Resell Agreement

by and between

The Kingdom of Sweden

and

The Swiss Confederation

regarding

administration and coordination of resale of Vaccine

This Resell Agreement has been made on the 15th of October 2020 by and between:

1. The Kingdom of Sweden, represented by the Swedish Government, with address at SE 103 33 Stockholm, Sweden ("**Sweden**"); and

2. The Swiss Confederation, represented by the Swiss Federal Office of Public Health, Schwarzenburgstrasse 157, 3003 Bern, Switzerland and the Swiss Armed Forces Pharmacy, Worblentalstrasse 36, 3063 Ittigen, Switzerland ("**Switzerland**"),

(each a "**Party**" and collectively the "**Parties**").

WHEREAS, the Commission intends to enter into advance purchase agreements with different manufactures of Covid-19 vaccine. The Commissions procurement will be based on the ESI Regulation;

WHEREAS, an agreement for the production, purchase and supply of the Vaccine in Europe has been entered into as of 27 August 2020, by and between the Commission, acting on behalf of the Member States and AstraZeneca (i.e. the EU APA);

WHEREAS, the EU APA is based on the principles that AstraZeneca shall use its Best Reasonable Efforts to build capacity to manufacture 300 million Initial Europe Doses, with an option for the Commission, acting on behalf of the Participating Member States (including Sweden), to order an additional 100 million Optional Doses, at no profit and no loss to AstraZeneca. Furthermore, the Commission and the Participating Member States will compensate AstraZeneca as set out in the EU APA;

WHEREAS, the Participating Member States have been allocated a certain number of Vaccine Doses pursuant to the EU APA;

WHEREAS, according to Section 8.3(b) and 8.3(c) of the EU APA, the Participating Member States may resell the Initial Europe Doses and/or Optional Doses to European countries that are not Member States if such other European countries agree to be bound by the terms and conditions of the EU APA applicable to a Participating Member State. For clarity, the resale will be at no profit and no loss for the Commission and the Participating Member States;

WHEREAS, subject to the EU APA and the fact that Switzerland and the Principality of Liechtenstein ("**Liechtenstein**") are not a Member State, the Participating Member States have decided to waive a portion of the number of the Initial Europe Doses in favour of Switzerland and Liechtenstein. In the event that the Commission exercises the option, on behalf of the Participating Member States, to order and obtain the Optional Doses in accordance with Section 5.2 of the EU APA, the Participating Member States may waive a portion of the number of such doses in favour of Switzerland and Liechtenstein;

WHEREAS, the Initial Europe Doses, and if applicable Optional Doses, waived by the Participating Member States in favour of Switzerland and Liechtenstein, shall be allocated to Sweden and Sweden shall, on behalf of the Participating Member States, administrate and coordinate the resale of the Initial Europe Doses, and if applicable Optional Doses, to Switzerland and Liechtenstein. For clarity, all delivery of the Vaccine shall be handled by AstraZeneca and not by Sweden;

WHEREAS, Switzerland, Sweden and AstraZeneca have entered into a three-party agreement (the "**TP Agreement**"), in which Switzerland has declared itself to be bound by the terms and conditions of the EU APA applicable to the Participating Member States;

WHEREAS, pursuant to a framework agreement with Liechtenstein for supply of COVID-19 vaccine, Switzerland has agreed or will agree to receive the Initial Europe Doses, and if applicable Optional Doses, waived by the Participating Member States in favour of Liechtenstein (the "**Liechtenstein Allocated Doses**"). Switzerland is accordingly authorized to provide the Liechtenstein Allocated Doses to Liechtenstein. For clarity, in relation to Sweden, Switzerland shall be deemed as the purchaser of the Liechtenstein Allocated Doses and Switzerland shall assume full responsibility for the Liechtenstein Allocated Doses and shall indemnify and hold Sweden harmless from all purchased Doses under this Resell Agreement;

WHEREAS, the terms and conditions of the EU APA and the TP Agreement are incorporated into this Resell Agreement by this reference, and the services provided hereunder are subject to the terms and conditions of the EU APA and the TP Agreement. Capitalized terms that are used but not otherwise defined herein shall have the same meaning as the capitalized terms set forth in the EU APA and the TP Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, each of the Parties hereby agrees as follows:

1. Mutual understandings

1.1 This Resell Agreement is entered into as a result of the EU APA and the TP Agreement, meaning that the TP Agreement needs to become effective in order for this Resell Agreement to enter into force and become legally binding.

1.2 Furthermore, this Resell Agreement is entered into as a result of the Participating Member States' intention to waive part of the allocated Initial Europe Doses (including Liechtenstein Allocated Doses, the "**Initial Swiss Allocated Doses**"), and if applicable Optional Doses (including Liechtenstein Allocated Doses, the "**Optional Swiss Allocated Doses**"), to Switzerland and Liechtenstein (together the "**Swiss Allocated Doses**") and Sweden's undertaking to administrate and coordinate the resale of these doses to Switzerland at no profit and no loss.

1.3 Switzerland hereby declares that it agrees to be bound by the terms and conditions of the EU APA applicable to a Participating Member State. Switzerland acknowledges that measures and actions taken by the Commission and or the Participating Member States according to the EU APA shall be binding also for Switzerland. Sweden shall use its best reasonable efforts to ensure that the Commission and other Participating Member States in this respect shall treat Switzerland as a Participating Member State and that obligations for Switzerland may not exceed obligations for the Participating Member States.

1.4 Switzerland hereby acknowledges its obligation to purchase a precise quantity of the Initial Swiss Allocated Doses, as set forth in Section 3.1 below, waived by the Participating Member States in favour of Switzerland and Liechtenstein. Switzerland also acknowledges that if and to the extent AstraZeneca's obligation under the EU APA to deliver Initial Europe Doses or Optional Doses under the EU APA lapses, then Sweden's obligation to resell Initial Swiss Allocated Doses or Optional Swiss Allocated Doses, as applicable, according to this Resell Agreement shall also lapse to the same extent.

1.5 Switzerland hereby acknowledges that Switzerland could be liable to cover costs for AstraZeneca as set out in the EU APA and the TP Agreement. Such cost may initially be borne by the Commission or directly by the Participating Member States and such obligation may occur even if the Vaccine will not be delivered. The cost allocation for Switzerland shall be based on the number of doses included in Initial Swiss Allocated Doses, and, if applicable, the number of doses included in Optional Swiss Allocated Doses, as set forth in Section 3 below, in relation, to the total number of doses included in the Initial Europe Doses and, if applicable regarding Optional Swiss Allocated Doses, the total number of Optional Doses. Switzerland's obligation to cover cost borne by the Commission is subject to what is set out in section 5.

1.6 Switzerland may according to the TP Agreement, donate Swiss Allocated Doses to lower or middle income countries that agree to be bound by the terms and conditions of the EU APA applicable to a Participating Member State. For clarity, to the extent Switzerland donates Swiss Allocated Doses, such doses shall still be regarded as Swiss Allocated Doses.

1.7 Switzerland hereby declares that it shall under all circumstances, indemnify and hold Sweden harmless from all Losses relating to or arising from the use or administration of the Swiss Allocated Doses. Such indemnification will be available regardless of where the Swiss Allocated Doses is administered, where the claim is brought, and whether the claim of a Defect originates from the distribution, administration and use, clinical testing or investigation, manufacture, labelling, formulation, packaging, donation, dispensing, prescribing or licensing of the Swiss Allocated Doses. Furthermore, such indemnification will be available for Losses arising from the use and administration of the Swiss Allocated Doses supplied under this Resell Agreement and the TP Agreement, regardless of when or where vaccination occurred and regardless of when or where the injury leading to the Losses occurs or is reported.

1.8 If AstraZeneca or any third party demand claims or damages from Sweden related to the use or administration of the Swiss Allocated Doses, Switzerland has a liability to indemnify and hold Sweden harmless from all claims and damages.

1.9 Switzerland hereby declares that it also, waives and releases any claim against Sweden arising out of or relating to circumstances regulated in Section 15.1 of the EU APA.

2. Resale and Purchase of Swiss Allocated Doses

2.1 Sweden shall, on behalf of the Participating Member States, administrate and coordinate the resale of the ordered, as set forth in Section 3 below, Initial Swiss Allocated Doses, and if applicable Optional Swiss Allocated Doses to Switzerland and Switzerland shall purchase and pay for the Swiss Allocated Doses in accordance with the terms of this Resell Agreement.

3. Order

3.1 Switzerland hereby orders 5 405 105 Initial Swiss Allocated Doses (for clarity, which includes the Liechtenstein Allocated Doses).

3.2 Sweden undertakes, in accordance with Article 3.3(a) of the TP Agreement, to submit Switzerland's order of the Initial Swiss Allocated Doses to AstraZeneca (i.e. by providing AstraZeneca an Order Form which includes the Initial Swiss Allocated Doses). Switzerland acknowledges that the order of the Initial Swiss Allocated Doses is binding for Switzerland, but that the order may be invalid upon termination of the EU APA and the TP Agreement, or if the order provided by Sweden for any other reason should be invalid. Notwithstanding the preceding sentence, Sweden shall use its reasonable efforts to ensure that the order made by Sweden in respect of the Swiss Allocated Doses to AstraZeneca is not cancelled, withdrawn or in any other way deemed invalid, and shall consult with Switzerland before taking any steps which may lead to such result. For the avoidance of doubt, Sweden's obligations pursuant to the foregoing sentence shall, if possible, be independent of any cancellation, invalidation or similar of any order made by Sweden for delivery of Doses to Sweden. Furthermore, Switzerland's order may be reduced according to Section 7.4(c) of the EU APA.

3.3 In the event that the Commission exercises the option to order and obtain the Optional Doses in accordance with Section 5.2 of the EU APA, and any or all Participating Member States waives a portion of the number of such doses in favour of Switzerland and Liechtenstein, Switzerland shall have the right to order Optional Swiss Allocated Doses in accordance with the terms and conditions of this Resell Agreement (i.e. the order shall be subject to the terms and conditions of this Resell Agreement). In such case, Sweden shall use its best reasonable efforts to secure Switzerland's right to order the Optional Swiss Allocated Doses. Sweden will thus inform Switzerland when a right to order the Optional Swiss Allocated Doses occurs.

4. Delivery

4.1 For clarity, the Swiss Allocated Doses will be delivered directly by AstraZeneca to a single Distribution Hub located in Switzerland in accordance with the TP Agreement. The title to and the risk for the Swiss Allocated Doses shall pass from Sweden to Switzerland simultaneously with the risk passing from AstraZeneca to Sweden in accordance with the EU APA, as further described in the TP Agreement. For clarity, this entails that Sweden will not assume any risk for the Swiss Allocated Doses.

4.2 The Distribution Hub for Switzerland is at The Swiss Armed Forces Pharmacy, Worblentalstrasse 36, 3063 Ittigen, Switzerland.

5. Price and payment

5.1 Switzerland shall in consideration for the Swiss Allocated Doses pay a price per Swiss Allocated Dose to Sweden (the "**Purchase Price**").

5.2 The Purchase Price shall be equal to the Price Per Dose calculated pursuant to Sections 7.3, 7.4, 9.1, 9.2 and 10.3 of the EU APA, taking into account adjustments provided for therein, plus an amount per Swiss Allocated Dose corresponding to the Initial Funding in accordance with Sections 7.2, 7.4 and 9.1 of the EU APA.

5.3 The Price Per Dose is at the Effective Date of the EU APA estimated to approximately [redacted] Euros (i.e. [redacted] Euros refers to the Initial Funding and [redacted] Euros to additional cost). However, this is just an estimation and the Purchase Price shall be established according to this Section 5.

5.4 As set out in the TP Agreement AstraZeneca will invoice Sweden for delivery costs plus applicable taxes, fees and VAT associated with the Swiss Allocated Doses. Switzerland shall reimburse Sweden for such costs, and, if any, additional taxes and fees related thereto.

5.5 Sweden has appointed the Public Health Agency of Sweden (*Sw.* Folkhälsomyndigheten) to issue invoices and demand payments under this Resell Agreement. Issued invoices under this Resell Agreement shall be addressed to the address set out in Section 14.

5.6 In order for Switzerland to fulfill its obligations under this Resell Agreement, payments for the Swiss Allocated Doses to Sweden shall be made to the Public Health Agency of Sweden. All payments to Sweden under this Resell Agreement shall be made in euro and by deposit and wire transfer of immediately available funds in the requisite amount to such bank account that Sweden may from time to time designate by written notice to Switzerland.

5.7 In order for Sweden to be able to fulfill its obligations as regards payment in relation to AstraZeneca in accordance with the EU APA and the TP Agreement, payment for the Swiss Allocated Doses and all delivery costs, applicable taxes, fees and VAT associated with the Swiss Allocated Doses, shall be due and payable within fifteen (15) days following the issued invoice. For clarity, such invoice will be issued when an obligation for payment for the applicable Swiss Allocated Doses arises for Sweden in accordance with the EU APA and the TP Agreement, i.e. such obligation could arise even if the Vaccine is not delivered or approved by Swiss regulatory authorities. When payment for the ordered Initial Swiss Allocated Doses has been fully executed by Switzerland, Sweden will, in accordance with Section 8.3(c) of the EU APA, reimburse the Commission the part of the payment corresponding to the Initial Funding in accordance with Sections 7.2, 7.4 and 9.1 of the EU APA.

5.8 In the event that an obligation for payment as regards the Initial Funding in accordance with Section 8.3(c) of the EU APA arises for Sweden before Switzerland has executed full payment for the ordered Initial Swiss Allocated Doses in accordance with Section 5.7 above, payment corresponding to the remaining quantity of the Initial Swiss Allocated Doses as stated in Section 3.1 above and equal to the Initial Funding in accordance with Sections 7.2, 7.4 and 9.1 of the EU APA shall be due and payable within thirty (30) days following an invoice issued by Sweden.

5.9 In the event that the Commission has no obligation to pay the second Installment or may seek to recover the first or second Installment or a portion of it or if Sweden has a right to refund of the Subsequent Funding in accordance with the EU APA, Sweden shall use its best reasonable efforts to secure Switzerland's right, if applicable, to refund.

5.10 In the event that Switzerland fails to pay any amount payable under this Resell Agreement, interest will be charged from the due date until receipt of payment in accordance with the provisions of the Swedish Interest Act (*Sw.* Räntelagen (1975:635)).

5.11 Should Switzerland pay part or all of the Purchase Price prior to delivery of the Swiss Allocated Doses, any such payment(s) would be deemed a reservation fee for the reservation of supply under this Resell Agreement and shall be counted as payment(s) towards the Purchase Price. For the avoidance of doubt, the foregoing shall not entail any additional condition to the payment obligations of Switzerland pursuant to the terms of this Resell Agreement.

6. Representations, warranties and covenants

6.1 Each Party represents, warrants and covenants to the other Party that:

(a) the execution and delivery of this Resell 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 Resell Agreement and to perform its obligations hereunder, including to satisfy the payment obligations hereunder;

(c) this Resell Agreement has been duly executed and is a legal, valid and binding obligation, enforceable against it in accordance with its terms;

(d) it is not under any obligation, contractual or otherwise, to any Person or third party that conflicts with or is inconsistent in any material respect with the terms of this Resell Agreement or that would impede the complete fulfillment of its obligations under this Resell Agreement; and

(e) it shall comply with all Applicable Laws that are applicable to its activities and operations under this Resell Agreement.

7. Information

7.1 Information that Sweden has received as a Participating Member State shall be provided to Switzerland to the extent Sweden is not restricted to provide such information according to the EU APA, other undertakings towards AstraZeneca or for any other justified and reasonably substantiated reasons.

8. Termination

8.1 This Resell Agreement shall terminate concurrently with the EU APA and the TP Agreement, and with the same obligations and effects of termination as set forth in Section 12 of the EU APA, including that Switzerland shall reimburse Sweden within fifteen (15) days of being invoiced, for the amount that Sweden, in relation to the Swiss Allocated Doses, has reimbursed AstraZeneca in accordance with Section 12.2(d) of the EU APA and Article 6 of the Order Forms between Sweden and AstraZeneca.

9. Confidentiality

9.1 The content of this Resell Agreement shall during the term of this Resell Agreement and for a period of five (5) years after its termination or expiry be kept confidential and not be disclosed to any third party without the prior written consent of the other Party.

9.2 All information, whether oral or written or in visual, electronic or tangible form, regarding or otherwise relating to a Party or to any of its affairs or other business matters, which has been disclosed or may be disclosed to the other Party (the "**Receiving Party**") or which the Receiving Party has or may otherwise become aware of in connection with the preparation, negotiation, entry into or performance of this Resell Agreement, shall during the term of this Resell Agreement and for a period of five (5) years after its termination or expiry for whatever reason be kept strictly confidential by the Receiving Party and not be used by it for any other purpose than the purpose contemplated by this Resell Agreement nor be disclosed by the Receiving Party to any third party without the prior written consent of the other Party (such consent not to be unreasonably withheld).

9.3 The restrictions in Section 9.1 and 9.2 above shall not apply to information:

(a) disclosed by Switzerland to Liechtenstein as a third party according to the terms and conditions set forth in Article 16 of the EU APA for disclosure of confidential information to third parties;

(b) to the extent reasonably necessary to be used or disclosed by the Receiving Party in order for it to secure its interests against the other Party in connection with a dispute, controversy or claim arising out of or in connection with this Resell Agreement or to otherwise enforce its rights under this Resell Agreement;

(c) that was at the time of its disclosure or which becomes thereafter generally available to the public otherwise than as a consequence of a breach of this Resell Agreement;

(d) that was already known to the Receiving Party or otherwise in its possession prior to the time of this Resell Agreement;

(e) that was obtained by the Receiving Party in good faith without restriction from a third party; or

(f) that the Receiving Party is required or entitled to disclose by law or any governmental or other regulatory authority or by any applicable contract or regulations of any applicable stock exchange or other market place.

The Party using or disclosing any information or documentation with reference to any of these exceptions bears the burden of proof to establish that the relevant exception applies.

9.4 Notwithstanding the above, the Parties acknowledges that pursuant to mandatory law, this Resell Agreement or any other documents relating to this Resell Agreement, and all other documents that are drafted or received by, or stored at the Swedish Government's and the Swiss Government's premises, are official documents which are public unless there exists a legal ground to treat the document as confidential. The Swedish Government and the Swiss Government can only refuse to disclose such documents if there are any legal grounds therefore.

9.5 Prior to public communication, the Parties shall inform each other and coordinate the timing of the public communication.

10. Limitation of liability

10.1 Unless otherwise expressly provided in this Resell Agreement, Sweden shall have no liability for any damage or loss of any kind under or in connection with this Resell Agreement, regardless of how it was caused and whether such damage or loss was foreseeable or not at the time when the Resell Agreement was formed (even if advised of the possibility of such damage or loss).

10.2 To the extent Sweden has a liability, such liability shall be limited and Sweden shall not be liable for any special, indirect, incidental, consequential damage or loss of any kind, regardless of how it was caused and including but not limited to, loss of profit, loss of reputation or goodwill, loss of production, loss of business, loss of revenues or anticipated savings. Furthermore, Sweden's aggregated liability shall be limited to an amount of 1 000 000 Euros.

11. Entire agreement

11.1 This Resell Agreement represents the entire understanding and agreement between the Parties with respect to its subject matter and supersedes all prior understandings and agreements with respect to such subject matter.

12. Changes and additions

12.1 Changes and additions to this Resell Agreement, including to this Section 12.1, must be made in writing and duly executed by the Parties.

13. Provisions severable

13.1 If any part of this Resell Agreement is held to be invalid or unenforceable, the validity and enforceability of the remainder of this Resell Agreement shall not be affected; however, the Parties shall attempt, through negotiations in good faith, to replace any part of this Resell Agreement so held to be invalid or unenforceable in order to give effect to the intentions of the Parties when signing this Resell Agreement.

14. Communication details; Notices; Representatives

14.1 Any notice given under this Resell Agreement shall be made in writing and in English, shall refer to the Agreement 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:

Sweden:

[redacted]

Folkhälsomyndigheten/Public Health Authority

SE-171 82 Solna Sweden

[redacted]

Switzerland:

[redacted]

Federal Office of Public Health

Schwarzenburgstrasse 157, 3003 Bern, Switzerland

[redacted]

Copy to:

[redacted]

The Swiss Armed Forces Pharmacy

Worblentalstrasse 36, 3063 Ittigen, Switzerland

[redacted]

[redacted]

14.2 For the purpose of this Resell Agreement, Sweden and Switzerland have designated the above referenced person as their duly appointed Representative.

14.3 In all dealings concerning this Resell Agreement, the Parties hereby represent and warrant that its Representative will have full power to execute, deliver, and receive on the Party's behalf all notices, requests and other communications and the Parties shall be entitled to act and rely upon any statement, request, notice or agreement made or given by such Representative. The Parties shall have the right, power and authority to replace appointed Representative upon written notice to the other Party stating that such prior Representative is being replaced and providing the name and relevant contact information for the replacing Representative.

15. Governing law and disputes

15.1 This Resell Agreement shall be governed and construed in accordance with the laws of Belgium.

15.2 Any dispute, controversy or claim arising out of, or in connection with, this Resell Agreement, or the breach, termination or invalidity thereof, shall be exclusively settled by the courts located in Brussels, Belgium.

Signature page follows

This Resell Agreement has been entered into on the date stated in the beginning of this Resell Agreement. This Resell Agreement 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 Resell Agreement may be executed in writing 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.

Place:

The Kingdom of Sweden, represented by the Swedish Government

[redacted]

Place: Bern, Switzerland

The Swiss Confederation, represented by the Swiss Federal Office of Public Health

By_____

Anne Lévy
Director-General

By_____

Nora Kronig Romero

Vice-Director

and the Swiss Armed Forces Pharmacy

By_____

Thomas Süssli

Chief of the Armed Forces

By_____

Daniel Aeschbach

Chief a.i. Army Pharmacy

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Place:

The Kingdom of Sweden, represented by the Swedish Government

By_____

[redacted]

Place: Bern, Switzerland

The Swiss Confederation, represented by the Swiss Federal Office of Public Health

By [redacted]

Anne Lévy

Director-General

By [redacted]

Nora Kronig Romero

Vice-Director

and the Swiss Armed Forces Pharmacy

By Thomas Suessl [redacted]

Thomas Süssli

Chief of the Armed Forces

By [redacted]

~~Daniel Aeschbach~~

~~Chief a.i. Army Pharmacy~~