

FIRST AMENDMENT AGREEMENT

This **FIRST AMENDMENT AGREEMENT** (this “**First Amendment**”), entered into as of the 4th day of December, 2020 (the “**Amendment Effective Date**”), is by and between (1) Swiss Confederation, represented by Federal Office of Public Health, Schwarzenburgstrasse 157, 3003 Bern, Switzerland and The Swiss Armed Forces Pharmacy, Worbentalstrasse 36, 3063 Ittigen, Switzerland (collectively, “**Purchaser**”), and (2) Moderna Switzerland GmbH, a limited liability company (“*Gesellschaft mit beschränkter Haftung*”) organized and existing under the Laws of Switzerland with company number CHE-344.522.989 and registered address at Aeschenvorstadt 48 ( [REDACTED] 4051 Basel, Switzerland (“**Moderna**”). Purchaser and Moderna are referred to in this First Amendment individually as a “**Party**” and together as the “**Parties**”.

**WHEREAS**, Purchaser and Moderna entered into an agreement, dated August 4, 2020, relating to the reservation, manufacture and supply of filled and finished mRNA-1273 (the “**Agreement**”).

**WHEREAS**, the Purchaser wishes to reserve and purchase an additional three million (3,000,000) doses (based on a dose of 100-micrograms of Product) of Product (as defined in the Agreement) to be delivered by Moderna to Purchaser under the Agreement, and in connection therewith, the Parties wish to amend the Agreement as provided in this First Amendment.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants herein contained, the Parties hereby agree as follows:

1. DEFINITIONS. Unless specifically set forth to the contrary herein, capitalized terms used but not defined herein will have the meanings ascribed to such terms in the Agreement.

2. AMENDMENTS.

2.1 [INTENTIONALLY LEFT BLANK]

2.2 Section 1.48 of the Agreement is hereby deleted and restated as follows:

“1.48 “**Payment Amount**” [REDACTED]

2.3 [INTENTIONALLY LEFT BLANK]

2.4 New Section 1.76 is hereby inserted immediately following Section 1.75 of the Agreement:

“1.76 “**Additional Volume**” means based on a dose of 100-micrograms of the Product, three million (3,000,000) doses of the Product, subject to adjustment as expressly provided for herein. For clarity, in no event shall the Additional Volume, or any portion thereof, be deemed Confirmed Volume.”

2.5 New Section 1.77 is hereby inserted immediately following Section 1.76 of the Agreement, as amended pursuant to this First Amendment:

**“1.77 “Additional Volume Delivery Payment”** [REDACTED]

2.6 New Section 1.78 is hereby inserted immediately following Section 1.77 of the Agreement, as amended pursuant to this First Amendment:

**“1.78 “Additional Volume Payment”** [REDACTED]

2.7 New Section 1.79 is hereby inserted immediately following Section 1.78 of the Agreement, as amended pursuant to this First Amendment:

**“1.79 “Amendment Marketing Approval Payment”** [REDACTED]

2.8 New Section 1.80 is hereby inserted immediately following Section 1.79 of the Agreement, as amended pursuant to this First Amendment:

**“1.80 “Amendment Upfront Payment”** [REDACTED]

2.9 New Section 1.81 is hereby inserted immediately following Section 1.80 of the Agreement, as amended pursuant to this First Amendment:

“1.81 **“Calendar Quarter”** means the respective periods of three (3) consecutive calendar months ending on [REDACTED] of each calendar year.”

2.10 The portion of the sentence in Section 2.2 of the Agreement beginning “Subject to the terms and conditions of this Agreement,” and ending “all responsibility for the following main tasks and duties:” is hereby deleted and restated as follows:

“Subject to the terms and conditions of this Agreement, in consideration of the [REDACTED] Moderna will, whether itself or through an Affiliate, agent, contractor, collaborator or other designee, solely control and assume all responsibility for the following main tasks and duties:”

2.11 Section 4.8 of the Agreement is hereby deleted and restated as follows:

“Set-off. Moderna will be entitled, to the fullest extent permitted by applicable Law, to set-off and apply against any amounts payable to Purchaser (including pursuant to Section 5.7) or any Related Party (other than import and export duties, income tax, corporation tax, capital gains tax, value added tax, or any other taxes), any amounts owed to Moderna or any other Moderna Party by Purchaser under the indemnification in Sections 4.1 through 4.8 or under Sections 5.2(ii), 5.2(iii), 5.2(iv), 5.2(v) or 5.3. Any other set-off right of Moderna is expressly excluded ([REDACTED])”

2.12 Section 4.9(i) of the Agreement is hereby deleted and restated as follows:

“(i) [REDACTED]

2.13 Section 4.10 of the Agreement is hereby deleted and restated as follows:

“(ii) [REDACTED]

2.14 Section 4.11 of the Agreement is hereby deleted and restated as follows:

“4.11 Exceptions to Territory Restrictions.

(i) [REDACTED]

Purchaser and its Related Parties may provide the Product to (a) the Principality of Liechtenstein [REDACTED]

(ii) [REDACTED]

[REDACTED]

2.15 Section 5.2 of the Agreement is hereby deleted and restated as follows:

“5.2 Payment.

(i)

[REDACTED]

(ii)

[REDACTED]

(iii)

[REDACTED]

(iv)

[REDACTED]

(v)

[REDACTED]

2.16 Section 5.7 of the Agreement is hereby deleted and replaced as follows:

“5.7 Refunds. If any refund is required to be paid by Moderna to Purchaser pursuant to Section 6.3(ii), 6.3(iii)(1), 6.3(iv), 6.3(v), 6.3(vi), 10.1(iv) or 12.3(v), or as a result of the Term expiring following the occurrence of the Cessation Date (if any), any such refund shall occur no later than [REDACTED] days following such refund becoming due hereunder [REDACTED]

[REDACTED]

For the avoidance of doubt, in no event shall Purchaser receive refunds under more

than one of the following Sections upon the expiration or termination of this Agreement: Section 6.3(iv), Section 6.3(v), Section 6.3(vi), Section 12.3(ii) and Section 12.3(v).”

2.17 [INTENTIONALLY LEFT BLANK]

2.18 Section 6.3(iii) of the Agreement is hereby deleted and restated as follows:

“(iii)

(1) If Moderna (itself or through its Affiliates, collaborators or contractors) has not obtained Marketing Approval for the Product in the Territory on or before [REDACTED] Purchaser may by notice in writing received by Moderna at any time on or before [REDACTED] reduce the Confirmed Volume by up to [REDACTED]. In such case, (i) the definition of Confirmed Volume will be deemed to be amended accordingly and (ii) Purchaser will be entitled to a refund [REDACTED]

[REDACTED] Following any such permitted reduction, Moderna will, after consultation with Purchaser, promptly provide an updated [REDACTED] which will thereafter be the [REDACTED] for all purposes hereunder.

(2) If Moderna (itself or through its Affiliates, collaborators or contractors) has not obtained Marketing Approval for the Product in the Territory on or before [REDACTED] Purchaser may by notice in writing received by Moderna at any time on or before [REDACTED] reduce the Additional Volume by up to [REDACTED]. In such case, the definition of Additional Volume will be deemed to be amended accordingly. Following any such permitted reduction, Moderna will, after consultation with Purchaser, promptly provide an updated [REDACTED] which will thereafter be the [REDACTED] for all purposes hereunder.

This Section 6.3(iii) will also apply where the Regulatory Authority in the Territory requires Moderna or any Moderna Party to carry out any additional non-clinical trials or clinical trials prior to Marketing Approval for the Product in the Territory; *provided*, that (x) [REDACTED]

[REDACTED] or (B) such additional non-clinical trials or clinical trials could not reasonably be completed in time to obtain Marketing Approval for the Product in the Territory by [REDACTED], then Moderna would not be required for the purposes of this Section 6.3(iii) to carry out any such additional non-clinical trials or clinical trials.”

2.19 Section 6.3(iv) of the Agreement is hereby deleted and restated as follows:

“(iv)If Moderna (itself or through its Affiliates, collaborators or contractors) has not obtained Marketing Approval for the Product in the Territory on or before [REDACTED] after Moderna has cooperated with the Governmental Authorities and the Regulatory Authority in the Territory as required by this Agreement but the Product has obtained another Relevant Marketing Approval, and (a) Moderna has provided written notice to Purchaser on or before [REDACTED] indicating that Moderna does not reasonably expect to deliver to Purchaser all of the then current Confirmed Volume on or before [REDACTED], or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before [REDACTED] and Moderna has not actually delivered to Purchaser all of the then current Confirmed Volume on or before [REDACTED] then, if the Term

expires as a result of Section 12.1(c)(i), Purchaser will be entitled to a refund pursuant [REDACTED]

[REDACTED] This Section 6.3(iv) will also apply where the Regulatory Authority in the Territory requires Moderna or any Moderna Party to carry out any additional non-clinical trials or clinical trials prior to Marketing Approval for the Product in the Territory; provided, that (x) [REDACTED]

[REDACTED] to carry out any such additional non-clinical trials or clinical trials if such trials could reasonably be completed in time to obtain Marketing Approval for the Product in the Territory by [REDACTED]; and provided, further, that if (A) Purchaser does not bear all of the costs and expenses for such additional non-clinical trials or clinical trials, or (B) such additional non-clinical trials or clinical trials could not reasonably be completed in time to obtain Marketing Approval for the Product in the Territory by [REDACTED] then (1) Moderna would not be required for the purposes of this Section 6.3(iv) to carry out any such additional non-clinical trials or clinical trials and (2) Moderna's or any Moderna Party's conduct of such additional non-clinical trials or clinical trials is not required for Moderna to be in compliance with its obligations to cooperate with the Governmental Authorities and the Regulatory Authority in the Territory under this Agreement."

2.20 Section 6.3(v) of the Agreement is hereby deleted and restated as follows:

“(v)

(1) If Moderna (itself or through its Affiliates, collaborators or contractors) has obtained Marketing Approval for the Product in the Territory on or before [REDACTED] and (a) Moderna has provided written notice to Purchaser on or before [REDACTED] indicating that Moderna does not reasonably expect to deliver to Purchaser all of the then current Confirmed Volume on or before [REDACTED] or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before [REDACTED] and Moderna has not actually delivered to Purchaser all of the then current Confirmed Volume on or before [REDACTED] then, if the Term expires as a result of Section 12.1(c)(i), Purchaser will be entitled to a refund pursuant to Section 5.7 in an amount equal to (A) [REDACTED]

(2) If Moderna (itself or through its Affiliates, collaborators or contractors) has obtained Marketing Approval for the Product in the Territory on or before [REDACTED] and (a) Moderna has provided written notice to Purchaser on or before [REDACTED] indicating that Moderna does not reasonably expect to deliver to Purchaser all of the Additional Volume on or before [REDACTED] or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before [REDACTED] and Moderna has not actually delivered to Purchaser all of the Additional Volume on or before [REDACTED] then, if the Term expires as a result of Section 12.1(c)(ii), Purchaser will be entitled to a refund pursuant to Section 5.7 in an amount equal [REDACTED]

2.21 Section 6.3(vi) of the Agreement is hereby deleted and restated as follows:

“If (a) Moderna has provided written notice to Purchaser on or before [REDACTED] indicating that Moderna does not reasonably expect the Product to obtain any Relevant Marketing Approval on or before [REDACTED] or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before [REDACTED] and the Product has not obtained any Relevant Marketing Approval on or before [REDACTED] then, if the Term expires as a result of Section 12.1(c)(i), Purchaser will be entitled to a refund pursuant to Section 5.7 in an amount equal to [REDACTED]

2.22 Section 6.6 of the Agreement is hereby deleted and restated as follows:

“6.6 [REDACTED]

2.23 Section 6.7 of the Agreement is hereby deleted and restated as follows:

“6.7 Pricing Terms [REDACTED]

2.24 Section 6.9 of the Agreement is hereby deleted and restated as follows:

“6.9 Supply Timing. If Marketing Approval for the Product in the Territory is granted on or before [REDACTED] and requested by Purchaser in writing to Moderna, Moderna will use [REDACTED] to accelerate Delivery of up to [REDACTED] 100-microgram doses of the Confirmed Volume to Purchaser in the [REDACTED] (if such Marketing Approval is received reasonably prior to [REDACTED] and in the aggregate with the doses already scheduled to be Delivered in the [REDACTED] or as soon as reasonably

practicable thereafter. For clarity, any such acceleration shall not affect the Delivery schedule of the Additional Volume.”

2.25 Section 10.1(v) of the Agreement is hereby deleted and restated as follows:

“(v) Maximum Liability [REDACTED]

2.26 Section 12.1 of the Agreement is hereby deleted and restated as follows:

“ 12.1 Term. This Agreement will commence on the Effective Date and will continue until the earliest of (a) the date that all of the then current Confirmed Volume and then current Additional Volume of the Product has been delivered by Moderna to Purchaser, (b) the Cessation Date, (c) (i) [REDACTED] solely in the event that all of the then current Confirmed Volume has not been delivered by Moderna to Purchaser by such date or (ii) [REDACTED] in the event that all of the Additional Volume has not been delivered by Moderna to Purchaser by such date, and (d) the termination of this Agreement in accordance with Section 12.2 (the “Term”). If Marketing Approval for the Product in the Territory is not obtained by [REDACTED], the Parties will discuss in good faith whether to extend the deadlines relating to the delivery of Product and the expiration of the Agreement as provided for in Section 12.1(c) (as well as the dates in Sections 6.3(iv), 6.3(v), 6.3(vi), 6.3(viii)(B) and 12.3(i)), and if the Parties agree to extend any such dates, the Parties will enter into an amendment to this Agreement to reflect such extension(s).”

2.27 Section 12.2(ii) of the Agreement is hereby deleted and restated as follows:

“(ii) Moderna may terminate immediately this Agreement for cause by written notice to Purchaser if [REDACTED]



[REDACTED]

2.28 Section 12.3(iv) of the Agreement is hereby deleted and restated as follows:

“(iv) In the event of a termination of this Agreement pursuant to Section 12.2(ii), 12.2(iv) or 12.2(v) (as a result of Purchaser’s failure to comply with its obligations under Sections 4.1 through 4.8, Section 4.10(i) or Section 4.11), [REDACTED]

2.29 Section 13.3(ii) of the Agreement is hereby deleted and restated as follows:

“(ii) Dispute Escalation. In the event of a Dispute between the Parties, the Parties will first attempt to resolve such Dispute by negotiation and consultation between Purchaser Representative and the Project Manager. In the event that such Dispute is not resolved on an informal basis within [REDACTED] days from receipt of the written notice of a Dispute, any Party may, by written notice to the other, have such Dispute referred to [REDACTED] for Moderna and [REDACTED] for Purchaser (or their respective designees, which designee is required to have decision-making authority on behalf of such Party), who will attempt to resolve such Dispute by negotiation and consultation for a [REDACTED] day period following receipt of such written notice.”

2.30 Moderna’s address as set forth in Section 13.10 of the Agreement is hereby deleted and replaced with the following address:

If to Moderna, to: Moderna Switzerland GmbH  
[REDACTED]  
Aeschenvorstadt 48  
4051 Basel, Switzerland  
[REDACTED]  
[REDACTED]

With a copy to: Moderna Switzerland GmbH  
c/o ModernaTX, Inc.  
200 Technology Square  
Cambridge, MA 02139  
Attn: [REDACTED]  
Email: [REDACTED]

2.31 Exhibit D of the Agreement is deleted and replaced with the table annexed hereto as Annex 1, which will be deemed to be an updated Anticipated Delivery Schedule and is inclusive of the anticipated delivery schedule for the Confirmed Volume and the Additional Volume.

2.32 For purposes of the Agreement, the doses delivered in a calendar quarter will be deemed to first be doses included in the Confirmed Volume, and second to be doses included in the Additional Volume.

2.33 Exhibit H of the Agreement is deleted and replaced with the Amended Parent Guarantee Agreement annexed hereto as Annex 2, duly executed by ModernaTX on the Amendment Effective Date.

2.34 Except to the extent modified herein, the terms and conditions of the Agreement will remain in full force and effect.

3. MISCELLANEOUS.

3.1 This First Amendment will be construed and the respective rights of the Parties determined in accordance with the substantive Laws of ██████ notwithstanding any provisions of ██████ Laws or any other Laws governing conflicts of laws to the contrary, and the patent Laws of the relevant jurisdiction without reference to any rules of conflicts of laws to the contrary. Each Party, and its Affiliates and Related Parties, disclaims any reliance on any representation, act or omission other than what is expressly set forth in this First Amendment. The Parties expressly reject any application of the United Nations Convention on Contracts for the International Sale of Goods to this First Amendment.

3.2 The provisions of Section 13.3(i), Section 13.3(ii) (as amended pursuant to this First Amendment), Section 13.3(iii), Section 13.5, Section 13.6, Section 13.7, Section 13.8, Section 13.12 and Section 13.13 of the Agreement are incorporated herein by reference as though set forth herein, *mutatis mutandis*.

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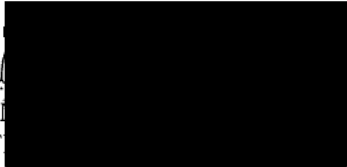
**IN WITNESS WHEREOF**, the Parties have caused this First Amendment to be executed by their duly authorized representatives as of the Amendment Effective Date.

**SWISS CONFEDERATION, represented by  
FEDERAL OFFICE OF PUBLIC HEALTH**

**MODERNA SWITZERLAND GMBH**

BY: \_\_\_\_\_  
NAME:  
TITLE:

BY: \_\_\_\_\_  
NAME:  
TITLE:



BY: \_\_\_\_\_  
NAME:  
TITLE:

**THE SWISS ARMED FORCES PHARMACY**

BY: \_\_\_\_\_  
NAME:  
TITLE:

BY: \_\_\_\_\_  
NAME:  
TITLE:

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed by their duly authorized representatives as of the Amendment Effective Date.

SWISS CONFEDERATION, represented by MODFRNA SWITZERLAND GMBH

FEDERAL OFFICE OF PUBLIC HEALTH

BY: [REDACTED]  
NAME: [REDACTED]  
TITLE: [REDACTED]

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

BY: [REDACTED]  
NAME: Nora KRONIG ROTTRO  
TITLE: VICE DIRECTOR GENERAL

THE SWISS ARMED FORCES PHARMACY

Thomas Suessli [REDACTED]

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

Kaiser Thomas [REDACTED]  
BY: [REDACTED]  
NAME: [REDACTED]  
TITLE: [REDACTED]

ANNEX 1

EXHIBIT D

ANTICIPATED DELIVERY SCHEDULE

Anticipated First Delivery Date: [REDACTED]

Period	100-microgram doses of Product
First Quarter 2021	[REDACTED]
Second Quarter 2021	[REDACTED]
Third Quarter 2021	[REDACTED]

ANNEX 2

EXHIBIT H

FORM OF AMENDED PARENT GUARANTEE AGREEMENT

This **AMENDED AND RESTATED PARENT GUARANTEE AGREEMENT** (this "**Amended Guarantee Agreement**"), entered into as of this 4th day of December, 2020, by and between ModernaTx, Inc., a Delaware corporation with file number 4676789 and address at 200 Technology Square, Cambridge, MA 02139, USA ("**Parent Guarantor**"), in favor of Swiss Confederation, represented by Federal Office of Public Health, Schwarzenburgstrasse 157, 3003 Bern, Switzerland and The Swiss Armed Forces Pharmacy, Worblentalstrasse 36, 3063 Ittigen, Switzerland (collectively, "**Purchaser**" and together with Parent Guarantor, the "**Parties**" and each a "**Party**").

**WHEREAS**, pursuant to the Agreement, dated as of August 5, 2020 (as amended, restated and/or otherwise modified from time to time, including by that certain First Amendment between the Parties dated December 4, 2020, the "**Agreement**"), by and between Moderna Switzerland GmbH, a limited liability company ("*Gesellschaft mit beschränkter Haftung*") organized and existing under the Laws of Switzerland ("**Moderna**"), and Purchaser, Purchaser may become entitled to certain refund payments upon the terms and subject to the conditions set forth therein;

**WHEREAS**, Parent Guarantor is a parent company to Moderna;

**WHEREAS**, Parent Guarantor and Moderna are engaged in related businesses, and Parent Guarantor shall derive substantial direct and indirect benefit from entry by Moderna into the Agreement with Purchaser; and


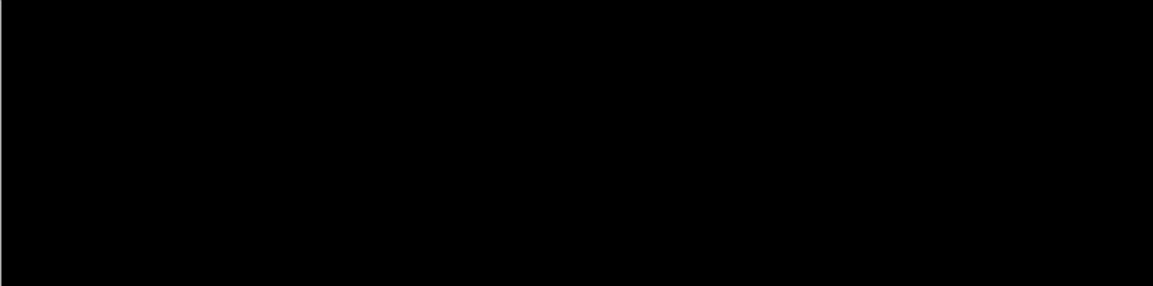
**WHEREAS**, it is an obligation of Moderna under the Agreement to cause Parent Guarantor to execute and deliver this Amended Guarantee Agreement to Purchaser.

**NOW, THEREFORE**, in consideration of the foregoing premises and mutual covenants herein contained, the Parties hereby agree as follows:

SECTION 1. DEFINITIONS

- 1.1. Definitions. Unless specifically set forth to the contrary herein, terms, whether used in the singular or plural, defined in the Agreement will have the respective meanings set forth therein.

SECTION 2. GUARANTEE

- 2.1. Guarantee. Parent Guarantor hereby unconditionally and irrevocably, guarantees, as primary obligor and not merely as surety, to Purchaser and its successors, permitted transferees and permitted assigns, 
- 

[REDACTED]

(i)

[REDACTED]

(ii)

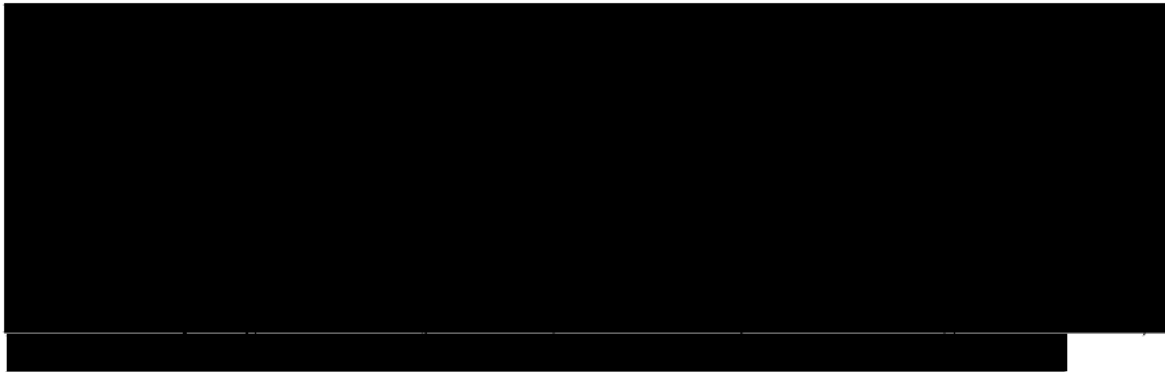
This Amended Guarantee Agreement shall remain in full force and effect until the Termination Date occurs, notwithstanding that from time to time during the term of the Agreement no Guaranteed Obligations may be outstanding. Upon the Termination Date, this Amended Guarantee Agreement shall automatically terminate without any further action required by any Party. For purposes hereof, "**Termination Date**" means the earliest of the following: (a) the date on which the Guaranteed Obligations have been paid in full by Moderna or Parent Guarantor; (b) the date on which Moderna no longer has any obligation to make any refund payment under the Agreement pursuant to Section 5.7, 6.3(ii), 6.3(iii)(1), 6.3(iv), 6.3(v), 6.3(vi), 10.1(iv) and 12.3(ii) of the Agreement; (c) the date of termination or expiration of the Agreement with no Guaranteed Obligations that remain due and payable as of such date, except that, in the case in which the term of the Agreement expires as a result of the occurrence of the Cessation Date, then Parent Guarantor's guarantee obligations hereunder shall survive with respect to the Guaranteed Obligations related to Section 12.3(ii) of the Agreement until such Guaranteed Obligations are paid in full by Moderna or Parent Guarantor.

2.2. Modification of the Guaranteed Obligations.

[REDACTED]

2.3.

[REDACTED]



### SECTION 3. REPRESENTATIONS AND WARRANTIES

3.1. Representations of Parent Guarantor. Parent Guarantor represents and warrants to Purchaser as of the date hereof that:

(i) Parent Guarantor is a Delaware corporation duly organized, validly existing, and, if applicable, in good standing under the Laws of its jurisdiction of formation;

(ii) it has the full power and right to enter into this Amended Guarantee Agreement and to carry out its obligations under this Amended Guarantee Agreement;

(iii) the execution and delivery of this Amended Guarantee Agreement by Parent Guarantor has been authorized by all requisite company action and this Amended Guarantee Agreement is and will remain a valid and binding obligation of Parent Guarantor, enforceable in accordance with its terms, subject to laws of general application; and

(iv)



### SECTION 4. MISCELLANEOUS

4.1. Assignment. Except as expressly provided in this Amended Guarantee Agreement, this Amended Guarantee Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be delegated, assigned or transferred, by either Party without the written consent of the other Party. Notwithstanding the foregoing, Parent Guarantor may, without Purchaser's written consent, assign this Amended Guarantee Agreement and its rights and obligations hereunder in whole to any Party that acquires, by or otherwise in connection with, merger, sale of assets, reorganization, consolidation or otherwise, all or substantially all of the business of Parent Guarantor to which the subject matter of this Amended Guarantee Agreement relates. Any purported assignment in violation of this Section 4.1 will be null, void, and of no legal effect.



4.2. Governing Law. This Amended Guarantee Agreement will be construed and the respective rights of the Parties determined in accordance with the substantive Laws of [REDACTED] notwithstanding any provisions of [REDACTED] Laws or any other Laws governing conflicts of laws to the contrary.

4.3. Dispute Resolutions. The following will apply to disputes of any nature arising under, relating to, or in connection with this Amended Guarantee Agreement (“**Disputes**”).

(i) Jurisdiction. In the event a Dispute between the Parties, each Party (a) hereby irrevocably submits to the exclusive jurisdiction of the courts located in [REDACTED] for the purpose of any and all unresolved Disputes, (b) hereby waives to the extent not prohibited by Law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, suit or proceeding, any claim of sovereign immunity and/or that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such action, suit or proceeding brought in one of the above-named courts in such jurisdiction should be dismissed on grounds of forum non conveniens, should be transferred to any court other than one of the above-named courts, or should be stayed by reason of the pendency of some other action, suit or proceeding in any other court other than one of the above-named courts, or that this Agreement or the subject matter hereof may not be enforced in or by such courts, and (c) hereby agrees not to commence any such action, suit or proceeding other than before one of the above-named courts nor to make any motion or take any other action, suit or proceeding seeking or intending to cause the transfer or removal of any such action, suit or proceeding to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, application may be made to any court of competent jurisdiction with respect to the enforcement of any judgment or award.

(ii) Injunctive Relief. Notwithstanding the Dispute resolution procedures set forth in this Section 4.3, in the event of an actual or threatened breach of this Agreement, the aggrieved Party may seek provisional equitable relief (including restraining orders, specific performance or other injunctive relief), without first submitting to any Dispute resolution procedures hereunder.

(iii) Tolling. The Parties agree that all applicable statutes of limitation and time-based defenses, as well as all time periods in which a Party must exercise rights or perform obligation hereunder, will be tolled once the dispute resolution procedures set forth in this Section 4.3 have been initiated and for so long as they are pending, and the Parties will cooperate in taking all actions reasonably necessary to achieve such a result.

4.4. Entire Agreement; Amendments. This Amended Guarantee Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, amends and restates the Guarantee Agreement between Parent Guarantor and Purchaser, dated August 5, 2020, and supersedes all previous arrangements with respect to the subject matter hereof, whether written or oral. This Amended Guarantee Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties.

4.5. Severability. Any provision of this Amended Guarantee Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the remaining provisions will be construed and enforced in all respects as if such invalid or unenforceable provision or provisions had been omitted and substituted with a provision that is valid, legal and enforceable and most closely effectuates the original intent of this Amended Guarantee Agreement. The invalidity of a particular provision in a particular jurisdiction will not invalidate such provision in any other jurisdiction.

- 4.6. Headings. The captions to the Sections hereof are not a part of this Amended Guarantee Agreement, but are merely for convenience to assist in locating and reading the several Sections hereof.
- 4.7. Waiver of Rule of Construction. Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Amended Guarantee Agreement. Accordingly, the rule of construction that any ambiguity in this Amended Guarantee Agreement will be construed against the drafting Party will not apply.
- 4.8. Interpretation. Except where the context expressly requires otherwise: (a) the use of any gender herein will be deemed to encompass references to either or both genders, and the use of the singular will be deemed to include the plural (and vice versa); (b) the words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation” and will not be interpreted to limit the provision to which it relates; (c) the word “shall” will be construed to have the same meaning and effect as the word “will”; (d) any definition of or reference to any agreement, instrument or other document herein will 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 will be construed to include the Person’s successors and permitted assigns; (f) the words “herein,” “hereof,” and “hereunder,” and words of similar import, will be construed to refer to this Amended Guarantee Agreement in each of their entirety, as the context requires, and not to any particular provision hereof; (g) all references herein to Sections will be construed to refer to sections of this Amended Guarantee Agreement; (h) the word “notice” means notice in writing (whether or not specifically stated); (i) provisions that require that a Party or the Parties “agree,” “consent,” or “approve” or the like will require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise (but instant messaging); (j) references to any specific law, rule or regulation, or article, section or other division thereof, will be deemed to include the then current amendments thereto or any replacement or successor law, rule or regulation thereof; (k) the term “or” will be interpreted in the inclusive sense commonly associated with the term “and/or”; (l) unless otherwise specified, “day” means a calendar day; and (m) the interpretation of this Amended Guarantee Agreement, any notice, consent or the like delivered hereunder, and any action, dispute or proceeding, will be provided or conducted in English.
- 4.9. No Implied Waivers; Rights Cumulative. Except as expressly provided in this Amended Guarantee Agreement, no failure on the part of a Party to exercise, and no delay in exercising, any right, power, remedy or privilege under this Amended Guarantee Agreement, or provided by statute or at Law or in equity or otherwise, will impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Amended Guarantee Agreement or as an acquiescence therein, nor will any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.
- 4.10. Notices. All notices or other communications to or upon Parent Guarantor or Purchaser hereunder shall be effected in the manner provided for in Section 13.10 of the Agreement; provided, that, for purposes of this Amended Guarantee Agreement, the address for Parent Guarantor shall be deemed to be the same as the address of Moderna as set forth in Section 13.10 of the Agreement.
- 4.11. Counterparts. This Amended Guarantee Agreement may be executed in two or more counterparts, including electronically or by facsimile or PDF signature pages, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

- 4.12. Binding Effect; No Third Party Beneficiaries. As of the date hereof, this Amended Guarantee Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as expressly set forth in this Amended Guarantee Agreement, no Person other than the Parties and their respective Affiliates, and permitted assignees hereunder will be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Amended Guarantee Agreement.

*[Signature Pages Follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Amended Parent Guarantee Agreement to be executed by their duly authorized representatives as of the date first written above.

**SWISS CONFEDERATION, represented by      MODERNATX, INC.**  
**FEDERAL OFFICE OF PUBLIC HEALTH**

BY: \_\_\_\_\_  
NAME:  
TITLE:

BY: \_\_\_\_\_  
NAME:  
TITLE:

BY: \_\_\_\_\_  
NAME:  
TITLE:

**THE SWISS ARMED FORCES PHARMACY**

BY: \_\_\_\_\_  
NAME:  
TITLE:

BY: \_\_\_\_\_  
NAME:  
TITLE: