TERM SHEET [1]

Janssen SARS-CoV-2 Vaccine Candidate

This term sheet (the "**Term Sheet**") is made by and between:

(1) The **Government of the Republic of South Africa through its National Department of Health** (the "**Government**"); and

(2) *Janssen Pharmaceutica NV* ("**Janssen**")

The Government and Janssen are referred to herein individually as a "**Party**" and together as the "**Parties**".

1. Introduction

1.1. The world is experiencing an emergency healthcare crisis from COVID-19, and the global demand for vaccines is expected to be in order of magnitude of billions of doses.

1.2. Janssen is developing a COVID-19 vaccine based on its proprietary recombinant, replication defective adenovirus 26 (Ad26) vector (the "**Vaccine Candidate**"). Janssen is currently establishing its own as well as external manufacturing capacities around the world in order to meet the expected global demand.

1.3. The Government wishes to enter into an advance purchase agreement with Janssen to secure the availability of 9 million doses of the Vaccine Candidate (the "**Vaccine Doses**") (the "**Advance Purchase Agreement**").

2. Purpose and Timeline

2.1. This Term Sheet sets forth the general terms and conditions upon which the Parties will attempt to negotiate and execute a mutually acceptable Advance Purchase Agreement. It is being entered into for the purpose of facilitating further discussions and negotiations between the Parties with respect to the transactions referred to herein. If successful, these discussions could result in the execution and delivery of the Advance Purchase Agreement. Neither Party is obligated to enter into the Advance Purchase Agreement, and it is understood that these negotiations may be abandoned by any Party for any reason prior to entry into the Advance Purchase Agreement.

2.2. The Parties recognize that the entering into of the Advance Purchase Agreement will depend upon further negotiation, documentation and written approvals, including, among other things, mutual agreement on all terms and conditions that the Parties deem necessary or desirable, and obtaining all required reviews and approvals. Neither Party will have any obligations to the other in connection with this Term Sheet except as may be set forth in an Advance Purchase Agreement signed by the duly authorized representatives of both Parties.

[1] Note to Government: the allocation offered in this term sheet is dependent on finalizing and agreeing this term sheet within 30 days of receipt of this draft.

2.3. Without prejudice to paragraphs 2.1 and 2.2 above, the Parties hereby confirm their current intention to negotiate the Advance Purchase Agreement by **31 March 2021.**

3. Key Terms

3.1. The Parties intend that the Advance Purchase Agreement will reflect the key terms set out in Annex 1 (*Advance Purchase Agreement – Key Terms*).

3.2. The Parties recognize that the key terms set out in Annex 1 are not exhaustive of all matters that may be agreed in the Advance Purchase Agreement, and that additional terms with respect to matters not elaborated on in this Term Sheet will have to be negotiated and agreed between the Parties.

4. Legal Effect

4.1. Other than with respect to the matters covered in this paragraph 4 and paragraphs 5 (*Public Announcement*), 6 (*Confidentiality*) and 7 (*General*) (which represent a binding agreement among the Parties), it is understood that this Term Sheet is intended only as a non-binding expression of intent and the Parties will hereby have no legally binding obligation to enter into the Advance Purchase Agreement or any other contract. In fact, there can be no guarantee that any Advance Purchase Agreement will be entered into or completed. All obligations to proceed with the transactions envisaged by this Term Sheet will be contained only in a mutually agreed upon Advance Purchase Agreement.

4.2. This Term Sheet shall not give any Party any right or claims (other than claims for breaches of this paragraph 4 and paragraphs 5 (*Public Announcement*), 6 (*Confidentiality*) and 7 (*General*)) in the event the other Party for any reason terminates negotiations to effect the transactions contemplated hereby or does not enter into an Advance Purchase Agreement.

5. Public Announcement

Each Party agrees not to issue any press release or other public statement disclosing the discussions in relation to this Term Sheet or the Advance Purchase Agreement, entry into, existence and/or contents of this Term Sheet or the transactions contemplated hereby without the prior written consent of the other Party, provided that Janssen or its affiliates may issue a press release or other public statement required by applicable securities or similar laws.

6. Confidentiality

6.1. This Term Sheet constitutes Confidential Information of Janssen as defined in the non-disclosure agreement dated **02 October 2020** between the Government and Janssen Vaccines & Prevention B.V. (the "**NDA**") and is subject to the terms of the NDA.

6.2. Without prejudice to the above, the Government acknowledges that the information provided in this Term Sheet, including all information that was provided or to be provided by Janssen to the Government with regard to the Vaccine Candidate, is considered trade secrets or commercial or financial information that Janssen owns and customarily holds close and treats as confidential. The information is

provided under the assurance that the Government and all of its agencies will strictly maintain the confidentiality of the information and not further distribute any of such information to other parties.

6.3. The Parties agree that all Confidential Information constitutes exempt information pursuant to the NDA and the relevant provisions of the Promotion of Access to Information Act, and that the Government shall therefore refuse access to all Confidential Information.

7. General

7.1. Governing Law. This Term Sheet shall be governed by the laws of **the Republic of South Africa**, excluding, however, its conflicts of laws provisions. The place of jurisdiction for all disputes arising out of or in connection with this Term Sheet (including such disputes concerning claims under tort law) between the Parties shall be **the Republic of South Africa**.

7.2. No Third-Party Beneficiaries. Nothing herein is intended or will be construed to confer upon any person or entity other than the Parties and their successors or permitted assigns, any rights or remedies under or by reason of this Term Sheet.

7.3. Notices. All notices will be given in writing in English by email, at the electronic addresses specified below or at such other electronic addresses as each Party may notify in writing in accordance with this paragraph 7.3 (*Notices*):

7.3.1. if addressed to the Government:

The Director-General
National Department of Health
Civitas Building,
222 Thabo Sehume Street
CBD
Pretoria
0001

7.3.2. if addressed to Janssen:

The Managing Director of Janssen Pharmaceutica (Pty) Ltd
2 Medical Road
Halfway House
Midrand
1685

7.4. No Assignment. Neither this Term Sheet, nor any rights or obligations hereunder may be assigned, delegated or conveyed by either Party without the prior written consent of the other Party, except that Janssen may assign this Term Sheet, its rights and/or obligations hereunder to its affiliates without the prior consent of the Government.

7.5. Amendments. This Term Sheet may not be amended or modified without both Parties' written consent.

7.6. Costs. Except as otherwise set forth in the Advance Purchase Agreement, each Party will bear its own costs in relation to the negotiations and other activities contemplated in this Term Sheet, including any costs of experts, consultants and lawyers or travelling expenses.

7.7. Counterparts. This Term Sheet may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile, PDF format via email or other electronically transmitted signatures and such signatures shall be deemed to bind each Party hereto as if they were original signatures.

(The remainder of this page has been intentionally left blank. The signature page follows.)

On behalf of the Government

_____

Name:

Title:

Date:

On behalf of Janssen

_____

Name:

Title:

Date:

ANNEX 1

ADVANCE PURCHASE AGREEMENT – KEY TERMS

This summary of key terms (this "**Term Sheet**") is intended to facilitate the negotiation between the Parties of a mutually acceptable Advance Purchase Agreement by setting forth certain of the general terms and conditions upon which the Parties are willing to enter into such an agreement.

SUBJECT	DESCRIPTION
Overview	Key terms for a potential Advance Purchase Agreement ("**APA**") for supply of Janssen's COVID-19 vaccine
Product	Janssen's investigational SARS-CoV-2 vaccine regimen, Ad26.COV2-S, recombinant (the "***Vaccine Candidate***")
Contracting Parties	• The Government of **the Republic of South Africa** ("***Government Purchaser***") • Janssen Pharmaceutica NV, or any of its affiliates (to be determined in the APA) ("***Janssen***")
Territory	**Republic of South Africa**
Volume & Dosage	9 million doses of the Vaccine Candidate (the "***Vaccine Doses***"). Janssen's expectation, based on the current status of development of the Vaccine Candidate, is that to address the current pandemic, and depending on the results generated as part of the overall clinical development plan, each Vaccine Dose will consist of one single injection of [up to $1x10^{11}$ viral particles (one dose)]. The final total dosage and administration schedule required to protect one individual against COVID-19 will be determined by Janssen based on data generated in ongoing clinical trials. Janssen provides no warranty that a Vaccine Dose will be sufficient to protect one individual against COVID-19 and no assurances on the number of individuals who can or will ultimately be protected with the Vaccine Doses.
Supply & Conditions	Janssen will make available the Vaccine Doses to the Government Purchaser only after Janssen has: (i) obtained a marketing authorization or such other regulatory approvals as are deemed necessary by Janssen for the legal marketing of the Vaccine Candidate in the Territory ("***Regulatory Approval***"); (ii) successfully scaled up manufacture and expanded manufacturing capacity of the Vaccine Candidate at anticipated scale; (iii) been able export the volume of Vaccine Doses from the country of production to, and to import the volume of Vaccine Doses into, the Territory; and (iv) received payment of the price for the Vaccine Doses from Government Purchaser. Allocation and distribution of the Vaccine Doses after delivery by Janssen (at a single central location in the Territory) will be the responsibility of the Government Purchaser. Government Purchaser will not be entitled to resell or donate the Vaccine Doses to third parties (such as foreign governments or international organizations) without the prior written consent of Janssen. Due to timing or other factors, Janssen may not be able to supply the Vaccine Doses fully in accordance with the usual packaging and labelling requirements for medicinal

SUBJECT	DESCRIPTION
	products for commercialization within the Territory. The Government Purchaser agrees to receive such products in a generic packaged and labelled form suitable for usage in the Territory.
Availability Schedule	Janssen currently expects the Vaccine Doses to be made available (at a Janssen central warehouse, quality released by Janssen) on the tentative schedule and in the tentative quantities as set forth on **Exhibit A**. Given the status of development of the Vaccine Candidate, actual availability of the Vaccine Doses may differ from what is currently expected. The schedule and quantities set forth on Exhibit A are based on Janssen's current assumption that Regulatory Approval will be obtained on or prior to Q2 2021. If Regulatory Approval is not obtained by such date, such schedule and quantities will likely be delayed. For the avoidance of doubt, Janssen will not make available any volume of Vaccine Doses until such time Regulatory Approval has been obtained (pre-condition to supply).
Purchase Commitments	The Government Purchaser will commit upfront (binding order), in the Advance Purchase Agreement, to purchasing and paying for the Vaccine Doses, irrespective of the actual demand or need for such volume.
Price	The price per single Vaccine Dose (the "***Price***") will not exceed $USD 10. During the initial emergency response period, Janssen's intention is to offer a single global Price based on Janssen's global not-for-profit framework (as described below). The Price will be determined and communicated by Janssen in due course. The Price ultimately charged by Janssen will be the price for the final form of the Vaccine Candidate only. The Government Purchaser and/or its representatives will be responsible for the allocation, distribution, storage and administration of the Vaccine Candidate, along with any related follow-on care, following sale. No mark-up or other price differentials will be applied by the Government Purchaser in the distribution of the Vaccine Candidate. The Price will be exclusive of sales, value-added and other taxes, as well as customs and import fees and duties. Janssen is currently developing an external audit process for its COVID-19 operations to strengthen its commitment to making the Vaccine Candidate available on a not-for-profit basis during the emergency pandemic response period, as well as a framework under which any profit included in the Price paid by a purchaser would be returned to that purchaser of the Vaccine Candidate. The Government Purchaser will benefit from the application of these procedures (as will all other purchasers of the Vaccine Candidate). Janssen will transition to commercial pricing at the end of the emergency pandemic use period.
Down Payment	Upon entry into the Advance Purchase Agreement, the Government Purchaser will make a nonrefundable down payment of **$USD 22 500 000** to Janssen ("***Down Payment***").

SUBJECT	DESCRIPTION
	The Down Payment will only be credited toward actual sales of the Vaccine Doses to the Government Purchaser at a rate of **[$2.50]** per Vaccine Dose. The Down Payment will not be refunded to the Government Purchaser in any circumstances, including if the Vaccine Candidate does not receive Regulatory Approval or development and/or manufacturing of the Vaccine Candidate is unsuccessful.
Compensation Framework & Indemnification	The Parties recognize the importance of vaccination amongst the population as a means to mitigate the current pandemic, and to ensure public confidence is maintained through delivery of safe and effective vaccination programs. To ensure uptake of vaccination that best serve the needs of the [country/ries] and its citizens represented by the Government Purchaser, Government Purchaser agrees to implement a robust, accessible and effective patient protection no fault compensation framework ("**Compensation Framework**"). Janssen expressly reserves the right not to enter into the Advance Purchase Agreement if a satisfactory Compensation Framework is not implemented or established. In addition, the Advance Purchase Agreement will contain an indemnification clause in favor of Janssen substantially in the form set forth in **Exhibit C** hereto.
Cooperation and Assistance	Government Purchaser will assist Janssen and work with other governmental authorities (including [•], [provincial and/or municipal] authorities) to facilitate and expedite the review of all licenses, permits, legislative or regulatory exemptions and activities in relation to the Vaccine Candidate.
Additional Purchases of doses	Janssen will discuss requests from the Government Purchaser to purchase additional quantities of the Vaccine Candidate in excess of the Vaccine Doses. Any additional orders for the Vaccine Candidate in excess of the 9 million Vaccine Doses specified above, if agreed by Janssen, shall be covered by a separate purchase agreement. Such additional doses, if made available by Janssen, would be at the price applicable at that time (which may be different than the price set out in the Advance Purchase Agreement).
Other Terms and Approvals	The Parties recognize that the key terms set forth above are not exhaustive of all matters that may or must be agreed in the Advance Purchase Agreement and that additional terms with respect to matters not elaborated on in this Term Sheet will have to be negotiated and agreed between the Parties. The Parties therefore recognize that the completion of the Advance Purchase Agreement will depend upon further negotiation, documentation and written approvals, including, among other things, mutual agreement on all terms and conditions that the Parties deem necessary or desirable, and obtaining all required reviews and approvals.

EXHIBIT A

TENTATIVE AVAILABILITY OF THE VACCINE CANDIDATE

Based on current assumptions (certain of which are outlined below), Janssen tentatively expects to be able to make available to the Government Purchaser allocations of the Vaccine Candidate after Regulatory Approval, and subject to the conditions of the Term Sheet, as follows:

Expected Calendar Quarter(s) of Availability	***Number of Vaccine Doses per Quarter***	***Number of Vaccine Doses Cumulative***
[Quarter 2 of 2021]	[0.3] million	[0.3] million
[Quarter 3 of 2021]	[4] million	[4.3] million
[Quarter 4 of 2021]	[4.7] million	[9] million

Notes and Assumptions:

- Commencement of supply is dependent on Regulatory Approval as well as on the local quality release by local competent authorities, and is based on current expectation as to timing of regulatory approvals globally and process and timing for local quality release by local competent authorities. Should certain jurisdictions obtain regulatory approval prior to or later than the current assumption or should the current expectations regarding process and timing for local quality release by local competent authorities prove to be incorrect, the foregoing allocation may be subject to change.

- The foregoing assumes that all contemplated Janssen manufacturing capacity produces at expected volumes and that the jurisdictions of production allow free export of the Vaccine Candidate. Should one or more facilities (or portions thereof) fail to come online as expected or should there be any issues with export or transport, this allocation may be subject to change.

- The timing reflected in the above table assumes that the Vaccine Doses will be released for sale based solely on Janssen's standard requirements. If importation or sale of the Vaccine Candidate is subject to additional local release testing or other requirements, delivery of the Vaccine Doses may take longer than the schedule set forth above.

- Final dose and administration schedule is to be determined in clinical studies. If concentration and/or dosing and/or administration schedule changes, this allocation may be changed by Jansen.

EXHIBIT C

JANSSEN VACCINE INDEMNIFICATION PROVISIONS

1. Government Purchaser shall indemnify and hold harmless Janssen, its affiliates, sub-contractors and sub-licensees, all of its partners and third party contractors involved in or otherwise contracted for the design, research, development (including pre-clinical and clinical testing), manufacturing (including contract manufacturers), packaging and labelling (including warnings), procurement, storage, distribution and deployment of the COVID Vaccine, as well as its and their respective officers, directors, employees and other agents and representatives (together, the "**Indemnified Persons**") from any and all (i) losses, claims (including, without limitation, claims for personal injury or death), actions, liabilities, damages, judgments and awards, (ii) costs and expenses pertaining to or resulting from the defense, resolution (including settlement) or processing of any such losses, claims, actions, liabilities, damages, judgments or awards (including attorneys' and other professional advisors' fees and expenses (including taxation)), and (iii) procedural costs (including penalties, interest, fines and taxes on court ordered payments) ((i) to (iii) together, the "**Losses**") suffered or incurred by, or against, the Indemnified Persons in connection with any demands, claims, actions or proceedings of any kind:

   a) involving, relating to, or arising out of or in connection with the COVID Vaccine (including, and regardless of whether the alleged cause of the damage originates from, the design, research, development, testing, manufacture, labelling, packaging, sale, procurement, delivery, deployment, distribution, storage, administration, effects and/or use of the COVID Vaccine); and

   b) brought or initiated by or on behalf of:

      i. the Government Purchaser or any state, provincial, municipal, local or regional governments or competent public authorities within the Territory, or any of its or their respective agencies, departments, ministries, bodies, governments (local, regional or federal) or other public authorities of any kind; or

      ii. a Vaccinated Individual whose Residence is in the Territory (irrespective of the nationality, citizenship or country of origin or incorporation of such Vaccinated Individual); or

      iii. a Vaccinated Individual who has been administered the COVID Vaccine in the Territory (even if such Vaccinated Individual's Residence is not in the Territory); or

iv. any other person in the courts of competent jurisdiction of the Territory, including within any state, province, municipality or locality thereof.

2. The indemnification right under paragraph 1 will not be available to the Indemnified Persons to the extent that their Losses result directly from the Adjudicated Wilful Misconduct or Adjudicated Failure to comply with Good Manufacturing Practices ("GMP") of such Indemnified Persons, where:

a) "**Wilful Misconduct**" shall mean an act or omission that is taken (i) with intentional disregard of a known risk in the manufacture of the COVID Vaccine that is so great as to make it highly probable that the harm will outweigh the benefit, (ii) without legal or factual justification, and (iii) with the intent of achieving a wrongful purpose (it being understood, however, that any action consistent with rules or guidance set out by Government Purchaser or any other government (be it state, provincial, municipal, local or regional) in the Territory, or any public agency, body or other public or regulatory authority in the Territory, and any action, test or results disclosed to a regulatory authority as a part of receiving regulatory approval for the COVID Vaccine in the Territory shall not be considered to be Wilful Misconduct);

b) "**Failure to comply with GMP**" shall mean a failure of compliance with the GMP rules directly causing death or serious physical injury or illness of a Vaccinated Individual.

c) "**Adjudicated"** shall mean a final determination by a court of competent jurisdiction for which the time for filing an appeal has expired and all appeals have been exhausted.

3. If any person makes a claim or initiates a demand, claim, action or proceeding (or notifies in writing an intention to do so) against an Indemnified Person which, in the reasonable opinion of Janssen is considered likely to result in indemnification under paragraph 1 above (a "**Claim**"), Janssen shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the Government Purchaser, specifying the nature of the Claim in reasonable detail (insofar as available), provided that the failure to promptly provide such notice shall not relieve the Government Purchaser of its indemnification obligations under paragraph 1; and

(b) in Janssen's sole discretion:

i. either take such actions as it may consider reasonable and appropriate to avoid, dispute, compromise or defend the Claim (with all related costs, fees and expenses, as well as Losses, to be paid by the Government Purchaser), provided that Janssen may settle the Claim

only with the prior consent of the Government Purchaser (such consent not to be unreasonably withheld, conditioned or delayed); or

ii. require the Government Purchaser to assume (with its own counsel and at its own costs) sole control of the defence or settlement of the Claim and substitute, where possible under applicable law, the Government Purchaser as the defendant; provided that in such case:

A) the Government Purchaser shall reasonably take into consideration the interests (commercial, corporate, reputational or other) of Janssen and shall not conclude any agreement or make any compromise or settlement with any person in relation to such Claim without the prior written consent of Janssen (such consent not to be unreasonably conditioned, withheld or delayed); and

B) Janssen shall have the right, but not the obligation, to participate in the defence or settlement of the Claim and to retain its own counsel in connection with such Claim; and

C) Janssen shall provide assistance and information reasonably required by the Government Purchaser in the defense of the Claim (at the expense of the Government Purchaser), provided that (a) any information reasonably considered by Janssen as confidential or proprietary information shall be provided by it only if and when satisfactory confidentiality arrangements are put in place, and (b) under no circumstances shall Janssen provide any information (including trade secrets) which it reasonably believes would cause material harm to it or other Indemnified Persons if disclosed.

4. Government Purchaser's obligation to indemnify the Indemnified Persons for Claims under paragraph 1 is not subject to a financial limitation or maximum, nor is it limited by the number of indemnifiable Claims brought against the Indemnified Persons.

5. It is the intention of the Government Purchaser to constitute Janssen as a trustee for and agent of the Indemnified Persons that are not party to this Agreement of the covenants of the Government Purchaser contained in paragraphs 1 to 4 above and Government Purchaser agrees that Janssen may enforce the indemnity covenants of the Government Purchaser contained in paragraphs 1 to 4 above for and on behalf of each applicable Indemnified Person and, in such event, the Government Purchaser will not, in any proceeding to enforce the indemnity by or

on behalf of the applicable Indemnified Persons, assert any defense thereto based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defense.

6. The Parties acknowledge and agree that the provisions of paragraphs 1 to 5 are reasonable and necessary to protect the legitimate interest of the Indemnified Persons. However, if any provision in paragraphs 1 to 5 is held to be illegal, invalid or unenforceable, in whole or in part, under any applicable law, then such provision shall not be nullified but the Parties shall be deemed to have agreed to such provision that conforms with the limitations imposed by applicable law and that is as close as possible to the original intention of the Parties and has the same or as similar as possible economic effect, and such provision shall be automatically reformed accordingly.

*

Defined terms (to be further refined in the APA):

"**Residence**" means the place of permanent home or principal establishment;

"**COVID Vaccine**" means Janssen's investigational COVID-19 vaccine based on its proprietary recombinant, replication defective adenovirus 26 (Ad26) vector, supplied to the Government Purchaser under the Advance Purchase Agreement;

"**Vaccinated Individual**" means any individual who has been administered the COVID Vaccine (or, as the case may be, any individual, group, entity or organization purporting to represent, act on behalf or, recover for or in respect of, or seek damages with respect to, any such individual or group of such individuals)