

THE GOVERNMENT OF BRAZIL

and

GAVI ALLIANCE

COMMITMENT AGREEMENT

(OPTIONAL PURCHASE ARRANGEMENT)

This Commitment Agreement is dated 25 September 2020 and is made between:

- (1) **The Government of Brazil** and
- (2) **THE GAVI ALLIANCE**, a non-profit foundation registered in the canton of Geneva (registry number CH-660-1699006-1) with office at Chemin du Pommier 40, 1218 Le Grand-Saconnex, Switzerland ("Gavi").

(together, the "**Parties**" to this Agreement and "**Party**" means any one of them).

Whereas:

- (A) The COVID-19 pandemic has already caused the loss of hundreds of thousands of lives and disrupted the lives of billions more. Developing and deploying a safe and effective COVID-19 vaccine is essential to restoring normal economic activity.
- (B) Pooling demand with other countries through a joint mechanism vastly increases the probability of success for each country and global success in stamping out a disease which does not recognise borders.
- (C) Through the COVID-19 Vaccines Global Access facility (the "COVAX Facility"), countries have the opportunity to benefit from a portfolio of vaccine candidates using a range of technology platforms, produced by more manufacturers across the world, with a bigger market to provide security of demand with greater scope than governments or regional groups can support on their own, giving their populations early access to safe and efficacious vaccines.
- (D) The COVAX Advance Market Commitment (the "COVAX AMC") has been established to raise funding to enable Gavi to subsidise vaccine dose purchase through the COVAX Facility for 92 eligible economies through Official Development Assistance funding from donors, as well as through support from private foundations. The COVAX AMC helps ensure that all economies can participate in the COVAX Facility and access vaccines through it.
- (E) Gavi and/or a procurement agency acting on its behalf, will enter into advance purchase commitments with manufacturers for supply of vaccines for the benefit of the Participants. The COVAX Facility aims to procure 2 billion doses of a safe and efficacious vaccine by the end of 2021.
- (F) By participating in the COVAX Facility, the Participants will have access to doses of vaccine candidates as a result of the advance purchase commitments that Gavi will conclude with vaccine manufacturers. As doses from successful candidates become available, a Participant will be given the opportunity to purchase Approved Vaccines from manufacturers. The achievement of this will be subject to the availability of funding, from Participants as well as funding for the COVAX AMC. The total amount allocated to each Participant and the COVAX AMC Eligible Economics (as defined below) over time may be more or less than 20%, depending on the funding that is made available as the provision of doses from the two financing streams (funding from Participants and the COVAX AMC) are separate. Lack of funding or readiness by a participant or set of participants would not delay the distribution of vaccines to other Participants in alignment with the Allocation Framework.
- (G) This Commitment Agreement is entered into by a Participant subscribing to the Optional

Purchase Arrangement (as defined below).

IT IS THEREFORE AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) All terms capitalised but not otherwise defined shall have the meanings given to them in the Terms and Conditions attached to this Agreement at Schedule 1 (*Terms and Conditions*); and
- (b) The following terms shall have the following meanings:

"Actual Procurement Price" means the actual procurement price per dose of an Approved Vaccine at the time of purchase thereof from the Specified Manufacturer (as notified by the Specified Manufacturer to Gavi prior to the procurement of an Approved Vaccine by the Participant, which notification shall constitute conclusive evidence of the Actual Procurement Price);

"Approved Vaccine" means a vaccine against COVID-19 in respect of which Gavi has entered into an Advanced Purchase Commitment and which has WHO Prequalification or on an exceptional basis, at a minimum, licensure/authorisation in place from an SRA.

"Assigned Doses" has the meaning given to such term in Clause 2.2(b)(v).

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Business Day" means a day on which commercial banks are open for the transaction of general business (including dealings in foreign exchange) in Geneva, Switzerland and the capital city of the Participant.

"Commitment Satisfaction Certificate" has the meaning given to that term in Clause 4.1(g).

"COVAX Facility Account" means the account held in Gavi's name with the following details:

Account Name	Gavi Alliance
Account Number	0240 264568.50U
IBAN USD Account	CH05 0024 0240 2645 6850 U
Reference	COVAX
SWIFT	UBSWCHZH80A
Bank Details	UBS Switzerland AG Rue des Noirettes 35 1227 Carouge

or such other account as Gavi may from time to time notify to the Participant in writing no later than 10 Business Days prior to the relevant payment date).

"Gavi Transferee" has the meaning given to such term in Clause 6.1.

"Non-Exercise Notice" has the meaning given to such term in Clause 4.1(b).

"Non-Participation Notice" has the meaning given to such term in Clause 2.2(b)(iii).

"Option Exercise Window" means the period from expiry of the Participant's ability to issue a Non-Participation Notice pursuant to Clause 2.2(b)(iii) to the date notified by Gavi to the Participant in the relevant Purchase Opportunity or Purchase Option (as determined by Gavi at the time).

"Participant Payment Deadline" means 9 October 2020.

"Prepaid Doses" means the Pro Rata Share of Approved Vaccines already paid for through payments made by Gavi to the relevant manufacturer, as evidenced by Gavi in each notification to the Participant of a Purchase Opportunity in accordance with Clause 2.2(b)(i).

"Pro Rata Share" means the number of Total Participant Doses divided by the number of Total Facility Doses.

"Purchase Opportunity" has the meaning given to such term in Clause 2.2(b)(i).

"Purchase Option" has the meaning given to such term in Clause 2.2(b)(iv)

"Risk Sharing Guarantee Amount" means US\$17,004,720.

"Risk Sharing Guarantee Deadline" means the date that is 21 days from the date of this Agreement.

"Specified Manufacturer" means the manufacturer, or manufacturers, allocated to the Participant to supply Approved Vaccine pursuant to a Purchase Option, such allocation being determined in accordance with the Terms and Conditions.

"Tax" means all forms of taxation in the Participant's jurisdiction whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other matters and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating thereto.

"Terms and Conditions" means the terms and conditions of the COVAX Facility as set out in Schedule 1 to this Agreement.

"Total Facility Doses" means the total number of doses of Approved Vaccine that the Facility intends to procure, from time to time.

"Total Participant Doses" means 42,511,800 number of doses of Approved Vaccine, sufficient to vaccinate 10% of the Participant's Population.

"Upfront Payment" means US\$131,786,580.

"USD" or **"US\$"** means the lawful currency of the United States of America.

"VAT" means

- (i) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

- (ii) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (i) above or imposed elsewhere.

1.2 Construction

Unless a contrary indication appears, any reference in this Agreement to:

- (i) "assets" includes present and future properties, revenues and rights of every description;
- (ii) "this Agreement" or any other agreement or instrument is a reference to that document or other agreement or instrument as amended or novated;
- (iii) a "person" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (iv) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (v) a provision of law is a reference to that provision as amended or re-enacted; and
- (vi) a time of day is a reference to London time.

1.3 Singular, plural, gender

References to one gender include all genders and references to the singular include the plural and vice versa.

1.4 Clauses

In this Agreement any reference to a "Clause" or a "Schedule" is, unless the context otherwise requires, a reference to a Clause of or a Schedule to this Agreement.

1.5 Non-limiting effect of words

The words "including", "include", "in particular" and words of similar effect shall not be deemed to limit the general effect of the words that precede them.

1.6 Precedence

If there is any conflict, apparent conflict or ambiguity in or between any of the sections of the Agreement set out below, the sections shall be applied in the following order of precedence:

- (i) the Clauses; then
- (ii) the Schedules, including the Terms and Conditions; then
- (iii) any other document referred to in this Agreement.

2. COMMITMENT TO PAY

2.1 Upfront Amount

The Participant, irrevocably and unconditionally, undertakes to pay to Gavi (or to procure the payment to Gavi of) the Upfront Payment before or on the Participant Payment Deadline.

2.2 Purchase Opportunity

- (a) For the avoidance of doubt, the Participant shall be under no obligation to procure the purchase of Approved Vaccine as a result of entry into this Agreement.
 - (b) Following receipt by Gavi of the Upfront Payment:
 - (i) Gavi will notify the Participant in writing, from time to time, of any opportunities to purchase Approved Vaccines from a Specified Manufacturer (the “Purchase Opportunity”);
 - (ii) each Purchase Opportunity will set out the key terms of procurement and delivery of Approved Vaccines from the relevant Specified Manufacturer. The Participant acknowledges that the terms provided in the Purchase Opportunity may not be negotiated and will be binding on the Participant should it participate in a Purchase Opportunity;
 - (iii) if the Participant does not wish to participate in a Purchase Opportunity the Participant shall notify Gavi in writing substantially in the form of Schedule 2 (*Form of Non-Participation Notice*) within the period specified by Gavi in the notification of a Purchase Opportunity (such notice, a “Non-Participation Notice”);
 - (iv) if the Participant does not deliver a Non-Participation Notice to Gavi, within the period specified by Gavi in the notification of the Purchase Opportunity, Gavi may, from time to time, notify the Participant of each Specified Manufacturers’ option to procure Approved Vaccines (a “Purchase Option”); and
 - (v) on exercise of a Purchase Option from a Specified Manufacturer, the Participant shall:
 - (A) procure from the relevant Specified Manufacturer, in accordance with Clause 4.1, its Pro Rata Share of the relevant Approved Vaccine (less any Prepaid Doses) (the “Assigned Doses”); and
 - (B) take delivery of its Prepaid Doses it is entitled to receive from the relevant Specified Manufacturer,
- 1.1 in each case as made available by the relevant Specified Manufacturer.

3. PAYMENT

3.1 Payments to Gavi

- (a) Any payments due from the Participant to Gavi under this Agreement, shall be made to the COVAX Facility Account for value on such date by 12 noon.
- (b) The Participant shall notify Gavi in writing of any payment made pursuant to this Agreement from time to time (including any payment made to a procurement agent or the Specified Manufacturer).
- (c) All payments made pursuant to this Agreement shall be in USD.

3.2 Business Days

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

3.3 Enforcement Rights

If the Participant does not make the Upfront Payment on the Participant Payment Deadline, then

Gavi shall be entitled to pursue all rights available to it under this Agreement including under Clause 8.1.

3.4 No set-off by Participant

All payments to be made by the Participant under this Agreement shall be calculated and be made without (and free and clear of any deduction for) withholding, set-off or counterclaim.

4. PROCUREMENT

4.1 Purchase Options

- (a) Gavi shall notify the Participant in writing of its Purchase Options from time to time and such notifications shall be binding on the Parties.
- (b) If the Participant does not wish to exercise a Purchase Option from a Specified Manufacturer, the Participant shall notify Gavi in writing, substantially in the form of Schedule 3 (*Form of Non-Exercise Notice*), during the Option Exercise Window (such notice, a "**Non-Exercise Notice**"). For the avoidance of doubt, a Participant will be obliged to exercise a Purchase Option if it does not deliver to Gavi a Non-Exercise Notice during the Option Exercise Window.
- (c) If Participant exercises a Purchase Option, Gavi will confirm by notice in writing to the relevant Specified Manufacturer, the Participant's order, the details of which (including its Assigned Doses and Prepaid Doses in relation to such Purchase Option) will correspond with the relevant Purchase Option and constitute conclusive evidence of the Assigned Doses and Prepaid Doses in relation to such Purchase Option.
- (d) By exercising a Purchase Option, the Participant undertakes
 - (i) to procure its Assigned Doses and take delivery of its Prepaid Doses, from the relevant Specified Manufacturer, as soon as such doses become available and in any event within such period as Gavi shall notify the Participant in writing, from time to time (such notifications being binding on the Parties);
 - (ii) not to negotiate and to pay (or to procure the payment of) the Actual Procurement Price for the Assigned Doses; and
 - (iii) to comply with the provisions of the relevant Purchase Option and supply contract with the relevant Specified Manufacturer, which will detail the mechanics for the procurement of the Assigned Doses and delivery of the Assigned Doses and Prepaid Doses.
- (e) For the avoidance of doubt, if after having been notified in writing by Gavi of a Purchase Option, the Participant delivers to Gavi a Non-Exercise Notice or it for any reason does not exercise such Purchase Option pursuant to Clause 4.1(c), it shall not be entitled to its Prepaid Doses in relation to such Purchase Option.
- (f) The Participant acknowledges and agrees that Gavi has the discretion to manage, with each of the relevant Specified Manufacturers, the timing of delivery of Approved Vaccine under the Purchase Options and the Prepaid Doses, in accordance with the Allocation Framework.
- (g) The Participant shall provide a certificate of confirmation to Gavi within 10 Business Days after it has satisfied its obligation to purchase its Assigned Doses in respect of each Purchase Option.

The certificate of confirmation shall be in the form set out in Schedule 4 (*Commitment Satisfaction Certificate*) and shall be countersigned by the Specified Manufacturer or a procurement agent (if any) (the "**Commitment Satisfaction Certificate**"). The Commitment Satisfaction Certificate shall be deemed to be a confirmation that any amounts to be paid by the Participant to the Specified Manufacturer or a procurement agent (if any) have been duly received.

5. **RISK SHARING GUARANTEE**

- (a) The Participant undertakes that it shall procure a risk-sharing guarantee for the Risk Sharing Guarantee Amount that is on demand, irrevocable, unconditional and in form and substance satisfactory to Gavi acting in its sole discretion, by no later than 5pm Geneva time on the Risk Sharing Guarantee Deadline (or such later date as may be agreed with Gavi, acting in its sole discretion, in writing).
- (b) If the Participant fails to meet the Risk Sharing Guarantee Deadline in Clause 5(a), Gavi may, following an assessment of the Participant's risk profile and creditworthiness, by notice in writing (such notice being binding on the Parties), either
 - (i) terminate this Agreement pursuant to Clause 11(a) or
 - (ii) provide that the Participant shall
 - (A) no longer be entitled to issue a Non-Exercise Notice, in accordance with Clause 4.1(b); and
 - (B) be deemed to have exercised any Purchase Option in accordance with Clause 4.1(c).

6. **ASSIGNMENT**

6.1 **Assignment by Gavi**

Gavi may transfer to any agency that Gavi deems appropriate (acting in its sole discretion) (the "**Gavi Transferee**") by way of absolute assignment or transfer in or substantially in the form set out in Part A, Schedule 5 (*Form of Assignment Agreement*), all of its rights, title, benefit, interest and/or obligations hereunder, including with respect to the payment obligations of the Participant hereunder. Gavi shall give notice, in or substantially in the form set out in Part B of Schedule 5 (*Notice of Assignment*) to the Participant of such assignment or transfer. The Participant shall acknowledge in writing, addressed to Gavi and the Gavi Transferee, its receipt of notice of any such transfer or assignment. Upon such transfer or assignment to the Gavi Transferee, all references to Gavi in this Agreement shall be deemed to mean the Gavi Transferee, and the rights, title, benefit, interest and/or obligations hereunder (including with respect to the payment obligations of the Participant hereunder) transferred or assigned to the Gavi Transferee shall not be capable of being further transferred, assigned or otherwise disposed of in any manner whatsoever (whether absolutely or by way of security) without the prior written consent of the Participant.

6.2 **Assignment by the Participant**

Other than a transfer through the COVAX Exchange, the Participant may only transfer all but not

part of its rights, title, interest and obligations hereunder to any appropriate ministry or government agency of that same Participant of the same or higher credit standing provided that such transfer is notified in writing in advance to Gavi.

7. TAX GROSS UP AND INDEMNITIES

7.1 Definitions

(a) In this Agreement:

- (i) "Tax Credit" means a credit against, relief or remission for, or repayment of any Tax.
- (ii) "Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under this Agreement.
- (iii) "Tax Payment" means either the increase in a payment made by the Participant to Gavi under Clause 7.2 or a payment under Clause 7.3.

(b) Unless a contrary indication appears, in this Clause 7 a reference to "determines" or "determined" means a reasonable determination of the Party making the determination, supported by evidence provided to the other Party.

7.2 Tax gross-up

- (a) The Participant shall make all payments to be made by it (or on its behalf) without any Tax Deduction.
- (b) The Participant shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify Gavi accordingly. Similarly, Gavi shall notify the Participant on becoming so aware in respect of a payment payable to it.
- (c) If a Tax Deduction is required by law to be made by the Participant, the amount of the payment due from the Participant shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If a Participant is required to make a Tax Deduction, that Participant shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within 30 days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Participant making that Tax Deduction shall deliver to Gavi a statement under Section 975 of the UK Income Tax Act 2007 or other evidence satisfactory to Gavi, acting reasonably, that the Tax Deduction has been made or (as applicable) as soon as is practically possible, evidence that the required payment has been paid to the relevant taxing authority.

7.3 Tax indemnity

- (a) The Participant shall (within 40 days of demand by Gavi) pay to Gavi (or procure the payment to Gavi of) an amount equal to the loss, liability or cost which Gavi determines (supported by evidence which Gavi shall provide to the Participant) will be or has been (directly or indirectly) suffered for or on account of Tax by Gavi in respect of this Agreement. The indemnity given by the Participant under this Clause 7.3(a) shall extend to any VAT or sales tax which is or may become

chargeable on any supply made by Gavi to the Participant in connection with this Agreement.

(b) Paragraph 7.3(a) above shall not apply:

(i) with respect to any Tax assessed on Gavi:

(A) under the law of the jurisdiction in which Gavi is incorporated or, if different, the jurisdiction (or jurisdictions) in which Gavi is treated as resident for tax purposes; or

(B) under the law of the jurisdiction in which Gavi's head office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by Gavi; or

(ii) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 7.2.

7.4 Tax Credit

If the Participant makes a Tax Payment and Gavi determines that:

(i) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and

(ii) Gavi has obtained, utilised and retained that Tax Credit,

Gavi shall pay an amount to the Participant which Gavi determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Participant.

7.5 Mitigation by Gavi

Gavi shall, in consultation with the Participant, take all reasonable steps (including completing relevant forms and claiming relevant reliefs and tax credits) to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to Clause 7.2 or Clause 7.3. This Clause does not limit the obligations of the Participant under this Agreement, and Gavi shall not be obliged to take any action which it considers (acting reasonably) is prejudicial to it. The Participant shall indemnify Gavi against any reasonable cost or expense incurred by Gavi in taking any such action.

8. INDEMNITIES

8.1 General indemnities

The Participant shall promptly indemnify Gavi against any cost, loss or liability incurred by Gavi (and supported by evidence which Gavi shall provide to the Participant) as a result of failure, or delay, by the Participant to: (i) pay (or procure the payment of) any sum due from it under this Agreement; or (ii) otherwise comply with any of its other obligations under Clauses 2 (*Commitment to Pay*), 3 (*Payment*), 4 (*Procurement*), 5 (*Risk Sharing Guarantee*) and 7 (*Tax Gross up and Indemnities*) of this Agreement.

8.2 Separate indemnities

Each indemnity obligation arising under this Agreement shall:

- (i) constitute a separate and independent obligation from the other obligations in this Agreement;
- (ii) give rise to a separate and independent cause of action;
- (iii) apply irrespective of any indulgence granted by Gavi or any other person; and
- (iv) continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any sum due under this Agreement or any other judgment or order.

8.3 Mitigation by Gavi

Gavi shall, in consultation with the Participant, take all reasonable steps to mitigate any circumstances which arise and which would result pursuant to Clause 8.1, including using reasonable endeavours to re-allocate Participant Doses which have not been purchased to other Participants. This Clause does not limit the obligations of the Participant under this Agreement, and Gavi shall not be obliged to take any action which it considers (acting reasonably) is prejudicial to it. The Participant shall indemnify Gavi against any reasonable cost or expense incurred by Gavi in taking any such action.

9. UNDERTAKINGS OF THE PARTICIPANT

- (a) The undertakings in this Clause 9 shall remain in force from the date of this Agreement for so long as any obligation hereunder remains outstanding.
- (b) The Participant shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect any Authorisation required under any law or regulation to enable it to perform its obligations under this Agreement.
- (c) The Participant represents and warrants to Gavi that:
 - (i) it has full power and authority to enter into, perform and deliver this Agreement and the transactions contemplated herein;
 - (ii) this Agreement has been duly authorised, executed and delivered by it and constitutes valid and legally binding obligations of it and enforceable against it in accordance with its terms;
 - (iii) all actions required to be taken (including the obtaining of any Authorisation) for the entry by it into this Agreement, the carrying out of the other transactions contemplated herein, or the compliance by it with the terms hereof, as the case may be, have been taken and any Authorisations are in full force and effect;
 - (iv) its execution and delivery of this Agreement, the consummation of the transactions herein contemplated and compliance with the terms hereof do not: (a) conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, trust deed, mortgage or other agreement or instrument to which it is a party or by which it or any of its properties is bound; or (b) infringe any existing applicable law, rule, regulation

judgment, order or decree applicable to it or any international treaty convention or agreement to which it is a part or by which it is bound; and

- (v) under the laws of the Participant it is not necessary that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.
- (d) The Participant shall promptly notify Gavi in writing immediately on becoming aware of any breach of the representations and warranties given in Clause 9(c).

10. **TERM**

This Agreement commences on the date hereof and, unless terminated pursuant to Clause 11 (*Termination*), shall end on

- (i) if there is no Approved Vaccine prior to the third anniversary of the date of this Agreement, the third anniversary of the date of this Agreement; or
- (ii) the date on which Gavi and the Participant mutually agree in writing to terminate this Agreement.

11. **TERMINATION**

- (a) Gavi may terminate this Agreement if the Participant is in breach of Clause 2 or commits a material breach of any other provisions of this Agreement and fails to remedy such breach within 15 Business Days (or such longer period as Gavi may agree, acting in its sole discretion) of written notice of such breach by Gavi to the Participant; and
- (b) The Participant may terminate this Agreement if Gavi ceases its operations or is in material breach of this Agreement and fails to remedy such breach within 15 Business Days (or such longer period as the Participant may agree, acting in its sole discretion) of written notice from the Participant to Gavi.

12. **TERMS AND CONDITIONS**

Subject to Clause 1.6, the Parties agree that the following paragraphs of the Terms and Conditions shall be binding on the Participant and Gavi and enforceable against each other:

- (i) paragraph [5] (*Role of Gavi as administrator of the COVAX Facility*);
- (ii) paragraph [6] (*Non-Financial Considerations of all Participants*);
- (iii) paragraph [7] (*Liability and Indemnity*);
- (iv) paragraph [8] (*Participant Cost Structure*);
- (v) paragraph [10] (*Commitments of the Participants subscribed to the Optional Purchase Arrangement*);
- (vi) paragraph [11] (*Engagement with manufacturers*);
- (vii) paragraph [13] (*Product Choice*);
- (viii) paragraph [14] (*Vaccine allocation*);

- (ix) paragraph [15] (*Trading of Approved Vaccines / Proposed COVAX Exchange*);
- (x) paragraph [18] (*Governance, Information and Reporting*);
- (xi) paragraph [19] (*Advisory Bodies*);
- (xii) paragraph [20] (*Costs of administering the Facility*);
- (xiii) paragraph [22] (*Sign-up period*);
- (xiv) paragraph [23] (*Duration*);
- (xv) paragraph [24] (*Events of termination*); and
- (xvi) paragraph [25] (*Return of any surplus funds*).

13. COMMUNICATIONS

13.1 Methods of Communication

- (a) Any communication under this Agreement (a "Notice") shall be in writing, in English and subject to Clause 13.1(b) below, shall either (a) be delivered in person or by courier or (b) sent by e-mail, in each case addressed to the relevant Party for the attention of the appropriate person identified in Clause 13.1(c) below.
- (b) All Non-Participation Notices and Non-Exercise Notices shall be sent by e-mail, in each case addressed to the relevant Party for the attention of the appropriate person identified in Clause 13.1(c) below.
- (c) A Notice to Gavi shall be sent to such Party at the following address or to such other person and address as Gavi may notify by Notice to the Participant from time to time:

The Gavi Alliance

Chemin du Pommier 40,

1218 Le Grand-Saconnex,

Switzerland

Email: Covax@gavi.org

Attention: Dr. Seth Berkley on behalf of the Office of the COVAX Facility

- (d) A Notice to the Participant shall be sent to such Party at the following address or to such other person and address as the Participant may notify by Notice to Gavi from time to time:

Ministério da Saúde

Esplanada dos Ministérios, Bloco G

Brasília, DF 70058-900

Brazil

Email: aai@saude.gov.br / ministro@saude.gov.br

Attention: HE Minister Eduardo Pazuello

13.2 Deemed Receipt

The date on which any communication under this Agreement shall be deemed effective is as follows:

- (i) if delivered in person or by courier, on the date it is delivered;
- (ii) if sent by e-mail, at the time of sending, provided that no delivery failure notification is received by the sender within 24 hours of sending such communication,

provided that any communication which is received (or deemed to take effect in accordance with the foregoing) outside business hours or on a non-business day in the place of receipt shall be deemed to take effect at the opening of business on the next following business day in such place. Any communication delivered to any Party under this Agreement which is to be sent by e-mail will be written legal evidence.

14. MISCELLANEOUS

14.1 Counterparts

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

14.2 Partial invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

14.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of Gavi, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

14.4 Amendments and waivers

No term of this Agreement may be amended or waived without the prior written consent of Gavi and the Participant.

15. GOVERNING LAW

The terms of this Agreement shall be interpreted and applied in accordance with their true meaning and intended effect independently of any system of national law, whether federal or state law. If the arbitral tribunal finds the terms of this Agreement to be ambiguous or unclear, then in those circumstances only, the arbitral tribunal may refer to and apply English law as it deems appropriate.

16. DISPUTE RESOLUTION

Any dispute, controversy or claim ("**Dispute**") between the Parties arising out of or in connection with this Agreement shall be submitted to arbitration at the request of either Party. The arbitration

shall be conducted in accordance with the then-current rules of the United Nations Commission of International Trade Law. Gavi and the Participant shall each appoint one arbitrator, and the two arbitrators so appointed shall jointly appoint a third arbitrator who shall be the chairperson. If either Party fails to appoint an arbitrator, the appointing authority shall instead be the President of the Swiss Arbitration Association. The arbitration proceedings shall take place in Geneva (which is the seat of the arbitration) and shall be conducted in English. The Parties agree to be bound by any arbitration award, as the final adjudication of any Dispute.

SCHEDULE 1
TERMS AND CONDITIONS

SCHEDULE 2
FORM OF NON-PARTICIPATION NOTICE

Non-Participation Notice

The Gavi Alliance

Chemin du Pommier 40,

1218 Le Grand-Saconnex,

Switzerland

Attention: Dr. Seth Berkley on behalf of the Office of the COVAX Facility

By email

Dear Madam/Sir

Notice of Non-Participation

We refer to the commitment agreement dated _____ 2020 between Gavi and The Government of Brazil, the Participant (the "**Commitment Agreement**").

Terms defined in the Commitment Agreement have the same meaning when used in this notice unless otherwise defined.

Pursuant to Clause [2.2(b)(iii)] of the Commitment Agreement, we hereby give notice that we do not wish to participate in the Purchase Opportunity notified to us by Gavi on [*insert date of notice*] to purchase [*name/description of Approved Vaccine*] from [*name of Specified Manufacturer*].

Yours faithfully

.....

For and on behalf of
The Government of Brazil

SCHEDULE 3
FORM OF NON-EXERCISE NOTICE

Non-Exercise Notice

The Gavi Alliance

Chemin du Pommier 40,

1218 Le Grand-Saconnex,

Switzerland

Attention: Dr. Seth Berkley on behalf of the Office of the COVAX Facility

By email

Dear Madam/Sir

Notice of Non-Exercise

We refer to the commitment agreement dated _____ 2020 between GAVI and The Government of Brazil, the Participant (the "**Commitment Agreement**").

Terms defined in the Commitment Agreement have the same meaning when used in this notice unless otherwise defined.

Pursuant to Clause [4.1(b)] of the Commitment Agreement, we hereby give notice that we do not wish to exercise the Purchase Option in respect of the relevant Purchase Opportunity notified to us by Gavi on [insert date of notice] to purchase [name/description of Approved Vaccine] from [name of Specified Manufacturer].

Yours faithfully

.....
For and on behalf of
The Government of Brazil

SCHEDULE 4

FORM OF COMMITMENT SATISFACTION CERTIFICATE

To: THE GAVIALLIANCE
Chemin du Pommier 40
1218 Le Grand-Saconnex
Switzerland ("Gavi")

From: The Government of Brazil

Dated:

Dear Sirs

1. I refer to the commitment agreement dated _____ 2020 and made between Gavi and The Government of Brazil, the Participant (the "**Commitment Agreement**"). This is a Commitment Satisfaction Certificate. Terms defined in the Commitment Agreement have the same meaning when used in this Commitment Satisfaction Certificate unless otherwise defined.
2. I am an authorised signatory of the Participant and certify as follows:
 - (i) I am authorised to give this Commitment Satisfaction Certificate.
 - (ii) I confirm that the Participant has purchased the *[insert number of doses]* Assigned Doses from *[insert name of Specified Manufacturer or procurement agent (if applicable)]* at the specified price of US\$*[insert price]* per dose and in accordance with Clause [4.1(g)] of the Commitment Agreement on *[insert date]*.

Yours faithfully

for and behalf of The Government of Brazil

We, *[insert name of Specified Manufacturer or procurement agent (if applicable)]* confirm receipt of the payment for the Assigned Doses as set out in paragraph 2 above.

for and behalf of *[Specified Manufacturer or procurement agent (if applicable)]*

Date:

SCHEDULE 5
PART A
FORM OF ASSIGNMENT AGREEMENT

Deed of Assignment

This Deed of Assignment (the "Deed") is made on [insert date] between:

- (1) **THE GAVI ALLIANCE**, a non-profit foundation registered in the canton of Geneva (registry number CH-660-1699006-1) with office at Chemin du Pommier 40, 218 Le Grand-Saconnex, Switzerland ("Gavi"); and
- (2) [insert name of assignee], a company incorporated under the laws of [•] with registered number [•] and registered office at [•] (the "Gavi Transferee").

Whereas:

- (A) Gavi and *The Government of Brazil* are parties to a commitment agreement dated _____ 2020 (the "**Commitment Agreement**"). By entering the Commitment Agreement, the Participant agreed to participate in the COVAX Facility in accordance with the terms of the Commitment Agreement.
- (B) Pursuant to Clause [6.1] of the Commitment Agreement, Gavi is permitted to assign or transfer all its rights, title, benefit and/or obligations under the Commitment Agreement, including with respect to the payment obligations of the Participant thereunder.
- (C) Gavi wishes to assign to the Gavi Transferee the benefit of the Commitment Agreement and to be released from its liabilities in relation to the Commitment Agreement. The parties have agreed to the assignment of the benefit of the Commitment Agreement and the assumption by the Gavi Transferee of the obligations and liabilities of Gavi in relation to the Commitment Agreement on the terms and conditions set out below.

It is agreed as follows:

1 INTERPRETATION

- 1.1 Unless otherwise defined in this Deed, words and expressions defined in the Commitment Agreement shall have the same meaning wherever used in this Deed.
- 1.2 In this Deed any reference to:
 - 1.2.1 any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute or statutory provision;
 - 1.2.2 the singular includes a reference to the plural and vice versa; and
 - 1.2.3 any paragraph of the introduction, clause, sub-clause or schedule is to a paragraph of the introduction, clause, sub-clause or schedule (as the case may be) of or to this Deed.
- 1.3 Each reference in this Deed to this Deed or any other agreement, document or deed shall be construed as a reference to this Deed or such other agreement, document or deed as each of the same may be amended, varied, novated or supplemented from time to time.

2 ASSIGNMENT

- 2.1 Gavi hereby assigns to the Gavi Transferee absolutely all Gavi's benefits, interests, rights, title, and claims in and to the Commitment Agreement and the Gavi Transferee hereby agrees to accept such assignment from Gavi.
- 2.2 The Gavi Transferee covenants to perform all duties and discharge all the obligations of Gavi under the Commitment Agreement, whether arising before, on or after the date of this Deed and shall indemnify Gavi, within 30 days of demand, against any costs, expenses or liabilities reasonably incurred by Gavi in relation to any such obligation.
- 2.3 The Gavi Transferee will be bound by all the terms and conditions of the Commitment Agreement in every way as if references to Gavi in the Commitment Agreement had been references to the Gavi Transferee from the commencement of the Commitment Agreement.
- 2.4 Gavi undertakes that it will execute and deliver to the Participant a notice of the assignment effected by this Deed in the form set out in Part B of schedule 5 to the Commitment Agreement.

3 CONTINUING EFFECT

For the avoidance of doubt, the Commitment Agreement shall continue in full force and effect and its terms and conditions shall have changed only to the extent set out in this Deed, as applicable.

4 FURTHER ASSURANCES

Each of the parties to this Deed agrees to perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents as may be required by law or as any party may reasonably require to effect the assignment referred to in Clause [2] and to give any party the full benefit of this Deed.

5 INVALIDITY

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

6 COUNTERPARTS

This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

7 GOVERNING LAW

The terms of this Deed shall be interpreted and applied in accordance with their true meaning and intended effect independently of any system of national law, whether federal or state law. If the arbitral tribunal finds the terms of this Deed to be ambiguous or unclear, then in those circumstances only, the arbitral tribunal may refer to and apply English law as it deems appropriate.

8 DISPUTE RESOLUTION

Any dispute, controversy or claim ("Dispute") between Gavi and the Gavi Transferee arising out of or in connection with this Deed shall be submitted to arbitration at the request of either party. The arbitration shall be conducted in accordance with the then-current rules of the United Nations Commission of International Trade Law (UNCITRAL). Gavi and the Gavi Transferee shall each appoint one arbitrator, and the two arbitrators so appointed shall jointly appoint a third arbitrator who shall be the chairperson. If either party fails to appoint an arbitrator, the appointing authority shall instead be the President of the Swiss Arbitration Association. The arbitration proceedings shall take place in Geneva (which is the seat of the arbitration) and shall be conducted in English. The parties agree to be bound by any arbitration award, as the final adjudication of any Dispute.

In witness whereof this Deed has been delivered on the date first stated above.

EXECUTED and DELIVERED as a DEED
by *[insert Gavi Transferee name]*,
acting by its duly authorised attorney
in the presence of:

}

Witness' Signature:

Name:

Occupation:

Address:

EXECUTED and DELIVERED as a DEED
by THE GAVI ALLIANCE,
acting by its duly authorised attorney
in the presence of:

}

Witness' Signature:

Name: Marie-Ange Saraka-Yao

Occupation: Managing Director, RM & PSP

Address: The Gavi Alliance

Chemin du Pommier 40,
1218 Le Grand-Saconnex,
Switzerland

SCHEDULE 5
PART B
FORM OF NOTICE OF ASSIGNMENT

Notice of Assignment

The Government of Brazil
[Address of Participant]

Dear Madam/Sir

Notice of Assignment

We refer to the commitment agreement dated _____ 2020 between Gavi and *The Government of Brazil* (the "**Commitment Agreement**").

Pursuant to Clause [6.1] of the Commitment Agreement, we hereby give notice that we have assigned all of our rights, title, interest and benefit, present and future in and under the Commitment Agreement (including with respect to the payment obligations of the Participant) to [insert name of Gavi Transferee] (the "**Gavi Transferee**"). The Gavi Transferee shall also perform Gavi's obligations under the Commitment Agreement.

Pursuant to Clause [6.1] of the Commitment Agreement, you are hereby requested to acknowledge receipt of this notice of assignment by signing and returning a duplicate copy of this notice.

Upon acknowledgement, you are authorised and instructed to deal with the Gavi Transferee in relation to the Commitment Agreement, and to make all payments under the Commitment Agreement to or at the direction of the Gavi Transferee or any of its agents, without further reference to us.

All notices to the Assignee should be sent to [insert details of Gavi Transferee] in accordance with Clause [13] of the Commitment Agreement.

This notice is irrevocable.

Yours faithfully

.....
For and on behalf of
THE GAVI ALLIANCE

Acknowledged by:

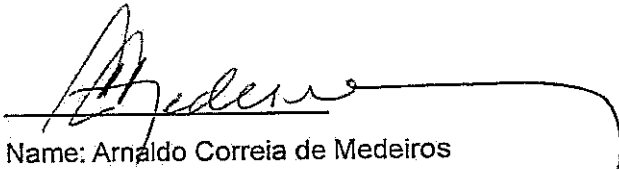
.....
For and on behalf of
The Government of Brazil
The Participant

EXECUTED by
THE GOVERNMENT OF BRAZIL,
Represented by
THE MINISTER OF HEALTH, H.E. Mr. Eduardo Pazuello



in the presence of:

Witness' Signature:



Name: Arnaldo Correia de Medeiros
Occupation: Secretary for Health Vigilance
Address: Ministério da Saúde.
Esplanada dos Ministérios, Bloco G,
Brasilia, DF 70058-900
Brazil

Gavi

EXECUTED by
THE GAVI ALLIANCE,
acting by its duly authorised attorney
in the presence of:

Witness' Signature:

_____:

Name: Marie-Ange Saraka-Yao
Occupation: Managing Director, RM & PSP
Address: The Gavi Alliance
Chemin du Pommier 40,
1218 Le Grand-Saconnex,
Switzerland

The Participant

EXECUTED by

in the presence of:

Witness' Signature:

Name:

Occupation:

Address:

}

Gavi

EXECUTED by

THE GAVI ALLIANCE,

acting by its duly authorised attorney

in the presence of:

Witness' Signature:

_____:

Name: Marie-Ange Saraka-Yao

Occupation: Managing Director, RM & PSP

Address: The Gavi Alliance

Chemin du Pommier 40,

1218 Le Grand-Saconnex,

Switzerland

} 



