the WHO PIP vaccine stockpile.

6.7.3 Member States should urge influenza vaccine manufacturers to donate sufficient doses of H5N1 vaccine for the WHO PIP vaccine stockpile. If insufficient doses are donated, the WHO Secretariat will work with Member States to explore use of sustainable financing mechanisms (in Section 6.12 below) to meet the requirements of the WHO PIP vaccine stockpile.

[6.7.4A Member States should urge influenza vaccine manufacturers to prioritize and immediately respond to the needs of the WHO PIP vaccine stockpile.]

AND/OR

[6.7.4B Member States should urge influenza vaccine manufacturers to set aside  $x\%$  of [production][future production unallocated as of November 2008] for provision to the WHO PIP vaccine stockpile.]

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<sup>1</sup> The WHO Secretariat has been asked to make documentation, including operational guidelines, on the antivirals stockpile available at the resumed sessions of the Open-Ended Working Group and the Intergovernmental Meeting.

6.7.5 The WHO Secretariat will, with the guidance of experts, keep under review the potential for the pre-pandemic use of the WHO PIP vaccine stockpile in Affected countries, including by supporting trials as appropriate.

6.7.6 The WHO Secretariat will work with relevant experts and Member States to develop and exercise operational plans for the deployment of the vaccines in the WHO PIP vaccine stockpile.<sup>1</sup>

## **6.8 Access to vaccines for developing and least developed country use**

[6.8.1A Separately from the WHO PIP vaccine stockpile, Member States should continue to work with each other, with the WHO Secretariat and with influenza vaccine manufacturers with the aim of ensuring that adequate quantities of vaccines for H5N1 and other influenza viruses with human pandemic potential, and pandemic influenza vaccines, are made available to developing and least developed countries at the same time as to developed countries, on the basis of public health needs and at affordable prices.]

OR

[6.8.1B Separately from the WHO PIP vaccine stockpile, Member States should urge vaccine manufacturers to set aside  $[x\%]^2$  of each production cycle of vaccines for H5N1 and other influenza viruses of human pandemic potential for provision to developing and least developed countries.]

## **6.9 Pandemic influenza vaccines**

6.9.1 Noting that pandemic influenza vaccines can only be produced after a pandemic begins;

[6.9.2A Member States should urge vaccine manufacturers to set aside  $[x\%]$  of each production cycle of pandemic influenza vaccine for use by developing and least developed countries.]

AND/OR

[6.9.2B The Director-General, consulting the Advisory Mechanism and Member States, will convene an expert group to develop international mechanisms on the production and distribution of influenza vaccines during a pandemic for consideration by the World Health Assembly in 2010.]

## **6.10 [Tiered][Affordable] Pricing**

6.10.1 Member States should urge influenza vaccine manufacturers to implement [tiered pricing][affordable pricing] for vaccines for H5N1 and other influenza viruses with human pandemic potential and for pandemic influenza vaccines.

[6.10.2 “Tiered pricing” involves different countries paying different prices for the same product, usually according to their income level.]

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<sup>1</sup> The WHO Secretariat has been asked to make documentation, including operational guidelines, on the antivirals stockpile available at the resumed sessions of the Open-Ended Working Group and the Intergovernmental Meeting.

<sup>2</sup> A proposal is yet to be made for a minimum percentage.



[6.10.3 “Affordable pricing” could be defined to mean:

- (i) for developing countries, a price no higher than marginal cost per unit plus 5%;
- (ii) for least developed countries, at ‘no profit no loss’ to the manufacturer.]

## **6.11 Technology transfer**

6.11.1 The WHO Secretariat will continue to work closely with Member States and influenza vaccine manufacturers to implement the WHO Global Pandemic Influenza Action Plan to Increase Vaccine Supply, notably Strategy 4.2 to increase influenza vaccine production capacity by building new production facilities in, and transferring technology and know how as appropriate to, developing and/or industrialized countries.

6.11.2 Member States should urge organizations with access to vaccine manufacturing and other technologies for the control of influenza to make specific efforts to transfer these technologies to other Member States, particularly developing countries.

6.11.3 Technology transfer should be conducted in a manner consistent with national laws and international laws and obligations, facilitated progressively over time, on mutually agreed terms, and be appropriate to the capacity of recipient Member States, to empower developing countries to study and manufacture influenza vaccines, diagnostics and pharmaceuticals.

[6.11.4A Member States should urge influenza vaccine manufacturers who receive PIP biological materials to grant, on request, a non-exclusive, royalty-free licence to any influenza vaccine manufacturer from the Member State where the relevant clinical specimen was collected from which the relevant PIP biological materials were derived, to use its intellectual property and other protected substances, products, technology, know-how, information and knowledge used in the process of influenza vaccine development and production in particular for pre-pandemic and pandemic vaccines.]

OR

[6.11.4B Influenza vaccine manufacturers who receive PIP biological materials may grant on a voluntary basis, a non-exclusive, royalty-free licence to any influenza vaccine manufacturer from a developing country, to use its intellectual property and other protected substances, products, technology, know-how, information and knowledge used in the process of influenza vaccine development and production, in particular for pre-pandemic and pandemic vaccines.]

## **6.12 Sustainable financing mechanism**

6.12.1 Member States should work with the Director-General to establish a sustainable financing mechanism to support the PIP Benefit Sharing System.

6.12.2 The sustainable financing mechanism should have a particular priority on meeting the needs of affected developing and least developed countries for access to vaccines for H5N1 and other influenza viruses with human pandemic potential, including through the WHO PIP vaccine stockpile, but may also be used to support the provision of other benefits including technology transfer and capacity building.

6.12.3 The Director-General, with the support of Member States and the Advisory Mechanism, will explore the use of existing fund-holding institutions and organizations to hold and administer funds for the sustainable financing mechanism, before any new arrangement within the WHO or elsewhere is considered.

6.12.4 The Director-General will report to the World Health Assembly in 2009 on whether a suitable existing fund-holding institution or organization is willing to hold and administer funds for the sustainable financing mechanism. If such an arrangement cannot be agreed, the Director-General, in consultation with the Advisory Mechanism and Member States, will propose a new arrangement to the World Health Assembly in 2009.

6.12.5 The sustainable financing mechanism will receive funding from:

[A. voluntary contributions from influenza vaccine, diagnostic and pharmaceutical manufacturers, Member States, nongovernmental organizations and any other individuals or entities;]

AND/OR

[B. mandatory contributions from influenza vaccine, diagnostic and pharmaceutical manufacturers based on [x%]<sup>1</sup> of the sales of products developed using PIP biological materials;]

AND/OR

[C. annual assessed contributions from Member States, ranging from US\$ 0.006 per capita from Member States in the lowest decile of per capita gross domestic product to US\$ 0.015 per capita for Member States in the highest decile of per capita gross domestic product;]

AND/OR

[D. annual assessed contributions from influenza vaccine manufacturers, at US\$ 0.20 per influenza vaccine dose manufactured by them in that year].

### **6.13 Innovative financing mechanisms for national vaccine requirements**

6.13.1 Interested Member States may work together, with the WHO Secretariat and with nongovernmental and international organizations as appropriate, to establish urgently a fund for the procurement of national stocks of vaccines for H5N1 and other influenza viruses of human pandemic potential, using a revolving fund for immunization, potentially modelled after the Pan American Health Organization (PAHO) Revolving Fund for Immunization, or other similar types of funds, as a reference point.

6.13.2 The fund may be used for, but not limited to:

- (i) procure supplies of vaccine for H5N1 and other viruses with human pandemic potential, and associated equipment, that meet WHO standards, on behalf of participating countries;

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<sup>1</sup> Member States are still to propose a specific percentage.

(ii) seek to provide such vaccines and associated equipment for low-income and middle-income countries at tiered or subsidized prices;

(iii) provide affordable financing arrangements to developing and least-developed countries to support procurement of vaccines and associated equipment.

6.13.3 The mechanism for capitalization and governance arrangements for the fund should be agreed by participating Member States and organizations, but may include voluntary contributions from Member States and nongovernmental organizations.

6.13.4 Neither the existence of, nor participation in, the sustainable financing mechanism or the innovative financing mechanism will prevent Member States from making other unilateral or multilateral arrangements to procure vaccines for H5N1 and other viruses with human pandemic potential.

## 7. GOVERNANCE AND REVIEW

### 7.1 General

The implementation of this Framework will be overseen by the World Health Assembly with advice from the Director-General and the Advisory Mechanism.

### 7.2 Advisory Mechanism<sup>1</sup>

7.2.1 The Director-General will establish a transparent Advisory Mechanism to monitor and provide guidance to strengthen the functioning of the [WHO Network] and undertake necessary assessment of the trust-based system needed to protect public health and to help ensure full implementation of this Framework.

7.2.2 The Director-General, in consultation with Member States, will appoint an independent Advisory Group<sup>2</sup> based on equitable representation of the WHO regions and of Affected countries, taking into account balanced representation between developed and developing countries. This Advisory Group will serve as the main operator of the Advisory Mechanism.

7.2.3 The Advisory Group will comprise 18 members drawn from three Member States in each WHO region, with a skill mix of internationally recognized policy makers, public health experts and technical experts in the field of influenza.

7.2.4 The Advisory Group will function to assist the Director-General in monitoring the implementation of this Framework, including the internal and external conduct and effectiveness of the WHO Network as it relates to H5N1 and other influenza viruses with pandemic potential, the compliance of WHO Network laboratories with their terms of reference, the sharing of H5N1 and other influenza viruses with human pandemic potential and the operation of the Standard Material Transfer Agreement, the PIP benefit sharing system and the Traceability Mechanism.

7.2.5 The WHO Secretariat will provide secretariat services to the Advisory Group.

7.2.6 The terms of reference for the Advisory Group are at Annex 2 to this Framework.<sup>3</sup>

7.2.7 The Advisory Group will present an annual report to the Director General on its evaluation of the implementation of this Framework.

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<sup>1</sup> At the suspended of the Intergovernmental Meeting in November 2007, the term 'advisory mechanism' was substituted for the term 'oversight mechanism' used in resolution WHA60.28.

<sup>2</sup> 'Advisory Committee' was also suggested.

<sup>3</sup> The WHO Secretariat has been asked to table Terms of Reference for the Advisory Group at the resumed sessions of the Open-Ended Working Group and the Intergovernmental Meeting.

7.2.8 The Director-General will present a report on the work carried out by the Advisory Group through the Executive Board to the World Health Assembly in 2011 for a decision on any future mandate.

### **7.3 Dispute resolution**

7.3.1 In the event of a dispute between two or more Member States concerning the interpretation or application of this Framework, the Member States concerned should seek in the first instance to settle the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation or conciliation. Failure to settle the dispute will not absolve the parties to the dispute from the responsibility of continuing to seek to resolve it.

7.3.2 In the event that the dispute is not settled by the means described under paragraph 7.3.1 above, the Member States concerned may agree to refer the dispute to the Director-General<sup>1</sup>, who will make every effort to settle it.

7.3.3 In the event of a dispute between the WHO Secretariat and one or more Member States concerning the interpretation or application of this Framework, the matter should be submitted through the Advisory Group and Executive Board to the World Health Assembly.

### **7.4 Terms of Reference for [WHO Network] laboratories**

7.4.1 The Terms of Reference of the WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and National Influenza Centres are at Annex 3 to this Framework.

7.4.2 In the event of any alleged breaches of the Terms of Reference or the Standard Material Transfer Agreement by a WHO Collaborating Centre on Influenza, WHO H5 Reference Laboratories or National Influenza Centre, the Director-General will review the circumstances and may discuss with the Advisory Group any appropriate action in response to those breaches. Where there has been a serious breach, the Director-General may consider suspending or revoking the WHO designation of the relevant laboratory.

7.4.3 The Director-General will regularly review the Terms of Reference of the WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and National Influenza Centres, in consultation with the Advisory Group, and amend these Terms of Reference, when needed, to promote the principles provided by this Framework, and report thereon to the World Health Assembly.

### **7.5 Review of Framework**

[7.5.1A The Director-General, consulting Member States and the Advisory Mechanism as appropriate, will conduct a review of this Framework and all of its components for consideration by the World Health Assembly in 2014.<sup>2</sup>]

OR

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<sup>1</sup> The Advisory Group was suggested as an alternative.

<sup>2</sup> This paragraph was discussed at the Open-Ended Working Group in April 2008.

[7.5.1B The Sixty-seventh World Health Assembly in 2014 should include in its agenda a review of the Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits, and the Director-General will submit a comprehensive report on the status of the implementation of the Framework.]

7.5.2 The Director-General, consulting Member States and the Advisory Mechanism as appropriate, will provide an interim report on the operation of this Framework and all of its components for consideration by the World Health Assembly in 2011.

## ANNEX 1

### **STANDARD MATERIAL TRANSFER AGREEMENT**

The institution, organization or entity accepting PIP Biological materials under cover of an attached email or on a signed hard copy of this Annex, agrees to accept, upon receipt of the PIP Biological materials, the following standard terms and conditions.

#### **1. Traceability**

1.1 National Influenza Centres and Other authorized laboratories providing clinical specimens from human cases of H5N1 and other influenza viruses of human pandemic potential shall register those specimens in the PIP traceability mechanism as PIP biological materials.

1.2 As a condition of receiving PIP biological materials, all National Influenza Centres, authorized laboratories, WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories, influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers shall register receipt of the PIP biological materials through the traceability mechanism and shall comply with any other data provision requirements of the traceability and associated reporting mechanisms.

#### **2. No further transfer outside [WHO Network]**

2.1 Influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers outside the [WHO Network] receiving PIP biological materials from the [WHO Network] shall not further transfer those materials without the prior informed consent of the originating Member State and the [WHO Network] laboratory that provided the materials.

#### **3. Biosafety and biosecurity<sup>1</sup>**

3.1 All institutions, organizations and entities shall ensure that transfer of PIP biological materials shall at all times be in compliance with all relevant national and international laws, rules and regulations, including those relating to biosafety and biosecurity, to the full extent that such laws, rules and regulations are applicable to each party concerned.

3.2 All institutions, organizations and entities shall ensure that handling, storage and use of PIP biological materials shall at all times be in compliance with all relevant national and international laws, rules and regulations, including those relating to biosafety and biosecurity, to the full extent that such laws, rules and regulations are applicable to each party concerned.

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<sup>1</sup> This section was debated in the April 2008 session of the IGM Working Group. The term 'institutions, organizations and entities' has been substituted for 'parties' for consistency with the rest of the Framework. Suggestions have been made to combine these two paragraphs. In addition, some concern has been expressed about the term 'biosecurity'. Alternative suggestions are 'biosafety and security of biological materials' or "biosafety, shipping and laboratory protection" be used in place of "biosafety and biosecurity,".

#### **4. Fees and charges**

4.1 [WHO Network] laboratories shall not impose charges for the provision of PIP biological materials. However:

4.1.1 National Influenza Centres and Other authorized laboratories in developing and least developed countries may charge a nominal administrative fee to recover the costs of shipping, handling, storage or other direct administrative overheads associated with transferring the PIP biological materials to WHO Collaborating Centres on Influenza and/or H5 Reference Laboratories. Where such a fee is sought, the WHO Collaborating Centre on Influenza or WHO H5 Reference Laboratory receiving the PIP biological materials shall pay the fee.

4.1.2 WHO Collaborating Centres, H5 Reference Laboratories and essential regulatory laboratories may charge a nominal administrative fee to recover the costs of shipping, handling, storage or other direct administrative overheads associated with transferring the PIP biological materials to influenza vaccine, diagnostic and pharmaceutical manufacturers and public health researchers. Where such a fee is sought, the influenza vaccine, diagnostic or pharmaceutical manufacturer or public health researcher shall pay the fee.

#### **5. Feedback**

5.1 WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories shall provide in a routine and timely way to National Influenza Centres and Other authorized laboratories providing clinical specimens and/or viruses, all relevant information about the clinical specimens and/or viruses received, including the results of virus sequencing, characterization and pandemic influenza risk assessment, and respond in a timely way to requests from those laboratories for further information about the specimens or viruses provided.

5.2 Upon request, WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories shall provide, in a timely way, aliquotes of isolated virus strains to the originating National Influenza Centre or Other authorized laboratory, where those laboratories have appropriate biosafety and biosecurity facilities and practices.

5.3 Upon request, WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories shall provide PIP vaccine viruses to the originating National Influenza Centre or Other authorized laboratory, where those laboratories have appropriate biosafety and biosecurity facilities and practices, at the same time as the PIP vaccine viruses are provided to influenza vaccine manufacturers.

#### **6. Involvement in research**

6.1 [WHO Collaborating Centres and H5 Reference Laboratories][All institutions, organizations and entities receiving PIP biological materials] shall, to the fullest extent feasible, include scientists from the originating Member State or originating National Influenza Centre or Other authorized laboratory in research on those biological materials, with a view to facilitating meaningful participation, skills transfer and capacity development.



## **7. Publication of research**

7.1 Institutions, organizations and entities<sup>1</sup> receiving PIP biological materials may publish or otherwise disseminate scientific results generated from the PIP biological materials with [the consent of the originating National Influenza Centre or Other authorized laboratory][with 28<sup>2</sup> days' written notice to the originating National Influenza Centre or Other authorized laboratory, prior to submission for publication].<sup>3</sup>

## **8. Acknowledgment, attribution and authorship**

8.1 Institutions, organizations and entities<sup>4</sup> publishing research arising from the use of PIP biological materials shall appropriately acknowledge and properly attribute contributions by scientists and/or researchers from the originating Member State or originating National Influenza Centre or Other authorized laboratory in any medical or scientific journal or publication in a manner that is consistent with the guidelines for authorship and acknowledgment as stipulated by the International Committee of Medical Journal Editors in the Uniform Requirements for Manuscripts Submitted to Biomedical Journals. Similarly, proper acknowledgment, attribution and authorship shall be provided for other formal scientific presentations.

## **9. Sharing of risk assessment information**

9.1 [WHO Network] laboratories [shall] [may, with the written consent of the originating Member State,] make available in a timely manner pandemic influenza risk assessment information relating to PIP biological materials, including viral genetic sequence data and complete antigenic characterization, to other institutions, organizations and entities in accordance with the other terms and conditions of this Standard Material Transfer Agreement.

## **10. Limitation of use by WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories**

10.1 WHO Collaborating Centres on Influenza and WHO H5 Reference Laboratories shall seek the prior written consent of the originating National Influenza Centre or Other authorized laboratory for any use of the PIP biological materials outside the terms of reference of that WHO Collaborating Centre or H5 Reference Laboratory, and any such use will be subject to mutually agreed terms.

## **11. Ownership**

[11.1A By providing PIP biological materials, the originating Member States do not transfer ownership rights over those materials to the receiving institution, organization, entity or Member State.]

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<sup>1</sup> This text was debated extensively by the Open-Ended Working Group at its session in April 2008. For consistency with the rest of the Framework, the terms 'institutions, organizations and entities' have been substituted here for 'WHO Collaborating Centres on Influenza, WHO H5 Reference Laboratories and other parties'.

<sup>2</sup> Notice periods of 14, 28 and 30 days have been suggested.

<sup>3</sup> These two phrases suggested as alternatives for discussion.

<sup>4</sup> This paragraph was debated extensively by the Open-Ended Working Group at its session in April 2008. Terms have been adjusted for consistency with the rest of the Framework. The suggestion has since been made to delete the word 'or' between 'journal' and 'publication' in the fourth line.

OR

[11.1B Institutions, organizations, entities or Member States providing or receiving PIP biological materials shall not assert ownership rights over the PIP biological materials.]

## 12. Intellectual property

[12.1A Institutions, organizations and entities providing or receiving PIP biological materials shall not assert intellectual property rights over viral gene sequence data directly based on those materials.]

OR

[12.1B Institutions, organizations and entities<sup>1</sup> providing or receiving PIP biological materials shall not assert intellectual property rights over those materials.]

[12.2 Institutions, organizations, entities or Member States inventing patentable processes or products using PIP biological materials shall:

(i) at all times, grant royalty-free licences upon request to any institution, organization, entity or Member State seeking to use those processes or products for non-commercial public health research; and

(ii) during a pandemic declared by the World Health Organization, grant royalty-free licences to any institution, organization, entity or Member State to use those processes or products for the production of influenza vaccines, diagnostics and pharmaceuticals.]<sup>2</sup>

12.3 Any institution, organization, entity or Member State receiving PIP biological materials that seeks patent protection or other intellectual property rights over inventions directly based on PIP biological materials shall disclose in the patent application the country in which the PIP biological materials were first collected, obtained and/or developed.

## 13. Benefits

[13.1A PIP biological materials are provided to receiving institutions, organizations and entities with the objective of improving pandemic influenza preparedness and strengthening public health. In consideration of this, and recalling Resolution WHA60.28, the PIP benefit sharing system set out in the “Pandemic Influenza Preparedness Framework for the Sharing of Influenza Viruses and Access to Vaccines and Other Benefits” aims to improve access for developing and least developed countries, especially Affected countries, to vaccines and other benefits from the sharing of H5N1 and other influenza viruses of human pandemic potential. The priorities of the Framework are fairness, transparency, equity and efficiency.]

OR

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<sup>1</sup> A suggestion was made to limit this to ‘influenza vaccine, diagnostic and pharmaceutical manufacturers’.

<sup>2</sup> Chair’s suggestion.

[13.1B Institutions, organizations and entities receiving PIP Biological Materials shall contribute to the PIP Benefit Sharing System.]

OR

[13.1C Institutions, organizations and entities receiving PIP biological materials shall comply with the PIP Benefit Sharing System. The PIP Benefit Sharing is an integral part of this Standard Material Transfer Agreement.]

#### **14. Warranties and indemnities**

14.1 Under this Standard Material Transfer Agreement, PIP biological materials are provided without any warranty whatsoever, either express or implied, as to their quality, viability, purity, merchantability, suitability or fitness for a particular purpose.

14.2 Under this Standard Material Transfer Agreement, institutions, organizations and entities receiving PIP biological materials shall assume all responsibility for any claims, costs, damages or expenses resulting from or otherwise related to their possession and use of the materials.

#### **15. Dispute settlement**

15.1 In the event of a dispute relating to the operation of this Standard Materials Transfer Agreement, institutions, organizations and entities providing or receiving PIP biological materials may initiate Dispute Settlement procedures as follows:

15.1.1 Amicable dispute settlement. The parties to the dispute shall attempt in good faith to resolve the dispute by negotiation.

15.1.2 Mediation. If the dispute is not resolved by negotiation, the parties to the dispute may choose mediation through a neutral third party mediator, to be mutually agreed.

15.1.3 Arbitration. If the dispute has not been settled by negotiation or mediation, any party to the dispute may submit the dispute for arbitration under the Arbitration Rules of an international body as agreed by the parties to the dispute. Failing such agreement, the party that wishes a dispute to be referred to an arbitration tribunal shall give notice to the other party in writing specifying the person it has appointed as an arbitrator on its part. The other party shall appoint one arbitrator on its part within 60 days from receipt of such notice. The two arbitrators nominated by the parties shall appoint the third arbitrator who shall preside over the arbitration tribunal. Should the two arbitrators fail to appoint a third arbitrator, the Director General of WHO shall appoint the third arbitrator. All parties shall facilitate the work of the Tribunal and, in particular, using all means at their disposal, shall provide it with all relevant documents, information and facilities; and enable it, when necessary, to call witnesses or experts and receive their evidence. The decision of the arbitration tribunal shall be final and binding on the parties without appeal.

#### **16. Termination**

16.1 If an institution, organization or entity providing or receiving PIP biological materials violates any of the terms of the Standard Materials Transfer Agreement, and dispute settlement procedures have been unsuccessful, the aggrieved party to the dispute may give the other party notice of not less than 30 days in writing requiring that the failure or violation be remedied. If the failure or violation is

not remedied within the said 30 days, the aggrieved party shall have the right to terminate the Standard Material Transfer Agreement.

16.2 Upon termination, the party subject to the termination of the Standard Material Transfer Agreement shall immediately discontinue use of the PIP biological materials in any manner including either derivation or development of substances, processes or products from the materials, and shall arrange the return or the destruction of any remaining materials.

16.3 Termination of the Standard Material Transfer Agreement shall not affect the accrued rights and obligations that were due prior to the effective date of termination.

ANNEX 2

**TERMS OF REFERENCE OF THE ADVISORY MECHANISM**

Note: The draft terms of reference for the Advisory Mechanism will be submitted to the Intergovernmental Meeting at its resumed session.

ANNEX 3<sup>1</sup>

**TERMS OF REFERENCE**

**WHO Collaborating Centres  
WHO H5 Reference Laboratories  
National Influenza Centres**

**Key to document references:**

**IGM/2 Rev.1** refers to document A/PIP/IGM/2 Rev.1, Reports by the Director-General: Summary progress reports. (The document summarizes actions undertaken and planned in order to implement the following paragraphs of resolution WHA60.28: 2(1) on frameworks and mechanisms, 2(2) on establishing an international stockpile of vaccines, and 2(3) on mechanisms and guidelines for distributing vaccines fairly and equitably.)

**IGM/4** refers to document A/PIP/IGM/4, Sharing of influenza viruses and access to vaccines and other benefits: Interdisciplinary Working Group on Pandemic Influenza Preparedness. (The meeting (Singapore, 31 July – 4 August 2007) was convened in accordance with resolution WHA60.28 (paragraph 2(5)) and the document contains a summary of the debate.)

**IGM/5** refers to document A/PIP/IGM/5, Annex: Fundamental principles and elements for the development of a new system for virus access and fair and equitable benefit sharing arising from the use of the virus for the pandemic influenza preparedness. (This text was proposed by Indonesia to be considered as a working document for the discussion in the Intergovernmental Meeting on Pandemic Influenza Preparedness, 20–23 November 2007.)

**IGM/6** refers to document A/PIP/IGM/6, Annex: A proposal from Thailand for the Intergovernmental Meeting on Pandemic Influenza Preparedness, 20–23 November 2007: Standard Terms and Conditions (STCs) for the transfer and use of influenza biological materials and fair and equitable benefits sharing (between Member States [MS] and WHO Secretariat [WS]).

**AFRO** refers to document A/PIP/IGM/7, Annex: Standard Terms and Conditions for the transfer and use of influenza biological materials and fair and equitable benefit sharing: A proposal from the African Region for the Intergovernmental Meeting on Pandemic Influenza Preparedness, 20–23 November 2007.

In all cases, the **bold number** immediately following the document number refers to the paragraph in the document.

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<sup>1</sup> This annex reproduces the text of document A/PIP/IGM/WG/3, which contains extracts from document EB122/5.

## AFRO ANNEX 3

## ANNEX 3 (REVISION TO THE EXISTING TOR)

All activities by the WHO Collaborating Centres for Reference and Research on Influenza under this Terms of Reference will be subject to the Standard Terms and Conditions.

## (a) Provide:

- Recommendations to WHO on suitable influenza vaccine viruses for use in seasonal, pre-pandemic and pandemic influenza vaccine development and production;
- Regular and timely surveillance data to WHO, particularly from local and neighbouring geographical regions;
- Advice to the WHO Global Influenza Surveillance Network (GISN)ii National Influenza Centres and other national laboratories designated by the State on laboratory methods for the diagnosis of influenza, the adoption of new diagnostic approaches, the improvement of laboratory practices and on other operational needs;
- Regular and timely reports of virus characterization to WHO and the country contributing the virus and GISN members;
- Expertise, continuous training and laboratory support to WHO Member States in particular developing countries facing influenza outbreaks to conduct influenza outbreak investigation, risk assessment and response activities, including developing candidate influenza vaccine virus.

And response, especially those with pandemic potential; and

- Expertise to assist WHO on the improvement of global surveillance of influenza viruses causing or with the potential to cause human infections, including the development and revision of relevant policies, recommendations and guidelines.

## (b) Conduct:

- Isolation and analysis in both embryonated eggs and cell culture of influenza viruses causing or with the potential to cause human infections;
- Complete antigenic and genetic analysis of influenza viruses causing or with the potential to cause human infections, making the information available to WHO and the originating country in a timely manner;
- Antiviral susceptibility testing and analysis of circulating influenza strains and provide a minimum of two reports each year to WHO and the originating country on the findings;
- Active communication and collaboration with other laboratories, especially with the WHO recognized National Influenza Centres, to ensure that high quality clinical specimens and/or virus isolates are received and information is exchanged;

(c) Develop, produce and distribute:

- Antisera against representative influenza viruses causing or with the potential to cause human infections to WHO laboratories involved in influenza vaccine virus selection, development and other WHO activities; and
- Laboratory diagnostic reagents for circulating influenza viruses to GISN members.

(d) Participate in:

- Bi-annual WHO influenza vaccine composition consultations; and
- WHO process to select, develop and distribute candidate influenza vaccine viruses for influenza pandemic preparedness and response.

***OR***



## APPENDIX 4

**Core Terms of Reference for WHO Collaborating Centres for Reference and Research on Influenza (including WHO Collaborating Centre on Surveillance, Epidemiology, and Control of Influenza)**

This document has not been agreed by all IDWG participants.

**The title, WHO Collaborating Centre for Reference and Research on Influenza, designates, through a defined WHO application process, centres of excellence on influenza which:**

- Meet all core Terms of Reference (TOR) for WHO Collaborating Centres for Reference and Research on Influenza (WHO CCRRI) listed below. This includes the maintenance of Biosafety Level 2 and Biosafety Level 3 laboratory facilities;
- Work under the coordination of the WHO Global Influenza Programme (GIP);<sup>1</sup> and
- Receive adequate long-term governmental and/or other non-commercial financial support to fulfil the core TOR for WHO CCRRI.

**The core TOR constitute minimum requirements; an individual WHO Collaborating Centre for Reference and Research on Influenza may have additional functions in its TOR in discussion with and agreed upon with WHO GIP.**

**Core Terms of Reference**

All influenza clinical specimens, candidate influenza vaccine viruses and other influenza viruses will be distributed subject to Standard Terms and Conditions for Transfer and Use of Specimens (STC).

**A. Advisory role**

1. Provide data and advice to WHO concerning suitable influenza viruses for use in vaccines against seasonal, A(H5N1) and other influenza virus with a potential to cause a pandemic; participate in the development and timely availability of the candidate influenza vaccine viruses;
2. Advise the WHO Global Influenza Surveillance Network (GISN)<sup>2</sup> on laboratory methods for diagnosis of influenza, including the adoption of new diagnostic approaches, the improvement of laboratory practices and other operational needs;

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<sup>1</sup> WHO Global Influenza Programme <http://www.who.int/csr/disease/influenza/en/>.

<sup>2</sup> The WHO Global Influenza Surveillance Network  
<http://www.who.int/csr/disease/influenza/surveillance/en/index.html>.

3. Serve as ready technical resources globally to WHO on routine influenza surveillance and influenza emergencies, especially on influenza outbreaks with pandemic potential.

## **B. Technical performance**

### **1. Strengthening the WHO Global Influenza Surveillance Network**

- (a) Maintain and strengthen active communication and collaboration with National Influenza Centres (NICs)<sup>1</sup> and other national influenza laboratories to ensure that high quality clinical specimens and/or viruses are received and up-to-date information is exchanged;
- (b) Conduct training and provide support to NICs and other national influenza laboratories, especially those in developing countries, on laboratory techniques and skills, including diagnosis, data analyses, risk assessment and other critical capacities;
- (c) Develop, update and produce laboratory diagnostic reagents for circulating influenza viruses and distribute to NICs and other national influenza laboratories;

### **2. Laboratory analyses and other related activities**

- (a) Isolate in both cell culture and embryonated eggs influenza viruses causing or with the potential to cause human infections;
- (b) Develop and produce antisera in ferrets against representative influenza viruses causing or with the potential to cause human infections;
- (c) Conduct complete antigenic and genetic analyses of influenza viruses causing or with the potential to cause human infections;
- (d) Develop data for recommending appropriate vaccine viruses for use globally, including semi-annual data for seasonal influenza vaccine viruses and, for pandemic preparedness, ongoing data for influenza vaccine viruses with a potential to cause a pandemic;
- (e) Participate in the development of candidate influenza vaccine viruses for seasonal influenza semi-annually and for influenza pandemic preparedness;
- (f) Conduct antiviral susceptibility testing of circulating influenza strains, as part of routine surveillance, and provide findings to WHO at least twice every year;
- (g) Select, maintain and update a group of influenza reference viruses, including seasonal, A(H5N1) and other influenza viruses with pandemic potential, and corresponding antisera if available; update the availability of reference viruses and corresponding antisera, if any, to WHO, which will maintain a web page on the WHO web site;
- (h) Actively initiate research on influenza viruses, engaging laboratories providing clinical specimens and/or viruses; rapidly share findings of public health significance with WHO.

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<sup>1</sup> WHO designated National Influenza Centers <http://www.who.int/csr/disease/influenza/centres/en/index.html>.

### 3. Global influenza response and preparedness

- (a) Provide expertise and laboratory support, in coordination with WHO, to Member States to assist in influenza outbreak response, especially those associated with influenza viruses having pandemic potential;
- (b) Assist WHO in the development of standards, recommendations and policies concerning the broad areas of influenza surveillance, response and preparedness.

## C. Communication and distribution of viruses and/or clinical specimens

### 1. Laboratory analyses and results

- (a) Provide data and/or results timely to originating laboratories/countries providing clinical specimens and/or viruses and to WHO;
- (b) Alert WHO and the country from which the specimens were provided on unusual findings, especially those related to seasonal or pandemic influenza risks obtained from the analysis of the specimens.

### 2. Gene sequences

- (a) Seasonal influenza
  - Upload available sequences of HA and NA genes, and other genes, to a publicly accessible database after each WHO semi-annual vaccine composition consultations, unless otherwise instructed by the laboratory or country providing the specimens.
- (b) A(H5N1) and other influenza viruses with pandemic potential
  - Upload available sequences of HA and NA genes, and other genes, to a publicly accessible database within 3 months after sequencing done, unless otherwise instructed by the laboratory or country providing the specimens. [**Germany: What is the rationale for 3 months?**]
  -
- (c) Post a list of virus isolates/specimens analysed but not approved for public use.
- (d) (old c) Appropriately acknowledge originating laboratories/countries providing clinical specimens and/or viruses.

### 3. Scientific presentations and publications

- (a) Actively engage scientists from originating laboratories/countries in scientific projects associated with research on specimens from these countries and engage them actively in preparation of manuscripts for presentations and publications;
- (b) Appropriately acknowledge in the presentations and publications the contributions of various collaborators, including laboratories/countries providing clinical specimens, viruses or reagents.

#### 4. Influenza clinical specimens and influenza viruses

Share **influenza clinical specimens and influenza viruses, in a timely and unrestricted manner**, with laboratories working in coordination and in collaboration with GIP, including:

- (i) Other WHO CCs for laboratory analyses as defined above;
- (ii) Other laboratories involved in WHO coordinated specialized activities, (e.g. the WHO External Quality Assessment Project for the detection of subtype influenza A viruses using PCR; the WHO influenza PCR primer updating), and other activities whose purpose is to strengthen global influenza surveillance and other risk assessment and risk response; as well as capacity building.
- (iii) Key national regulatory laboratories, including FDA, NIBSC and TGA, which are involved in the WHO process of candidate influenza vaccine virus selection and development, as well as vaccine potency reagent development.

**5. Candidate influenza vaccine viruses** are selected and developed under the coordination of WHO, for development and production of vaccines against seasonal, A(H5N1) and other influenza viruses with a potential to cause a pandemic. The candidate influenza vaccine viruses include wild type viruses and high-growth reassortant viruses, including those prepared by reverse genetics.

- (a) Distribute to appropriate recipients on request, including influenza vaccine manufacturers, diagnostic companies, research institutes and others interested in receiving influenza vaccine viruses;
- (b) Report the distribution status to WHO, which will maintain a list of recipients on the WHO web site.

**6. Influenza reference viruses** are a group of viruses selected, maintained and updated by WHO CCs as antigenically and genetically representative of important groups of viruses, including seasonal, A(H5N1) and other influenza viruses with pandemic potential. These viruses are often used to generate corresponding antisera. Both reference viruses and corresponding antisera will be:

- (a) Distribute, on request, to NICs and research institutes for non-commercial activities including surveillance, reference and research; the laboratories/countries providing the original clinical specimens and/or viruses will be notified of the distribution;

**7.** Distribution of influenza clinical specimens and influenza viruses, for purposes beyond those described above, will require approval from the laboratories/countries providing the original clinical specimens and/or viruses.

## AFRO ANNEX 4

## ANNEX 4 (REVISION TO EXISTING TOR)

**TERMS OF REFERENCE FOR WHO H5 REFERENCE LABORATORIES**

In 2004, the WHO H5 Reference Laboratory Network was established, as an ad hoc component of the WHO Global Influenza Surveillance Network (GISN)<sup>1</sup>, in response to the public health needs arising from avian influenza A(H5N1) infection in humans and influenza pandemic preparedness. The laboratories involved to date<sup>2</sup> include the four WHO Collaborating Centres for Reference and Research on Influenza, the WHO Collaborating Centre for Studies on the Ecology of Influenza in Animals and other laboratories with internationally recognized expertise in avian influenza.

The addition of new laboratories to the Network is based on an overall assessment of global public health needs, the ability of candidate laboratories to fulfill the Terms of Reference listed below, and, in particular, the added value that inclusion of candidate laboratories would bring to the Network.

Membership in the WHO H5 Reference Laboratory Network is ad hoc and will be reviewed periodically to ensure the Network's optimum effectiveness in meeting emerging public health risks.

**A. Provide**

1. accurate laboratory diagnosis of influenza infection in humans to assist in rapid outbreak response, especially those suspected of being associated with avian influenza A (H5) viruses;
2. expertise and laboratory support in response to A (H5) avian influenza outbreaks;
3. immediately report to WHO and the originating laboratory the results of laboratory diagnostic tests, especially the detection of A (H5) viruses and any other important findings;
4. feedback to WHO on the use of WHO recommended diagnostic protocols and primers to assist WHO in the update of laboratory diagnostic recommendations.

**B. Actively seek approval from the Ministry of Health of the originating laboratory for sharing the A (H5) clinical specimens and/or viruses with any other entity.**

OR

## IGM/4 APPENDIX 6

## APPENDIX 6

**Terms of Reference for WHO H5 Reference Laboratories**

This document has not been agreed by all IDWG participants.

The title, **WHO H5 Reference Laboratory**, designates, through a defined WHO process, on an ad hoc basis,<sup>1</sup> a national influenza laboratory which:

- Meets the WHO Criteria for accepting positive results of H5 infection in humans,<sup>2</sup> which ensures that the laboratory conducts reliable diagnosis of influenza A(H5) infection in humans, and that the positive results of A(H5) detection are accepted by WHO as confirmatory without external verification in a WHO Collaborating Centre (CC) for Reference and Research on Influenza (RRI); and
- Fulfils the Terms of Reference (TOR) for WHO H5 Reference Laboratories.

**Terms of Reference for WHO H5 Reference Laboratories****A. Core functions**

1. Provide accurate laboratory diagnosis of influenza infection in humans to assist in rapid outbreak response, especially those suspected of being associated with avian influenza A(H5) viruses; and
2. Provide A(H5) laboratory diagnostic services to its own country and beyond when needed.

**B. Technical performance**

1. Provide advice to clinics, hospitals and other specimen collection sites on safe and appropriate clinical specimen collection, storage, packaging and shipping;
2. Conduct accurate laboratory diagnosis of specimens received, typing and subtyping influenza viruses, especially the confirmation of A(H5) human infections; and
3. Provide expertise and laboratory support in response to A(H5) avian influenza outbreaks.

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<sup>1</sup> WHO maintains an up-to-date list of WHO H5 Reference Laboratories.

<sup>2</sup> Web-link to Criteria.

**C. Communication and exchange**

1. Report immediately to WHO and the originating laboratory the results of laboratory diagnostic tests, especially the detection of A(H5) viruses and any other important findings;
2. Actively seek approval from the Ministry of Health of the originating laboratory for sharing the A(H5) clinical specimens and/or viruses with WHO for further characterization in the WHO CCRRI; and
3. Provide feedback to WHO on the use of WHO recommended diagnostic protocols and primers to assist WHO in the update of laboratory diagnostic recommendations.

## IGM/4 APPENDIX 5

## APPENDIX 5

**Terms of Reference for National Influenza Centres**

This document has not been agreed by all IDWG participants.

**The title, National Influenza Centre (NIC), recognizes, through a defined WHO process, national influenza laboratories which:**

- Function as members of the WHO Global Influenza Surveillance Network (GISN)<sup>1</sup> in coordination with the WHO Global Influenza Programme (GIP);<sup>2</sup>
- Are formally designated by the country Ministry of Health and officially recognized by WHO; and
- Fulfil the Terms of Reference (TOR) for NICs.

**The TOR constitutes minimum requirements for a NIC being a member of the WHO GISN; an individual NIC may have additional obligations under the authority of its Ministry of Health.**

**Terms of Reference for National Influenza Centres as members of the WHO Global Influenza Surveillance Network****D. Core functions**

1. Serve as the key reference point between WHO and the country of origin on all issues related to influenza virological surveillance, laboratory diagnosis of influenza infection in humans and sharing of influenza clinical specimens and/or viruses with WHO;
2. Participate actively in WHO global influenza surveillance activities and maintain active communication and collaboration with other members of the WHO GISN, including WHO Collaborating Centres and other National Influenza Centres.

**E. Technical performance**

4. Collect appropriate clinical specimens from patients year-round and especially during influenza seasons and outbreaks;
5. Act as a collection point for influenza viruses where available from laboratories within the country;

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<sup>1</sup> <http://www.who.int/csr/disease/influenza/surveillance/en/index.html>.

<sup>2</sup> <http://www.who.int/csr/disease/influenza/en/>.



6. Review, expand and maintain sufficient coverage of influenza virological surveillance in the country;
7. Isolate in cell culture and/or embryonated eggs seasonal/influenza viruses under appropriate laboratory containment;
8. Conduct preliminary characterization of influenza virus type and subtype;
9. Store original influenza positive clinical specimens for at least 18 months at -70 °C;
10. Provide technical advice and support to other influenza laboratories in the country, on specimen collection and shipment logistics, laboratory diagnosis, laboratory biosafety and other operational procedures related to influenza virological surveillance;
11. Select seasonal/influenza viruses, especially those of geographical and possibly antigenic and genetic representativeness, for further characterization in WHO Collaborating Centers for Reference and Research on Influenza (CC RRI).

#### **F. Communication and exchange**

4. Alert WHO GIP immediately on the emergence of unusual outbreaks of influenza or influenza-like illness, the detection/isolation from humans of A(H5) or other influenza viruses with a potential to cause a pandemic, or of influenza viruses that cannot be readily identified with WHO diagnostic reagents provided through the WHO GISN;
5. Report regularly to WHO FluNet,<sup>1</sup> weekly during influenza seasons, the extent of influenza activity in the country, virological surveillance data and other relevant information of public health importance;
6. Provide to national authorities and the general public, information on influenza viruses circulating in the country;
7. At least twice every year make shipments to WHO CCRRI of a selection of representative seasonal influenza virus isolates and all influenza virus isolates which gave low titres in HI tests using WHO diagnostic reagents provided through the WHO GISN:
  - (a) For northern hemisphere countries, once in November and once in early January;
  - (b) For southern hemisphere countries, once in June and once in mid-August;
  - (c) For tropical countries, depending on influenza activity, make shipments of recent virus isolates timely to be included in the next WHO vaccine composition recommendation, either for northern hemisphere or southern hemisphere; and
  - (d) For all countries, make shipments of any unusual viruses within one week after detection.

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<sup>1</sup> <http://gamapserver.who.int/GlobalAtlas/home.asp>.

8. Initiate shipments to WHO CCRRI of clinical specimens and/or viruses from all suspected/confirmed infections of A(H5) and other influenza in humans, within two weeks after detection or isolation of the virus with potential to cause a pandemic; include in the shipment information of time, geographical, epidemiological and clinical factors associated with the suspected/confirmed human infections, for the purpose of ongoing and rapid WHO global pandemic risk assessment and response, as well as and pandemic preparedness.

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