

SECOND AMENDMENT AGREEMENT

This **SECOND AMENDMENT AGREEMENT** (this "**Second Amendment**"), entered into as of the 2nd day of February, 2021 (the "**Second Amendment Effective Date**"), is by and between (1) Swiss Confederation, represented by Federal Office of Public Health, Schwarzenburgstrasse 157, 3003 Bern, Switzerland and The Swiss Armed Forces Pharmacy, Worbentalstrasse 36, 3063 Ittigen, Switzerland (collectively, "**Purchaser**"), and (2) Moderna Switzerland GmbH, a limited liability company ("*Gesellschaft mit beschränkter Haftung*") organized and existing under the Laws of Switzerland with company number CHE-344.522.989 and registered address at Aeschenvorstadt 48 (c/o [REDACTED] 4051 Basel, Switzerland ("**Moderna**"). Purchaser and Moderna are referred to in this Second Amendment individually as a "**Party**" and together as the "**Parties**".

WHEREAS, Purchaser and Moderna entered into an agreement, dated August 5, 2020, relating to the reservation, manufacture and supply of filled and finished mRNA-1273, as amended by that certain First Amendment dated as of December 4, 2020 (the "**Agreement**").

WHEREAS, the Purchaser wishes to reserve and purchase an additional six million (6,000,000) doses (based on a dose of 100-micrograms of Product) of Product (as defined in the Agreement) to be delivered by Moderna to Purchaser under the Agreement, and in connection therewith, the Parties wish to amend the Agreement as provided in this Second Amendment.

WHEREAS, recognizing the identification of new variants and strains of SARS-CoV-2 (COVID 19), if Moderna elects to develop new vaccines to target such variants or strains, Moderna has agreed to discuss in good faith with the Purchaser the terms of supply of such new vaccines, including the potential substitution of existing ordered Product with new vaccines.

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

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

2. **AMENDMENTS**.

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

"1.48 "**Payment Amount**" means the dollar amount equal to the MoU Upfront Payment plus the Initial Balancing Payment plus the portion of the Delayed Balancing Payment actually paid to Moderna under this Agreement plus the portion of the Additional Volume Payment and Second Additional Volume Payment actually paid to Moderna under this Agreement."

2.2 New Section 1.82 is hereby inserted immediately following Section 1.81 of the Agreement:

"1.82 "**Second Additional Volume**" means based on a dose of 100-micrograms of the Product, six million (6,000,000) doses of the Product. For clarity, in no event shall the Second Additional Volume, or any portion thereof, be deemed Confirmed Volume."

2.3 New Section 1.83 is hereby inserted immediately following Section 1.82 of the Agreement, as amended pursuant to this Second Amendment:

“1.83 “**Second Additional Volume Delivery Payment**” means the dollar amount equal to fifty percent (50%) of the Additional Volume actually delivered during a given Calendar Quarter multiplied by the Price Per 100-microgram Dose.”

2.4 New Section 1.84 is hereby inserted immediately following Section 1.83 of the Agreement, as amended pursuant to this Second Amendment:

“1.84 “**Second Additional Volume Payment**” means the dollar amount equal to the sum of (a) the Second Amendment Upfront Payment plus (b) the Second Additional Volume Delivery Payment.”

2.5 New Section 1.85 is hereby inserted immediately following Section 1.84 of the Agreement, as amended pursuant to this Second Amendment:

“1.85 “**Second Amendment Upfront Payment**” means US\$96,000,000.00 representing the dollar amount equal to fifty percent (50%) of the Additional Volume as of the Second Amendment Effective Date multiplied by the Price Per 100-microgram Dose.”

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

“Subject to the terms and conditions of this Agreement, in consideration of the Total Payment, the Additional Volume Payment, the Second Additional Volume Payment and the Ancillary Costs, Moderna will, whether itself or through an Affiliate, agent, contractor, collaborator or other designee, solely control and assume all responsibility for the following main tasks and duties:”

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

“Set-off. Moderna will be entitled, to the fullest extent permitted by applicable Law, to set-off and apply against any amounts payable to Purchaser (including pursuant to Section 5.7) or any Related Party (other than import and export duties, income tax, corporation tax, capital gains tax, value added tax, or any other taxes), any amounts owed to Moderna or any other Moderna Party by Purchaser under the indemnification in Sections 4.1 through 4.8 or under Sections 5.2(ii), 5.2(iii), 5.2(iv), 5.2(v), 5.2(vi), 5.2(vii) or 5.3. Any other set-off right of Moderna is expressly excluded (which, for the avoidance of doubt, will not prevent reductions to the Delayed Balancing Payment as contemplated by Section 5.7).”

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

“(i) pay the Initial Balancing Payment, the Delayed Balancing Payment, the Additional Volume Payment, and the Second Additional Volume Payment, as well as the Ancillary Costs, as described in Section 5:”

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

“5.2 Payment.

(i) Within fifteen (15) days after the Effective Date, Purchaser will pay the Initial Balancing Payment to Moderna.

(ii) Subject to Section 5.7, within fifteen (15) days after the grant of Marketing Approval for the Product in the Territory, Purchaser will pay the Delayed Balancing Payment by wire transfer to Moderna.

(iii) Within fifteen (15) days after the Amendment Effective Date, Purchaser will pay the Amendment Upfront Payment to Moderna by wire transfer.

(iv) Within fifteen (15) days after the date of grant of Marketing Approval in the Territory, Purchaser will pay the Amendment Marketing Approval Payment to Moderna by wire transfer.

(v) Within fifteen (15) days after the end of a Calendar Quarter in which Product constituting Additional Volume was delivered to Purchaser, Purchaser will pay the Additional Volume Delivery Payment corresponding to such Product constituting Additional Volume delivered during such Calendar Quarter to Moderna by wire transfer.

(vi) Within thirty (30) days after the Second Amendment Effective Date, Purchaser will pay the Second Amendment Upfront Payment to Moderna by wire transfer.

(vii) Within fifteen (15) days after the end of a Calendar Quarter in which Product constituting Second Additional Volume was delivered to Purchaser, Purchaser will pay the Second Additional Volume Delivery Payment corresponding to such Product constituting Second Additional Volume delivered during such Calendar Quarter to Moderna by wire transfer.”

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

“5.7 Refunds. If any refund is required to be paid by Moderna to Purchaser pursuant to Section 6.3(ii), 6.3(iii)(1), 6.3(iv), 6.3(v), 6.3(vi), 10.1(iv) or 12.3(v), or as a result of the Term expiring following the occurrence of the Cessation Date (if any), any such refund shall occur no later than ninety (90) days following such refund becoming due hereunder. Notwithstanding the foregoing, until the Delayed Balancing Payment, the Additional Volume Payment and the Second Additional Volume Payment are paid in full, any refund to be paid under this Section 5.7 by Moderna to Purchaser will first be satisfied through a reduction of, first, the outstanding Delayed Balancing Payment, second, the Additional Volume Payment and, third, the Second Additional Volume Payment prior to Moderna paying an amount to Purchaser directly under this Section 5.7 (and Moderna will have no obligation to make such payment to the extent of the reduction of the outstanding Delayed Balancing Payment, the Additional Volume Payment and the Second Additional Volume Payment). Moderna’s maximum aggregate liability to Purchaser for refunds under or in connection with Sections 6.3(iii)(1), 6.3(iv), 6.3(vi), 10.1(iv), or 12.3(v), or for a failure to make payments properly due under this Section, will not exceed sixty two and one-half percent (62.5%) of the Total Payment (inclusive of any reductions to the Delayed Balancing Payment as contemplated by this Section 5.7). Moderna’s maximum aggregate liability to Purchaser for refunds under or in connection with Section 6.3(v), or for a failure to make payments properly due under such Section, will not exceed (a) in relation to the Confirmed Volume, sixty two and one-half percent (62.5%) of the Total Payment (inclusive of any reductions to the Delayed Balancing Payment as contemplated by Section 5.7). (b) in relation to the Additional Volume, sixty two and one-half percent (62.5%) of the Additional Volume Payment and (c) in relation to the Second Additional Volume, sixty two and one-half percent (62.5%) of the Second Additional Volume Payment. For the avoidance of doubt, in no event shall Purchaser receive refunds under more than one of the following Sections upon the expiration or termination of this Agreement: Section 6.3(iv), Section 6.3(v), Section 6.3(vi), Section 12.3(ii) and Section 12.3(v).”

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

“(v)

(1) If Moderna (itself or through its Affiliates, collaborators or contractors) has obtained Marketing Approval for the Product in the Territory on or before December 31, 2021 and (a) Moderna has provided written notice to Purchaser on or before December 1, 2021 indicating that Moderna does not reasonably expect to deliver to Purchaser all of the then current Confirmed Volume on or before December 31, 2021, or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before December 1, 2021, and Moderna has not actually delivered to Purchaser all of the then current Confirmed Volume on or before December 31, 2021, then, if the Term expires as a result of Section 12.1(c)(i), Purchaser will be entitled to a refund pursuant to Section 0 in an amount equal to (A) the quantity of 100 microgram doses that comprise fifty percent (50%) of the portion of the then current Confirmed Volume that has not actually been delivered to Purchaser on or prior to such expiration of this Agreement (or sixty two and one half percent (62.5%) of the portion of the then current Confirmed Volume that has not actually been delivered to Purchaser prior to such expiration of this Agreement if and only to the extent Purchaser has not exercised any of its right to reduction of the Confirmed Volume under Sections 6.3(ii) and 6.3(iii)(1) prior to such date) multiplied by (B) by the Price Per 100-microgram Dose (which includes, for the avoidance of doubt, the related Fill and Finish Cost).

(2) If Moderna (itself or through its Affiliates, collaborators or contractors) has obtained Marketing Approval for the Product in the Territory on or before December 31, 2021 and (a) Moderna has provided written notice to Purchaser on or before March 1, 2022 indicating that Moderna does not reasonably expect to deliver to Purchaser all of the Additional Volume on or before March 31, 2022, or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before March 1, 2022, and Moderna has not actually delivered to Purchaser all of the Additional Volume on or before March 31, 2022, then, if the Term expires as a result of Section 12.1(c)(ii), Purchaser will be entitled to a refund pursuant to Section 0 in an amount equal to (A) the quantity of 100 microgram doses that comprise sixty two and one half percent (62.5%) of the portion of the then current Additional Volume that has not actually been delivered to Purchaser on or prior to such expiration of this Agreement multiplied by (B) by the Price Per 100-microgram Dose (which includes, for the avoidance of doubt, the related Fill and Finish Cost).

(3) If Moderna (itself or through its Affiliates, collaborators or contractors) has obtained Marketing Approval for the Product in the Territory on or before December 31, 2021 and (a) Moderna has provided written notice to Purchaser on or before (i) June 1, 2022 (if Purchaser does not exercise its option to delay delivery pursuant to Section 6.10), (ii) September 1, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the first Calendar Quarter of 2022 only) or (iii) December 1, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the second Calendar Quarter of 2022), indicating that Moderna does not reasonably expect to deliver to Purchaser all of the Second Additional Volume on or before (I) June 30, 2022 (if Purchaser does not exercise its option to delay delivery pursuant to Section 6.10), (II) September 30, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the first Calendar Quarter of 2022 only) or (III) December 31, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the second Calendar Quarter of 2022), or (b) if such written notice referenced in clause (a) is not provided by Moderna to Purchaser on or before (i) June 1, 2022 (if Purchaser does not exercise its option to delay delivery pursuant to Section 6.10), (ii) September 1, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the first Calendar Quarter of 2022 only) or (iii) December 1, 2022 (if Purchaser exercises its option pursuant to Section 6.10

to delay delivery of all or any part of the Second Additional Volume to the second Calendar Quarter of 2022),, and Moderna has not actually delivered to Purchaser all of the Additional Volume on or before (I) June 30, 2022 (if Purchaser does not exercise its option to delay delivery pursuant to Section 6.10), (II) September 30, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the first Calendar Quarter of 2022 only) or (III) December 31, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the second Calendar Quarter of 2022), then, if the Term expires as a result of Section 12.1(c)(iii), Purchaser will be entitled to a refund pursuant to Section 0 in an amount equal to (A) the quantity of 100 microgram doses that comprise sixty two and one half percent (62.5%) of the portion of the then current Second Additional Volume that has not actually been delivered to Purchaser on or prior to such expiration of this Agreement multiplied by (B) by the Price Per 100-microgram Dose (which includes, for the avoidance of doubt, the related Fill and Finish Cost”.

2.12 The final sentence of Section 6.6 of the Agreement is hereby deleted and replaced with the following:

“For clarity, this Section 6.6 shall not apply to supply of the Additional Volume or the Second Additional Volume.”

2.13 The final sentence of Section 6.9 of the Agreement is hereby deleted and replaced with the following:

“For clarity, any such acceleration shall not affect the Delivery schedule of the Additional Volume or the Second Additional Volume.”

2.14 New Section 6.10 is hereby inserted immediately following Section 6.9 of the Agreement:

“6.10 Second Additional Volume Delay Option. Purchaser may, by notice in writing received by Moderna at any time on or before June 30, 2021 delay the delivery of all or part of the final four million (4,000,000) doses of the Second Additional Volume, currently scheduled to be delivered in the fourth Calendar Quarter of 2021 as set out in Exhibit D, until the first calendar half of 2022. Such notice must specify the Calendar Quarters (the first and/or second Calendar Quarter of 2022) in which Purchaser wishes to take delivery of such doses of Second Additional Volume, and will be deemed void and have no effect hereunder if received by Moderna after June 30, 2021. If Purchaser validly exercises this option to delay the Second Additional Volume as described above, Moderna shall delay the delivery of all or part of the final four million (4,000,000) doses of the Second Additional Volume accordingly.”

2.15 New Section 7.9 is hereby inserted immediately following Section 7.8 of the Agreement:

“7.9 Product Variants. The Parties acknowledge that Moderna may develop one or more alternative versions of the Product to target any current or future variants or strains identified to the SARS-CoV-2 coronavirus 2019 strain identified as the cause of the pandemic outbreak in early 2020 (each a “**Variant Product**”). In the event that Moderna elects to commercialize a Variant Product, it shall promptly inform the Purchaser of such proposed commercialization and the Parties shall enter into good faith discussions as to the terms and timing of supply of such Variant Product(s) and the potential substitution of existing ordered Product with Variant Product(s). For clarity, this Section does not affect Moderna’s obligations to supply Product to Purchaser pursuant to the terms of the Agreement and does not impose any obligation on Purchaser to accept substitution of existing ordered Product with Variant Product.”

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

“12.1 Term. This Agreement will commence on the Effective Date and will continue until the earliest of (a) the date that all of the then current Confirmed Volume, then current Additional Volume and then current Second Additional Volume of the Product has been delivered by Moderna to Purchaser, (b) the Cessation Date, (c) (i) December 31, 2021 solely in the event that all of the then current Confirmed Volume has not been delivered by Moderna to Purchaser by such date, (ii) March 31, 2022 in the event that all of the Additional Volume has not been delivered by Moderna to Purchaser by such date or (iii) (1) June 30, 2022 (if Purchaser does not exercise its option to delay delivery pursuant to Section 6.10), (2) September 30, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the first Calendar Quarter of 2022 only) or (3) December 31, 2022 (if Purchaser exercises its option pursuant to Section 6.10 to delay delivery of all or any part of the Second Additional Volume to the second Calendar Quarter of 2022), in the event that all of the Second Additional Volume has not been delivered by Moderna to Purchaser by such date, and (d) the termination of this Agreement in accordance with Section 12.2(the “Term”).”

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

“(ii) Moderna may terminate immediately this Agreement for cause by written notice to Purchaser if (a) the Initial Balancing Payment is not paid in full within fifteen (15) days following the Effective Date pursuant to Section 5.2(i); (b) the Delayed Balancing Payment (reduced in accordance with Section 5.7, as applicable) is not paid in full within fifteen (15) days after the grant of Marketing Approval for the Product in the Territory pursuant to Section 5.2(ii); (c) the Amendment Upfront Payment is not paid in full within fifteen (15) days following the Amendment Effective Date pursuant to Section 5.2(iii); (d) the Amendment Marketing Approval Payment is not paid in full within fifteen (15) days after the grant of Marketing Approval for the Product in the Territory pursuant to Section 5.2(iv); (e) any Additional Volume Delivery Payment is not made within fifteen (15) days following the end of the relevant Calendar Quarter pursuant to Section 5.2(v); (f) the Second Amendment Upfront Payment is not paid in full within fifteen (15) days following the Second Amendment Effective Date pursuant to Section 5.2(vi); or (g) any Second Additional Volume Delivery Payment is not made within fifteen (15) days following the end of the relevant Calendar Quarter pursuant to Section 5.2(vii); in each case ((a)-(g)), unless its failure to pay is caused by administrative or technical error and payment is made within five (5) days of its due date.”

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

“(iv) In the event of a termination of this Agreement pursuant to Section 12.2(ii), 12.2(iv) or 12.2(v) (as a result of Purchaser’s failure to comply with its obligations under Sections 4.1 through 4.8, Section 4.10(i) or Section 4.11), any remaining Delayed Balancing Payment, any Additional Volume Delivery Payment for doses of Additional Volume already delivered but not yet paid by Purchaser and any Second Additional Volume Delivery Payment for doses of Second Additional Volume already delivered but not yet paid by Purchaser will be paid to Moderna within five (5) Business days after such termination.”

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

2.20 For purposes of the Agreement, the doses delivered in a Calendar Quarter will be deemed to first be doses included in the Confirmed Volume, second to be doses included in the Additional Volume and third to be doses included in the Second Additional Volume.

2.21 The Parties agree that the reference to "Section 4.10" in the first sentence of Section 2.13 of the First Amendment is intended to be a reference to "Section 4.10(ii)". Such Section reference is hereby corrected by inserting "(ii)" immediately after "Section 4.10".

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

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

3. MISCELLANEOUS.

3.1 This Second Amendment will be construed and the respective rights of the Parties determined in accordance with the substantive Laws of Switzerland, notwithstanding any provisions of Swiss 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 Second Amendment. The Parties expressly reject any application of the United Nations Convention on Contracts for the International Sale of Goods to this Second Amendment.

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

3.3 Condition Subsequent. This Second Amendment shall be null and void if the Swiss Federal Government and Parliament have not approved the additional required budget by 25 February 2021. Purchaser shall keep Moderna informed of the budget process, promptly upon the outcome thereof and no later than 6:00 pm CET on 26 February 2021.

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[REDACTED]

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

SWISS CONFEDERATION, represented by

MODERNA SWITZERLAND GMBH

FEDERAL OFFICE OF PUBLIC HEALTH

BY: [REDACTED]
NAME: ANNA LEVY
TITLE: DIRECTOR GENERAL

BY: _____
NAME:
TITLE:

BY: [REDACTED]
NAME: NOBA KROLIC
TITLE: VICEDIRECTOR

THE SWISS ARMED FORCES PHARMACY

[REDACTED]
BY: _____
NAME:
TITLE:

BY: Thomas Suessli [REDACTED]
NAME:
TITLE:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

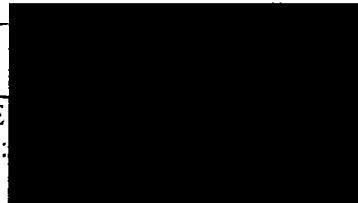
SWISS CONFEDERATION, represented by

MODERNA SWITZERLAND GMBH

FEDERAL OFFICE OF PUBLIC HEALTH

BY: _____
NAME:
TITLE:

BY: _____
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TITLE:



BY: _____
NAME:
TITLE:

THE SWISS ARMED FORCES PHARMACY

BY: _____
NAME:
TITLE:

BY: _____
NAME:
TITLE:

ANNEX 1

EXHIBIT D

ANTICIPATED DELIVERY SCHEDULE

Anticipated First Delivery Date: March 15, 2021

Period	100-microgram doses of Product
First Quarter 2021	One million three hundred and fifty thousand (1,350,000) of Confirmed Volume
Second Quarter 2021	Three million one hundred and fifty thousand (3,150,000) of Confirmed Volume One million nine hundred thousand (1,900,000) of Additional Volume
Third Quarter 2021	One million one hundred thousand (1,100,000) of Additional Volume Two million (2,000,000) of Second Additional Volume, including at least one million (1,000,000) in August 2021 or earlier and the remaining balance up to one million (1,000,000) in September 2021 or earlier
Fourth Quarter 2021	Four million (4,000,000) of Second Additional Volume, including at least two million (2,000,000) in October 2021 or earlier and the remaining balance up to two million (2,000,000) in November 2021 or earlier

ANNEX 2

EXHIBIT H

FORM OF NEWLY AMENDED PARENT GUARANTEE AGREEMENT

This **AMENDED AND RESTATED PARENT GUARANTEE AGREEMENT** (this "**Amended Guarantee Agreement**") is entered into as of this ___ day of _____, 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, pursuant to the Agreement, dated as of August 5, 2020 (as amended, restated and/or otherwise modified from time to time, including by that certain First Amendment between the Parties dated December 4, 2020 and that certain Second Amendment between the Parties dated _____ 2021, the "**Agreement**"), by and between Moderna Switzerland GmbH, a limited liability company ("*Gesellschaft mit beschränkter Haftung*") organized and existing under the Laws of Switzerland ("**Moderna**"), and Purchaser, Purchaser may become entitled to certain refund payments upon the terms and subject to the conditions set forth therein;

WHEREAS, Parent Guarantor is a parent company to Moderna;

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

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

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

SECTION 1. DEFINITIONS

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

SECTION 2. GUARANTEE

- 2.1. **Guarantee**. Parent Guarantor hereby unconditionally and irrevocably, guarantees, as primary obligor and not merely as surety, to Purchaser and its successors, permitted transferees and permitted assigns, the prompt and complete payment by Moderna when due of the Guaranteed Obligations. For purposes hereof, "**Guaranteed Obligations**" means, without duplication, (a) the refund obligations required to be paid by Moderna to Purchaser pursuant to Sections 5.7, 6.3(ii), 6.3(iii)(1), 6.3(iv), 6.3(v), 6.3(vi), 10.1(iv), 12.3(ii) and 12.3(v) of the Agreement (after taking into account the exercise of any right to set-off any such amount by a Moderna Party under the Agreement) (the "**Refund Obligations**"); and (b) the payment of any damages if awarded (without further right of appeal) to Purchaser for a claim under the Agreement, whether in contract, tort, negligence or otherwise, subject to the limitations set forth in the Agreement (the "**Damages Obligations**"). For the avoidance of doubt, Purchaser will be entitled to enforce this

Amended Parent Guarantee Agreement directly against the Parent Guarantor without exhausting remedies against Moderna for any such damages claims.

- (i) Anything herein or in the Agreement to the contrary notwithstanding, the maximum liability of Parent Guarantor hereunder shall in no event exceed the amount which can be guaranteed by Parent Guarantor under applicable federal and state Laws relating to the insolvency of debtors and in no event shall the amount payable by Moderna and Parent Guarantor in respect of the Guaranteed Obligations exceed (a) (i) sixty two and one-half percent (62.5%) of the Total Payment in relation to the Refund Obligations with respect to Sections 5.7, 6.3(ii), 6.3(iii)(1), 6.3(iv), 6.3(v)(1), 6.3(vi), 6.3(viii)(A), 10.1(iv), 12.3(ii) and 12.3(v) (inclusive of any reductions to the Delayed Balancing Payment as contemplated by Section 5.7 of the Agreement), (ii) an amount equal to (A) the quantity of 100 microgram doses that comprise sixty two and one half percent (62.5%) of the portion of the then current Additional Volume that has not actually been delivered to Purchaser on or prior to such expiration of the Agreement multiplied by (B) by the Price Per 100-microgram Dose (which includes, for the avoidance of doubt, the related Fill and Finish Cost) in relation to the Refund Obligations with respect to Section 6.3(v)(2) or (iii) an amount equal to (A) the quantity of 100 microgram doses that comprise sixty two and one half percent (62.5%) of the portion of the then current Second Additional Volume that has not actually been delivered to Purchaser on or prior to such expiration of the Agreement multiplied by (B) by the Price Per 100-microgram Dose (which includes, for the avoidance of doubt, the related Fill and Finish Cost) in relation to the Refund Obligations with respect to Section 6.3(v)(3) or (b) ten percent (10%) of the Payment Amount in relation to the Damages Obligations.
- (ii) This Amended Guarantee Agreement shall remain in full force and effect until the Termination Date occurs, notwithstanding that from time to time during the term of the Agreement no Guaranteed Obligations may be outstanding. Upon the Termination Date, this Amended Guarantee Agreement shall automatically terminate without any further action required by any Party. For purposes hereof, "**Termination Date**" means the earliest of the following: (a) the date on which the Guaranteed Obligations have been paid in full by Moderna or Parent Guarantor; (b) the date on which Moderna no longer has any obligation to make any refund payment under the Agreement pursuant to Section 5.7, 6.3(ii), 6.3(iii)(1), 6.3(iv), 6.3(v), 6.3(vi), 10.1(iv) and 12.3(ii) of the Agreement; (c) the date of termination or expiration of the Agreement with no Guaranteed Obligations that remain due and payable as of such date, except that, in the case in which the term of the Agreement expires as a result of the occurrence of the Cessation Date, then Parent Guarantor's guarantee obligations hereunder shall survive with respect to the Guaranteed Obligations related to Section 12.3(ii) of the Agreement until such Guaranteed Obligations are paid in full by Moderna or Parent Guarantor.

2.2. Modification of the Guaranteed Obligations. To the fullest extent permitted by applicable Law, Parent Guarantor shall remain obligated hereunder notwithstanding that any demand for payment of any of the Guaranteed Obligations made by Purchaser may be rescinded by Purchaser and any of the Guaranteed Obligations be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Purchaser, and the Agreement, and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, in accordance with the terms thereof.

2.3. Guarantee Absolute and Unconditional. Parent Guarantor waives to the fullest extent permitted by applicable Law any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Purchaser upon this Amended Guarantee Agreement. To the fullest extent permitted by applicable Law, the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Amended Guarantee Agreement and all dealings between Moderna and Parent Guarantor, on the one hand, and Purchaser, on the other hand, likewise shall be conclusively

presumed to have been had or consummated in reliance upon this Amended Guarantee Agreement. Parent Guarantor understands and agrees, to the fullest extent permitted by applicable Law, that this Amended Guarantee Agreement shall be construed as a continuing, absolute and unconditional guarantee of payment and not of collection without regard to any defense, set-off or counterclaim (other than a defense of payment) which may at any time be available to or be asserted by Moderna, Parent Guarantor or any other Person against Purchaser, except, in each case, any and all defenses available to be raised by Moderna under the Agreement and the right to set-off expressly provided for in the Agreement). To the fullest extent permitted by applicable Law, when making any demand hereunder or otherwise pursuing its rights and remedies hereunder against Parent Guarantor, Purchaser may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Moderna or any other Person or against any guarantee for the Guaranteed Obligations or any right of offset with respect thereto, and any failure by Purchaser to make any such demand, to pursue such other rights or remedies or to collect any payments from Moderna or any other Person or to realize upon any such guarantee or to exercise any such right of offset, or any release of Moderna, any other Person or any such guarantee or right of offset, shall, to the extent permitted by applicable Law, not relieve Parent Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Purchaser against Parent Guarantor.

SECTION 3. REPRESENTATIONS AND WARRANTIES

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

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

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

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

(iv) the execution, delivery and performance of this Amended Guarantee Agreement, and compliance with the provisions of this Amended Guarantee Agreement, by Parent Guarantor 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, (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 Parent Guarantor or any of its assets are bound, or (c) violate or conflict with any of the provisions of Parent Guarantor's organizational documents (including any articles or memoranda of organization or association, charter, bylaws or similar documents).

SECTION 4. MISCELLANEOUS

4.1. Assignment. Except as expressly provided in this Amended Guarantee Agreement, this Amended Guarantee Agreement may not be assigned or otherwise transferred, nor may any right or obligation hereunder be delegated, assigned or transferred, by either Party without the written consent of the other Party. Notwithstanding the foregoing, Parent Guarantor may, without Purchaser's written consent, assign

this Amended Guarantee Agreement and its rights and obligations hereunder in whole to any Party that acquires, by or otherwise in connection with, merger, sale of assets, reorganization, consolidation or otherwise, all or substantially all of the business of Parent Guarantor to which the subject matter of this Amended Guarantee Agreement relates. Any purported assignment in violation of this Section 4.1 will be null, void, and of no legal effect.

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

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

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

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

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

4.4. Entire Agreement; Amendments. This Amended Guarantee Agreement contains the entire understanding of the Parties with respect to the subject matter hereof, amends and restates the amended and restated Guarantee Agreement between Parent Guarantor and Purchaser dated December 4, 2020 (which in turn amended and restated the Guarantee Agreement between Parent Guarantor and Purchaser dated August 5, 2020), and supersedes all previous arrangements with respect to the subject matter hereof, whether written or oral. This Amended Guarantee Agreement may be amended, or any term hereof modified, only by a written instrument duly executed by authorized representatives of both Parties.

- 4.5. Severability. Any provision of this Amended Guarantee Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the remaining provisions will be construed and enforced in all respects as if such invalid or unenforceable provision or provisions had been omitted and substituted with a provision that is valid, legal and enforceable and most closely effectuates the original intent of this Amended Guarantee Agreement. The invalidity of a particular provision in a particular jurisdiction will not invalidate such provision in any other jurisdiction.
- 4.6. Headings. The captions to the Sections hereof are not a part of this Amended Guarantee Agreement, but are merely for convenience to assist in locating and reading the several Sections hereof.
- 4.7. Waiver of Rule of Construction. Each Party has had the opportunity to consult with counsel in connection with the review, drafting and negotiation of this Amended Guarantee Agreement. Accordingly, the rule of construction that any ambiguity in this Amended Guarantee Agreement will be construed against the drafting Party will not apply.
- 4.8. Interpretation. Except where the context expressly requires otherwise: (a) the use of any gender herein will be deemed to encompass references to either or both genders, and the use of the singular will be deemed to include the plural (and vice versa); (b) the words "include", "includes" and "including" will be deemed to be followed by the phrase "without limitation" and will not be interpreted to limit the provision to which it relates; (c) the word "shall" will be construed to have the same meaning and effect as the word "will"; (d) any definition of or reference to any agreement, instrument or other document herein will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (e) any reference herein to any Person will be construed to include the Person's successors and permitted assigns; (f) the words "herein," "hereof," and "hereunder," and words of similar import, will be construed to refer to this Amended Guarantee Agreement in each of their entirety, as the context requires, and not to any particular provision hereof; (g) all references herein to Sections will be construed to refer to sections of this Amended Guarantee Agreement; (h) the word "notice" means notice in writing (whether or not specifically stated); (i) provisions that require that a Party or the Parties "agree," "consent," or "approve" or the like will require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise (but instant messaging); (j) references to any specific law, rule or regulation, or article, section or other division thereof, will be deemed to include the then current amendments thereto or any replacement or successor law, rule or regulation thereof; (k) the term "or" will be interpreted in the inclusive sense commonly associated with the term "and/or"; (l) unless otherwise specified, "day" means a calendar day; and (m) the interpretation of this Amended Guarantee Agreement, any notice, consent or the like delivered hereunder, and any action, dispute or proceeding, will be provided or conducted in English.
- 4.9. No Implied Waivers; Rights Cumulative. Except as expressly provided in this Amended Guarantee Agreement, no failure on the part of a Party to exercise, and no delay in exercising, any right, power, remedy or privilege under this Amended Guarantee Agreement, or provided by statute or at Law or in equity or otherwise, will impair, prejudice or constitute a waiver of any such right, power, remedy or privilege or be construed as a waiver of any breach of this Amended Guarantee Agreement or as an acquiescence therein, nor will any single or partial exercise of any such right, power, remedy or privilege preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.
- 4.10. Notices. All notices or other communications to or upon Parent Guarantor or Purchaser hereunder shall be effected in the manner provided for in Section 13.10 of the Agreement; provided, that, for purposes of

this Amended Guarantee Agreement, the address for Parent Guarantor shall be deemed to be the same as the address of Moderna as set forth in Section 13.10 of the Agreement.

- 4.11. Counterparts. This Amended Guarantee Agreement may be executed in two or more counterparts, including electronically or by facsimile or PDF signature pages, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 4.12. Binding Effect; No Third Party Beneficiaries. As of the date hereof, this Amended Guarantee Agreement will be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Except as expressly set forth in this Amended Guarantee Agreement, no Person other than the Parties and their respective Affiliates, and permitted assignees hereunder will be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Amended Guarantee Agreement.
- 4.13. Condition Subsequent. This Amended Guarantee Agreement shall be null and void if the Swiss Federal Government and Parliament have not approved the additional required budget in relation to the Second Amendment by 25 February 2021. Purchaser shall keep Moderna informed of the budget process, promptly upon the outcome thereof and no later than 6:00 pm CET on 26 February 2021.

[Signature Pages Follows]

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

SWISS CONFEDERATION, represented by MODERNATX, INC.

FEDERAL OFFICE OF PUBLIC HEALTH

BY: _____
NAME:
TITLE:

BY: _____
NAME:
TITLE:

BY: _____
NAME:
TITLE:

THE SWISS ARMED FORCES PHARMACY

BY: _____
NAME:
TITLE:

BY: _____
NAME:
TITLE: