

PfizerLeak : Exposer l'accord de fabrication et d'approvisionnement de Pfizer - Le travail brésilien (JOURS 5 et 6)

By Ehden Biber

https://T.ME/EH_DEN

Suite à l'excellente conversation que j'ai eue avec Stew Peters dans son émission, j'ai eu envie de m'étendre un peu sur le contrat brésilien.

Tout d'abord, si vous n'avez pas regardé l'épisode, je vous recommande vivement de le faire.

Maintenant, parlons d'abord de la réalité ou non de ce contrat.

Chronologie du contrat

Le 3 mars 2021, le message suivant [1] a été publié dans le « Diario Oficial Da UNiado » (Journal officiel de l'Union) qui est la presse nationale de la République fédérative du Brésil.

[1] <https://sintse.tse.jus.br/documentos/2021/Mar/4/saude/aviso-de-dispensa-de-licitacao-laboratorios-pfizer-ltda-aquisicao-de-100-000-000-de-doses-da-vacina->

AVIS DE RENONCIATION AUX APPELS D'OFFRES - UASG 250005

Le Département de Logistique Sanitaire du Secrétariat Exécutif du Ministère de la Santé rend publique son intention de passer un contrat avec la société Laboratórios Pfizer LTDA, en renonçant à une procédure d'appel d'offres basée sur l'article 2, point I, de la Mesure Provisoire n° 1.026/2021, pour l'acquisition de 100.000.000 de doses du vaccin COVID-19 CORONAVÍRUS, SARS-COV-2, INJECTABLE, à livrer avant décembre 2021. Cette intention sera ratifiée après l'achèvement de l'instruction de procédure en cours. Processus 25000.171832/2020-92. ROBERTO FERREIRA DIAS Directeur du département de la logistique sanitaire



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Ministério da Saúde

SECRETARIA EXECUTIVA

DEPARTAMENTO DE LOGÍSTICA EM SAÚDE

AVISO DE DISPENSA DE LICITAÇÃO - UASG 250005

O Departamento de Logística em Saúde da Secretaria Executiva do Ministério da Saúde torna pública a intenção de contratar, junto à empresa JANSSEN-CILAG FARMACEUTICA LTDA, por dispensa de licitação com fundamento no artigo 2º, inciso I, da Medida Provisória nº 1.026/2021, a aquisição de 38.000.000 de doses da vacina COVID-19 CORONAVIRUS, SARS-COV-2, INJETÁVEL, a serem entregues até dezembro de 2021. Esta intenção será ratificada após a complementação da instrução processual em curso. Processo 25000.175285/2020-14.

ROBERTO FERREIRA DIAS
Diretor do Departamento de Logística em Saúde

AVISO DE DISPENSA DE LICITAÇÃO - UASG 250005

O Departamento de Logística em Saúde da Secretaria Executiva do Ministério da Saúde torna pública a intenção de contratar, junto à empresa Laboratórios Pfizer LTDA, por dispensa de licitação com fundamento no artigo 2º, inciso I, da Medida Provisória nº 1.026/2021, a aquisição de 100.000.000 de doses da vacina COVID-19 CORONAVIRUS, SARS-COV-2, INJETÁVEL, a serem entregues até dezembro de 2021. Esta intenção será ratificada após a complementação da instrução processual em curso. Processo 25000.171832/2020-92.

ROBERTO FERREIRA DIAS
Diretor do Departamento de Logística em Saúde

Diário Oficial da União

A informação oficial
ao alcance de todos



Le 15 mars, dans la même publication, la renonciation à l'appel d'offres a été expliquée [2].

[2] <https://sintse.tse.jus.br/documentos/2021/Mar/16/saude/extrato-de-dispensa-de-licitacao-no-18-2021-aquisicao-de-vacina-covid-19-coronavirus-sars-cov-2-inje>

EXTRAIT DE L'ABANDON DE SOUMISSION N° 19/2021 - UASG 250005

Espèce : N° du processus : 25000.171832/2020-92. Objet : Acquisition de VACCINE, COVID-19 (CORONAVIRUS, SARS-COV-2), INJECTABLE (Vaccin Comirnaty™). Total des articles : 01. Base juridique : Article 2, point I, de la mesure provisoire n° 1.026/2021. Justification : Acquisition de vaccins et de fournitures pour la vaccination contre le Covid-19. Reconnaissance le 15/03/2021. MARCELO BATISTA COSTA - Coordinateur général adjoint des intrants stratégiques de santé. Ratification le 15/03/2021. ROBERTO FERREIRA DIAS - Directeur du département de logistique sanitaire. Valeur globale : R\$5,630,060,241.00. Contractant : Pfizer Export B.V, représenté par Laboratórios Pfizer Ltda, CNPJ : 46.070.868/0036-99. Valeur : 5.630.060.241,00 BRL.

**Sumário**

Ministério da Saúde 1

.....Esta edição completa do DOU é composta de 1 página.....

Ministério da Saúde**SECRETARIA EXECUTIVA****DEPARTAMENTO DE LOGÍSTICA EM SAÚDE****EXTRATO DE DISPENSA DE LICITAÇÃO Nº 18/2021 - UASG 250005**

Espécie: Nº Processo: 25000.175285/2020-14. Objeto: Aquisição de VACINA, COVID-19 (CORONAVÍRUS, SARS-COV-2), INJETÁVEL (Ad26.COV2.S/JNI-78436735). Total de Itens: 01. Fundamento Legal: Artigo 2º, inciso I, da Medida Provisória nº 1.026/2021. Justificativa: Aquisição de vacinas e de insumos destinados à vacinação contra a Covid-19. Reconhecimento em 15/03/2021. MARCELO BATISTA COSTA - Coordenador Geral Substituto de Aquisições de Insumos Estratégicos para Saúde. Ratificação em 15/03/2021. ROBERTO FERREIRA DIAS - Diretor do Departamento de Logística em Saúde. Valor Global: R\$ 2.139.400.000,00. Contratada: JANSSEN PHARMACEUTICA NV, representada pela empresa JANSSEN-CILAG FARMACEUTICA LTDA, CNPJ: 51.780.468/0001-87. Valor: R\$ 2.139.400.000,00.

EXTRATO DE DISPENSA DE LICITAÇÃO Nº 19/2021 - UASG 250005

Espécie: Nº Processo: 25000.171832/2020-92. Objeto: Aquisição de VACINA, COVID-19 (CORONAVÍRUS, SARS-COV-2), INJETÁVEL (Vacina ComirnatyTM). Total de Itens: 01. Fundamento Legal: Artigo 2º, inciso I, da Medida Provisória nº 1.026/2021. Justificativa: Aquisição de vacinas e de insumos destinados à vacinação contra a Covid-19. Reconhecimento em 15/03/2021. MARCELO BATISTA COSTA - Coordenador Geral Substituto de Aquisições de Insumos Estratégicos para Saúde. Ratificação em 15/03/2021. ROBERTO FERREIRA DIAS - Diretor do Departamento de Logística em Saúde. Valor Global: R\$ 5.630.060.241,00. Contratada: Pfizer Export B.V., representada pela empresa Laboratórios Pfizer Ltda, CNPJ: 46.070.868/0036-99. Valor: R\$ 5.630.060.241,00.

Diário Oficial da União**A informação oficial ao alcance de todos**

Le contrat lui-même a été signé le 18 mars. Voici les détails tels qu'ils apparaissent dans le dépôt de documents brésilien :

			Signature list (1 register):
Subscriber	Position/Function	Date/hour	Type
Roberto Ferreira Dias	Diretor(a) do Departamento de Logística	March 18, 2021 at 8:59:29 PM GMT-03:00	Login/password

Vous pouvez valider par vous-même si vous allez sur le dépôt de documents du gouvernement brésilien [ici](#), et utiliser le code de validation : 0019603551 avec le CRC suivant : 1A550AF8

Signatures

Tout d'abord, les informations du côté de Pfizer :

PFIZER EXPORT B.V.**By: PFIZER EXPORT B.V.****Name: LIESBETH LEONIE MARJOLEINE VAN GORKOM****Title: Director of PFIZER EXPORT B.V.**

DocuSigned by:

Liesbeth van Gorkom

ED23AAE25FCA405...

Il s'agit de la signature du représentant de Pfizer, dont vous pouvez valider qu'il s'agit d'une personne réelle, qui est administrateur de Pfizer Export B.V., ici [3]

[3] <http://opencorporates.al/en/nipt/66254302>

Voici des informations sur Pfizer Export B.V., qui partage la même adresse enregistrée que :

Pfizer Australia Holdings B.V., Pfizer B.V., Pfizer Development B.V., Pfizer East India B.V., Pfizer Eastern Investments B.V., Pfizer Enterprise Holdings B.V., Pfizer Global Holdings B.V., Pfizer Himalaya Holdings Coöperatief U.A., Pfizer Manufacturing Holdings LLC, Pfizer Manufacturing LLC , Pfizer Mexico Holding B.V. , Pfizer OTC B.V., Pfizer PFE AsiaPac Holding B.V., Pfizer PFE Australia Holding B.V., Pfizer PFE Eastern Investments B.V., Pfizer PFE Global Holdings B.V. , Pfizer PFE Ireland Pharmaceuticals Holding 1 B.V. , Pfizer PFE Service Company Holding B.V., Pfizer PFE Spain B.V. , Pfizer PFE Turkey Holding 1 B.V., Pfizer Pharmaceuticals Global B.V. , Pfizer Production LLC, Pfizer R&D Holding B.V., and... Pfizer Ventures LLC.

Et voici la signature brésilienne, qui se traduit par : « Document signé électroniquement par Roberto Ferreira Dias, directeur du département de la logistique, le 18/03/2021, à 20h59, selon l'heure officielle du Brésil, sur la base de l'art. 6, § 1, du décret n° 8.539, du 8 octobre 2015 ; et l'art. 8, de l'Ordonnance n° 900 du 31 mars 2017 ».

Documento assinado eletronicamente por Roberto Ferreira Dias, Diretor(a) do Departamento de Logística, em 18/03/2021, às 20:59, conforme horário oficial de Brasília, com fundamento no art. 6º, § 1º, do [Decreto nº 8.539, de 8 de outubro de 2015](#); e art. 8º, da [Portaria nº 900 de 31 de Março de 2017](#).

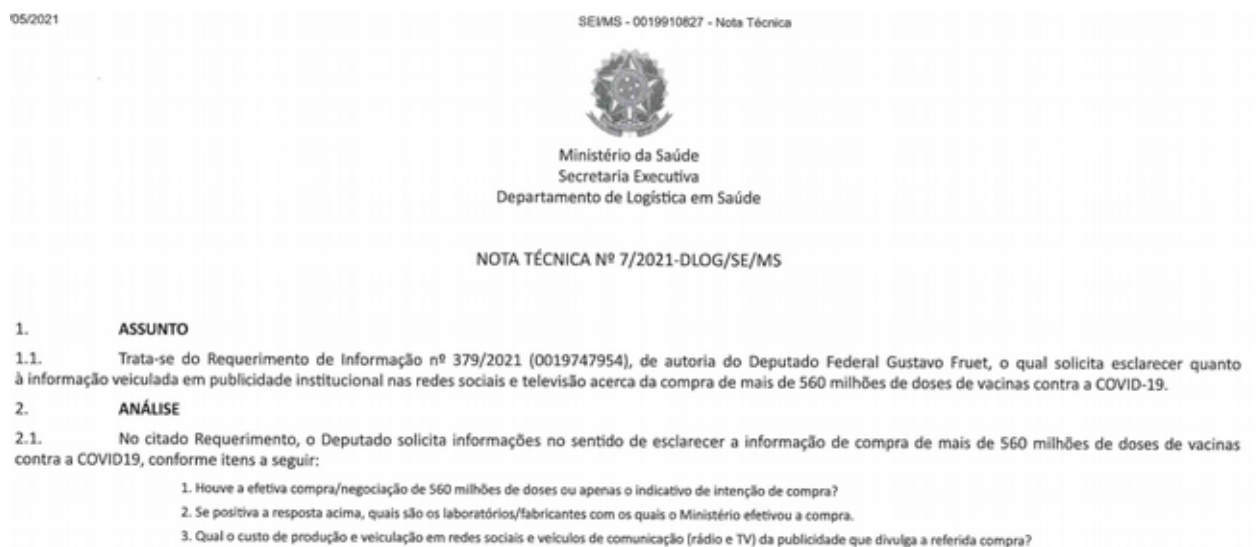
Plus d'informations sur M. Roberto Ferreira Dias prochainement.

Légalité des documents signés numériquement

Pour ceux qui souhaitent en savoir plus sur la légalité des documents signés numériquement (signature électronique) en tant que piste d'audit utilisée comme preuve essentielle, en tant qu'obligation légale, sur son utilisation pour les dépôts auprès des tribunaux et pour les recours collectifs et les questions connexes, ils peuvent lire les livres blancs DocuSign relatifs aux tribunaux [américains](#) et [canadiens](#), le fait que les signatures numériques peuvent être utilisées pour exécuter des documents, y compris lorsqu'il existe une obligation légale de signature, [selon la Commission juridique du Royaume-Uni](#)... et je pourrais continuer encore longtemps.

Continuons.

Suite à une demande d'information n° 379/2021 (0019747954), rédigée par le député fédéral Gustavo Fruet, qui demandait des éclaircissements sur les informations véhiculées dans la publicité institutionnelle sur les réseaux sociaux et à la télévision concernant l'achat de plus de 560 millions de doses de vaccins contre le COVID-19, le département de la logistique sanitaire du ministère de la santé a répondu à la demande le 7 avril 2021 via une « note technique n° 7/2021-DLOG/SE/MS », signée par nul autre que Roberto Ferreira Dias, directeur du département de la logistique.



La demande d'information posait 3 questions :

1. Y a-t-il eu un achat effectif/négociation de 560 millions de doses ou simplement une indication d'intention d'achat ?
2. Si la réponse ci-dessus est oui, quels sont les laboratoires/fabricants avec lesquels le ministère a effectué l'achat ?
3. Quel est le coût de la production et du placement sur les réseaux sociaux et les médias (radio et télévision) de la publicité qui fait connaître l'achat susmentionné ?

Dans la réponse, à l'article 2.4, le directeur écrit : « En réponse à cette demande, les principales données concernant les contrats signés par le ministère de la Santé pour l'acquisition de vaccins contre le COVID19 sont énumérées ci-dessous : »

Voici le tableau complet :

Process No.	TYPE	INPUT	Quantity contracted	Unit Value	Amount	Contract	Date Signed	Company	CNPJ
25000.002031/2021-69	VACCINE	SINOVAC	46,000,000	BRL 58.20	BRL 2,677,200,000.00	005/2021	07/jan	BUTANTAN FOUNDATION	61.189.445/0001-56
25000.013174/2021-04	VACCINE	CORONAVAC	54,000,000	BRL 58.20	BRL 3,142,800,000	014/2021	Feb 15th	BUTANTAN FOUNDATION	61.189.445/0001-56
25000.175250/2020-85	VACCINE	COVAXIN	20,000,000	\$15.00	US\$300,000,000.00	029/2021	Feb 25	BHARAT BIOTECH LIMITED INTERNATIONAL, represented nationally by PRECISA COMERCIALIZATION DE MEDICAMENTOS LTDA	03.394.819/0005-00
25000.175293/2020-61	VACCINE	SPUTNIK V comp. I	5,000,000	BRL 69.36	BRL 346,800,000.00	042/2021	12/mar	UNION QUÍMICA FARMACÉUTICA NACIONAL S/A	60.665.981/0001-18
25000.175293/2020-61	VACCINE	SPUTNIK V comp. II	5,000,000	BRL 69.36	BRL 346,800,000.00	042/2021	12/mar	UNION QUÍMICA FARMACÉUTICA NACIONAL S/A	60.665.981/0001-18
25000.002023/2021-12	VACCINE	COVID 19 vaccine	2,000,000	BRL 29.70	BRL 59,400,000.00	TED - 001/2021	07/jan	FUNDACAO OSWALDO CRUZ/RJ	33.781.055/0001-35
25000.002023/2021-12	VACCINE	COVID 19 vaccine	10,000,000	BRL 30.25	BRL 302,500,000.00	1st Adt. - TED - 001/2021	Feb 5th	FUNDACAO OSWALDO CRUZ/RJ	33.781.055/0001-35
25000.171832/2020-92	VACCINE	COVID 19 vaccine	100,001,070	USD 10.00	USD 1,000,010,700.00	052/2021	March 18	PFIZER EXPORT BV, herein represented by LIESBETH LEONIE MARJOLEINE VAN GORKOM	foreign
25000.175285/2020-14	VACCINE	COVID 19 vaccine	38,000,000	USD 10.00	USD 380,000,000.00	051/2021	March 18	JANSSEN PHARMACEUTICA NV, represented nationally by JANSSEN-CILAG FARMACEUTICA LTDA	51.780.468/0001-87

Comme précédemment, vous pouvez valider les informations ici, en utilisant le code de validation 0019910827, et le code CRC 3722E1DD.

25000.171832/2020-92	VACCINE	COVID 19 vaccine	100,001,070	USD 10.00	USD 1,000,010,700.00	052/2021	March 18	PFIZER EXPORT BV, herein represented by LIESBETH LEONIE MARJOLEINE VAN GORKOM	foreign
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Notez que ce prix correspond au prix figurant à l'annexe B du contrat.

Quarter / Trimestre	Q2 2021	Q3 2021	Total
	T2 2021	T3 2021	
Doses / Doses	13.518.180	86.482.890	100.001.070
Price per dose / Preço por dose	USD 10,00	USD 10,00	USD 1.000.010.700,00

Visibilité des contrats :

Selon le [site du ministère de la santé brésilien](#),

« Tous les contrats ou acquisitions réalisés en vertu de la présente loi seront immédiatement mis à disposition sur un site officiel spécifique sur le world wide web (internet), contenant, le cas échéant, outre les informations prévues au § 3 de l'art. 8 de la loi n° 12.527, du 18 novembre 2011, le nom de l'entrepreneur, le numéro d'enregistrement auprès du Service fédéral des impôts du Brésil, la durée du contrat, la valeur et le processus d'embauche ou d'acquisition respectif ».

Encore une fois, vous pouvez vérifier les détails du contrat là.

Correction de la déclaration que j'ai faite dans mes interviews

Avant de poursuivre, un rappel sur Roberto Ferreira Dias. L'histoire est la suivante, selon les [médias brésiliens](#) (en utilisant Google Translate) :

Le président de la Commission d'enquête parlementaire (CPI) de Covid, Omar Aziz, a emprisonné l'ancien directeur de la logistique du ministère de la Santé, Roberto Ferreira Dias, accusé d'avoir menti lors de son témoignage. « Appelez la police du Sénat. Vous êtes détenu par la présidence du CPI », a déclaré Omar Aziz, qui l'a accusé de parjure... Dias a été appelé à s'expliquer sur les accusations selon lesquelles il aurait demandé un pot-de-vin de 1 dollar par dose de vaccin lors de négociations et aurait fait pression sur un fonctionnaire du ministère pour accélérer l'acquisition de Covaxin, un agent immunisant produit en Inde.

Dans mes interviews, j'ai dit que Roberto Ferreira Dias avait demandé un pot-de-vin de 2 millions de dollars... et comme vous pouvez le voir dans les informations ci-dessus, le chiffre réel est de 20 millions de dollars. Ma belle dyslexie. Il a ensuite été [libéré sous caution](#).

Validation d'un document DocuSign

Avant de passer au contrat lui-même, voici la validation que j'ai effectuée pour m'assurer que le document signé numériquement était correct :

[Validating the Pfizer contract with Brazil](#)

et voici une présentation de 5 minutes du système et du processus utilisés par le gouvernement brésilien pour signer le contrat avec Pfizer :

[How To Use DocuSign & How To Send Documents With DocuSign in 2021 \[STEP BY STEP TUTORIAL\]](#)

Le contrat brésilien - Les conditions

Maintenant que nous avons démontré, au-delà de tout doute raisonnable, que ce contrat est bien réel, allons-nous l'examiner à nouveau ? (Je fais évidemment référence à la version anglaise du contrat qui figure à la page 27). Nous commençons par les termes, car ils ont des implications importantes sur la nature des clauses.

Efforts commercialement raisonnables

Dans la clause 1.9, Pfizer s'assure que tout retard ou problème lié à son produit relèvera des efforts commercialement raisonnables. « Les efforts... déployés par Pfizer pour atteindre les objectifs pertinents... qu'une entreprise se trouvant dans une situation similaire... déploierait pour atteindre un objectif similaire... compte tenu des... risques, des incertitudes... en prenant en compte... les problèmes réels et potentiels de sécurité et d'efficacité... (et) la capacité de produire ou d'obtenir un

approvisionnement adéquat du produit ou de tout composant ou matériau utilisé dans la fabrication du produit ».

Après tout, il s'agit d'un nouveau traitement, aucune autre société n'est en concurrence avec eux dans le domaine de l'ARNm (Moderna n'a pas la capacité de produire autant que Pfizer), cette clause donne donc beaucoup de possibilités à Pfizer de prétendre que tout problème qui pourrait survenir au niveau de la production, de la livraison ou de la sécurité relève de ses efforts commercialement raisonnables pour remplir sa part du contrat.

1.9 "Commercially Reasonable Efforts" means with respect to the efforts to be expended by Pfizer to achieve the relevant objective, the activities and degree of effort that a similarly situated party (with respect to size, resources and assets) in the pharmaceutical industry would use to accomplish a similar objective in its own commercial interests under similar circumstances and considering the relevant risks, uncertainties, limitations and challenges of the development, manufacture, commercialization and distribution of a novel COVID-19 vaccine product, taking into account the following factors: actual and potential issues of safety and efficacy, novelty, product profile, the proprietary position, the then current competitive environment for such Product, the likely timing of the Product's entry into the market, the regulatory environment and status of the Product, compliance with Laws, past performance of the Product and other similar products, the ability to produce or obtain adequate supply of the Product or any components or materials used in the manufacture of the Product and other relevant scientific, technical, operational and commercial factors, in each case as measured by the facts and circumstances at the time such efforts are due.

Dispositif COVAX

Voici maintenant un élément qui ne figurait pas dans le contrat précédent que j'ai publié (L'Albanais). Comme vous pouvez le voir, le Match 2021 prévoit un nouveau mécanisme d'approvisionnement global pour l'achat et la livraison de vaccins. Nous parlerons de COVAX dans un autre billet.

1.13 "Covax Facility" means the global procurement mechanism for the procurement and delivery of doses of approved vaccine for COVID-19.

cGMP

Pfizer s'engagera plus tard à respecter les bonnes pratiques de fabrication actuelles. Le seul problème est que, s'il existe des « normes d'excellence » pour la fabrication des vaccins normaux, l'ARNm est une chose totalement différente. Il s'agit d'une thérapie génique et, pour autant que je sache, il n'existe pas de normes de ce type pour la technologie ARNm.

1.14 "Current Good Manufacturing Practices" or "cGMP" means applicable Good Manufacturing Practices as specified in the Brazilian regulatory legislation, including but not limited

to RDC 301/2019, and any successor legislation from time to time, prevailing at the time of the manufacture of the Product.

Défaut latent

Selon Pfizer, un produit n'est défectueux que s'il ne correspond pas aux spécifications du produit, et non s'il ne fonctionne pas correctement. N'oubliez pas que Pfizer possède des éléments du vaccin qui sont exclusifs, notamment une partie du code génétique (dans le 3'-UTR). Il n'y a aucun moyen de prouver un vice caché sur ces éléments.

1.31 "Latent Defect" means a defect causing the Product to not conform to the applicable Specifications that Purchaser can show was present at the time of Pfizer's delivery of the Product to Purchaser and which could not have been detected by Purchaser, its designee, or their Personnel at delivery through diligent inspection.

Vaccin (?)

Selon Pfizer, les vaccins qu'elle vend sont destinés à la prévention de la maladie humaine COVID-19 ou de toute autre maladie humaine, dans chaque cas causée par l'un des virus SARS-CoV-2, et/ou l'une ou l'autre des souches, mutations, MODIFICATIONS ou dérivés de ces virus.

Il désigne également « tout dispositif, technologie ou produit utilisé dans l'administration OU pour améliorer l'utilisation ou l'effet de ce vaccin" et toute combinaison ».

1.57 "Vaccine" shall include (a) all vaccines manufactured, in whole or in part, or supplied, directly or indirectly, by or on behalf of Pfizer or BioNTech or any of their Affiliates that are

intended for the prevention of the human disease COVID-19 or any other human disease, in each case which is caused by any of the virus SARS-CoV-2, and/or any or all related strains, mutations, modifications or derivatives of the foregoing, that are (i) procured by Purchaser by any means whether pursuant to the Agreement or by way of any other purchase or donation including from any third party or otherwise, whether or not authorized pursuant to Section 2.1, and whether procured prior to or following execution of this Agreement, or (ii) administered in Brazil ("the Territory") by or on behalf of Pfizer (including to employees and agents), whether with Contracted Doses or non-Contracted Doses, and whether administered prior to or following execution of this Agreement; (b) any device, technology, or product used in the administration of or to enhance the use or effect of, such vaccine; (c) any component or constituent material of (a) or (b); or (d) any use or application of any product referred to in (a)-(b).

Ce contrat couvre les vaccins Pfizer, qu'ils aient été obtenus ou non par le Brésil :

« ... obtenus par l'Acheteur par quelque moyen que ce soit, que ce soit dans le cadre de l'Accord ou par tout autre achat ou don, y compris auprès d'un tiers ou autrement, qu'ils soient ou non autorisés conformément à la section 2.1, et qu'ils soient acquis avant ou après la signature du présent contrat ».

Will = Shall

En termes juridiques, « shall » est une obligation, un devoir (par opposition à should). Ici, Pfizer s'assure que chaque fois que le mot « will » est utilisé, il est considéré comme une obligation légale.

Except where the context expressly requires otherwise, (a) the use of any gender herein shall be deemed to encompass references to either or both genders, and the use of the singular shall be deemed to include the plural (and vice versa); (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation"; (c) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (d) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (e) any reference herein to any Person shall be construed to include the Person's successors and assigns; (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof; (g) all references herein to Sections or Attachments shall be construed to refer to Sections or Attachments of this Agreement, and references to this Agreement include all Attachments hereto; (h) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (i) references to any specific Law, rule or regulation, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement or successor Law, rule or regulation thereof; and (j) the term "or" shall be interpreted in the inclusive sense commonly associated with the term "and/or".

Le contrat brésilien - L'offre

Vous ne pouvez pas en sortir

Le produit que Pfizer vend est vendu dans le cadre d'une réglementation d'approbation d'urgence. S'il y a un produit qui peut traiter la maladie, un médicament, cette approbation selon la FDA doit être révoquée. Selon le contrat, même si un tel traitement sera trouvé, ce contrat ne peut être annulé. Désolé pour l'Ivermectin.

(b) Purchaser acknowledges and agrees that (i) Pfizer's efforts to develop and manufacture the Product are aspirational in nature and subject to significant risks and uncertainties, and (ii) the fact that any other drug or vaccine to prevent, treat or cure COVID-19 infection is successfully developed or granted authorization earlier than the granting of Authorization for the Product shall not change the current situation of urgent needs for prevention of the spread of the COVID-19 infection that poses serious threats to and harmful effects on the lives and health of the general public.

Vous ne pouvez vous le procurer qu'auprès de Pfizer et des fournisseurs autorisés, et vous n'êtes pas autorisé à le vendre à qui que ce soit sans l'accord de Pfizer.

(f) Purchaser, including any related Person or any agents of Purchaser, covenants to exclusively obtain all of its supply of any Vaccine of Pfizer, BioNTech or their respective Affiliates intended for the prevention of the human disease COVID-19 (including the Product) either (i) directly from Pfizer or from Pfizer through the COVAX Facility, or (ii) from a Third Party, whether by donation, resale or otherwise, only if Purchaser has obtained Pfizer's prior written consent. Any breach of this Section 2.1(f) shall be deemed an uncureable material breach of this Agreement, and Pfizer may immediately terminate this Agreement pursuant to Section 6.2. For clarity, nothing in this Section 2.1(f) shall prevent Purchaser from purchasing competing vaccine products of any Third Party.

Capacité de fabrication

Pfizer déploiera des « efforts commercialement raisonnables » (ce qui, rappelez-vous, signifie qu'il s'agit plus d'un « devrait » que d'un « doit ») pour fabriquer le produit.

Pfizer shall use Commercially Reasonable Efforts to build or obtain manufacturing capacity to be capable of manufacturing and supplying the Product to Purchaser in accordance with the provisions of this Agreement.

Nouvelle commande ? Nouvelles règles !

Si vous avez besoin de plus de doses, Pfizer pourrait « informer l'acheteur des conditions supplémentaires ou révisées que Pfizer exigerait dans le cadre de cette commande supplémentaire en relation avec cette commande supplémentaire ».

(c) The Purchaser may request additional doses during the Term of the Agreement but only upon being advised that: (i) Pfizer has availability of supply of such additional requested doses (the "Additional Order"); and (ii) Pfizer agrees, in its sole discretion, to allocate such Additional Order to Purchaser. In the event that Pfizer provides Purchaser written confirmation of (i) and (ii) herein, Pfizer shall provide notice to Purchaser (A) accepting such Additional Order and requesting Purchaser to submit a legally binding and irrevocable Purchase Order for such Additional Order in accordance with the terms set forth in this Section 2.3(c), or (B) notifying Purchaser of additional or revised terms Pfizer would require in connection with such Additional Order. In connection with execution of an amendment to include Pfizer's additional or revised terms for such Additional Order, the Purchaser would submit a legally binding and irrevocable Purchase Order for such Additional Order. For clarity, except for any additional or revised terms set forth by Pfizer for the Additional Order (as executed in an amendment to this Agreement at the time of such Additional Order), each Additional Order will also be subject to the same terms and conditions set forth in this Agreement (and any subsequent amendments thereto), as applicable. Any accepted Additional Order must be placed during the Term of the Agreement. Upon Pfizer's acceptance of a Purchase Order for an Additional Order (whether or not through amendment to this Agreement), the doses subject to the accepted Additional Order shall be Contracted Doses. After submission to, and acceptance by, Pfizer of an Additional Order, Purchaser shall pay Pfizer the additional advance payment (calculated as 20% of the price per dose multiplied by the doses subject to the Additional Order) within ten (10) days of the Purchase Order of such Additional Order ("Additional Advance Payment"). Purchaser shall pay such Additional Advance Payment, and Pfizer shall provide an updated Attachment B to reflect such Additional Order. Full payment of the Additional Advance Payment as well as the remainder of the Delivery Price for the additional contracted doses ("Additional Delivery Price") in accordance with the terms set forth herein, including without limitation Sections 3.2 and 3.3, are conditions to supply any doses subject to the Additional Order. If any failure by Purchaser to pay Pfizer for the Additional Advance Payment results in a delay in delivery, the undelivered doses will be at the sole risk of Purchaser, and Pfizer shall have no liability to Purchaser regarding such delay or further inability to supply by Pfizer.

Monopole

Pfizer pourrait vous livrer des dosages provenant d'autres pays. N'oubliez pas que Pfizer contrôle ses produits, même après que vous les ayez payés et obtenus.

(g) If Pfizer is unable to deliver any Contracted Doses for technical or other reasons from the Facilities intended to produce the Contracted Doses under this Agreement, Pfizer agrees to use Commercially Reasonable Efforts to obtain supply of the Product from another location, subject to availability of supply.

Pénurie, partie 1 (2.5a) :

Si Pfizer ne peut pas livrer à temps la quantité à laquelle elle s'est engagée, elle décidera de la quantité que le pays recevra et du moment où il la recevra, et « l'acheteur sera réputé accepter toute révision ».

(a) If Authorization is received but there is insufficient supply to deliver the full number of Contracted Doses on the Delivery Schedule (including the Adjusted Delivery Schedule), including to the extent any shortage is due to a requirement of Pfizer to divert available supply of the Product to another market, Pfizer shall work collaboratively to provide notice (and manage any communications associated with any Product shortages). Following receipt of such notification, Purchaser shall execute any instructions set out in the notice in a timely fashion (and in no event longer than 24 hours). Subject to the foregoing, including any requirement by Pfizer to divert Product to another market, Pfizer shall decide on necessary adjustments to the number of Contracted Doses and Delivery Schedule due to the Purchaser to reflect such shortages based on principles to be determined by Pfizer under the then existing circumstances ("Allocation") which shall be set out in such notice. Purchaser shall be deemed to agree to any revision.

Pénurie, partie 2 (2.5b)

« L'acheteur renonce par la présente à tous les droits et recours qu'il pourrait avoir en droit, en équité ou autrement...(pour) le défaut de Pfizer de livrer les doses contractuelles conformément au calendrier de livraison. ».

(b) Purchaser hereby waives all rights and remedies that it may have at Law, in equity or otherwise, arising from or relating to: (i) any failure by Pfizer to develop or obtain Authorization of the Product in accordance with the estimated dates described in this Agreement; or (ii) any failure by Pfizer to deliver the Contracted Doses in accordance with the Delivery Schedule. In the event of an inconsistency between the provisions of this Section 2.5 (Product Shortages) and those of other sections of this Agreement, the provisions of this Section 2.5 (Product Shortages) shall control and supersede over those of other sections of this Agreement to the extent of such inconsistency.

Pénurie, partie 3 (2.6)

« En aucun cas, Pfizer ne sera soumis ou responsable de pénalités de retard de livraison. »

Under no circumstances will Pfizer be subject to or liable for any late delivery penalties.

Prix d'achat

Nous en avons déjà parlé - 10 \$ par dose, avec un paiement initial de 2 \$ par dose, ou 200 millions de dollars, que Pfizer POURRAIT fournir.

(a) In partial consideration of the Contracted Doses, Purchaser shall pay an upfront payment of 200,002,140.00USD (calculated as 2USD/dose multiplied by the Contracted Doses) within ten (10) days of receipt of an invoice from Pfizer issued on or after the Effective Date (the "Advance Payment"); provided, however, that Pfizer shall have no obligation to ship or deliver Product until receipt of the Advance Payment and Delivery Price. All amounts due hereunder shall be paid in US Dollars (USD) in the bank account indicated by Pfizer with no reduction of set-off whatsoever. The Purchaser is solely responsible for carrying out the foreign exchange agreement with a local bank aiming at remitting funds for the payment of the Price.

Vous devez payer

L'acheteur n'est pas autorisé à « retenir, compenser, récupérer ou débiter les montants dus (ou qui deviendront dus) à Pfizer », quoi qu'il arrive.

(c) Purchaser shall not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, document or Law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Pfizer, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Pfizer or a Pfizer Affiliate.

cGMP - deuxième partie

Quelles sont les BPF pour un produit ARNm qui n'a jamais été approuvé pour les humains auparavant ? La thérapie génique elle-même n'est-elle pas couverte par les bonnes pratiques de fabrication ?

Pfizer shall manufacture and supply the Product in material accordance with the Specifications and cGMP. Such Specifications may be revised through written notification by Pfizer to Purchaser to conform to the Authorization or changes to the manufacturing or distribution of the Product.

Aucune sérialisation, aucun TEST n'est autorisé, aucune exigence spécifique des autorités locales.

« Pfizer n'acceptera pas les demandes de tests locaux, ni les demandes de protocole de libération de lots, ni les demandes d'échantillons d'enregistrement ».

(c) Prior to delivery, Pfizer shall comply with all conditions (in the relevant timescales) set out in the Authorization; provided, however, that Purchaser shall grant, or obtain on Pfizer's behalf, all exemptions, exceptions, and waivers of country specific requirements for the Product granted or permitted by the Government authority (including but not limited to serialization, applicable laboratory or quality testing and/or marketing information form submission and approval), which requirements, absent an exemption, exception or waiver, would prevent Pfizer from supplying and releasing the Product in Brazil upon receipt of the Authorization. In order to maintain an efficient supply chain for the manufacture, release and supply of the Product, Pfizer will be solely responsible for determination of manufacturing and testing locations and will conduct testing in accordance with the Authorization. Pfizer will not agree to requests for local testing or requests for lot release protocols or requests for registration samples in this Agreement or in subsequent amendments or extensions of this Agreement.

Pfizer shall perform all bulk holding stability, manufacturing trials, validation (including, but not limited to, method, process and equipment cleaning validation), raw material, in-process, bulk finished product and stability (chemical or microbial) tests or checks required to assure the quality of the Product and tests or checks required by the Specifications and cGMP.

Commentaire sur la sérialisation : Normalement, chaque vaccin fabriqué doit avoir une information relative au lot, pour pouvoir le retracer, en cas de réaction indésirable au vaccin. Il existe des protocoles pour la vaccination des enfants, par exemple, et l'un des éléments les plus importants de la formation des personnes qui injectent une substance dans le corps humain est l'enregistrement des détails du lot du produit (avec l'heure, la date, le lieu, la personne qui l'a administré, etc.

Si ce produit ne comporte aucun détail sur le lot et qu'un lot est défectueux et, disons, cause des décès, l'absence d'informations sur le lot le rendra introuvable et réduira donc considérablement la possibilité de demander un rappel. Il faut également tenir compte du fait qu'il s'agit d'un produit dont les effets à long terme sont inconnus selon le fabricant. Sans informations relatives au lot enregistrées au moment de l'injection, il sera pratiquement impossible de prouver qu'une réaction indésirable à long terme a été découverte.

Rejet du produit

Vous ne pouvez rejeter le produit que pour des raisons de BPF OU de vice caché (voir ci-dessus), mais n'oubliez pas que **VOUS N'ÊTES PAS AUTORISÉ À TESTER LE PRODUIT !!!**

(a) Purchaser may reject any Product that does not materially conform to Specifications or cGMP ("**Non-Complying Product**") by providing written notice of rejection to Pfizer and setting out detailed reasons for such rejection: (i) immediately (and in no event more than twenty-four (24) hours) upon delivery at the Place of Destination of such Non-Complying Product to Purchaser; or (ii) immediately and in no event more than twenty-four (24) hours upon its first knowledge of a Latent Defect. In the event notice is not provided within twenty-four (24) hours from delivery, the Product shall have been deemed accepted. Pfizer shall respond to any rejection and notice of Non-Complying Product from Purchaser in a timely manner. For clarity, Purchaser shall not be entitled to reject any Product based on service complaints unless a Product does not materially conform to Specifications or cGMP.

Pfizer est la loi

Si vous voulez quand même déposer une plainte, Pfizer fera des tests et vous dira s'ils décident ou non que quelque chose ne va pas. Après tout, vous n'avez pas le droit de faire des tests ou de les faire tester par un tiers.

(b)Pfizer shall conduct an analysis of the causes of any such quality-related complaint and shall report to Purchaser on any corrective action taken. If Pfizer's inspection and testing reveals, to Pfizer's reasonable satisfaction, that such items of the Product are Non-Complying Product and that any such non-conformity or defect has not been caused or contributed to by any abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Pfizer, Pfizer shall use Commercially Reasonable Efforts to replace such Non-Complying Product as soon as practicable at no additional charge to Purchaser. In such circumstances, Pfizer will further arrange for reverse logistics for Product collection and manage the destruction of the Non-Complying Product. Until collection, Purchaser shall store and maintain the relevant Non-Complying Product in appropriately secure locations and in accordance with the manufacturers' specifications. Notwithstanding any other provision of this Agreement, this Section 4.4(b) contains Purchaser's sole and exclusive remedy for Non-Complying Product. The provisions of this Section 4.4 (Rejection of Product; Disposal of Rejected Shipments) shall survive termination or expiration of this Agreement.

Rappel mortel

L'acheteur doit payer tous les frais de rappel, sauf s'il peut prouver que Pfizer a accompli « un acte illicite, commis volontairement et sciemment sans justification légale ou factuelle, dans l'intention de provoquer les effets nocifs. ».

Purchaser shall be responsible for all costs of any recall or market withdrawal of the Product in Brazil, including, without limitation, reasonable costs incurred by or on behalf of Pfizer and its Affiliates or BioNTech and its Affiliates, except to the extent that such recall or market withdrawal results from willful misconduct (being a wrongful act, willingly and knowingly committed without legal or factual justification, with the intent to cause the harmful effects) on the part of, Pfizer or any of its Affiliates or any of their respective Personnel, in which event Pfizer will be responsible solely for: (a) any reasonable and documented out of pocket expenses directly incurred by Purchaser to third parties in implementing such recall or market withdrawal; and (b) replacing, at Pfizer's expense, the Product which has to be recalled.

L'acheteur confirme par la présente qu'aucune loi ne peut s'opposer à ce contrat.

(b) No Conflicts or Violations. The execution and delivery of this Agreement by such Party and the performance of such Party's obligations hereunder (i) do not conflict with or violate any Laws existing as of the Effective Date and applicable to such Party and (ii) do not conflict with, violate, breach or constitute a default under, and are not prohibited or materially restricted by, any contractual obligations of such Party existing as of the Effective Date; and

Mais j'avais une garantie !

Non, en fait vous n'avez aucune garantie, même pas pour « l'aptitude {du produit} à un usage particulier ».

5.4 No Other Warranty.

Except to the extent set out expressly in this Agreement, all conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement (whether by statute, common law or otherwise) are hereby excluded to the fullest extent permitted by Laws. Without prejudice to the general nature of the previous sentence, unless this Agreement specifically states otherwise and to the maximum extent permitted by Law, Pfizer expressly disclaims any representations or warranties with respect to the Product, including, but not limited to, any representation, warranties or undertaking as to (a) non-infringement of Intellectual Property rights of any third party; (b) that there is no requirement to obtain a license of third party Intellectual Property rights to enable the use or receipt of the Product; (c) merchantability; or (d) fitness for a particular purpose.

« L'Acheteur reconnaît en outre que les effets à long terme et l'efficacité du Vaccin ne sont pas actuellement connus et qu'il peut y avoir des effets indésirables du Vaccin qui ne sont pas actuellement connus. En outre, dans la mesure où cela est applicable, l'Acheteur reconnaît que le Produit ne sera pas sérialisé. »

5.5 Purchaser Acknowledgement.

Purchaser acknowledges that the Vaccine and materials related to the Vaccine, and their components and constituent materials are being rapidly developed due to the emergency circumstances of the COVID-19 pandemic and will continue to be studied after provision of the Vaccine to Purchaser under this Agreement. Purchaser further acknowledges that the long-term effects and efficacy of the Vaccine are not currently known and that there may be adverse effects of the Vaccine that are not currently known. Further, to the extent applicable, Purchaser acknowledges that the Product shall not be serialized.

LE CONTRAT DURERA 2 ANS

Pfizer a 2 ans pour livrer ce qu'il a promis. S'ils le font. Rappelez-vous - pas de promesses !

This Agreement shall commence on the Effective Date and shall continue until the later of (a) delivery of the Contracted Doses of the Product under the initial accepted Purchase Order submitted within 5 days of the execution of the Agreement, and (b) twenty-four (24) months from the Effective Date, unless extended or terminated pursuant to this Section 6 (Term; Termination) or the mutual written agreement of the Parties ("Term").

Le contrat brésilien - Indemnisation

L'acheteur accepte par la présente d'indemniser, de défendre et de dégager de toute responsabilité Pfizer, BioNTech, chacune de leurs sociétés affiliées... et chacun des dirigeants, administrateurs, employés et autres agents et représentants... contre tous les procès, réclamations, actions, demandes, pertes, dommages, responsabilités, règlements, pénalités, amendes, coûts et dépenses, qu'ils soient fondés sur un contrat, un délit civil, la propriété intellectuelle ou toute autre perte, causés par, découlant de, en relation avec ou résultant du vaccin, y compris... la prescription, l'administration, la fourniture ou l'utilisation du vaccin.

8. Indemnification.

8.1 Indemnification by Purchaser

Purchaser hereby agrees to indemnify, defend and hold harmless Pfizer, BioNTech, each of their Affiliates, contractors, sub-contractors, licensors, licensees, sub-licensees, distributors, contract manufacturers, services providers, clinical trial researchers, third parties to whom Pfizer or BioNTech or any of their respective Affiliates may directly or indirectly owe an indemnity based on the research, development, manufacture, distribution, commercialization or use of the Vaccine, and each of the officers, directors, employees and other agents and representatives, and the respective predecessors, successors and assigns of any of the foregoing ("Indemnitees"), from and against any and all suits, claims, actions, demands, losses, damages, liabilities, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' and other counsels' fees and other expenses of an investigation or litigation), whether sounding in contract, tort (delict), intellectual property, or any other theory, and whether legal, statutory, equitable or otherwise by any natural or legal person (collectively, "Losses") caused by, arising out of, relating to, or resulting from the Vaccine, including but not limited to any stage of design, development, investigation, formulation, testing, clinical testing, manufacture, labeling, packaging, transport, storage, distribution, marketing, promotion, sale, purchase, licensing, donation, dispensing, prescribing, administration, provision, or use of the Vaccine, any information, instructions, advice or guidance provided by Pfizer and relating to the use of the Vaccine, or any processing or transfer of anyone's personal information processed and transferred by the Purchaser to the Indemnitees.

Pfizer a la possibilité de se défendre elle-même ou de demander au pays d'assurer sa défense (sous la supervision de Pfizer). Tout règlement ou accord doit être approuvé par Pfizer. Pfizer conserve le droit de « coopérer raisonnablement avec l'acheteur dans la défense de toute réclamation indemnisée menée et contrôlée par l'acheteur ».

The Indemnitee(s) shall notify Purchaser of Losses for which it is seeking indemnification pursuant hereto ("Indemnified Claims"). Upon such notification, the Indemnitee(s) shall have the option to conduct and control the defense or to require Purchaser to promptly assume conduct and control of the defense of such Indemnified Claims with counsel acceptable to Indemnitee(s), whether or not the Indemnified Claim is rightfully brought; provided, however, that Purchaser shall provide advance notice in writing of any proposed compromise or settlement of any Indemnified Claim and in no event may Purchaser compromise or settle any Indemnified Claim without Indemnitee(s)'s prior written consent, such consent not to be unreasonably withheld. Indemnitee(s) shall reasonably cooperate with Purchaser in the defense of any Indemnified Claims conducted and controlled by Purchaser.

Pfizer a le droit de participer à toute procédure judiciaire dans le cadre de la défense.

8.3 Participation Rights

Each Indemnitee shall have the right to retain its own counsel and to participate in Purchaser's defense of any Indemnified Claim, at its own cost and expense except as set forth below. A failure by the Indemnitee(s) to give timely notice or to offer to tender the defense of the action or suit pursuant to this Section 8.3 (Participation Rights) shall not limit the obligation of Purchaser under this Section 8, except and only to the extent Purchaser is actually prejudiced thereby.

Si Pfizer estime qu'un pays ne se défend pas suffisamment, elle prendra en charge l'affaire judiciaire (et le pays sera obligé de la payer).

8.4 Assumption of Defense

Notwithstanding the foregoing and without prejudice to Section 12.5 (Third Party Rights), Pfizer, directly or through any of its Affiliates or through BioNTech, may elect to assume control of the defense of an Indemnified Claim (a) within thirty (30) days of Indemnitee's notice to Purchaser of the Indemnified Claim or (b) at any time if, in Pfizer's sole discretion: (i) Purchaser fails to timely assume the defense of or reasonably defend such Indemnified Claim(s) in good faith to the satisfaction of Pfizer (or Pfizer's Affiliates and BioNTech); or (ii) Pfizer believes (or any of Pfizer's Affiliates or BioNTech believe) in good faith that a bona fide conflict exists between Indemnitee(s) and Purchaser with respect to an Indemnified Claim hereunder. Upon written notice of such election, Pfizer shall have the right to assume control of such defense (directly or through either one of its Affiliates or BioNTech), and Purchaser shall pay (as incurred and on demand), all Losses, including, without limitation, the reasonable attorneys' fees and other expenses incurred by Indemnitee(s), in connection with the Indemnified Claim. In all events, Purchaser shall cooperate with Indemnitee(s) in the defense, settlement or compromise of the Indemnified Claim.

Même si un tribunal décide qu'il y a lieu à indemnisation, le pays doit payer tous les frais de justice à Pfizer sur une base trimestrielle.

8.6 Costs

Costs and expenses, including, without limitation, fees and disbursements of counsel, incurred by the Indemnitee(s) in connection with any Indemnified Claim shall be reimbursed on a quarterly basis by Purchaser, without prejudice to Purchaser's right to refund in the event that Purchaser is ultimately held in a final, non-appealable judgment or award to be not obligated to indemnify the Indemnitee(s).

Le contrat brésilien - Responsabilité du produit

Le pays doit souscrire une assurance pour la performance du produit, car « **En aucun cas, Pfizer et ses Affiliés ne seront responsables envers l'Acheteur... pour toute responsabilité de l'Acheteur envers un tiers, y compris, sans limitation, par le biais d'une contribution, d'une indemnité, ou pour toute réclamation pour laquelle l'Acheteur devrait indemniser Pfizer si cette réclamation était portée directement contre Pfizer.** ».

Ou en d'autres termes - si quelqu'un poursuit Pfizer et gagne, le pays doit payer, il doit donc s'assurer.

9.2 Limits on Liability

(a) Subject to the exclusions set forth in Section 9.3, in no circumstances shall (i) either Party be liable to the other Party or its Affiliates, whether arising in tort (including, without limitation, negligence), contract or otherwise, for any indirect, special, consequential, incidental or punitive damages, whether in contract, warranty, tort, negligence, strict liability or otherwise arising out of or relating to this Agreement, the transactions contemplated therein or any breach thereof (whether or not reasonably foreseeable and even if the first Party had been advised of the possibility of the other Party incurring such loss or type of loss), and (ii) in the case of Pfizer and its Affiliates, in no event shall Pfizer be liable to Purchaser for any direct damages except to the extent such direct damages were a result of a material breach of a representation or warranty by Pfizer under this Agreement that directly and solely caused the damage. In no instance shall Pfizer and its Affiliates be liable to Purchaser (whether arising in warranty, tort (including, without limitation, negligence), contract, strict liability or otherwise) for any liabilities of Purchaser to any third party, including, without limitation, through contribution, indemnity, or for any claim for which Purchaser would have to indemnify Pfizer if that claim were brought directly against Pfizer.

La responsabilité totale de Pfizer est le coût du contrat, pas un penny/cent/pesos de plus.

(b) The aggregate liability of Pfizer and its Affiliates (whether arising in warranty, tort (including, without limitation, negligence), contract, strict liability or otherwise) arising out of, under or in connection with this Agreement shall not exceed a sum equivalent to one hundred percent (100%) of the total Price actually received by Pfizer under this Agreement for the Contracted Doses.

La clause relative aux ambassades (et aux réserves bancaires, et à tout autre actif possible)

« L'acheteur... renonce à tout droit d'immunité que lui-même ou ses actifs pourraient avoir ou acquérir à l'avenir, y compris tout actif contrôlé par une agence, une institution, une banque centrale ou une autorité monétaire du Brésil, en ce qui concerne tout arbitrage conformément à la section 12.2 (Arbitrage) ou toute autre procédure juridique... que ce soit au Brésil ou dans toute autre juridiction étrangère, y compris, mais sans s'y limiter, l'immunité contre la saisie conservatoire de l'un de ses actifs. ».

Purchaser, on behalf of itself and the State of Brazil, expressly and irrevocably waives any right of immunity which either it or its assets may have or acquire in the future (whether characterized as sovereign immunity or any other type of immunity), including any assets controlled by any agency, instrumentality, central bank, or monetary authority of Brazil, in respect of any arbitration pursuant to Section 12.2 (Arbitration) or any other legal procedure initiated to confirm or enforce any arbitral decision, order or award, or any settlement in connection with any arbitration pursuant to Section 12.2 (Arbitration), whether in Brazil or any other foreign jurisdiction, including but not limited to immunity against service of process, immunity of jurisdiction, or immunity against any judgment rendered by a court or tribunal, immunity against order to enforce the judgment, and immunity against precautionary seizure of any of its assets. Purchaser, on behalf of itself and the State of Brazil, further covenants and agrees not to assert any such immunity in any proceeding in

New York, New York

« L'acheteur, en son nom et au nom de l'État du Brésil, se soumet expressément et irrévocablement à la juridiction des tribunaux de New York, ou de tout autre tribunal compétent. ».

connection with this Agreement. Purchaser, on behalf of itself and the State of Brazil, expressly and irrevocably submits to the jurisdiction of the courts of New York, or any other court of competent jurisdiction, for the purposes of enforcing any arbitral decision, order or award, or any settlement in connection with any arbitration pursuant to Section 12.2 and represents and warrants that the Person signing this Agreement on its behalf has actual authority to submit to such jurisdiction. Purchaser also expressly and irrevocably waives the

Vous ne pouvez pas changer la loi

« L'Acheteur renonce également de manière expresse et irrévocable à l'application de toute Loi dans toute juridiction qui pourrait autrement limiter ou plafonner son obligation de payer des dommages et intérêts découlant de ou en relation avec toute réclamation indemnisée. »

represents and warrants that the Person signing this Agreement on its behalf has actual authority to submit to such jurisdiction. Purchaser also expressly and irrevocably waives the application of any Law in any jurisdiction that may otherwise limit or cap its obligation to pay damages arising from or in connection with any Indemnified Claims. Purchaser represents and warrants that the Person signing this Agreement on its behalf has actual authority to waive such immunity and bind Purchaser and the State of Brazil to the limitations of liability and liability waivers set forth herein.

« L'acquéreur (il)... continuera à disposer de (lois) et de financements adéquats... (pour) remplir les obligations d'indemnisations et fournir une protection adéquate (à Pfizer et) maintiendra ces (lois) et financements... aussi longtemps que nécessaire. ».

Purchaser represents that it has and will continue to have adequate statutory or regulatory authority and adequate funding appropriation to undertake and completely fulfil the indemnification obligations and provide adequate protection to Suppliers and all Indemnitees from liability for claims and all Losses arising out of or in connection with the Vaccine or its use. Purchaser hereby covenants and acknowledges and agrees that a condition precedent to supply of the Product hereunder requires that Purchaser shall implement and maintain in effect such statutory or regulatory requirements or funding appropriation sufficient to meet its obligations in this Agreement and thereafter shall maintain such statutory and regulatory requirement and funding appropriation, each as applicable, for so long as necessary to meet all of Purchaser's obligations under this Agreement, including, without limitation, any such obligations that, pursuant to Section 6.5, survive expiration or termination of this Agreement. For clarity, the sufficiency of such statutory or regulatory requirements or funding appropriation shall be in Suppliers' sole discretion. Purchaser acknowledges that Suppliers' supply of Product hereunder is in reliance (without any duty of investigation or confirmation by or on behalf of Pfizer or its Affiliates), *inter alia*, on Purchaser's representations and covenants under this Section 9.5, Purchaser implementing and

Le contrat brésilien - Confidentialité

Dans la clause 1.11, il a été défini que « les informations confidentielles comprennent, sans limitation, les termes et conditions du présent contrat ».

1.11 "Confidential Information" means all confidential or proprietary information, other than Exempt Information, in any form, directly or indirectly disclosed to Recipient or its Representatives by or on behalf of the Disclosing Party pursuant to this Agreement, regardless of the manner in which such information is disclosed, delivered, furnished, learned, or observed, either marked "Confidential" or, if oral, declared to be confidential when disclosed and confirmed in writing within thirty (30) days of disclosure. Confidential Information includes, without limitation, the terms and conditions of this Agreement. Failure to mark Confidential Information disclosed in writing hereunder as "Confidential" shall not cause the information to be considered non-confidential, with the burden on the Disclosing Party to prove such information clearly should have been known by a reasonable person with expertise on the subject matter, based on the nature of the information and the circumstances of its disclosure, to be Confidential Information, provided that the Disclosing Party has otherwise made good faith efforts to clearly mark Confidential Information as such.

Dans la clause 1.18, il a été décrit que « la Partie divulgateur » désigne la Partie ou l'un de ses Affiliés qui divulgue, ou fait divulguer, des Informations Confidentielles à l'autre Partie ou à l'un de ses Affiliés.

Dans la clause 1.48, le « destinataire » était décrit comme « la partie qui reçoit des informations confidentielles de l'autre partie ». Dans ce cas, le contrat a été reçu par le pays de la part de Pfizer.

Retour à la section 10.1 : Non-utilisation et non-divulgateur :

1. Le contrat doit rester strictement confidentiel, les pays ne sont pas autorisés à être divulgués à une tierce partie sans l'approbation de l'autre partie.
2. Si le pays est obligé de partager le contrat en raison d'une directive légale ou gouvernementale, il doit en informer Pfizer à l'avance pour qu'elle puisse essayer de l'empêcher.
3. En cas d'échec de la protection contre l'exposition, le conseil juridique du pays rétracte les segments qu'il estime ne pas devoir être exposés.
4. Le pays n'est pas autorisé à exposer les clauses financières OU les clauses d'indemnisation.

10.1 Non-Use and Non-Disclosure.

Each Recipient shall, and shall cause its Representatives which have access to the Disclosing Party's Confidential Information to, maintain in strict confidence, and shall not disclose to any third party, all Confidential Information observed by or disclosed to it by or on behalf of the Disclosing Party pursuant to this Agreement. Each Recipient shall not use or disclose such Confidential Information except as permitted by this Agreement. Each Recipient shall safeguard the confidential and proprietary nature of the Disclosing Party's Confidential Information with at least the same degree of care as it holds its own confidential or proprietary information of like kind, which shall be no less than a reasonable degree of care. The Recipient and its Representatives may use, copy, and make extracts of the Disclosing Party's Confidential Information only in connection with fulfilling its obligations under this Agreement and, without limiting the foregoing, shall not use the Confidential Information for the benefit of the Recipient or any of its Representatives, or for the benefit of any other Person. In the event that Recipient becomes aware of any breach of the obligations contained in this Section 10 (Confidential Information) by it or its Representatives, Recipient shall promptly notify the Disclosing Party in writing of such breach and all facts known to Recipient regarding same. In addition, if Recipient is required to disclose the Disclosing Party's Confidential Information in connection with any court order, statute or Government directive or requirement under any Law, Recipient shall give the Disclosing Party notice of such request, as soon as practicable, before such Confidential Information is disclosed so that the Disclosing Party may seek an appropriate protective order or other remedy, or waive compliance with the relevant provisions of this Agreement. If the Disclosing Party seeks a protective order or other remedy, Recipient shall promptly cooperate with and reasonably assist the Disclosing Party (at the Disclosing Party's cost) in such efforts. If the Disclosing Party fails to obtain a protective order or waives compliance with the relevant provisions of this Agreement, Recipient shall disclose only that portion of Confidential Information which its legal counsel determines it is required to disclose. Neither this Agreement nor the performance by either Party hereunder shall transfer to the Recipient any proprietary right, title, interest or claim in or to any of the Disclosing Party's Confidential Information (including, but not limited to, any Intellectual Property rights subsisting therein) or be construed as granting a license in its Confidential Information. Notwithstanding the foregoing, in all cases, (a) Purchaser may not disclose any of the financial or indemnification provisions contained in this Agreement, including, without limitation, the price per dose of Product or refundability of the Advance Payment or any information that could reasonably ascertain the price per dose of Product, without the prior written consent of Pfizer, and (b) Pfizer may disclose (i) Confidential Information to its Affiliates and BioNTech without prior written consent of Purchaser, and (ii) upon foreign government request, financial information relating to this Agreement, including cost per dose.

Confidentialité, suite

Toute violation de la confidentialité (du présent contrat) sera considérée comme relevant de la responsabilité du bénéficiaire qui l'a exposée à un tiers (représentant) :

10.2 Recipient Precautions.

In order to comply with the obligations contained in this Section 10 (Confidential Information), Recipient shall take at least the following precautions: (a) Recipient shall exercise all reasonable efforts to prevent unauthorized employees and unauthorized third parties from gaining access to Confidential Information (and in no event less than reasonable care); (b) Recipient shall disclose Confidential Information only to such of its Representatives who have a need to know such Confidential Information to fulfill its obligations under this Agreement; provided, however, before any disclosure of Confidential Information, Recipient shall bind its Representatives receiving such Confidential Information to a written agreement or obligation of confidentiality at least as restrictive as this Agreement; and (c) prior to any disclosure, Recipient shall instruct its Representatives of the confidential nature of, and to maintain the confidentiality of, the Confidential Information. Recipient shall be responsible for all actions of its Representatives, including, without limitation, any breach of the terms hereof, regardless of whether or not such Representatives remain employed or in contractual privity with the Recipient.

Une affaire de 10 ans

Le contrat doit être gardé secret pendant 10 ans.

Règlement des litiges (12.1)

Les litiges doivent être exécutés à New York, New York, USA.

irreparable harm. The Parties expressly and irrevocably submit to the jurisdiction of the courts of New York, New York, U.S.A. for any such injunctive relief. Further, the requirement to attempt to resolve a dispute in accordance with this Section 12.1 (Negotiations of Dispute) does not affect a Party's right to terminate this Agreement as provided in Section 6 hereof, and neither Party shall be required to follow these procedures prior to terminating the Agreement. The failure of either Party to participate in good faith discussions and negotiations in an attempt to resolve such dispute shall not delay the date by which the other Party may initiate arbitration under this Section 12.1 (Negotiations of Dispute).

Arbitrage

1. L'arbitrage doit être effectué selon le règlement d'arbitrage de la Cour internationale d'arbitrage de la Chambre de commerce internationale (« CCI »).
2. L'arbitrage doit être tenu secret (liste d'exceptions incluse).

3. Les coûts de l'arbitrage, y compris, sans limitation, les frais juridiques raisonnables des parties, seront à la charge de la partie perdante.

12.2 Arbitration.

Any dispute, controversy, or claim arising out of, relating to, or in connection with this Agreement, including with respect to the formation, applicability, breach, termination, validity or enforceability thereof, or relating to arbitrability or the scope and application of this Section 12.2 (Arbitration), shall be finally resolved by arbitration. The arbitration will be at law and shall be conducted by three arbitrators, in accordance with the Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The claimant shall nominate an arbitrator in its request for arbitration. The respondent shall nominate an arbitrator within thirty (30) days of the receipt of the request for arbitration. The two (2) arbitrators nominated by the Parties shall nominate a third arbitrator, in consultation with the Parties, within thirty (30) days after the confirmation of the later-nominated arbitrator. The third arbitrator shall act as chair of the tribunal. If any of the three (3) arbitrators are not nominated within the time prescribed above, then the ICC shall appoint the arbitrator(s). The seat of the arbitration shall be New York, New York, USA and it shall be conducted in the English language. The Parties undertake to maintain confidentiality as to all aspects of the arbitration, including its existence, content and result, and as to all submissions, correspondence and evidence relating to the arbitration proceedings. The foregoing sentence shall survive the termination of the arbitral proceedings. Notwithstanding the foregoing, a Party may disclose information relating to the arbitration proceedings to the extent that disclosure is required to protect or pursue a legal right related to the arbitration; enforce or challenge an award in bona fide legal proceedings; respond to a bona fide compulsory order or request for information of a governmental or regulatory body; make a disclosure required by securities Laws, rules of a securities exchange, or other similar Laws, regulations, or rules; or seek legal, accounting, or other professional services. The costs of the arbitration, including, without limitation, the Parties' reasonable legal fees, shall be borne by the unsuccessful Party or Parties. However, the arbitral tribunal may apportion such costs between the Parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. The arbitration award shall be final and binding on the Parties, and the Parties undertake to carry out any award without delay. Judgment upon the award may be entered by any court having jurisdiction of the award or having jurisdiction over the relevant Party or its assets.

La publicité :

1. Un pays n'est pas autorisé à mentionner le nom de Pfizer sans son approbation.
2. Le pays ne doit pas divulguer l'existence du contrat, les clauses qu'il contient ni son contenu, ni le type de relation avec Pfizer sans le consentement de cette dernière.
3. Tout communiqué de presse concernant l'accord est soumis à l'approbation de Pfizer.

12.3 Publicity.

A Party shall not use the name, trade name, service marks, trademarks, trade dress or logos of the other Party in publicity releases, advertising or any other publication, without the other Party's prior written consent in each instance. Purchaser shall not make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this Agreement, the wider transactions contemplated by it, or the relationship between the Parties (except as required by Law, and subject to the protections set forth in Section 10.1), without the prior written consent of Pfizer (such consent not to be unreasonably withheld or delayed). Any press release regarding this Agreement is subject to Pfizer's review and prior written approval.

Loi applicable :

Le droit qui régit ce contrat est le droit de l'État de New York, aux États-Unis, (et non le droit du pays).

12.4 Governing Law

All disputes shall be governed by the Laws of the State of New York, USA, without regard to conflict of Law principles other than Section 5-1401 of the New York General Obligations Law, except that any dispute regarding the arbitrability or the scope and application of this Section shall be governed by the Federal Arbitration Act of the United States.

Affiliés :

1. Le contrat protège Pfizer et tous ses affiliés (p. ex. BioNTech, toutes les filiales et entités juridiques de Pfizer, etc.)

2. Toute perte subie par les sociétés affiliées en raison de violations du contrat sera considérée comme une perte pour Pfizer et sera traitée en conséquence.

12.5 Third Party Rights.

(a) Purchaser agrees the applicable rights granted or provided to Pfizer under this Agreement are also granted or provided to Pfizer's Affiliates or to BioNTech to the extent that those rights relate to such Affiliates or BioNTech, including but not limited to the indemnification in Section 8.1 (each a "Third Party Beneficiary" and together the "Third Party Beneficiaries"). Each Third Party Beneficiary shall be entitled to enforce the terms of this Agreement; provided that, to the extent permissible by Law and where reasonably practicable, any claims, demands or actions from any Third Party Beneficiary shall be brought by Pfizer itself on behalf of the relevant Third Party Beneficiary.

(b) Any Losses suffered by a Third Party Beneficiary will not be treated as being indirect solely because it has been suffered by a Third Party Beneficiary and not by Pfizer directly.

Sous-traitance :

N'oubliez pas que ce contrat a été signé avec le ministère de la santé (au nom du gouvernement brésilien).

1. Je ne sais pas si cela signifie ou non que le ministère n'est pas autorisé à déléguer ou à sous-traiter ses devoirs et obligations en vertu de cet accord sans le consentement écrit préalable de Pfizer. En tout cas, pour le niveau national.
2. Toute tentative de cession de droits, de délégation ou de sous-traitance de fonctions sans le consentement écrit préalable requis de Pfizer est nulle et inefficace.
3. Pfizer peut, sans le consentement de l'Acheteur, céder, déléguer ou sous-traiter l'un de ses devoirs et obligations en vertu du présent Accord à un affilié de Pfizer, BioNTech ou un affilié de BioNTech.

12.7 Assignment: Binding Effect.

Neither Purchaser nor Pfizer shall assign any of its rights or delegate or subcontract any of its duties and obligations under this Agreement without the prior written consent of the other Party, which may be withheld at such Party's discretion, provided that Pfizer, without Purchaser's consent, may assign, delegate or subcontract any of its duties and obligations under this Agreement to an Affiliate of Pfizer, BioNTech or an Affiliate of BioNTech. Any such attempted assignment of rights or delegation or subcontracting of duties without the required prior written consent of the other Party shall be void and ineffective. Any such assignment, delegation or subcontracting consented to by a Party in writing shall not relieve the other Party of its responsibilities and liabilities hereunder and such assigning Party shall remain liable to other Party for the conduct and performance of each permitted assignee, delegate and subcontractor hereunder. This Agreement shall apply to, inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Except for the Third Party Beneficiaries set forth under Section 12.5(a), the Parties agree that this Agreement is not intended by either Party to give any benefits, rights, privileges, actions or remedies to any Person or entity, partnership, firm or corporation as a third party beneficiary or otherwise under any theory of Law.

Contrat électronique :

La version numérique du contrat qui a été envoyée par voie électronique est considérée comme légalement exécutée.

Delivery of a signed Agreement by reliable electronic means, including facsimile or email (with receipt electronically confirmed), shall be an effective method of delivery of the executed Agreement. This Agreement may be stored by electronic means and either an original or an electronically stored copy of this Agreement can be used for all purposes, including in any proceeding to enforce the rights or obligations of the Parties to this Agreement.

L'accord est considéré comme si les deux parties l'avaient rédigé conjointement.

Déclaration intéressante, compte tenu de la déclaration de l'ex-CEO de Pfizer au Brésil (voir ci-dessous).

The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

C'est la version anglaise du contrat qui fait foi, et non la traduction locale.

This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

Combien le Brésil a-t-il payé jusqu'à présent ?

Cette année, le Brésil a versé à Pfizer une somme totale de 708 701 223 \$ (oui, 708 MILLIONS de dollars) pour les vaccins COVID19 (sur la base du taux de change d'aujourd'hui, soit une somme totale de 3 694 895 245,00 BRL). [Voici la source](#). En mai, le Brésil a commandé 100 millions de doses supplémentaires à Pfizer, en utilisant la commande 25000.062483/2021-08, cette fois au prix de 12 \$ par dose (contre 10 \$).

FINI !!!

Pourquoi ce contrat est-il si important ? parce que l'ancien président de Pfizer au Brésil et PDG pour l'Amérique latine a témoigné devant la commission brésilienne que PFIZER EXIGE LA MÊME CONDITION POUR L'ACHAT DE VACCINS CONTRE LE COVID19 DE TOUS LES PAYS. Cependant, sa déclaration selon laquelle l'affirmation selon laquelle Pfizer pourrait s'en prendre à des actifs tels que les ambassades est une information déformée n'est pas correcte. Ils pourraient ne pas les poursuivre, mais ils ont tous les droits légaux de le faire sur la base de ce contrat...

Former president of Pfizer in Brazil and CEO for Latin America, Carlos Murillo said today in testimony to Covid's CPI that the clauses proposed by the pharmaceutical company for the offer of vaccines to Brazil are not “leonines”, as stated by the former minister of Eduardo Pazuello Health. According to Murillo, Pfizer demanded the same conditions for the purchase of vaccines against covid-19 from all countries. In addition, he said that claims that the drugmaker would have demanded state assets such as embassies and military bases as collateral are not correct. “It's distorted information,” he declared.

[CPI da Covid: Gerente-geral da Pfizer nega que cláusulas de vacina eram leoninas](#)

PENSÉES FINALES

C'était une longue analyse. J'ai essayé de couvrir tout ce que j'ai vu dans le contrat. N'OUBLIEZ PAS - JE NE SUIS PAS UN EXPERT JURIDIQUE, tout ce qui précède est MON OPINION et ma PROPRE interprétation.

Je ne suis pas un expert juridique, mais vous n'avez pas besoin d'être un expert juridique pour identifier les risques. Je travaille dans la sécurité de l'information depuis de nombreuses années.

J'aide les organisations à gérer les risques de confidentialité, d'intégrité et de disponibilité pour gagner ma vie. Si je peux voir des risques contractuels infinis dans ce contrat, et je ne suis pas juriste, je peux vous assurer que des juristes l'auraient remarqué.

1. Ce contrat DOIT avoir été approuvé par les départements juridiques non seulement du ministère de la santé mais aussi du gouvernement brésilien. Si ce n'est pas le cas, il s'agit d'un suicide juridique.

2. Qui sont les experts juridiques qui ont approuvé ce contrat au nom du ministère de la santé et des gouvernements ?
3. Sont-ils qualifiés pour approuver un tel contrat, compte tenu de la juridiction internationale impliquée ?
4. Si ces experts juridiques ont approuvé le contrat, qui a vu l'évaluation des risques juridiques et qui a signé pour les risques juridiques ?
5. La personne ou l'organisme qui a approuvé le risque (accepté les risques juridiques) était-il habilité à le faire ?
6. Pourquoi le contrat et l'évaluation des risques contractuels n'ont-ils pas été présentés aux citoyens avant l'accord ?
7. Pourquoi les citoyens se voient-ils toujours refuser l'accès au contrat signé par leur pays dans la plupart des pays du monde ?

Il ne s'agit pas d'un contrat ordinaire, mais d'un contrat qui introduit un grand nombre de risques juridiques et d'énormes responsabilités pour les pays qui ont signé un tel accord. Ce contrat a un impact sur chaque citoyen, il nous prive de nos droits, en tant que citoyens.

Chaque pays qui a signé ce contrat avec Pfizer a été contraint de devenir une république bananière pharmaceutique, où les priorités d'une multinationale l'emportent sur celles de ses citoyens.

Vous pensez peut-être que vous vivez au Canada, en Israël, au Brésil ou au Royaume-Uni, mais en fait, vous vivez au [#Pfizerland](#), au [#Modernaland](#) ou à [#AstraZenecaLand](#).

Les contrats que j'ai publiés ont mis en lumière le fait que nos gouvernements ont été contraints de signer de tels accords à notre insu et sans notre consentement en tant que citoyens, ce qui a transformé notre monde en un grand [#PharmaLand](#)

Je ne veux pas qu'une entreprise soit au-dessus de l'état de droit de mon pays, et je ne veux pas que mon pays change ses lois pour qu'une entreprise puisse être exemptée de ce que nous, en tant que citoyens du pays, sommes tenus de respecter.

Nos gouvernements et nos ministères sont censés nous servir, pas une multinationale pharmaceutique, ni aucune autre multinationale. Il faut que cela cesse, MAINTENANT.