

JANSSEN PHARMACEUTICA NV
30 Turnhoutseweg, B-2340 Beerse
BELGIUM
E-mail address: fcossalt@its.jnj.com

April __, 2022

The Government of the Republic of South Africa
acting through its National Department of Health
Civitas Building, 222 Thabo Sehume Street, CBD, Pretoria, 0001
E-mail address: dg@health.gov.za
For the attention of: Director General of National Department of Health

The African Vaccine Acquisition Trust
7th Floor, Happy World House
37 Sir William Newton Street
Port-Louis 11328
E-mail address: AVATT@afreximbank.com
For the attention of: Mr Strive Masiyiwa and Mr Malcolm Moller

African Export-Import Bank
72(B) El Maahad El Eshteraky Street
Heliopolis, Cariro 11341
Egypt
E-mail address: AVATT@afreximbank.com
For the attention of: Director of Banking Operations

RE: Republic of South Africa Donation of Janssen SARS-CoV-2 Vaccine

Dear Madam or Sir:

Reference is made to the Advance Purchase Agreement for SARS-CoV-2/COVID-19 Vaccine, dated February 26, 2021, and the Additional Doses Advance Purchase Agreement for SARS-CoV-2/COVID-19 Vaccine, dated April 16, 2021, by and between Janssen Pharmaceutica NV ("**Janssen**") and The Government of the Republic of South Africa ("**RSA**") (such agreements, collectively, the "**RSA APA**").

Reference is also made to the Advance Purchase Agreement for SARS-CoV-2/COVID-19 Vaccine, dated March 28, 2021, as amended on June 9, 2021, by and between Janssen, The African Vaccine Acquisition Trust ("**AVAT**") and African Export-Import Bank ("**Afreximbank**") (such agreement, as so amended, the "**Africa Union APA**").

Reference is also made to the donation request letter dated March 17, 2022, by the Director General Health, Republic of South Africa to Johnson & Johnson South Africa (the "**Donation Letter**").

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This letter agreement (the "**Letter Agreement**") has been prepared in response to the Donation Letter and after discussions between the RSA and AVAT for delivery to Kenya ("**Recipient Country**") of one hundred thousand eight hundred (100,800) doses of the COVID Vaccine previously delivered by Janssen to RSA pursuant to the RSA APA (the "**Donated Doses**"). In exchange for Janssen's consent to and facilitation of the donation of the Donated Doses to AVAT, Janssen, RSA, AVAT, Afreximbank and each Recipient Country (the "**Parties**" and each a "**Party**") desire to subject the Donated Doses to the provisions of this Letter Agreement.

The Parties hereby agree and confirm as follows:

1. Except as expressly provided, capitalized terms used herein but not otherwise defined in this Letter Agreement shall have the meaning given to such terms in the Africa Union APA.
2. RSA hereby irrevocably donates the Donated Doses to AVAT on the terms set out in this Letter Agreement. AVAT hereby agrees that it will Allocate 100 800 Donated Doses to Kenya, provided that prior to deployment of any Donated Doses to a Recipient Country, the Recipient Country accedes to this Letter Agreement in respect of its receipt and use of the Donated Doses by executing and delivering a Deed of Adherence substantially in the form set forth in Schedule 1 to this Letter Agreement (each a "**Donation Deed of Adherence**"). Subject to the satisfaction of the conditions set out in this Letter Agreement, Janssen hereby consents to the donation of the Donated Doses to Kenya subject to the terms and conditions of this Letter Agreement.
3. The Donated Doses shall be delivered by RSA to the Recipient Country at Biovac 106, 16th Rd, Midrand, Gauteng, South Africa (the "**Donated Doses Delivery Address**") and the Recipient Country shall accept the delivery of its allocation of the Donated Doses, FCA (Incoterms 2020) at the Donated Doses Delivery Address. The intended date for delivery of the Donated Doses shall be agreed between AVAT (on behalf of the Recipient Country) and RSA in advance and notified to the Recipient Country and Janssen before delivery takes place. Each Recipient Country shall be responsible for all logistics in relation to the shipment of Donated Doses to that Recipient Country (including adherence to cold chain requirements) as well as the costs thereof, and Janssen shall not have any responsibility for, or bear any liability in respect of, such delivery. RSA warrants to AVAT and the Recipient Country that from the point at which the Donated Doses were delivered to RSA by Janssen until the delivery of the Donated Doses by RSA to the Donated Doses Delivery Address, RSA has not breached any of its obligations with respect to the Donated Doses under the RSA APA. Title in the allocation of the Donated Doses shall transfer from RSA to the Recipient Country on the date on which delivery of such allocation at the Donated Doses Delivery Address takes place (such date being in respect of each allocation of the Donated Doses, a "**Donation Effective Date**"). For clarity, RSA shall not deliver any Donated Doses to a Recipient Country until it has duly executed a Deed of Adherence and a Donation Deed of Adherence, and a copy of such deeds have been provided to Janssen and Janssen shall confirm the same to RSA if such information is requested by RSA.
4. Janssen and RSA agree that the Donation Effective Date the allocation of the Donated Doses shall cease to be subject to the RSA APA.

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5. Janssen, AVAT, Afreximbank and each Recipient Country agree that on the Donation Effective Date, the Africa Union APA shall apply to the allocation of the Donated Doses that have been delivered to the Recipient Country as though such Donated Doses were portions of the Vaccine Volume, mutatis mutandis (it being understood that Janssen shall be deemed to have Delivered the Donated Doses and has no further obligations to make Available or Deliver the Donated Doses, but that the obligations on AVAT and the Recipient Country with respect to AU Vaccine Doses apply to the Donated Doses), except that references to the Deed of Adherence shall also include the Donation Deed of Adherence and the following provisions shall not apply to the Donated Doses: clause 2 (UNICEF); clause 4 (Purchase Commitment); clause 5 (Price); clause 9.1 (Binding Order); clause 9.2 (Reallocation); clause 10.1 (Conditionality of Janssen's Delivery Obligation); clause 10.2 (Availability Schedule); clause 10.3 (Delivery); clause 10.4 (Form of Delivery); clause 12.1 (Down Payment); clause 12.2 (Credit); clause 12.3 (Refundability); clause 12.4 (Price Balance); clause 12.5 (Payment Default); clause 12.6 (Currency); clause 12.7 (Invoice); clause 12.8 (Taxes); clause 22 (Guarantee and Indemnity); clause 24.1 (Method of Service) and any other provisions which by their nature would not be applicable to the Donated Doses because Janssen has Delivered the Donated Doses, and RSA has paid the price for the Donated Doses to, and received the Donated Doses from, Janssen.
6. Without limiting the generality of paragraph 5 above, AVAT, Afreximbank and each Recipient Country expressly agree that (a) as contemplated by clause 6.1 of the Africa Union APA (and other relevant provisions of the Africa Union APA), the No Fault Compensation System shall apply to the Donated Doses and (b) the indemnification provisions set forth in Article 19 (Indemnification) of the Africa Union APA shall apply to the Donated Doses.
7. Janssen, AVAT, Afreximbank and from the date of their accession, the Recipient Country, acknowledge and agree that notwithstanding any provision of the Africa Union APA, from the relevant Donation Effective Date:
 - a. the Donated Doses shall not be deemed to be in breach of the Product Warranty set forth in clause 10.7 of the Africa Union APA unless such Donated Doses did not satisfy the Product Warranty (as defined in the RSA APA) at the time of Delivery (pursuant to and as defined in the RSA APA) by Janssen to RSA of such Donated Doses;
 - b. no Donated Dose shall be considered Nonconforming COVID Vaccine for the purposes of clauses 10.6 and 12.3 and Exhibit D of the Africa Union APA because it does not meet the Specification as defined in the Africa Union APA if such Donated Dose met the Specifications (as defined in the RSA APA) at the time of Delivery (pursuant to and as defined in the RSA APA) by Janssen to RSA of such Donated Doses; and
 - c. for clarity, for the purposes of Exhibit D of the Africa Union APA, any reference to "Delivery" (including the date of such "Delivery") shall be deemed to be a reference to delivery by Janssen to RSA pursuant to the RSA APA.
8. AVAT, Afreximbank and each Recipient Country understands and agrees that:

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- a. the Donated Doses were packaged and labeled for deployment in the Republic of South Africa and such packaging (both primary and secondary) and labels may differ from Vaccine Doses made Available under the Africa Union APA;
 - b. prior to deployment of the Donated Doses, the relevant Recipient Country may need to secure necessary waivers or exemptions from competent authorities in the Recipient Country with respect to the import and use of such packaging and/or labels;
 - c. Janssen shall bear no liability, cost or expense in connection with the packaging or labelling of the Donated Doses, nor shall the inclusion of Janssen on the label or packaging in any way be perceived as an indication that Janssen or its Affiliates assume any other responsibility or liability beyond what is expressly stated in the Product Warranty set forth in clause 10.7 of the Africa Union APA as amended by this Letter Agreement; and
 - d. the Donated Doses were delivered to RSA and on such delivery left the possession and control of Janssen; Janssen is not, and shall not be held, responsible for the condition of the Donated Doses or the conditions under which the Donated Doses have been maintained or stored since such delivery; and except to the extent set forth in paragraph 7 above (i) neither Janssen, nor its Affiliates, provide any representations or warranties, whether express or implied, with respect to the Donated Doses, materials or services provided in connection with this Letter Agreement, including without limitation the warranties of noninfringement, fitness for a particular use or purpose, and merchantability; (ii) the Donated Doses are provided to the Recipient Country "as is" and (iii) each Recipient Country and all individuals and organizations that receive Donated Doses assume all risk associated with use and distribution of the Donated Doses, including with respect to any failures in safety or efficacy or failure to warn of potential risks.
9. As a condition to the delivery of the Donated Doses to the Recipient Country, on receipt of a duly issued invoice from AVAT, the Recipient Country shall pay to AVAT the sum of:
- a. USD \$0.30 per dose constituting the relevant portion of the Donated Doses to fund the NFCS; and
 - b. USD \$4,000.00 in order to cover AVAT's administrative costs.
10. The Recipient Country agrees that payments made to AVAT by it pursuant to this Letter Agreement shall, unless otherwise specified in this Letter Agreement, be made to AVAT's nominated bank account (the details of which are set out at Schedule 2 to this Letter Agreement) or to such other account as AVAT may notify the Recipient Country in writing from time to time.
11. Janssen shall have no liability to any other Party if the Donated Doses cannot be exported or transported from the Republic of South Africa to any country.

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12. With effect from the Donation Effective Date, RSA hereby releases Janssen from all obligations under the RSA APA with respect to the Donated Doses so delivered to the Recipient Country, including any obligation to manufacture, make available or deliver, replace or make any refund with respect to, the Donated Doses.
13. AVAT, Afreximbank and Janssen agree to discuss and, if agreed, enter into an amendment agreement to the Africa Union APA, if reasonably required by Janssen or AVAT to effect or acknowledge the terms of this Letter Agreement.
14. RSA and Janssen agree to discuss and, if agreed, enter into an amendment agreement to the RSA APA, if reasonably required by RSA or Janssen to effect or acknowledge the terms of this Letter Agreement.
15. The terms of this Letter Agreement apply only to the Donated Doses.
16. Each Party represents and warrants to the other Parties that:
 - a. the execution and delivery of this Letter Agreement and the performance of the transactions contemplated hereby have been duly authorized by all necessary action;
 - b. it has the power and authority to execute and deliver this Letter Agreement and to perform its obligations hereunder;
 - c. this Letter Agreement has been duly executed and is a legal, valid and binding obligation, enforceable against it in accordance with its terms; and
 - d. it shall comply with all laws that are applicable to its activities and operations under this Letter Agreement.
17. RSA represents and warrants to each of the other Parties that:
 - a. it has the right to donate the Donated Doses in accordance with the terms of this Letter Agreement;
 - b. it is executing this Letter Agreement on behalf of the national government of the Republic of South Africa in its entirety;
 - c. by executing this Letter Agreement on behalf of the national government of the Republic of South Africa in its entirety, such government is irrevocably and unconditionally bound by, and shall not challenge, the terms of this Letter Agreement and this Letter Agreement comprises a valid and legally binding obligation enforceable against such government in accordance with the terms of this Letter Agreement; and

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- d. under the laws of the Republic of South Africa it is not necessary that any stamp, registration or similar tax be paid on or in relation to this Letter Agreement or the transactions contemplated by this Letter Agreement.
18. AVAT represents and warrants to Janssen that the Donated Doses will be subject to an NFCS.
19. No Party to this Letter Agreement shall issue any press release or make any other public statement disclosing the other Party's Confidential Information without the prior written consent of the other Parties, except where required under the rules of any securities exchange to which Janssen or its Affiliates may be subject or applicable securities Laws.
20. The Parties acknowledge and agree the confidentiality obligations of clause 18 (Confidentiality) of the Africa Union APA are incorporated by reference into this Letter Agreement.
21. This Letter Agreement may be executed in any number of counterparts, each of which is deemed to be an original and which together have the same effect as if each Party had signed the same document. The Parties acknowledge and agree that this Letter Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. "Electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature or signatures affixed via e-signing platforms (such as Adobe Sign or DocuSign).
22. This Letter Agreement (including the agreement to arbitration in paragraph 24) and all matters relating to or in connection with it shall be governed by, and construed in accordance with, the Laws of England and Wales, without regard to any conflicts of law principles. The Parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods.
23. A notice given under this Letter Agreement by any Party to the other Party shall be in writing (which shall include e-mail), signed in manuscript by or on behalf of the Party giving it (which includes a scanned manuscript signature or, in the case of e-mail, that the message was sent from an e-mail address of the Party giving it (and which sender's e-mail address is one to which notices and other communications may also be validly delivered to that Party under this paragraph 23) in the English language and may be either:
- a. delivered personally by hand; or
 - b. if sent from within the same jurisdiction in which the recipient's address is located, then sent by first class pre-paid recorded delivery post or courier (or, if sent from outside the jurisdiction in which the recipient's address is located, then sent by international courier); or
 - c. sent by e-mail,
- in each case to the relevant address of the other Party as set out at the start of this Letter Agreement. Clauses 24.2-24.6 of the Africa Union APA shall apply, mutatis mutandis, to this Letter Agreement.

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24. In the event of any contractual or non-contractual dispute, controversy or claim arising out of or in connection with this Letter Agreement (including any question regarding its existence, validity or termination) between any of the Parties to this Letter Agreement (a "**Dispute**"), the Dispute shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ("**LCIA**") Arbitration Rules (the "**Arbitration Rules**"), which Arbitration Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The claimant (on the one hand) and the defendant (on the other hand) shall each nominate in the Request and the Response (both terms as defined in the Arbitration Rules), respectively, one co-arbitrator for appointment by the LCIA Court. Without prejudice to the generality of the foregoing, in any proceedings to which Janssen is a party, Janssen shall nominate one co-arbitrator for appointment and the other party or parties to the proceedings shall nominate one co-arbitrator for appointment, it being understood that where there are two or more parties opposing Janssen, those two or more parties shall constitute a unified side for purposes of the proceedings and shall make a joint nomination. If either fails to nominate a co-arbitrator in the Request or the Response, the selection and appointment of the co-arbitrator shall be made by the LCIA Court. The presiding arbitrator shall be jointly nominated by the two co-arbitrators for appointment by the LCIA Court. If the two co-arbitrators fail to reach agreement regarding a nomination within thirty (30) days of their appointment by the Court, the selection and appointment of the presiding arbitrator shall be made by the LCIA Court. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English. Judgment upon the award may be entered by any court of competent jurisdiction. The Parties agree that the subject matter of this Letter Agreement is commercial in nature and international in scope notwithstanding any benefit to the Recipient Country.
25. RSA and the Recipient Country hereby expressly, unconditionally, and irrevocably waives, to the extent possible, in respect of itself and its assets, any right of immunity under the laws of any jurisdiction on the grounds of sovereignty or otherwise which may now or hereafter exist, whether immunity from service, from any legal or arbitral process, from jurisdiction of any court or arbitral tribunal, from attachment prior to judgment, in aid of execution or execution, or claim thereto, which may now or thereafter exist, and agrees not to assert any such right or claim in any legal or arbitral action or proceeding, whether in the United Kingdom or otherwise. This waiver includes but is in no way limited to waiving any right of sovereign immunity as to RSA or the Recipient Country (as applicable) and any of its property, regardless of the commercial or non-commercial nature of this property, including any bank account belonging to RSA or the Recipient Country (whether held in the name of a diplomatic mission or otherwise) or bank accounts, belonging to RSA's or the Recipient Country's (as applicable) central bank or other monetary authority. For the avoidance of doubt, the irrevocable waiver in this paragraph includes a waiver of any right of sovereign immunity in respect of pre-judgment interim relief and post-judgment execution of any arbitral award, wherever such relief or execution is sought.

By virtue of its respective execution and delivery of this Letter Agreement, each of Janssen, AVAT, Afreximbank and RSA evidence their agreement with the terms of this Letter Agreement.

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[Signature page follows]

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Sincerely,

Janssen Pharmaceutica NV

By: _____

Name: Bart Van Waeyenberge

Title: Authorised Signatory

Agreed and accepted by The Government of the Republic of South Africa

By: _____

Name:

Title:

Agreed and accepted by The African Vaccine Acquisition Trust

By: _____

Name:

Title:

Agreed and accepted by African Export-Import Bank

By: _____

Name:

Title:

Schedule 1

Donation Deed of Adherence

This Donation Deed of Adherence is made and entered into on the _____ (the "Donation Accession Date")

BY

[●] (the "Recipient Country"), represented for the purposes of signing this specific Donation Deed of Adherence by the authorised signatory set out below.

WHEREAS Janssen Pharmaceutica NV ("Janssen") and The Government of the Republic of South Africa ("RSA") entered into an Advance Purchase Agreement for SARS-CoV-2/COVID-19 Vaccine, dated February 26, 2021, and an Additional Doses Advance Purchase Agreement for SARS-CoV-2/COVID-19 Vaccine, dated April 16, 2021, (such agreements, collectively, the "RSA APA")

WHEREAS Janssen, The African Vaccine Acquisition Trust ("AVAT") and African Export-Import Bank ("Afreximbank") entered into an Advance Purchase Agreement for SARS-CoV-2/COVID-19 Vaccine, dated March 28, 2021, as amended on June 9, 2021, (such agreement, as so amended, the "Africa Union APA").

WHEREAS Recipient Country entered into a Deed of Adherence (as defined in the Africa Union APA) dated [] and in accordance with such Deed of Adherence is a Party to the Africa Union APA in respect of its allocation of Vaccine Volume.

WHEREAS, Janssen, RSA, AVAT and Afreximbank entered into a Letter Agreement for the supply of the Donated Doses to the Recipient Country, dated [] (the "**Letter Agreement**");

WHEREAS, Janssen, RSA, AVAT, and Afreximbank acknowledged and agreed that the Donated Doses supplied under the Letter Agreement shall not be provided to any Recipient Country named in the Letter Agreement unless such Recipient Country delivers and executes a completed Donation Deed of Adherence in this form in order to accede to the Letter Agreement;

WHEREAS, the Recipient Country wishes to receive an allocation of the Donated Doses from RSA in accordance with the terms and conditions of the Letter Agreement; and

WHEREAS, RSA have agreed to supply the allocated volume of the Donated Doses to Recipient Country in accordance with the Letter Agreement.

NOW THEREFORE, the Recipient Country, RSA and Janssen agree as follows:

1. Subject matter

1.1 This Donation Deed of Adherence is entered into as contemplated by paragraph 2 of the Letter Agreement for the supply and delivery of the Donated Doses.

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1.2 This Donation Deed of Adherence is an integral part of the Letter Agreement and the terms and conditions of the Letter Agreement are incorporated into this Donation Deed of Adherence by reference.

1.3 Capitalised terms that are used but not otherwise defined herein shall have the meaning for such capitalised terms set forth in the Letter Agreement or Africa Union APA (as applicable).

1.4 By execution of this Donation Deed of Adherence, the undersigned Recipient Country shall be a Party to the Letter Agreement in respect of its allocation of the Donated Doses.

2. Effective date

2.1 This Donation Deed of Adherence shall become effective on the above Donation Accession Date.

3. Recipient Country obligations

3.1 With effect from the Donation Accession Date, the Recipient Country hereby agrees to accede to the provisions of the Letter Agreement and shall have the rights and obligations set out in respect of a 'Recipient Country' thereunder subject to and in accordance with the provisions of the Letter Agreement.

4. Notices

4.1 Any notice given under this Donation Deed of Adherence shall be in writing in English, shall refer to the Letter Agreement and this Donation Deed of Adherence and shall be sent by either pre-paid recorded first class post/pre-paid airmail or courier to the principal office or registered office of the recipient or by electronic transmission to the addresses set forth below:

Full name:

Function:

Name of Recipient Country:

Full official address:

E-mail:

or to such other addresses as the Recipient Country shall designate by notice, similarly given, to the other Parties. Notices or written communications shall be deemed to have been sufficiently made or given: (i) if mailed, fourteen (14) days after being dispatched by mail, postage prepaid; (ii) if by international air courier, seven (7) days after delivery to the international air courier company; or (iii) if by electronic

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transmission, at the time of transmission if delivered by email unless the sending party receives an automatic notification that the email has not been successfully delivered.

5. Governing Law

5.1 This Donation Deed of Adherence and all matters relating to or in connection with it shall be governed by, and construed in accordance with, the Laws of England and Wales, without regard to any conflicts of law principles.

IN WITNESS WHEREOF, the Recipient Country has caused this Donation Deed of Adherence to be executed by its duly authorised representative and made effective and delivered on the Donation Accession Date specified hereinabove:

EXECUTED AND DELIVERED AS A DEED

For and on behalf of

[Recipient Country]

Signature:

Name:

Designation:

Witness:

Signature:

Name:

Designation:

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Schedule 2

AVAT Settlement Instructions

Pursuant to paragraph 10 of this Letter Agreement, all payments to be made by the Recipient Country to AVAT under this Letter Agreement shall be made by MT103 to AVAT's nominated bank account, the details of which are outlined below:

(Field 56) Intermediary Institution	SWIFT CODE: SCBLGB2LXXX Standard Chartered Bank, London
(Field 57) Account with Institution	SWIFT CODE: AFXMEGCAXXX African Export-Import Bank, Cairo, Egypt
(Field 59) Beneficiary Account Number Beneficiary Account Name	<i>600065801220001</i> THE AFRICAN VACCINE ACQUISITION TRUST (AVAT)
(Field 70) Remittance Information	<< <i>[Name of Recipient Country]</i> >> - Participation Payments