

PURCHASE CONTRACT NO. 01

This **PURCHASE CONTRACT NO. 01** (this “**Purchase Contract**”), dated as of the 5th day of May, 2021 (the “**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 Purchase Contract individually as a “**Party**” and together as the “**Parties**”.

WHEREAS, Purchaser and Moderna entered into that certain agreement, dated as of August 5, 2020, by and between Purchaser and Moderna, as amended, restated and/or modified from time to time (the “**Supply Agreement**”);

WHEREAS, the Supply Agreement permits the Parties to enter into Purchase Contracts; and

WHEREAS, the Parties wish to enter into a Purchase Contract in accordance with the terms and conditions set forth herein.

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

1. DEFINITIONS.

Capitalized terms that are not otherwise defined herein will have the meanings ascribed to such terms in the Supply Agreement. Unless specifically set forth to the contrary herein, the following terms, whether used in the singular or plural, will have the respective meanings set forth below:

1.1 “**Change Notice**” has the meaning set forth in Appendix A.

1.2 “**Delivered Doses**” means, as of the applicable time, the actual aggregate number of doses of Product delivered under this Purchase Contract.

1.3 “**Delivered Product Payment**” [REDACTED]

1.4 “**Delivered Product Payments**” [REDACTED]

1.5 “**Delivery Site**” means warehouse in Switzerland operated by the Swiss Armed Forces Pharmacy and to be specified by Purchaser to Moderna in writing at least [REDACTED] days prior to the first delivery of the Product (or any other location as mutually agreed to by Purchaser and Moderna).

1.6 “**End Date**” has the meaning set forth in Article 8.1.

1.7 “**Firm Order Quantity**” means (a) as of the Effective Date, Seven Million (7,000,000) doses of the Product, and (b) at any given time during the Term, Seven Million (7,000,000) doses of the Product as may be adjusted in accordance with this Purchase Contract.

1.8 **“Initial Upfront Payment”** [REDACTED]

1.9 **“Local Marketing Approval”** means any Marketing Approval for the Product by the Regulatory Authority in the Territory.

1.10 **“Local Marketing Approval Payment”** [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

1.11 **“mRNA-1273 Product”** means Moderna’s proprietary vaccine against COVID-19 currently identified as mRNA-1273 which will be supplied to Purchaser under the Supply Agreement.

1.12 [REDACTED]

1.13 **“Option Exercise Payment”** [REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

1.14 **“Option Increase”** has the meaning set forth in Article 3.3.

1.15 **“Option Notice”** has the meaning set forth in Article 3.3.

1.16 **“Payment Amount”** [REDACTED]

1.17 **“Price Per Dose”** means:

and (i) [REDACTED]
(ii) [REDACTED]

1.18 **“Product”** have the meaning set forth in Appendix A.

1.19 “**Refund Amount**” means, for the number of doses of Product (a) reduced in accordance with Article 5.3(i), (b) cancelled in accordance with Article 5.3(iii), or (c) undelivered as a result of a termination of this Agreement pursuant to Articles 8.2(iii) and subject to the termination consequences pursuant to Article 8.3(iii) (as applicable), [REDACTED]

1.20 “**SARS-CoV-2**” means the SARS-CoV-2 coronavirus 2019 strain identified as the cause of the pandemic outbreak in early 2020.

1.21 “**Term**” has the meaning set forth in Article 8.1.

1.22 “**True-Up Payment**” [REDACTED]

2. PURCHASE CONTRACT.

2.1 This Purchase Contract will be considered a “Purchase Contract” for purposes of the Supply Agreement, and the terms and conditions of the Supply Agreement will apply with respect to the Product as defined herein purchased under this Purchase Contract unless otherwise specified herein. For clarity, (a) any references to “Product” under the Supply Agreement will be deemed to be for the “Product” as defined in this Purchase Contract, (b) “Product” as defined in this Purchase Contract will not be considered “Confirmed Volume”, “Additional Volume” or “Second Additional Volume”, each as defined in the Supply Agreement and (c) this Purchase Contract will not apply to (i) the purchase of the original “Product” (i.e., mRNA-1273 Product) under the Supply Agreement or (ii) any other Purchase Contracts that the Parties may execute from time to time. In the event of a conflict between the terms of the Supply Agreement and this Purchase Contract, this Purchase Contract will apply with respect to the specific terms set forth herein.

3. ORDERS.

3.1 Firm Order Quantity. Subject to the terms set forth herein (including Article 5.3), Purchaser will purchase, and Moderna will Manufacture and supply, the Firm Order Quantity of the Product in accordance with this Purchase Contract. For clarity, the Firm Order Quantity is binding and non-cancellable, except as expressly provided for in Articles 5.3(i), 5.3(iii) and 8.3(iii).

3.2 Option. Purchaser may, at its sole discretion, exercise a one-time option to increase the number of doses of Product to be purchased by Purchaser under this Purchase Contract by up to Seven Million (7,000,000) additional doses of Product; provided that such option must be exercised with a minimum quantity of Two Million Five Hundred Thousand (2,500,000) doses of Product.

3.3 Option Exercise. Purchaser may exercise its option once at any time during the period commencing on the Effective Date and continuing until [REDACTED] by providing written notice to Moderna (the “**Option Notice**”), which Option Notice will include (a) the number of additional doses of Product (including the requested allocation of the Product in 10 dose vials or 5 dose vials) that Purchaser is committing to purchase under this Purchase Contract (such additional doses, the “**Option Increase**”) and (b) [REDACTED]

[REDACTED] In the event that Purchaser issues a proper and timely Option Notice, then, subject to the terms set forth herein, Moderna will Manufacture and supply the doses of the Product in the Option Increase to Purchaser in accordance with this Purchase Contract. Any written notification issued after [REDACTED] [REDACTED] will be deemed void and have no effect hereunder, and if Purchaser only partially

exercises its option in the Option Notice, the remaining doses of Product subject to the option contemplated by Article 3.2 will be deemed void and have no effect hereunder. For clarity, once an Option Notice is issued, the Option Increase is binding and non-cancellable, except as expressly provided for in Articles 5.3 and 8.3(iii).

3.4 Order of Doses. For purposes of this Purchase Contract, the doses of Product delivered in a calendar quarter will be deemed first to be doses included in the Firm Order Quantity and second to be doses included in the Option Increase, and the doses of Product delivered will be deemed first to be the earliest doses required to be delivered pursuant to the latest communicated estimated delivery schedule in accordance with Article 5.1(ii).

4. PAYMENTS; REFUND.

4.1 Payments. Purchaser will pay to Moderna the following payments for the Product according to the following schedule:

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]

4.2 Payment Instructions. [REDACTED]

4.3 Taxes.

(i) All payments hereunder will be exclusive of any sales taxes, VAT, duties, levies, surcharges, or other similar taxes or governmental charges and any penalties levied thereon and will be increased as a result of any such amounts.

(ii) Each Party will be solely responsible for the payment of all taxes imposed on its share of income arising directly or indirectly from the activities of the Parties under this Purchase Contract.

(iii)

(iv) The Parties will cooperate with respect to all documentation required by any taxing authority, the preparation of any tax returns, or reasonably requested by either Party to secure a reduction in the rate of applicable taxes.

(v) Purchaser's VAT number is as follows: CHE-113.617.417 (Swiss Armed Forces Pharmacy).

4.4 Refunds. If any refund is required to be paid by Moderna to Purchaser as a result of Article 5.3(i), 5.3(iii) or 8.3(iii), Moderna will issue a refund to Purchaser due no later than [REDACTED] days following such refund becoming due hereunder. Moderna's right of set off under Section 4.8 (*Set-off*) of the Supply Agreement will apply to enable Moderna, in its sole discretion, to set off any refund that is payable under this Purchase Contract against any amounts owed to any Moderna Party by Purchaser under the terms of this Purchase Contract or the Supply Agreement (including the indemnification provided in Section 4.1 (*Indemnification of Moderna Parties*) of the Supply Agreement). Notwithstanding anything herein to the contrary, until all payments are paid in full hereunder, any refund to be paid under this Article 4.4 by Moderna to Purchaser [REDACTED]

4.5 Excluded Provisions. Notwithstanding anything herein to the contrary, Section 5.6 (*Untitled*) of the Supply Agreement will not apply to this Purchase Contract.

5. DELIVERY

5.1 Delivery Schedule.

(i) Appendix B contains information related to the estimated delivery of the Firm Order Quantity to Purchaser. In the event Purchaser exercises the Option Increase, Appendix C contains information related to the estimated delivery of the doses in the Option Increase to Purchaser.

(ii) On or before [REDACTED], Moderna will provide an update to Appendix B (the [REDACTED]), provided that the anticipated first delivery date for the Firm Order Quantity in such [REDACTED] shall be in the first calendar quarter of 2022 and the last anticipated delivery date for the Firm Order Quantity in such [REDACTED] shall be no later than [REDACTED] months after such anticipated first delivery date.

Upon its release on or before [REDACTED], the [REDACTED] will be the deemed November Delivery Schedule for purposes of this Agreement; provided that the [REDACTED] will be updated in the following events: (a) in the event that the Purchaser exercises the Option Increase, then Moderna will update the [REDACTED] to include the anticipated delivery schedule for the Option Increase in accordance with Appendix C; (b) in the event that the Purchaser exercises its reduction remedies in Article 5.3(i), then Moderna will update the [REDACTED] for the Firm Order Quantity and/or (if applicable) the Option Increase taking into account such reductions and the terms of Article 5.3(i); (c) in the event that the Purchaser exercises its substitution remedies in Article 5.3(ii), then Moderna will update the [REDACTED] for the Firm Order Quantity and/or (if applicable) the Option Increase taking into account such substitution (including the allocation of the applicable product(s) following such substitution) and the terms of Article 5.3(ii); and (d) in the event that the Purchaser exercises its cancellation remedies in Article 5.3(iii), then Moderna will update the [REDACTED] for the Firm Order Quantity and/or (if applicable) the Option Increase taking into account such cancellation and the terms of Article 5.3(iii).

(iii) On or before [REDACTED] and continuing each calendar month until the end of the Term, Moderna will provide for information purposes a rolling update on the status of the delivery of the Product to Purchaser.

5.2 [REDACTED]

5.3 Remedies for Delivery Delays.

(i) [REDACTED]

(ii) In lieu of or in addition to the provisions of Articles 5.3(i) and 5.3(iii), (a) in the event that Moderna (itself or through its Affiliates, collaborators or contractors) has not actually obtained Marketing Approval for the Product in the Territory on or before [REDACTED], or (b) Moderna has not actually delivered the full amount of doses of Product foreseen for a given calendar quarter according to the [REDACTED] days after the last day of such calendar quarter in which such doses were expected to be delivered (e.g., for doses that are expected to be delivered in Q1 2022, such doses have not been delivered by [REDACTED]; for doses

that are expected to be delivered in Q2 2022, such doses have not been delivered by [REDACTED]; etc.). Purchaser may, by written notice received by Moderna at any time between [REDACTED] and [REDACTED] for clause (a) or during the period starting on the first day following the expiration of the applicable [REDACTED] day period and ending [REDACTED] days thereafter for clause (b), request that

[REDACTED] must (A) be received during the applicable time period set forth above, (B) include a reference to this Article 5.3(ii), and (C)

[REDACTED] In the event that Purchaser issues a proper [REDACTED], then the Parties will negotiate in good faith an amendment to this Purchase Contract, including (X) amendments to the definitions of Product, Firm Order Quantity and (if applicable) Option Increase to address such [REDACTED] accordingly, and (Y) an update to the [REDACTED] taking into account such [REDACTED] and the terms of this Article 5.3(ii). For the avoidance of doubt, any written notification issued outside of the applicable notification window will be deemed void and have no effect hereunder, and such right to request that [REDACTED]

(iii) In the event that Moderna has not actually delivered the full amount of doses of Product foreseen for a given calendar quarter according to the [REDACTED] by at least [REDACTED] days after the last day of such calendar quarter in which such doses were expected to be delivered (e.g., for doses that are expected to be delivered in Q1 2022, such doses have not been delivered by [REDACTED]; for doses that are expected to be delivered in Q2 2022, such doses have not been delivered by [REDACTED]; etc.), then Purchaser will have the right to [REDACTED]

[REDACTED] which notice must (a) be received by Moderna during the period starting on the [REDACTED] following the expiration of the applicable [REDACTED] day period and ending [REDACTED] days thereafter (e.g., for doses that are expected to be delivered in Q1 2022 but have not been delivered by [REDACTED] such [REDACTED] must be received by Moderna between [REDACTED] and [REDACTED] for doses that are expected to be delivered in Q2 2022 but have not been delivered by [REDACTED] such [REDACTED] must be received by Moderna between [REDACTED]; etc.), and (b) identify the number of doses of Product in the late delivery that have not been delivered as of such date that Purchaser [REDACTED] in accordance with this Article 5.3(iii) (including the cap set forth herein). [REDACTED]

(iv) This Article 5.3 sets out the [REDACTED] for shortages, late deliveries, failure to deliver or cancelled doses of Product or substitutions for the Product, in each case in accordance with this Purchase Contract.

5.4 Excluded Provisions. Notwithstanding anything herein to the contrary, Section 6.3 (*Delivery Schedule; Delivery*), Section 6.6 ([REDACTED]), Section 6.7 (*Pricing Terms*), Section 6.8

(Dose Variation), Section 6.9 (Supply Timing) and Exhibit D (Anticipated Delivery Schedule) of the Supply Agreement will not apply to Product purchased under this Purchase Contract.

6. LIABILITY.

6.1 Maximum Liability. [REDACTED]

6.2 Consequential and Other Damages. UNDER NO CIRCUMSTANCES WHATSOEVER WILL MODERNA (OR ITS AFFILIATES) BE LIABLE TO PURCHASER OR ANY RELATED PARTIES IN CONTRACT, TORT, NEGLIGENCE, INDEMNITY, BREACH OF STATUTORY DUTY, OR OTHERWISE FOR: (I) ANY DELAY, PENALTY, LOSS OF PROFITS, OF ANTICIPATED SAVINGS, OF BUSINESS, OF GOODWILL, OR OF USE OF THE PRODUCT OR COSTS OF ANY SUBSTITUTE SERVICES; (II) ANY RELIANCE DAMAGES, INCLUDING TO COSTS OR EXPENDITURES INCURRED TO EVALUATE THE VIABILITY OF ENTERING INTO THIS PURCHASE CONTRACT OR TO PREPARE FOR PERFORMANCE UNDER THIS PURCHASE CONTRACT; OR (III) FOR ANY OTHER LIABILITY, DAMAGE, COSTS, PENALTY, OR EXPENSE OF ANY KIND INCURRED BY THE OTHER PARTY OF AN INDIRECT OR CONSEQUENTIAL NATURE, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF THESE DAMAGES.

6.3 Allocation of Risk. [REDACTED]

6.4 Excluded Provisions. Notwithstanding anything herein to the contrary, Sections 10.1 (Limitation of Liability), 10.2 (Consequential and Other Damages) and 10.3 (Allocation of Risk) of the Supply Agreement will not apply to Product purchased under this Purchase Contract.

7. REPRESENTATIONS AND WARRANTIES.

7.1 Moderna Warranties. Moderna represents and warrants to Purchaser as of the Effective Date that:

- (i) Moderna is a limited liability company (“*Gesellschaft mit beschränkter Haftung*”) duly incorporated, validly existing, and in good standing under the Laws of Switzerland;
- (ii) it has the full power and right to enter into this Purchase Contract and to carry out its obligations under this Purchase Contract;
- (iii) the execution and delivery of this Purchase Contract by Moderna has been authorized by all requisite company action and this Purchase Contract is and will remain a valid

and binding obligation of Moderna, enforceable in accordance with its terms, subject to laws of general application;

(iv)

[REDACTED]

(v)

[REDACTED]

7.2 Purchaser Warranties. Purchaser represents and warrants to Moderna as of the Effective Date that:

(i) it has the full power and right to enter into this Purchase Contract and to carry out its obligations under this Purchase Contract;

(ii) the execution and delivery of this Purchase Contract by Purchaser has been authorized by all requisite action and this Purchase Contract is and will remain a valid and binding obligation of Purchaser, enforceable in accordance with its terms, subject to laws of general application;

(iii) the execution, delivery and performance of this Purchase Contract, and compliance with the provisions of this Purchase Contract, by Purchaser does not and will not: (a) violate in any material respect any provision of applicable Laws or any ruling, writ, injunction, order, permit, judgment or decree of any Governmental Authority, or (b) constitute a material breach of, or default under (or an event which, with notice or lapse of time or both, would become a default under) or materially conflict with, or give rise to any right of termination, cancellation or acceleration of, any agreement, arrangement or instrument, whether written or oral, by which Purchaser or any of its assets are bound;

(iv) it has sufficient, liquid funds to pay all amounts hereunder; and

(v) the Product, if labelled, Manufactured and (if applicable) imported in accordance with this Purchase Contract, the Marketing Approval for the Product by the Regulatory Authority in the Territory, and in compliance with cGMP and Applicable Laws, may be lawfully distributed, administered and used in the Territory.

7.3 Disclaimer. MODERNA AND ITS AFFILIATES MAKE NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT.

8. TERM; TERMINATION.

8.1 Term. The term of this Purchase Contract will commence on the Effective Date and will continue until the earliest of (i) the date that all of the then current Firm Order Quantity and doses in the Option Increase (if applicable) have been delivered by Moderna to Purchaser, (ii) [REDACTED] (the “End Date”) and (iii) the termination of this Purchase Contract in accordance with Article 8.2 (the “Term”).

8.2 Termination.

(i) The Parties may terminate this Purchase Contract for any reason by mutual written agreement if set forth in writing and executed by an authorized representative of each Party.

(ii) Moderna may terminate this Purchase Contract, in its sole discretion, by written notice to Purchaser i [REDACTED] days of Moderna’s written notice of such non-payment, unless its failure to pay is caused by administrative or technical error and payment is made within [REDACTED] days of its due date.

(iii) Purchaser may terminate immediately this Purchase Contract for cause, by written notice to Moderna upon the occurrence of any of the following: (a) Moderna ceases its business operations, (b) Moderna becomes insolvent or unable to pay its debts as they mature, or ceases to so pay them, or makes an assignment for the benefit of its creditors, (c) bankruptcy or insolvency proceedings under bankruptcy or insolvency code or similar law, whether voluntary or involuntary are properly commenced by or against Moderna, (d) a trustee or receiver is appointed for Moderna over any or all of Moderna’s assets, or (e) Moderna is dissolved or liquidated.

(iv) Either Party may terminate this Purchase Contract, by written notice to the other Party, for any material breach of this Purchase Contract by the other Party (except as set forth in Article 8.2(ii) above), if such breach is not cured within [REDACTED] days after the breaching Party receives written notice of such breach from the non-breaching Party; *provided, however*, that if such breach is not capable of being cured within such [REDACTED] day period and the breaching Party has commenced and diligently continued actions to cure such breach within such [REDACTED] day period, except in the case of a payment default or a breach of safety and any of the security obligations set out at Sections 7.5 (*Records*) or 8.1 (*Moderna Technology*) of the Supply Agreement, the cure period will be extended to [REDACTED] days, so long as the breaching Party is making diligent efforts to do so. Such termination will be effective upon expiration of such cure period; *provided*, that in the event that the breaching Party disputes in good faith the non-breaching Party’s grounds for terminating this Purchase Contract pursuant to this Article 8.2(iv), then either of the Parties may refer such dispute for resolution in accordance with Section 13.3 (*Dispute Resolution*) of the Supply Agreement, and the provisions therein will apply.

(v) Purchaser may terminate this Purchase Contract, in its sole discretion, by written notice to Moderna 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]

8.3 Effects of Expiration or Termination.

(i) In the event of the expiration or termination of this Purchase Contract in accordance with the terms hereof, this Purchase Contract will forthwith become void and thereafter there will be no liability on the part of any Party, any Moderna Party or any Related Party, *provided*,

that any expiration or termination of this Purchase Contract will not affect any payments due prior to and unpaid as of the effectiveness of such expiration or termination; *provided, further*, that (a) the provisions of Articles 4, 5.3(iv), 5.4, 6, 7.3, 8.3 and Appendix A and Articles 1 and 9 of this Purchase Contract (solely as each applies to the foregoing Articles and Appendices of this Purchase Contract) will remain in full force and effect and survive any termination or expiration of this Purchase Contract and (b) Sections 4 (*Purchaser Obligations*) (except for Sections 4.3 (*Limitations on Indemnification*) and 4.8 (*Set-off*) and Section 4.9 (*Purchaser Responsibilities*) will survive solely with respect to Product delivered prior to the effective date of expiration or termination), 6.4 (*Acceptance/Rejection of Product*), 6.5 (*Disposition of Deficient Product*), 7.3 (*Pharmacovigilance*), 7.4 (*Product Recalls*), 7.5 (*Records*), 8 (*Confidentiality*), 9 (*Intellectual Property*), 10.1(i) (*Remedies for Deficient Product*), and Exhibits B (*Product Marks*) and C (*Dispute Resolution*) and Sections 1 (*Definitions*) and 13 (*Miscellaneous*) of the Supply Agreement (solely as each applies to the foregoing Sections and Exhibits of the Supply Agreement) will remain in full force and effect and survive any termination or expiration of this Purchase Contract.

(ii) In the event of a termination of this Purchase Contract by Moderna pursuant to Article 8.2(ii) or 8.2(iv) (solely as a result of Purchaser's uncured, material breach), [REDACTED]

(iii) In the event of a termination of this Purchase Contract by Purchaser pursuant to Article 8.2(iii), (a) any then outstanding payment under this Purchase Contract for undelivered doses of Product as of the effective date of termination will not be due, and (b) Moderna will issue a refund to Purchaser in an amount equal to the Refund Amount for such undelivered doses of Product in accordance with, but subject to the limitations set forth in, Article 4.4.

(iv) In the event of a termination of this Purchase Contract by Purchaser pursuant to Article 8.2(v), there will be no liability on the part of any Party; [REDACTED]

(v) Upon the expiration or termination of this Purchase Contract, at the written request of the disclosing Party, the receiving Party will return to the disclosing Party or destroy all originals, copies, and summaries of documents, materials, and other tangible manifestations of Confidential Information in the possession or control of the receiving Party (including its employees, advisors, agents and Affiliates); *provided, however*, that (a) one (1) copy of the Confidential Information may be retained by the receiving Party for the sole purpose of monitoring its ongoing obligations hereunder and (b) one (1) copy of Purchaser's Confidential Information may be retained and used by or on behalf of Moderna or its Affiliates in connection with regulatory filings for the Product. Purchaser also will promptly return to Moderna all materials, equipment, samples, data, reports, and other property, information or know-how in recorded form that was provided by or on behalf of Moderna or developed for Purchaser hereunder.

8.4 Excluded Provisions. Notwithstanding anything herein to the contrary, Section 12.2 (*Termination*) and 12.3 (*Effect of Expiration or Termination*) of the Supply Agreement will not apply to Product purchased under this Purchase Contract.

9. MISCELLANEOUS.

9.1 Assignment. Except as expressly provided in this Purchase Contract, this Purchase Contract 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, Moderna may, without Purchaser's written consent, assign this Purchase Contract and its rights and obligations hereunder in whole to any Affiliate of Moderna or 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 Moderna to which the subject matter of this Purchase Contract relates. Any purported assignment in violation of this Article 9.1 will be null, void, and of no legal effect.

9.2 Governing Law. This Purchase Contract 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, 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 Purchase Contract. The Parties expressly reject any application to this Purchase Contract of the United Nations Convention on Contracts for the International Sale of Goods.

9.3 Entire Agreement; Amendments. This Purchase Contract (including the Appendices), together with the Supply Agreement, contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all previous arrangements with respect to the subject matter hereof, whether written or oral. This Purchase Contract (or any Appendix to it) may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties. For clarity, any other Purchase Contracts executed by the Parties will be subject to the terms and conditions of such Purchase Contracts.

9.4 Counterparts. This Purchase Contract 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.


9.5 Parent Guarantee. Moderna agrees to deliver a Parent Guarantee Agreement for Purchase Contract #01 (in the form attached to this Purchase Contract as Appendix E) duly executed by ModernaTX, Inc. of the Effective Date (the "**Purchase Contract #01 Parent Guarantee**"). For clarity, the Newly Amended Guarantee Agreement, dated as of February 8, 2021, by and between ModernaTX, Inc. in favor of Swiss Confederation, represented by Federal Office of Public Health and The Swiss Armed Forces Pharmacy will remain in full force and effect with respect to the matters covered therein.


9.6 Condition Subsequent. This Purchase Contract shall be null and void if the Swiss Federal Government and Parliament have not approved the additional required budget by [REDACTED]. Purchaser shall keep Moderna informed of the budget process, promptly upon the outcome thereof and no later than [REDACTED].

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

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

BY: 
NAME: Anne Lévy
TITLE: Director-General of the Federal Office of Public Health

BY: 
NAME: KRONIA KOMERC NINA
TITLE: VICE DIRECTOR GENERAL

THE SWISS ARMED FORCES PHARMACY

BY: 
NAME: T. Stasi, S.S. 2021
TITLE: Chef of Armed Forces

BY: 
NAME:
TITLE:

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

MODERNA SWITZERLAND GMBH

DocuSigned by:
BY: _____
NAME _____
TITLE: _____

APPENDIX B

ANTICIPATED DELIVERY SCHEDULE FOR FIRM ORDER QUANTITY

Anticipated Delivery Schedule for the Firm Order Quantity:

Period	Doses of Product
First calendar quarter of 2022	7,000,000

As of the Effective Date, the Parties intend that the doses of Product to be delivered to Purchaser in the first calendar quarter of 2022 will be delivered [REDACTED] provided, however, that Moderna's obligation to make such supply on such schedule will be subject to (and it will not be a breach of Article 5 or this Appendix B if) the conditions on delivery of the Product as set forth in this Purchase Contract (including the requirements of Section 7.7 (*Drug Label*) of the Supply Agreement) and reasonable adjustments that are made by Moderna to prevent inefficient periodic allocation and to allow for optimization that is more useful for governments or multi-country organizations in specific periods of time.

APPENDIX C

ANTICIPATED DELIVERY SCHEDULE FOR OPTION INCREASE

In the event that there is an Option Increase, then on or prior to [REDACTED], Purchaser will provide written notice to Moderna with a proposed allocation for the doses of Product in the Option Increase (including the allocation of the Product in 10 dose vials or 5 dose vials) to be purchased by Purchaser and delivered during the [REDACTED] respectively upon Purchaser's express request in the [REDACTED]. Within [REDACTED] days after the receipt of such notice, the Parties will discuss and agree in good faith on an anticipated delivery schedule for the Option Increase (taking into account Product availability), which will include the number of doses of Product and the calendar quarter(s) for delivery of such doses of Product (including the allocation of the Product in 10 dose vials or 5 dose vials). Following the Parties' agreement on the anticipated delivery schedule for the Option Increase, this Appendix C will be updated accordingly. In addition, if the anticipated delivery schedule for the Option Increase contemplates deliveries of the Product during the [REDACTED] respectively upon Purchaser's express request in the [REDACTED] then the Parties will discuss in good faith potential amendments to this Purchase Contract to enable the distribution of the Product for use and administration in the Territory during such calendar quarter(s) through customary distribution channels and in accordance with customary pricing and reimbursement mechanisms of pharmaceutical and medical products in the Territory.

APPENDIX D
EXAMPLES OF CALCULATION OF REFUNDS

1. [REDACTED] under Article 5.3(i)

Example 1

[REDACTED]

[REDACTED]

Example 2

[REDACTED]

[REDACTED]

2. [REDACTED] under Article 5.3(iii)

Example 1

[REDACTED]

[Redacted text block]

[Redacted text block]

Example 2

[Redacted text block]

[Redacted text block]

APPENDIX E

**FORM OF PURCHASE CONTRACT #01
PARENT GUARANTEE AGREEMENT**

This **PURCHASE CONTRACT #01 PARENT GUARANTEE AGREEMENT** (this “**Guarantee Agreement**”), entered into as of this ___ day of May, 2021, 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, Purchaser and Moderna entered into that certain Agreement, dated as of August 5, 2020, by and between Purchaser and Moderna, as amended, restated and/or modified from time to time (the “**Supply Agreement**”);

WHEREAS, the Supply Agreement permits the Parties to enter into Purchase Contracts;

WHEREAS, the Parties entered into that certain Purchase Contract #01, dated as of May __, 2021, as amended, restated and/or modified from time to time (the “**Purchase Contract #01**”).

WHEREAS, Purchaser may become entitled to certain refund payments upon the terms and subject to the conditions set forth in the Purchase Contract #01;

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 Purchase Contract #01 with Purchaser; and

WHEREAS, it is an obligation of Moderna under the Purchase Contract #01 to cause Parent Guarantor to execute and deliver this Guarantee Agreement to Purchaser.

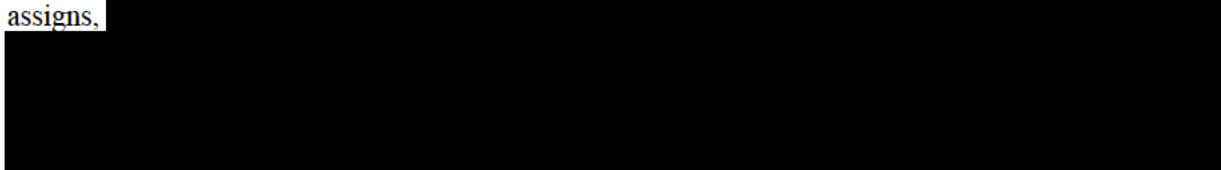
NOW, THEREFORE, in consideration of the foregoing premises and mutual covenants herein contained, the Parties hereby agree as follows:

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 Purchase Contract #01 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 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 Purchase Contract #01 no Guaranteed Obligations may be outstanding. Upon the Termination Date, this 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 Purchase Contract #01 pursuant to Article 4.4 of the Purchase Contract #01; or (c) the date of termination or expiration of the Purchase Contract #01 with no Guaranteed Obligations that remain due and payable as of such date.

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;

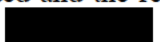

(ii) it has the full power and right to enter into this Guarantee Agreement and to carry out its obligations under this Guarantee Agreement;

(iii) the execution and delivery of this Guarantee Agreement by Parent Guarantor has been authorized by all requisite company action and this 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 Guarantee Agreement, this 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 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 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 Guarantee Agreement 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.

4.3. Dispute Resolutions. The following will apply to disputes of any nature arising under, relating to, or in connection with this 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 Guarantee 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 Guarantee 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 Guarantee Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all previous arrangements with respect to the subject matter hereof, whether written or oral. This Guarantee Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties. For clarity, the Newly Amended Guarantee Agreement, dated as of February 8, 2021, by and between ModernaTX, Inc. in favor of Swiss Confederation, represented by Federal Office of Public Health and The Swiss Armed Forces Pharmacy will remain in full force and effect with respect to the matters covered therein.

4.5. Severability. Any provision of this 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 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 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 Guarantee Agreement. Accordingly, the rule of construction that any ambiguity in this 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 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 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 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 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 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 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 Purchase Contract #01; provided, that, for purposes of this 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 Purchase Contract #01.

4.11. Counterparts. This 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 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 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 Guarantee Agreement.

4.13. Condition Subsequent. This Guarantee Agreement shall be null and void if the Swiss Federal Government and Parliament have not approved the additional required budget for the Purchase Contract #01 by [REDACTED]. Purchaser shall keep Moderna informed of the budget process, promptly upon the outcome thereof and no later than [REDACTED]

[Signature Pages Follows]

IN WITNESS WHEREOF, the parties hereto have caused this 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: