

Affiliation Agreement

between

The World Health Organization (WHO)

and

The FOUNDATION in Support of the World Health Organization (WHO-F)

This Affiliation Agreement is made, this 27th day May of 2020, between the World Health Organization (WHO), represented by its Director-General, Dr Tedros Adhanom Ghebreyesus, and the FOUNDATION in support of the WORLD HEALTH ORGANIZATION (WHO-F or the Foundation), represented by its founder and Chair of its Board of Directors, Dr Thomas Zeltner (together the "**Parties**").

WHEREAS,

- A. WHO**, a specialized agency of the United Nations, having its headquarters in Geneva, Switzerland, is the directing and coordinating authority on international health, and provides leadership on global environmental health matters, shapes the health research agenda, sets health norms and standards, articulates evidence-based policy options, provides technical support to countries, and monitors and assesses health trends;
- B. WHO-F** is a non-profit charitable foundation incorporated under the laws of Switzerland whose purposes are to support the global health ecosystem and promote health as a global public good by raising and providing financial resources for:
 - i. addressing critical global health needs, thus contributing towards the health-related Sustainable Development Goals and in particular goal 3 of "Good health and well-being" as well as future globally recognized health goals;
 - ii. encouraging innovation, effectiveness and rapid response to acute health needs globally and for neglected issues of a public health concern; and
 - iii. strengthening WHO's General Programme of Work, priorities or otherwise supporting WHO's mandate.



ARTICLE 3: USE OF THE WHO NAME

WHO hereby grants WHO-F a non-exclusive, revocable license to use the WHO name and acronym in the corporate name of the WHO-F, subject to the terms and conditions of this Affiliation Agreement and as otherwise may be required by WHO.

SECTION II- GOVERNANCE

ARTICLE 4: EXECUTIVE RELATIONS

- 4.1 The WHO Director-General and the Chair of the Board of Directors of WHO-F ("**Board**") and/or the Foundation Chief Executive Officer ("**CEO**") shall meet, on a quarterly basis, to discuss ways in which WHO-F may support WHO and other matters of their preference. The WHO Director-General shall be given the opportunity to make an annual address to the Board. Likewise, the Chair of the Board and/or WHO Foundation CEO may be invited to address the WHO Executive Board at least on annual basis in accordance with WHO policies and procedures.
- 4.2 Subject to its policies, procedures and practices, WHO shall provide two public badges to WHO-F representatives to attend WHO governing bodies meetings as appropriate.
- 4.3 The Chair of the WHO-F Board shall formally notify the WHO Director-General of any actions or decisions taken by the Board which impact the relationship between the Parties.
- 4.4 The WHO Director-General shall formally notify the Chair of the WHO-F of any actions or decisions taken by WHO which impact the relationship between the Parties.

ARTICLE 5: WHO RELATIONS WITH THE BOARD

- 5.1 WHO shall have a standing observer seat on the Board.
- 5.2 The WHO Director-General shall nominate a WHO Representative to the Board to serve as an observer.
- 5.3 Notwithstanding WHO's representation on the Board, the Chair of the WHO-F Board shall not be relieved of the obligation to formally notify the WHO Director-General of such Board actions which impact the relationship between the Parties.



- C. The rationale for the creation of the WHO-Foundation is to create a mechanism that complements WHO's resource mobilization strategy by engaging in areas where WHO is not traditionally structured to engage, including with the private sector, High Net Worth Individuals (HNWI) and launching fundraising campaigns aimed at the general public, in order to strengthen the financial base of WHO and support the General Programme of Work (GPW).

THEREFORE,

WHO and WHO-F, through the present Affiliation Agreement, and in consideration of the mutual covenants contained herein, agree as follows:

SECTION I- INTRODUCTION

ARTICLE 1: PURPOSE

The purpose of this Affiliation Agreement is to establish the terms and conditions pursuant to which the Parties will conduct their relationship in furtherance of the objective hereunder.

ARTICLE 2: OBJECTIVE

- 2.1 The objective of this Affiliation Agreement is to define how the WHO-F will financially support and advocate for WHO, its mission and the General Programme of Work, thereby contributing to, among other things: (i) the strengthening of health systems; (ii) the rapid response to acute health needs; and (iii) the improvement of global health indicators.
- 2.2 This objective shall be achieved through the following WHO-F activities, amongst others, in accordance with this Affiliation Agreement:
- a. fundraise for WHO, in particular from stakeholders that are not part of WHO's portfolio;
 - b. fund third-party high impact programs and initiatives;
 - c. advocate and develop support for WHO thereby raising awareness for critical health issues;
 - d. facilitate and advocate for social participation and educational programs; and
 - e. encourage innovation, effectiveness, collaboration and rapid response for health emergencies.





- 5.4 The WHO Representative on the Board may be accompanied by subject matter advisers.
- 5.5 The WHO-F Board and other Committee meetings necessitating WHO input, shall be scheduled taking into consideration schedule of meetings of WHO's governing bodies and the availability of the WHO Representative.
- 5.6 WHO, through its Representative on the Board, shall be permitted to request special meetings of the Board.
- 5.7 WHO-F shall consult with WHO and take into account its views with regard to any WHO-F governance changes including governance composition or any material decisions that impact its business model.
- 5.8 Approved minutes of Board meetings shall be forwarded to the designated Institutional Focal Points pursuant to Article 9 below, prior to the opening session of the next Board meeting.

ARTICLE 6: SELECTION OF WHO-F BOARD MEMBERS

- 6.1 WHO-F Board Members shall have professional profiles which are suited to advancing the objectives of the WHO-F and this Affiliation Agreement.
- 6.2 The commitments and loyalty of Board Members to WHO shall be an important criterion for their selection, continuation in office or renewal.
- 6.3 The Chair of the Board of the WHO-F shall provide the WHO Director-General with the names and relevant background information of prospective Board Member nominees for purposes of receiving WHO's input prior to extending an invitation to prospective nominees. The WHO Director-General may also propose to the Chair of the Board candidates to be considered as prospective Board Member nominees. The Chair of the Board shall give due deference to the opinion of the WHO Director-General; however, the final decision on the nomination and appointment of Board members remains the responsibility of the WHO-F Board.
- 6.4 All WHO-F Board Members shall be provided information on WHO's history and mission as well as an orientation by WHO on its General Programme of Work, priorities, its financing, key policies such as the WHO Framework of Engagement with Non-State Actors ("FENSA"), methods of work and the nature of the relationship that exists between WHO and WHO-F including the terms of this Affiliation Agreement.
- 6.5 Due diligence on prospective WHO-F Board Members will be shared with WHO.



- 10.2 Working through their respective Institutional Focal Points, the Parties shall establish a WHO-WHO-F Planning and Coordinating Committee (the “Committee”) which shall meet on a quarterly basis.
- 10.3 The Committee shall develop a biennial WHO-WHO-F Joint Strategic Plan (“JSP”) and related Key Performance Indicators (“KPIs”) which will identify general areas of work or thematic areas within WHO’s General Programme of Work where WHO-F can provide support and mobilize resources for WHO. The JSP shall aim to ensure that the WHO-F is one of the best donors to WHO in term of alignment, flexibility and predictability of funding and serve as possible model for other WHO donors.
- 10.4 The JSP shall also include all initiatives, projects and activities proposed and/or developed by WHO to be promoted by the WHO-F. The JSP may be adjusted or modified from time to time by mutual agreement of the Parties, in order to assure optimal performance taking into account WHO priorities at any given time.
- 10.5 The JSP proposed by the Committee, and any adjustments thereto, shall be submitted for approval to the WHO Director-General prior to its presentation to the Board. The JSP should be finalized at least one month prior to the by the WHO-F Board meeting during which it will be considered for endorsement.
- 10.6 Performance of both Parties as measured against the approved JSP will be monitored annually by the Committee and reported upon to the WHO Director-General and the Board.

SECTION IV- FUNDRAISING: WHO AND THIRD PARTIES

ARTICLE 11: FUNDRAISING ACTIVITIES IN SUPPORT OF THE JSP

- 11.1 All WHO-F fundraising strategies and activities shall seek to maximize net financial contributions to supplement funding for WHO, particularly in those areas identified in the JSP taking into consideration sustainability needs for the operations of WHO-F.
- 11.2 WHO-F shall seek donations from high-net worth individuals, the private sector, the general public, through innovative financing mechanisms and other sources that are not in conflict with, or which are not duplicative of, WHO’s efforts.



ARTICLE 7: SELECTION OF THE WHO-F CEO

The Chair of the Board shall formally consult with the WHO Director-General regarding the appointment and contract of the WHO-F CEO. This process shall offer the opportunity for WHO to have input in the selection process and thereby provide an opinion on short-listed candidates. The Chair of the Board shall give due deference to the opinion of the WHO Director-General; however, the final decision on the appointment of the WHO-F CEO remains the responsibility of the WHO-F Board.

ARTICLE 8: WHO-F ADVISORY BODIES

- 8.1 The Chair of the Board and/or the CEO shall consult and seek the views of the WHO Director-General when developing terms of reference for all WHO-F advisory bodies including the Founders Circle and Investment Committee.
- 8.2 At all times at least one-third of the members of WHO-F Global Advisory Group shall be individuals designated by WHO.
- 8.3 All members of WHO-F advisory bodies will be subject to conflict of interest assessment by the WHO-F and the results of such assessment may be shared with WHO upon its request.

SECTION III- JOINT PLANNING AND COORDINATION

ARTICLE 9: INSTITUTIONAL FOCAL POINTS

- 9.1 The Parties shall each name an individual who shall serve as the Institutional Focal Point under this Affiliation Agreement at the time of its signature. Each Party shall inform the other of any changes in their designation as soon as practicable, but no less than 10 business days after a change has become effective.
- 9.2 Except for those communications and notifications referenced in Section II above, all communications between the Parties shall be submitted through the respective Institutional Focal Points.

ARTICLE 10: WHO-WHO-F PLANNING AND COORDINATING COMMITTEE

- 10.1 WHO-F consideration of technical matters in the context of its activities shall be based solely and exclusively on WHO's technical norms, standards and policies.



- 11.3 For the avoidance of doubt, WHO-F shall not seek or accept funding from governments or governmental entities or philanthropic organizations that have or can provide funds directly to WHO, except as exceptionally agreed with WHO.
- 11.4 WHO-F shall at all times ensure that all funding that it receives (a) is aligned with the JSP, (b) does not pose a conflict of interest for WHO, and (c) is in accordance with the principles of FENSA or any subsequent relevant policy. For the avoidance of doubt, under no circumstances shall the WHO-F either receive or disburse funds or engage with any entities that form part of or are controlled by the Tobacco or Arms industries.
- 11.5 The WHO-F shall develop its own due diligence and operational procedures underpinned by the FENSA principles. WHO-F will consult WHO on the development and implementation of such policies and duly take into consideration any comments received.

ARTICLE 12: FUNDING TO WHO AREAS OF WORK OR INITIATIVES

- 12.1 The WHO-F shall ensure that between 70% and 80% of all funds raised over any given two-year period are provided to WHO in direct support of its General Programme of Work, WHO priorities and WHO technical norms and standards and that no unnecessary restrictions or burdensome reporting obligations would be placed on WHO's use of the funds.
- 12.2 WHO-F shall endeavor to create an endowment fund with terms of reference acceptable to WHO. Disbursements from the endowment fund shall be provided to WHO in a totally unrestricted manner.
- 12.3 Funding provided by WHO-F to the WHO shall be subject to specific agreement (using a pre-agreed template) executed between the Parties governing the applicable terms and conditions, including the World Health Assembly mandated project support costs.
- 12.4 Initiatives or projects implemented by WHO using WHO-F funding shall be under the exclusive technical control of WHO and shall be evaluated exclusively based on WHO's monitoring and evaluation framework. The WHO-F shall rely on this framework to communicate results to its donors.

ARTICLE 13: FUNDING TO THIRD PARTY ENTITIES

- 13.1 WHO-F, in close consultation and coordination with WHO through the Committee, may also identify third party implementing entities and provide them with funding support for selected projects.



- 13.2 A critical criteria for the approval of such WHO-F funding to third party entities shall be the requirement that such projects advance and be in alignment with the WHO General Programme of Work, WHO priorities and WHO technical norms and standards.
- 13.2 The WHO-F shall keep a roster of all projects or initiatives implemented by third party entities and ensure that WHO is informed of progress or other issues relating to the implementation of such projects.

ARTICLE 14: WHO-F COMMITMENTS

- 14.1 WHO-F shall, at all times, seek to complement and advance WHO's General Programme of Work and WHO priorities underpinned by WHO's technical norms, standards and policies, thereby ensuring compatibility, harmonization and avoidance of duplication and competition with WHO in all its activities.
- 14.2 Underscoring the importance of Articles 11.4 and 11.5 above, WHO-F shall avoid undertaking, sponsoring or supporting projects, activities or initiatives whose execution would result in conflicts of interests (including a violation of the FENSA principles) for WHO that cannot be mitigated in coordination with WHO.
- 14.3 To the extent that a WHO-F act or omission has caused harm or reputational damage to WHO, its name or reputation, then the WHO-F shall take all measures necessary to safeguard the name and reputation of WHO and shall take all necessary actions, as requested by WHO, to defend the name and reputation of WHO.
- 14.4 WHO-F shall also:
- a) Furnish WHO with all information as WHO may reasonably request with respect to WHO-F operations, specific projects and initiatives.
 - b) Provide WHO a valuable knowledge source with respect to fundraising and advocacy.
 - c) Furnish WHO with such information as WHO may reasonably request with respect to any subject which would give rise to rights or privileges for WHO under this Agreement.



SECTION V- MISCELLANEOUS

ARTICLE 15: FINANCIAL REPORTS AND AUDITS

- 15.1 WHO-F shall provide WHO its annual audited financial statements for all its activities as soon as they are available. These statements shall be disaggregated by revenue streams based on templates jointly agreed with WHO
- 15.2 WHO shall have the right to conduct an annual financial / programmatic audit of the WHO-F using external auditors that it has selected. The terms of reference for such external audits and evaluations shall be determined by WHO and the costs of such audit borne by WHO.

ARTICLE 16: CONSULTATION

The Parties shall consult with each other whenever either proposes to modify materially any decision or agreement concerning this Affiliation Agreement. This Affiliation Agreement shall not be altered or otherwise amended except pursuant to an instrument in writing signed by each of the Parties hereto, except that any Party to this Agreement may waive any obligation owed to it by another Party under this Agreement.

ARTICLE 17: PERSONNEL

Any personnel employed by the Parties shall remain subject to the rules and regulations of their respective institutions in all matters of employment, medical and life insurance and employee rights benefits. Nothing contained in this Affiliation Agreement shall be deemed to constitute or create any employer/employee relationship between the Parties.

ARTICLE 18: COMMUNICATION, INFORMATION AND PUBLICATIONS

- 18.1 The communication strategy and broad themes of WHO-F public campaigns or communications will be developed in consultation with WHO and their launch/issuance coordinated with WHO.
- 18.2 A WHO-F link will be featured on WHO headquarters', Regional and Country Offices' websites.
- 18.3 Publications resulting from WHO-F funding will be acknowledged within the publication in accordance with WHO's Publications Policy.



- 18.4 Standard business publications (strategic plans/annual reports), website and other social media will acknowledge WHO-F's role in resource mobilization, as appropriate.
- 18.5 To the extent that, WHO-F and WHO engage in co-branded activities, such co-branding will be in accordance with WHO's policies, rules and procedures.

ARTICLE 19: USE OF LOGOS

WHO-F shall not use the emblem, logo or official seal of WHO for any purpose other than as expressly authorized in writing by WHO. Conversely, WHO shall not use the emblem, logo or official seal of WHO-F other than as expressly authorized in writing by WHO-F.

ARTICLE 21: FORCE MAJEURE

Neither Party shall be responsible for obligations arising out of this Affiliation Agreement with which it is unable to comply in whole or in part, because of reasons of force majeure, including wars, natural disasters, civil or labor disturbances, or any other cause beyond the control of the Parties.

ARTICLE 22: LIABILITY

WHO shall not be responsible for the manner in which the WHO-F carries out its part of the activities under this Affiliation Agreement. Thus, WHO shall not be responsible for any loss, accident, damage or injury suffered or caused by WHO-F, or the employees, officers, agents, or sub-contractors of the WHO-F, in connection with, or as a result of, the activities conducted by it. Furthermore, WHO-F shall indemnify and hold WHO harmless, from and against the full amount of any and all claims and liabilities, including legal fees and costs, which are or may be made, filed or assessed against WHO at any time and based on, or arising out of, the acts or omissions of the WHO-F, or its employees, officers, agents, or sub-contractors.

ARTICLE 23: PRIVILEGES AND IMMUNITIES

Nothing in or related to this Agreement shall be deemed to constitute any waiver, express or implied, of the immunities, privileges exemptions and facilities enjoyed by WHO under international law, international conventions or agreements, or the laws of its Member States.

ARTICLE 24: CONFLICT RESOLUTION

In the event of any dispute arising out of or in connection with the present Affiliation Agreement, unless amicably settled, the Parties shall first refer the dispute to proceedings under the ICC Mediation Rules. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request



for Mediation or within such other period as the Parties may agree in writing, such dispute shall thereafter be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators. WHO-F and WHO shall each appoint one arbitrator, and the two so appointed shall jointly appoint a third who shall preside the arbitral tribunal. The arbitration shall be conducted in English. The seat of arbitration shall be Geneva, Switzerland. The arbitral award shall be final, binding and not appealable.

ARTICLE 25: DURATION

This Affiliation Agreement shall enter into force on the date of its signature and remain in effect unless terminated by either Party as provided for in Article 27.

ARTICLE 26: ENTIRE AGREEMENT AND AMENDMENT

This Affiliation Agreement constitutes the entire agreement among the Parties hereto and supersedes any prior understandings, representations or agreements by or among the Parties. The terms of this Affiliation Agreement may be amended or modified upon the mutual written consent of both Parties.

ARTICLE 27: TERMINATION AND REMEDIES

- 27.1 Either Party may terminate this Affiliation Agreement without cause at any time upon giving three months written notice of termination to the other Party. It is specifically understood that in the case of termination, the Parties will complete projects underway at the time of termination or make acceptable alternative arrangements to ensure settlement of all outstanding obligations.
- 27.2 In the event that WHO-F shall carry on, sponsor or support a project, program, policy or course of conduct which, in WHO's sole discretionary judgment, runs counter to WHO's General Programme of Work, WHO priorities or WHO norms and standards, or which unfavorably reflects upon WHO; become insolvent; incur excessive costs for fund raising or engaging in acts of fraud, corruption or mismanagement, or violate this Affiliation Agreement, WHO shall notify the WHO-F Board of its objections to such action or proposed action. WHO-F shall, within fifteen (15) days after receipt of WHO's notice, set forth its justification for, or the correction of, the action to which WHO objected. WHO thereupon may, in its sole discretion, waive its objections, accept WHO-F's corrective action or terminate this Affiliation Agreement with immediate effect.
- 27.3 Upon termination of this Affiliation Agreement for any reason or upon formal request by WHO, WHO-F shall within a period of three months from the date of the termination notice or formal request take all measures, including those that are of a legal and statutory nature, to ensure cessation of the use "World Health Organization" or "WHO" in the WHO-F's corporate name. At the end





of the aforementioned three months period, WHO-F shall no longer have the right to refer to "World Health Organization" or "WHO" in its corporate title, documents or any other marketing materials in any form or media. In adopting a new name, WHO-F agrees that it shall not use any name, logo or initials using or resembling "World Health Organization or WHO" or any other name or initials which may give rise to confusion or association with "World Health Organization" or "WHO", unless otherwise expressly agreed to by WHO.

- 27.4 Upon termination of this Affiliation Agreement and unless otherwise expressly agreed to by WHO, 70% of all funds held by the WHO-F (less any sums needed to settle any outstanding third party obligations entered into prior to the effective date of termination) shall be transferred to WHO within a period of twelve months from the effective date of termination along with a certified external auditors report confirming that the amount transferred reflects the aforementioned percentage.
- 27.5 It is understood and agreed that the breach of this Affiliation Agreement by WHO-F or failure to carry out the terms hereof shall cause WHO irreparable damage. Accordingly, in the event of such breach, WHO shall be entitled, should it so desire, to injunctive relief enjoining and restraining the violation of this Affiliation Agreement by WHO-F; and WHO-F does hereby consent that in the event of such a breach, equitable relief by injunction shall be awarded in favor of WHO, in addition to any other remedies to which WHO may be entitled as a result of such breach. In addition, WHO shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, in connection with such action. In no case shall a waiver by WHO of any right to take advantage of any breach or condition hereunder or of a remedy available to it be deemed a waiver of any other and further breaches or failure to perform on the part of WHO-F or any other remedy available to WHO.
- 27.6 The waiver by any Party hereto of a breach of any provision of this Affiliation Agreement shall not operate or be construed as a waiver of any subsequent breach.

ARTICLE 28: NOTICE

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, or (b) by certified mail. Any notice shall be effective only upon delivery.

ARTICLE 29: INDEPENDENT ENTITIES

- 29.1 Although the Parties will be working together to advance mutual goals and objectives under this Affiliation Agreement, the Parties shall at all times remain independent entities, and this Affiliation Agreement will not create or be deemed to create, constitute, recognize or imply any joint venture,

partnership, joint employer, or principal/agent relationship. Each Party shall be responsible for its own debts and obligations. Neither Party shall be responsible for the acts or omissions of the other Party.

ARTICLE 30: INTELLECTUAL PROPERTY

Unless otherwise agreed by WHO, WHO shall own all right, title and interest including, without limitation, all patent, trademark, copyright, trade secret and any other intellectual property rights (collectively, "**Intellectual Property Rights**"), in and to all work, inventions, discoveries, concepts, ideas, know-how, improvements, materials and information developed, produced, or created under, or in connection with this Agreement, including any initiative, project or activity approved under the JSP, or otherwise created by WHO (collectively, "**WHO Intellectual Property**"). WHO-F, and its employees, shall not acquire any rights in and to the WHO Intellectual Property, and WHO-F, in consultation with WHO, shall execute or cause to be executed such assignments or other documentation as may be necessary to secure, register and confirm WHO's Intellectual Property Rights and to assist WHO in applying for, obtaining and enforcing copyright, trademark or patent registration or other rights in Switzerland and any other country.

ARTICLE 31: CONFIDENTIAL INFORMATION

- 31.1 In the context of this Affiliation Agreement, the Parties are in a confidential relationship and may receive or learn the other Party's Confidential Information. Each Party hereto agrees that it shall: (i) not use the other's Confidential Information except as is reasonably necessary to exercise its rights and fulfill its obligations under this Affiliation Agreement; (ii) not disclose the other's Confidential Information to any third party without the other Party's prior consent, except that a Party may disclose the other's Confidential Information as reasonably necessary for that Party to exercise its rights or fulfill its obligations under this Affiliation Agreement; and (iii) safeguard the other's Confidential Information against unauthorized use or disclosure with at least the same level of care as it uses to safeguard its own Confidential Information, and in no event with less than reasonable care.
- 31.2 "**Confidential Information**" means third party information that is subject to confidentiality obligations or restrictions or is otherwise held by either party in confidence, and all other information having actual or potential value (whether in business, non-profit, or other use or operations) by reason of not being generally known and that is the subject of reasonable efforts under the circumstances to maintain its secrecy, including but not limited to financial and marketing information, strategic plans, technical and business information relating to products or programs, research and development material, engineering processes, and customer lists. Documents and things containing confidential information are Confidential Information. Confidential Information shall not include: (i) information already known

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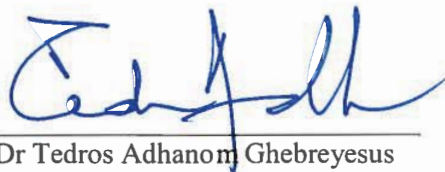
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to the receiving party prior to disclosure of it by the disclosing party; (ii) information that is, or that becomes, generally known to others (through no wrongful act of the receiving party); (iii) information disclosed to the receiving party by a third party lawfully holding same and not subject to an obligation of confidentiality; and (iv) information that is independently developed by the receiving party, without any reference to the disclosing party's Confidential Information, as shown by contemporaneous documentation.

31.3 In the interest of public transparency either party may publicly disclose this Affiliation Agreement.

IN WITNESS WHEREOF duly authorized representatives of the Parties sign this Affiliation Agreement in two (2) originals of equal content and validity on the dates and in the places indicated below:

For the **World Health Organization**



Dr Tedros Adhanom Ghebreyesus
Director-General

Date: 27 MAY 2020

For the **Foundation in Support of the
World Health Organization**



Dr Thomas Zeltner
Chair, Board of Directors

Date: 27/5/2020

