Resell Agreement

by and between

The Kingdom of Sweden

and

The Swiss Confederation

regarding

the administration and coordination of the resale of a COVID-19 vaccine being developed by CureVac AG

This Resell Agreement has been made on the 3d of February 2021 by and between:

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

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

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

WHEREAS, the Commission is in the process of entering into advance purchase agreements with different manufactures of Covid-19 vaccine. The Commission's procurement is based on the ESI Regulation;

WHEREAS, an agreement for the production, purchase and supply of the Vaccine in Europe has been entered into as of 30 November 2020, by and between the Commission, acting on behalf of the Participating Member States, and CureVac AG ("**CureVac**") (the "**EU APA**");

WHEREAS, the EU APA is based on the principles that the Commission, on behalf of the Participating Member States (including Sweden), shall advance purchase a volume of 225 million doses of the Product ("**Initial European Doses**") and may on the conditions set out in Article I.7.2 of the EU APA order up to 180 million additional doses (the "**Additional European Doses**"). The Commission and the Participating Member States will compensate CureVac as set out in the EU APA;

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

WHEREAS, according to Article I.10.1 of the EU APA, the Participating Member States may resell Product doses from their allocated portion of the Initial European Doses to any other EU or EEA Member State and Switzerland. For clarity, the resale will be at no profit and no loss for the Participating Member States;

WHEREAS, subject to the EU APA and the fact that Switzerland is not a Member State, the Participating Member States have decided to waive a portion of the number of the Initial European Doses in favour of Switzerland. In the event that the Commission elects to order Additional European Doses in accordance with Article I.7.2 of the EU APA, the Participating Member States may waive a portion thereof in favour of Switzerland;

WHEREAS, the portion of the Initial European Doses, and if applicable the Additional European Doses, waived by the Participating Member States in favour of Switzerland, has been allocated to Sweden for resale to Switzerland. Sweden shall, on behalf of the Participating Member States, administrate and coordinate the resale of the relevant portion of the Initial European Doses, and if applicable the Additional European Doses, to Switzerland. For clarity, all physical delivery of Products to Switzerland shall be handled by CureVac, not by Sweden;

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

WHEREAS, this Resell Agreement is entered into as a result of the EU APA and the TP Agreement, the Participating Member States' intention to resell part of the allocated Initial European Doses, and if applicable the Additional European Doses, to Switzerland and Sweden's undertaking to administrate and coordinate the resale of these Product doses to Switzerland;

WHEREAS, pursuant to a framework agreement with Liechtenstein for supply of COVID-19 vaccine, Switzerland may resell a portion of the Swiss Allocated Doses to Liechtenstein, if Liechtenstein wishes to buy the Product. Switzerland is accordingly authorized to resell a portion of the Swiss Allocated Doses to Liechtenstein;

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

1. **Mutual understandings**

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

1.2 The TP Agreement needs to become effective in order for this Resell Agreement to enter into force and become legally binding.

1.3 Switzerland hereby accepts and agrees to be bound by, and shall comply with, the relevant terms and conditions of the EU APA applicable to a Participating Member State as further set out in the TP Agreement. Switzerland acknowledges that measures and actions taken by the Commission on behalf of the Participating Member States according to the EU APA shall be binding also for Switzerland. Sweden shall use its best reasonable efforts to ensure that the Commission and other Participating Member States in this respect shall treat Switzerland as a Participating Member State and that obligations for Switzerland may not exceed obligations for the Participating Member States.

1.4 Switzerland hereby acknowledges its obligation to purchase a precise quantity of the Initial European Doses and, if applicable, the Additional European Doses, as set forth in Section ~~Fehler! Verweisquelle konnte nicht gefunden werden.~~ 3.1 below, waived by the Participating Member States in favour of Switzerland. Switzerland also acknowledges that if and to the extent CureVac's obligation under the EU APA to deliver the Initial European Doses or the Additional European Doses lapses or terminates, then Sweden's obligation to

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resell part of the Initial European Doses or the Additional European Doses, as applicable, according to this Resell Agreement shall also lapse or terminate to the same extent.

1.5 Switzerland is authorized to resell a portion of the Swiss Allocated Doses to Liechtenstein if Liechtenstein wishes to buy the Product. The terms of the TP Agreement and of this Resell Agreement shall also apply to the portion of the Swiss Allocated Doses that Switzerland may resell to Liechtenstein. For clarity, in relation to Sweden, Switzerland shall assume full responsibility for Product doses resold to Liechtenstein and shall indemnify and hold Sweden harmless from all purchased Vaccine doses under this Resell Agreement.

1.6 Pursuant to the EU APA Article I.10.2 and the TP Agreement Article 1.3, Switzerland may, with the prior consent of CureVac and on the additional conditions set out in the EU APA I.10.5 and I.10.6, donate Swiss Allocated Doses to third countries. For clarity, to the extent Switzerland donates part or all of the Swiss Allocated Doses, such doses shall still be regarded as Swiss Allocated Doses.

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

1.8 If CureVac or an affiliate thereof or any third party makes a claim against Sweden related to the use or administration of the Swiss Allocated Doses, Switzerland has a liability to indemnify and hold Sweden harmless from all such claims, regardless of where the Swiss Allocated Doses is administered, where the claim is brought, and whether the claim originates from the distribution, administration and use, clinical testing or investigation, manufacture, labelling, formulation, packaging, donation, dispensing, prescribing or licensing of the Swiss Allocated Doses.

2. Resale and Purchase of Swiss Allocated Doses

2.1 Sweden shall, on behalf of the Participating Member States, administrate and coordinate the resale of the ordered Initial European Doses ("**Swiss Allocated Initial Doses**"), as set forth in Section 3 below, and if applicable the Additional European Doses ("**Swiss Allocated Additional Doses**"), to Switzerland and

Switzerland shall purchase and pay for the Swiss Allocated Doses in accordance with the terms of this Resell Agreement.

3. Order

3.1 Switzerland hereby orders 5 019 226 doses as the Swiss Allocated Initial Doses.

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

3.3 In the event that the Commission elects to order Additional European Doses in accordance with Article I.7.2 of the EU APA, and any or all Participating Member States waives a portion of the number of such doses in favour of Switzerland, Switzerland shall have the right to order Swiss Allocated Additional Doses in accordance with the terms and conditions of this Resell Agreement (i.e. the order shall be subject to the terms and conditions of this Resell Agreement). In such case, Sweden shall use its best reasonable efforts to secure Switzerland's right to order the Swiss Allocated Additional Doses. Sweden will thus inform Switzerland when a right to order the Swiss Allocated Additional Doses occurs.

4. Delivery, title and risk

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

4.2 For the avoidance of doubt, all rights and obligations set out in Articles I.11, I.14.5 – I.14.9 and I.16.4 of the EU APA regarding Swiss Allocated Doses shall be assumed by and fulfilled by Switzerland and not by Sweden.

4.3 The Delivery Site for Switzerland is The Swiss Armed Forces Pharmacy, Worblentalstrasse 36, 3063 Ittigen, Switzerland.

5. Price and payment

5.1 Switzerland shall in consideration for the Swiss Allocated Doses pay a price per Product dose to Sweden (the "**Purchase Price**") which shall be equal to the price paid by Sweden and the Commission in accordance with Article I.16.2 of the EU APA. For clarity, Switzerland shall also directly to CureVac pay Compensation Payments in accordance with Article 3.3 d) in the TP Agreement.

5.2 As set out in the TP Agreement, CureVac will invoice Sweden for Ancillary Expenses associated with the Swiss Allocated Doses. Switzerland shall reimburse Sweden for such Ancillary Expenses in relation to the Swiss Allocated Doses. For avoidance of doubt the Purchase Price shall be exclusive VAT and VAT, if any, shall be paid in addition to the prices set forth in this Resell Agreement.

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

5.4 Payments to Sweden shall be made to the Public Health Agency of Sweden. All payments to Sweden under this Resell Agreement shall be made in Euro and by deposit and wire transfer of immediately available funds in the requisite amount to such bank account that Sweden may from time to time designate by written notice to Switzerland.

5.5 In order for Sweden to be able to fulfill its payment obligations in accordance with the EU APA or the TP Agreement in relation to CureVac or the Commission, payment for the Swiss Allocated Doses, including any sums reimbursable by Switzerland pursuant to Section 5.2 above and sums reimbursable to the Commission regarding the Up-front Payment in accordance with Article I.10.3 and I.17.1 of the EU APA, shall be due and payable within ten (10) days following receipt of the issued invoice. However, and notwithstanding the preceding sentence, an invoice issued by Sweden to Switzerland following a payment request from CureVac to Sweden under Article I.17.2(a) of the EU APA that is due and payable within ten (10) calendar days following receipt of the payment request, shall be due and payable by Switzerland within four (4) calendar days after Switzerland's receipt of such invoice.

For clarity, such invoice will be issued when an obligation for payment for the applicable Swiss Allocated Doses arises for Sweden in accordance with the EU APA and the TP Agreement, i.e. such obligation could arise even if the Vaccine is yet not delivered to Switzerland by CureVac or if Switzerland cannot accept delivery absent approval by Swiss regulatory authorities or for other reasons. When payment for the ordered Swiss Allocated Initial Doses has been fully executed by Switzerland, Sweden will, in accordance with Article I.10.3 of the EU APA, reimburse the Commission for the Up-front Payment per dose paid by the Commission to CureVac as set out in Article I.17.1 of the EU APA.

5.6 In the event that the Commission or Sweden has a right to refund of the Up-front Payment in accordance with the EU APA, Sweden shall use its best reasonable efforts to secure Switzerland's right, if applicable, to refund.

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

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

6. Representations, warranties and covenants

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

(a) the execution and delivery of this Resell Agreement and the performance of the transactions contemplated hereby have been duly authorized by all necessary action;

(b) it has the power and authority to execute and deliver this Resell Agreement and to perform its obligations hereunder, including to satisfy the payment obligations hereunder;

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

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

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

7. Information

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

8. Termination

8.1 This Resell Agreement shall terminate concurrently with the EU APA and the TP Agreement, and with the same obligations and effects of termination as set forth in Article II.14.5 of the EU APA.

8.2 On termination of this Resell Agreement, regardless of the reason for such termination, the following Sections shall survive and continue in full force and effect; Sections 1.8, 1.8, 10 and 15.

9. Confidentiality

9.1 The content of this Resell Agreement shall, as long as the provisions on confidentiality in Article II.6 of the EU APA are applicable, be kept confidential and not be disclosed to any third party without the prior written consent of the other Party.

9.2 All information, whether oral or written, or in visual, electronic or tangible form, regarding or otherwise relating to a Party or to any of its affairs or other business matters, which has been disclosed or may be disclosed to the other Party (the "Receiving Party") or which the Receiving Party has or may otherwise become aware of in connection with the preparation, negotiation, entry into or performance of this Resell Agreement, shall, as long as the provisions on confidentiality in Article II.6 of the EU APA are applicable, be kept strictly confidential by the Receiving Party. During this time, the Receiving Party shall not use the information for any other purpose than the purpose contemplated by this Resell Agreement or disclose the information to any third party without the prior written consent of the other Party. Such consent not to be unreasonably withheld.

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

(a) disclosed by Switzerland within the Swiss federal and cantonal administrations or to Liechtenstein in accordance with Section 8.2 of the TP Agreement;

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

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

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

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

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

(g) disclosed by Switzerland to external logistics providers in the supply chain of the use and administration of the Vaccine in Switzerland and Liechtenstein who: (i) have a need to know such information in order to enable Switzerland to perform its obligations or to exercise its rights under this Resell Agreement; (ii) are informed of the confidential nature of such information; and (iii) use such information solely for a permitted purpose under this Resell Agreement.

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

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

9.5 Prior to public communication, the Parties shall inform each other and coordinate the timing of the public communication. Notwithstanding the above, each Party may publicly communicate regarding the total contract volume and value of this Resell Agreement under the conditions set out in Article II.6.7 of the EU APA.

10. Limitation of liability

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

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

11. Entire agreement

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

12. Changes and additions

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

13. Provisions severable

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

14. Communication details; Notices; Representatives

14.1 Any notice given under this Resell Agreement shall be made in writing and in English, shall refer to the Agreement and shall be sent by either pre-paid recorded first class post/pre-paid airmail or courier to the principal office or registered office of the recipient or by electronic transmission to the addresses set forth below:

Sweden:

Name: [redacted]
Title: [redacted]
At: Folkhälsomyndigheten/Public Health Authority
Address: SE-171 82 Solna, SWEDEN
E-mail: [redacted]

Switzerland:

Name: [redacted]
Title: [redacted]
At: Federal Office of Public Health
Address: Schwarzenburgstrasse 157, 3003 Bern, Switzerland
E-mail: [redacted]

Copy to

Name: [redacted]
Title: [redacted]
At: The Swiss Armed Forces Pharmacy
Address: Worblentalstrasse 36, 3063 Ittigen, Switzerland

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E-mail: [redacted]h

[redacted]h

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

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

15. **Applicable Law and Settlement of Disputes**

15.1 This Resell Agreement shall be governed by the laws of Belgium.

15.2 Dispute Resolution

(a) In the event of a dispute between the Parties arising under or in connection with this Resell Agreement or the legal relationships established by this Resell Agreement, the Parties shall first refer such dispute to informal dispute resolution discussions between their respective representatives. Each Party may initiate such informal dispute resolution by sending written notice of the dispute to the other Party, and, within twenty (20) days of such notice, the representatives shall meet and attempt to resolve the dispute by good faith negotiations.

(b) If the Parties are not able to settle their dispute in accordance with lit. (a) above, the Parties irrevocably submit to the exclusive jurisdiction of the courts located in Brussels, Belgium to settle any dispute which may arise under or in connection with this Resell Agreement or the legal relationships established by this Resell Agreement.

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Signature page follows

This Resell Agreement has been entered into on the date stated in the beginning of this Resell Agreement. This Resell Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Resell Agreement may be executed in writing by facsimile, PDF format via email or other electronically transmitted signatures and such signatures shall be deemed to bind each Party hereto as if they were original signatures.

Place:

The Kingdom of Sweden, represented by the Swedish Government

[redacted]

Place: Bern, Switzerland

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

By [redacted]

Anne Lévy
Director General

By [redacted]

Nora Kronig Romero
Vice-Director

and the Swiss Armed Forces Pharmacy

By Thomas Suessli [redacted]

Thomas Süssli
Chief of the Armed Forces

By [redacted]

Thomas Kaiser
Chief of Armed Forces Logistics Organisation

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