HEADS OF TERMS – SUBJECT TO CONTRACT

Novavax, Inc. ("**Novavax**") is developing a vaccine (NVX-CoV2373) intended to help prevent COVID-19 disease caused by SARS-CoV-2 (the "**Vaccine**"). The Swiss Confederation ("**Government**"), represented by the Federal Office of Public Health and the Swiss Armed Forces Pharmacy, wishes to secure Vaccine supply during the COVID-19 pandemic period. Novavax and Government each may be referred to herein as a "**Party**" and collectively as the "**Parties.**"

This document ("**Heads of Terms**") records certain fundamental terms between Government and Novavax in respect of the purchase and supply of Vaccine during the COVID-19 pandemic period. This Heads of Terms is intended to be a binding expression of intent between the Parties, enforceable in accordance with its terms; however, the provisions of this Heads of Terms do not describe all the terms and conditions of the advance purchase arrangement, which are subject to contract in a final mutually agreed definitive agreement negotiated by the Parties ("**Definitive Agreement**").

SUPPLY TERMS	
Scope	The Definitive Agreement will memorialize the Parties' Vaccine reservation, purchase and supply commitments during the pandemic period related to COVID-19.
Purchase and Supply Commitment	Upon execution of the Definitive Agreement, Government will place a binding order (the "**Order**") for 6 million doses of the Vaccine which would allow Government to vaccinate 3 million people with a two-dose regimen. It is currently anticipated that the Vaccine will be administered in a two-dose regimen.
Territory	Government will use the Vaccine solely to vaccinate individuals in Switzerland ("**Territory**") against COVID-19, subject to the immediately following sentences and (b) all in accordance with the terms and conditions of the Definitive Agreement. Notwithstanding the foregoing, subject to Government's obligation to indemnify Novavax, Government may donate or re-sell Vaccine to the Principality of Liechtenstein ("**Liechtenstein**"), but only if (i) the intended purpose of such donation or resale is to vaccinate individuals in Liechtenstein against COVID-19, [redacted] In addition, Government expressly acknowledges and agrees that, in connection with any donation or resale or Vaccine to Liechtenstein, that (A) [redacted] (B) [redacted] (C) [redacted] (D) [redacted] (E) [redacted]

	[redacted]
Delivery of Vaccine	The Vaccine will be delivered [redacted] to a single point of entry in Switzerland agreed by the Government and Novavax. As part of the process of finalizing the Definitive Agreement, the Parties will revisit the [redacted] to ensure it aligns with the activities being executed by the local sponsor. Based upon Novavax's current projections and expectations for manufacturing capacity, Novavax estimates that Vaccine will be ready for delivery starting in [redacted] Novavax intends to deliver Vaccine on a monthly basis until the contracted amounts are satisfied and estimates that the Order would be fulfilled by the end of [redacted] Novavax will communicate updated estimated supply schedules to Government as more information becomes available and will include an estimated quarterly breakdown in the Definitive Agreement ("**Estimated Delivery Schedule**"). [redacted] Government acknowledges that the Estimated Delivery Schedule and any other information provided by Novavax on supply may change as many variables can impact such schedule, including but not limited to, the timing of clinical trials and case accruals, manufacturing delays and / or timing of Marketing Authorization by regulatory authorities. At least [redacted] days in advance of the anticipated initial shipment under the Estimated Delivery Schedule, Novavax will inform Government in writing of the date of the initial delivery of Vaccine ("**Delivery Start Date**") and provide Government an updated Estimated Delivery Schedule which details the anticipated amounts and dates of each monthly delivery of Vaccine. The Delivery Start Date is expected to be a date as soon as practicable after receipt of Marketing Authorization in the Territory when sufficient Product is available for the first shipment in the Delivery Schedule. Government acknowledges and agrees that the Estimated Delivery Schedule is an estimate only and that notwithstanding anything in the Definitive Agreement to the contrary, (a) the quantity of Vaccine actually delivered in each calendar quarter may vary within plus/minus [redacted] of the Order amount and (b) the actual date of delivery may vary within plus/minus [redacted] months of the delivery date projected by Novavax. No doses will be delivered prior to Novavax receiving a Marketing Authorization by Swissmedic (as these terms are defined in the "Regulatory" section below). Government acknowledges a delay in Marketing Authorization may impact the Estimated Delivery Schedule. If Novavax reasonably believes that it will not be able to supply Government with the Vaccine doses in the quantities and in accordance with the Estimated Delivery Schedule, then Novavax would notify Government of such circumstances [redacted] including [redacted] ("**Remedial Plan**"). Where such inability to supply results from Novavax' inability to manufacture or source sufficient quantities of Vaccine to supply all of its customers, Novavax shall allocate to Government a [redacted]

	[redacted] If the Remedial Plan does not resolve such inability or failure to supply to Government within [redacted] months of the first missed delivery giving rise to the plan, the Government may, [redacted], cancel delivery of the Vaccine units that were scheduled for delivery during the duration of the supply failure. If failure to supply is still ongoing after [redacted] months of the initial missed delivery giving rise to the Remedial Plan, Government may [redacted] to Novavax cancel future deliveries of Vaccine and terminate the Definitive Agreement. If Government elects to cancel delivery of Vaccine pursuant to this Section, [redacted] The remedies in this Section shall be Government's sole recourse and Novavax' entire liability with respect to any failure to supply. Government will within the framework of its competencies provide such assistance as reasonably requested by Novavax to clear customs at the point of entry of Switzerland. Risk of loss or of damage to the Vaccine and title to the Vaccine will pass from Novavax to Government [redacted].
REGULATORY	
Marketing Authorization and Establishment License	Government and Novavax both agree that regulatory harmonization and streamlined logistics requirements, including packaging, labelling, and post-marketing requirements across all participating high income countries, is of the utmost importance to the timely approval and delivery of COVID-19 vaccine during the pandemic. Novavax shall use commercially reasonable efforts to obtain approval or authorization of the Vaccine, including any emergency authorization or conditional marketing approval ("**Marketing Authorization**") from several prioritized regulatory bodies (including FDA, EMA and MHRA). Government acknowledges that given the state of urgency and high demand for COVID 19 vaccines during the current pandemic, Novavax has developed the following policy: 1. Any country(ies) not willing to reference and abide by, COVID-19 vaccine approvals from FDA, EMA, MHRA and / or any other country's regulatory body prioritized by Novavax, may delay the issuance of local regulatory approvals and the ultimate delivery of NVX-CoV2373. 2. In the event that a country's regulatory body agrees to reference an approval from FDA, EMA, MHRA and / or any other country's regulatory body prioritized by Novavax, and has *additional* requirements, Novavax, at its own discretion, *may* consider collaborating with said country to determine if a mutually acceptable approval pathway (with associated requirements and timelines) is achievable.

	As an exception to its policy described above, Novavax acknowledges that the Swiss Agency for Therapeutic Products ("**Swissmedic**") must grant Marketing Authorization in Switzerland. Novavax further acknowledges that as a prerequisite to the Marketing Authorization by Swissmedic, Novavax must secure a Swissmedic establishment licence (*Betriebsbewilligung / autorisation d'exercice*) for import and trade of medicinal products in Switzerland. Novavax may designate an affiliate or a third party contractor (including a third party contractor that already holds an establishment licence in Switzerland); *provided*, that (i) Novavax shall promptly inform Government in writing of any such designation and (ii) Novavax shall remain jointly and severally liable for any acts or omissions, including financial liabilities of any such affiliate or third party contractor. Accordingly, Novavax agrees to use commercially reasonable efforts to obtain Marketing Authorization in Switzerland and to submit its application for Marketing Authorization to Swissmedic promptly after it has received Marketing Authorization from any of FDA, EMA, MHRA and / or any other country's regulatory body prioritized by Novavax and acceptable as reference to Swissmedic (as communicated by the Government). As part of its evaluation, Novavax will explore the possibility to leverage its filing through the Access Consortium, which is a multilateral cooperation and work-sharing initiative among various regulatory authorities including TGA (Australia), HPFB (Canada), HAS (Singapore), Swissmedic (Switzerland) and from 1 January 2021 MHRA (UK). Prior to signature of the Definitive Agreement, Novavax will confirm submission requirements via a third party engagement. The goal of the engagement will be to ensure the Parties' expectations regarding the Marketing Authorization are aligned. If Swissmedic does not reference an approval from FDA, EMA, MHRA or any other country's regulatory body prioritized by Novavax or agrees to reference such approvals, but has additional requirements, the following shall apply: (i) should Swissmedic's requirements relate to answering questions or providing data or documents, Novavax shall use commercially reasonable efforts to meet any such requirements; (ii) should Swissmedic's requirements relate to performing new or additional clinical studies or other obligations identified in the Definitive Agreement, the Government acknowledges that Novavax shall be entitled, at its own discretion, to determine whether or not to pursue Marketing Authorization from Swissmedic, and shall be entitled to decline to perform any such additional clinical studies or other obligations imposed by Swissmedic for Marketing Authorization, and such decision shall not be considered a breach of the Definitive Agreement. Government will within the framework of its competencies provide such lawful assistance as reasonably requested by Novavax in its efforts to obtain Marketing Authorization.
Recall	Novavax[1] (or its designee) shall be responsible for initiating and implementing any Vaccine recalls (a) required by controlling regulatory agencies and (b) requested by Novavax due to safety concerns, with respect to each, in the Territory. Novavax shall handle such matters in a timely, prudent and skillful manner, in compliance with all applicable laws. Novavax shall keep Government informed in a timely manner with respect to Novavax' activities in regard to all such recalls and market withdrawals. As the distributor of the Vaccine in the Territory, Government shall provide logistical support to Novavax in implementing any such recalls and market withdrawals and such other assistance as reasonably requested by Novavax. All costs incurred in responding

[redacted]

	to recalls and market withdrawals as well as the costs of replacement of any such recalled or withdrawn Vaccine doses shall be borne by [redacted]
PRICING	
Vaccine Pricing	Subject to the volumes anticipated herein, pricing will be $[redacted] per dose for a total of US$[redacted] ("**Price**" or **Pricing**"). Pricing is based on the following assumptions and subject to change if they prove untrue: • Net 30-day payment terms • Price includes all costs of filling and finishing the bulk product into [redacted] vials (currently expected to be [redacted] vials) ready to use in Switzerland. • [redacted] Additional shipping charges, including but not limited to charges for expedited shipping, more frequent delivery or multiple locations, and insurance, will be charged to the Government. • Prices exclude taxes, duties, charges, levies, assessments, customs and other fees of any kind imposed by governmental or other authority in respect of the purchase, importation, exportation, sale or other distribution of the Vaccine. All such fees shall be borne by Government. • Assumes current product packaging and labelling requirements are streamlined to a uniform requirement for Novavax. [redacted]
Advance Payment	Government agrees to pay an upfront [redacted]% payment of US$[redacted] (corresponding to $[redacted] per dose) to Novavax within [redacted] days of signature of the Definitive Agreement (the "**Advance Payment**"). [redacted] Government acknowledges that in consideration of Novavax's commitment to manufacture Vaccine in advance of Marketing Authorization, [redacted] of the Advance Payment is non-refundable. The remaining [redacted] of the Advance Payment is refundable only as provided in this Section below. Marketing Authorization. If Novavax fails to receive Marketing Authorization with respect to the Vaccine in the Territory on or before [redacted] then Government's sole and exclusive remedy shall be that it may terminate this Agreement [redacted] upon written notice to Novavax and [redacted] of the Advance Payment will become due and refundable to Government. Novavax will refund such amount within [redacted] days of receipt of such termination notice.

Further payment terms	After the Advance Payment is made, the remainder of the contracted price per dose (the "**Delivery Price**") is to be paid promptly to Novavax against invoice(s) to be raised upon delivery/ies of contracted doses. The Delivery Price is equal to the price per dose set out above minus the Advance Payment per dose, multiplied by the number of doses supplied in the relevant timeframe.
Contingencies	Government acknowledges and agrees that Novavax' efforts to develop and manufacture the Vaccine are aspirational in nature and subject to significant risks and uncertainties. Notwithstanding the efforts and any estimated dates set forth herein, the Parties recognize that the Vaccine, despite the diligent efforts of Novavax in research, and development and manufacturing, may not be successful due to technical, clinical, regulatory, manufacturing or other challenges or failures. Novavax shall have no liability for any failure by Novavax to develop or obtain Marketing Authorization of Swissmedic for the Vaccine (other than the refund rights set out in the Advance Payment section of this Heads of Terms document). Even if the Vaccine is successfully developed and obtains Marketing Authorization, Novavax shall have no liability for any failure to deliver the number of doses anticipated herein or to deliver such doses in accordance with the Estimated Delivery Schedule (other than the rights set forth in the Delivery of Vaccine section of this Heads of Terms document).
OTHER PROVISIONS	
Liability Protection	Novavax understands that no liability immunity system exists in the Territory similar to the Public Readiness and Emergency Preparedness Act of the U.S. (PREP Act). Accordingly, Government would defend, indemnify and hold harmless Novavax, its affiliates, and their respective representatives, sub-contractors, sub-licensees and agents (each a "**Novavax Indemnitee**") from and against any and all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including legal fees and litigation expenses), penalties, fines, settlements and judgments resulting from a claim (each, a "**Claim**") arising out of or in connection with any one or more of [redacted] Novavax shall defend, indemnify and hold harmless Government from third parties' Claims to the extent such Claims giving rise to such loss result directly from [redacted]
Inspection; Warranty	Visual Inspection. Government (or its designee) will, [redacted] business days ("**Inspection Period**") following [redacted] visually inspect such delivery to confirm that the Vaccine has been supplied in the correct quantity and constitutes Conforming Product (as defined

below). Notwithstanding the foregoing, Government may request to extend the Inspection Period for an additional [redacted] hour period with reasonable advance notice and a detailing of the circumstances for such extension and Novavax will reasonably and in good faith consider such extension request and provide written notice of approval to Customer if granted. Vaccine will be deemed accepted by Government if Government fails to inspect the shipment during the Inspection Period. If Government determines that any shipment of Vaccine contains any non-Conforming Product, then Government shall have the right to reject the portion of the applicable delivery that constitutes non-Conforming Product by providing Novavax with written notice of such rejection during the Inspection Period. Government will be deemed to have accepted a delivery of Vaccine if not rejected prior to expiry of the Inspection Period. Notwithstanding the foregoing, if after the Inspection Period, Government discovers any hidden defect or other deficiency at the time of delivery to Government that was not reasonably susceptible to discovery upon such delivery ("**Latent Defect**"), then [redacted] days following Government's first discovery of such Latent Defect, Government shall have the right to seek relief for such non-Conforming Product pursuant to the Limited Product Warranty paragraph below; *provided that* such remedy shall not be available to Government if the applicable Vaccine has expired prior to the date of discovery of the Latent Defect.

Limited Product Warranty. Novavax warrants to Government that, upon delivery of Vaccine to the Point of Entry, such Vaccine will (a) conform to the specifications for such Vaccine (the "**Specifications**"), (b) comply with the applicable Marketing Authorization for such Vaccine in the Territory, and (c) have been manufactured in accordance with current good manufacturing practice (cGMP) as defined under applicable laws (Vaccine satisfying clauses (a)-(c) hereof, "**Conforming Product**"). Any claims by Government that Vaccine fails to meet this warranty set forth in this Section must be made by Government within [redacted] days after acceptance (or, in the case of any Latent Defect, within [redacted] days after discovery by Government).

Remedies For Non-Conforming Product. If Novavax accepts Government's rejection of Vaccine as part of the visual inspection process, accepts Government's warranty claim after acceptance or if the Independent Expert determines that any Vaccine is non-Conforming Product as set forth below, then Novavax shall, at Novavax's option and at no additional charge to Government, either (a) replace the non-Conforming Product or (b) credit or refund the Price of such non-Conforming Product. If Novavax so requests, Government shall, [redacted], return any non-Conforming Product to Novavax; otherwise, Government shall dispose of Vaccine at Novavax' costs in compliance with applicable laws and regulations.

Disputes. If Novavax disputes Government's rejection of Vaccine during visual inspection or in connection with a warranty claim, then Novavax will provide Government written notice of such dispute no later than [redacted] business days after the date of the notice from Government that a Vaccine is non-Conforming Product. Such dispute shall be resolved by having an independent, mutually acceptable, qualified third party expert (the "**Independent Expert**") promptly examine the Vaccine subject to the dispute. The non-prevailing Party shall bear all out-of-pocket costs and expenses associated with the Independent Expert's determination, including any reasonable out-of-pocket costs incurred by the prevailing Party in connection therewith.

	Disclaimer. THE REMEDIES SET FORTH HEREIN SHALL BE GOVERNMENT'S SOLE AND EXCLUSIVE REMEDY AND NOVAVAX'S ENTIRE LIABILITY FOR NON-ACCEPTANCE OF VACCINE DURING VISUAL INSPECTION OR ANY BREACH OF THE LIMITED WARRANTY.
Limitation of Liability	[redacted]
Intellectual Property	Novavax will be the sole owners of all intellectual property they generate during the development, manufacture and supply of the Vaccine or otherwise related to the Vaccine.
Specifications	The initial specifications of the Vaccine are set forth in Exhibit A to this Heads of Terms. Novavax shall include the latest specifications in the Definitive Agreement and update the specifications of the Vaccine upon the first Marketing Authorization from FDA, EMA or MHRA. Novavax shall provide Government with the final specifications of the Vaccine promptly upon Marketing Authorization by Swissmedic.
Other Terms	The Definitive Agreement shall contain other terms typically found in supply agreements to be agreed by the Parties, including, without limitation: warranties, representations, further assurance and "boiler-plate" provisions, including force majeure.
Legal Costs	Each Party will bear its own legal costs in preparing and concluding the Definitive Agreement.

EFFECT OF HEADS OF TERMS	
Effect of Heads of Terms	The Parties expressly agree that the terms of this Heads of Terms document are intended to be a binding statement of intent Parties with legally binding rights and obligations, enforceable in accordance with their terms. Details of these and other rights and obligations will be further specified in the Definitive Agreement.
Publicity	Each Party agrees not to issue any press release or other public statement disclosing the discussions in relation to this Heads of Term or the Definitive Agreement, entry into, existence and/or contents of this Heads of Term or the transactions contemplated hereby without the prior written consent of the other Party, except to the extend required by applicable laws, in which case the other Party shall be given advance written notice of such disclosure. The Parties will further consult each other prior to issuing any press release or other public announcement with respect to this Heads of Terms or the Definitive Agreement.
Confidentiality	Each Party named below hereby agrees that the terms of this Heads of Terms comprise the confidential information of the Parties identified below, each of which shall hold the same subject to the terms of the confidentiality agreement between Novavax and Government, signed 16 July 2020 ("**CDA**"). Should Government receive a request under the Swiss Transparency Act to disclose any Proprietary Information (as defined in the CDA), it will notify Novavax as soon as reasonably practicable, thereby enabling Novavax to comment on the information to be disclosed and/or seek prevention, limitation or protection of such disclosure in accordance with applicable laws. Government will be permitted to discuss and share Proprietary Information: *(a)* within the Swiss federal and cantonal administrations; *(b)* with the authorities of the Principality of Liechtenstein; and *(c)* with 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 Government to perform its obligations or to exercise its rights under this Heads of Terms; (ii) are informed of the confidential nature of such information; and (iii) use such information solely for a permitted purpose under this Heads of Terms. If a party discloses any such Proprietary Information pursuant to any of the above exceptions, it must ensure that all persons (including the authorities of the Principality of Liechtenstein) receiving such Proprietary Information are bound by confidentiality obligations or duty (deriving from contractual obligation or under the applicable laws) and must use all reasonable endeavours to ensure that the information will be kept confidential and will not be disclosed, except in accordance with the above exceptions.
Negotiation	The Parties shall use [redacted] to enter into the Definitive Agreement within [redacted] weeks of the date of execution of this Heads of Terms. Upon its execution by both Parties, the Definitive Agreement will supersede and replace this Heads of Terms with immediate effect. [redacted]

	[redacted] Should the Parties fail despite good faith negotiations to conclude the Definitive Agreement within this timeframe, this Heads of Terms will govern the relationship until such Definitive Agreement is concluded between the Parties. As an exception to the above, either Party may terminate this Heads of Terms without any liability to the other Party should the Parties fail to reach an agreement within this timeframe regarding the law governing the Definitive Agreement.
Governing Law and Jurisdiction	This Heads of Terms shall be governed by the substantive laws of [redacted][2] to the exclusion of conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods. Government may request that the Definitive Agreement be governed by the substantive laws of [redacted] (to the exclusion of conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods). All disputes arising out of or in connection with this Heads of Terms document shall be finally settled under the [redacted] by three arbitrators appointed in accordance with the said [redacted]. The seat of the arbitration shall be in [redacted] if initiated by Novavax and [redacted] if initiated by Government.
Counterparts	This Heads of Terms may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Heads of Terms may be executed 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.

[signature page follows]

[2] NTD [redacted].

SIGNED for and on behalf of
Novavax, Inc.

By: [redacted]

Name: [redacted]

Position: [redacted]

Date:

SIGNED for any on behalf of
Swiss Confederation, represented by:

The Federal Office of Public Health

By: [redacted]

Name: Anne Lévy

Position: Director

Date: 11.01.2021

By: [redacted]

Name: Nora Kronig Romero

Position: Vice-Director General

Date: 11.01.2021

The Swiss Armed Forces Pharmacy

By: _____

Name:

Position:

Date:

Thomas Suessli [redacted]

By: _____

Name:

Position:

Date:

Kaiser Thomas [redacted]

Exhibit A

Specifications