

9/28/23, 9:37 AM

## RE: REQUEST FOR AN URGENT MEETING ON THE SII AGREEMENT

Jeannine Bednar-Giyose <Jeannine.Bednar-giyose@treasury.gov.za>

Wed 2021/01/13 18:07

To: Khadija K. Jamaloodien <Khadija.Jamaloodien@health.gov.za>

Cc: Anban Pillay <Anban.Pillay@health.gov.za>; sibungubane.cos@gmail.com <sibungubane.cos@gmail.com>; Sandile S. Buthelezi <Sandile.Buthelezi@health.gov.za>; Mark Blecher <mark.blecher@treasury.gov.za>; Empie Van Schoor

<Empie.Vanschoor@treasury.gov.za>

Hello Khadija,

I hope that you are well! Thank you so much, I think that the presentation generally looks good, and the proposed revisions are very welcome.

I just have a couple of proposed points:

In respect of paragraph 10.2(c), could I propose the following additional refinement, in addition to the proposal contained in the presentation:

“(c) any and all third party claims for death, physical, mental, or emotional injury, illness, disability, or condition, fear of the foregoing, property loss or damage, and business interruption of the injured party or a related person of such injured person (including court costs and reasonable attorney’s fees) (together, “Losses”) relating to or arising from the use or administration of the said Vaccine shipped or allocated to its jurisdiction, excluding claims arising from the proven gross negligence or proven willful misconduct of the Serum with regard to the manufacture of the said Vaccine as referred to in clause 10.1 (which must be dealt with in accordance with that provision), or arising from advice or instructions that may be provided by Serum in respect of the correct distribution, administration and use of the vaccine, which the DoH adhered to, which claims would be indemnified by Serum.”

I would propose this addition, to ensure that the liability in respect of injury, illness, or disability would not be unnecessarily broad, and so if it resulted from the gross negligence of Serum in respect of the manufacture of the vaccine, then it should be clear that that would fall under paragraph 10.1. Similarly, if Serum’s protocol gave instructions for proper administration and use of the vaccine which turned out to result in injury or illness, because they gave incorrect and negligent advice, then they should be responsible for what arises from those type of instructions if they are followed.

In respect of paragraph 11.2, I would propose the deletion of the second sentence, which provides as follows:

“Further, if the manufacturing is prevented or delayed by a Force Majeure event, then Serum shall not be obligated to refund the equivalent of the advance payment that has not been supplied as the said Vaccine to DOH due to such Force Majeure.”

If the Serum Institute cannot perform and provide the vaccine, then the advance payment should be refunded?

In respect of paragraph 20, I support the proposal, it could be any mutually agreed body or arbitration.. This type of governing law and jurisdiction agreement is commonly included, so it is possible that they may not budge on that.

Thanks so very much for all of your work, Khadija, and please give me a call any time if you would like to discuss.

Take care, and keep well!

Very Best Wishes

Jeannine

9/28/23, 9:37 AM

**From:** Jeannine Bednar-Giyose  
**Sent:** Wednesday, 13 January 2021 17:21  
**To:** Khadija K. Jamaloodien <Khadija.Jamaloodien@health.gov.za>  
**Cc:** Anban Pillay <Anban.Pillay@health.gov.za>; sibungubane.cos@gmail.com; Sandile S. Buthelezi <Sandile.Buthelezi@health.gov.za>; Mark Blecher <Mark.Blecher@Treasury.gov.za>; Empie Van Schoor <Empie.VanSchoor@Treasury.gov.za>  
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Thank you very much, indeed, Khadija, I will review the presentation and suggested amendments to the Purchase Agreement, and send through any comments.

Thank you very much for the engagement, it is greatly appreciated.

Take care, keep well, and I will be in touch very soon!

Very Best Wishes,

Jeannine

**From:** Khadija K. Jamaloodien <Khadija.Jamaloodien@health.gov.za>  
**Sent:** Wednesday, 13 January 2021 17:17  
**To:** Jeannine Bednar-Giyose <Jeannine.Bednar-giyose@treasury.gov.za>  
**Cc:** Anban Pillay <Anban.Pillay@health.gov.za>; sibungubane.cos@gmail.com; Sandile S. Buthelezi <Sandile.Buthelezi@health.gov.za>; Mark Blecher <Mark.Blecher@treasury.gov.za>  
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Hi Jeannine

Please find attached, proposed presentation for the NCCC and the suggested amendments to the Purchase Agreement.

I am available if you want to discuss.

Regards  
Khadija

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**From:** Mark Blecher <Mark.Blecher@treasury.gov.za>  
**Sent:** Wednesday, 13 January 2021 17:13  
**To:** Sandile S. Buthelezi <Sandile.Buthelezi@health.gov.za>; Edgar Sishi <Edgar.Sishi@treasury.gov.za>  
**Cc:** Anban Pillay <Anban.Pillay@health.gov.za>; sibungubane.cos@gmail.com <sibungubane.cos@gmail.com>; Dondo Mogajane <Dondo.Mogajane@treasury.gov.za>; Khadija K. Jamaloodien <Khadija.Jamaloodien@health.gov.za>; Ismail Momoniat <Ismail.Momoniat@treasury.gov.za>  
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Dear DG

Khadija was going to send the presentation to our lawyer Jeannine at 7pm to review and add comments.

Anban was going to take you through Jeannine's comments

However, if you still need to meet Jeannine is available and I will join her and if they are available also draw in

Moipone and Marie

Rgds M

**From:** Sandile S. Buthelezi <Sandile.Buthelezi@health.gov.za>  
**Sent:** Wednesday, 13 January 2021 15:11  
**To:** Edgar Sishi <Edgar.Sishi@treasury.gov.za>  
**Cc:** Mark Blecher <Mark.Blecher@treasury.gov.za>; Anban Pillay <Anban.Pillay@health.gov.za>; sibungubane.cos@gmail.com; Dondo Mogajane <Dondo.Mogajane@treasury.gov.za>; Khadija K. Jamaloodien

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Mail - Khadija K. Jamaloodien - Outlook

<Khadija.Jamaloodien@health.gov.za>; Ismail Momoniat <Ismail.Momoniat@treasury.gov.za>

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Dear Edgar

I tried calling earlier but I guess you are probably tight. I also left a WhatsApp message.

We are request an urgent meeting to discuss the SII agreement as there are some proposals that we want to take to NCCC tomorrow. We wanted to ensure that we are aligned with Treasury on those proposals.

Sandile

**Dr Sandile S.S Buthelezi**  
**Director-General: Department of Health**



**health**

Department:  
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