

CONFIDENTIAL DISCLOSURE AGREEMENT

This **CONFIDENTIAL DISCLOSURE AGREEMENT** (this “**Agreement**”), is entered into by and between:

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 Katja Schott, Walder Wyss), 4051 Basel, Switzerland

(**"Moderna"**)

and

the [**Country contracting entity**]

(**"Purchaser"**)

Purchaser and Moderna are referred to in this Agreement individually as a “**Party**” and together as the “**Parties**”.

WHEREAS, Moderna is currently advancing its vaccine candidate mRNA-1273 against SARS-CoV-2 infections through clinical development and is establishing sites outside of the United States at contract manufacturers for the large-scale manufacturing of filled and finished product of mRNA-1273.

WHEREAS, the Parties wish to hold discussions about the possible supply of filled and finished product of mRNA-1273 by Moderna to Purchaser and the negotiation of certain agreements relating thereto (the “**Supply Agreement**”).

WHEREAS, the Parties now wish to exchange Confidential Information for the Purpose (as defined below).

NOW, THEREFORE, the Parties hereby agree as follows:

1 PURPOSE

1.1. Purpose. Moderna wishes to disclose certain information for internal evaluation by Purchaser in order to decide whether to enter into, and in order to negotiate, the Supply Agreement (the “**Purpose**”).

2. CONFIDENTIAL INFORMATION

2.1. “**Confidential Information**” means all technical, scientific and other know-how and information, trade secrets, knowledge, technology, means, methods, processes, practices, formulas, instructions, skills, techniques, procedures, specifications, data, results and other material, pre-clinical and clinical trial results, manufacturing procedures, test procedures and purification and isolation techniques, and any tangible embodiments of any of the foregoing, and any scientific, manufacturing, marketing and business plans, any financial and personnel matters relating to Moderna or its Affiliates or its or their present or future products, sales, licensors, licensees, suppliers, purchasers, employees, investors or businesses, that have been disclosed directly or indirectly by or on behalf of Moderna or its Affiliates or its or their Representatives to Purchaser or its Representatives (as applicable) in connection with the possible supply of filled and finished product of mRNA-1273 by Moderna to Purchaser and the negotiation of certain agreements relating thereto;

including information disclosed before the Effective Date, and information in any form whether or not identified as “confidential”. Without limiting the foregoing, Confidential Information includes (a) this Agreement and its terms as well as all information pertaining to the proposed supply relationship between the Parties, including the proposed commercial terms of such supply relationship, (b) the fact that the discussions between the Parties are taking place and the content and status of any discussions that are taking place between the Parties, and (c) all information and analysis derived from the Confidential Information.

2.2. Exclusions. The obligations of nondisclosure and non-use set forth in this Agreement will not apply to the extent that such Confidential Information:

- i. is known by Purchaser on a non-confidential basis at the time of its receipt (and not pursuant to a prior disclosure by or on behalf of Moderna, any of its Affiliates or any of its or their Representatives), as documented by Purchaser’s contemporaneous written records;
- ii. at the time of disclosure by or on behalf of Moderna, any of its Affiliates or any of its or their Representatives, is in the public domain;
- iii. becomes part of the public domain, by publication or otherwise, through no fault or breach of this Agreement of Purchaser or its Representatives;
- iv. is subsequently disclosed to Purchaser on a non-confidential basis, without restriction as to confidentiality or use, by a third party who is lawfully and contractually entitled to the possession and disclosure of such Confidential Information, as documented by Purchaser’s contemporaneous written business records;
- v. is developed by Purchaser independently without use of, reliance upon or reference to Confidential Information received from Moderna, any of its Affiliates or any of its or their Representatives, as documented by Purchaser’s contemporaneous written business records; or
- vi. is information which Moderna authorizes, in writing, for public release.

Confidential Information shall not be considered to be in the public domain or in Purchaser’s or its Representatives’ possession merely because it is included in more general information in the public domain or in such entities’ possession. In addition, any combination of Confidential Information shall not be considered to be within the foregoing exceptions merely because individual parts of such Confidential Information are in the public domain or in the possession Purchaser or any of its Representatives.

3. USE OF CONFIDENTIAL INFORMATION

3.1. “**Affiliate**” means, with respect to Moderna, any entity that controls, is controlled by, or is under common control with Moderna. For purposes of this Agreement, such entity will be deemed to control another entity if it owns or controls, directly or indirectly, more than fifty percent (50%) of the equity securities of such entity entitled to vote in the election of directors (or, in the case that such entity is not a corporation, for the election of the corresponding managing authority), or otherwise has the power to direct the management and policies of such entity. The Parties acknowledge that in the case of certain entities organized under the laws of certain countries outside the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent (50%), and that in such case such lower percentage will be substituted in the preceding sentence; provided, that such foreign investor has the power to direct the management and policies of such entity.

3.2. Purchaser and its Representatives will keep the Confidential Information confidential, and will not disclose it to any person other than as permitted by this Agreement, and shall only use the Confidential Information for the Purpose.

3.3. Purchaser and its Representatives shall not disclose or permit or enable the disclosure of any Confidential Information, in whole or in part, or in summary, to any third party, other than its Representatives in accordance with clause 4.1, or use any such Confidential Information, other than for the Purpose, without the prior written consent of Moderna. Purchaser and its Representatives shall not reproduce, analyze, disassemble, reverse engineer, publish, exploit or otherwise use the Confidential Information unless authorized in writing by Moderna.

3.4. In the event that Moderna makes Confidential Information available in a physical or electronic data room, Purchaser and its Representatives must not photograph or otherwise reproduce, extract, print or otherwise remove from the data room any such Confidential Information or any recorded summary of the same without prior written consent of Moderna. Access to any such data room must be limited to Representatives of Purchaser having been approved in writing in advance by Moderna.

3.5. To the extent reasonably possible, Purchaser and its Representatives shall keep the Confidential Information separate from other documents and other records of Purchaser and its Representatives.

3.6. Without prejudice to the generality of clauses 3.1 through 3.5, Purchaser and its Representatives shall not use any of the Confidential Information, for the purpose of: (i) initiating or progressing any legal or patent related proceedings against Moderna or its Affiliates; or (ii) procuring a commercial benefit to Purchaser or its Representatives or any third party; or (iii) supporting any patent applications being made by the Purchaser or its Representatives or any third party.

3.7. Purchaser and its Representatives will not be in breach of their obligations under this Agreement to the extent that they are required to disclose Confidential Information by law (provided, in the case of a disclosure under any freedom of information legislation, that the exemptions under that legislation do not apply) or order of a court that has jurisdiction over it, *provided*, that if such entity is required by law to disclose Confidential Information, then if legally permitted, such entity will (i) use reasonable best efforts to prevent and limit the disclosure of such Confidential Information and ask the court to treat the Confidential Information as confidential, and (ii) promptly inform Moderna of the disclosure that is being sought (and if possible before the court orders the disclosure) in order to provide Moderna an opportunity to challenge or limit the disclosure, and (iii) permit Moderna to make representations to the court in respect of the disclosure and/or confidential treatment of the Confidential Information. Notwithstanding the foregoing, Confidential Information that is required to be disclosed by law will remain otherwise subject to the confidentiality and non-use provisions of this Agreement.

3.8. If Purchaser receives a request under the applicable freedom of information legislation or similar law ("**FOIA**") to disclose any Confidential Information, it will notify Moderna as soon as reasonably practicable, and in any event within 3 days of receiving the request. Purchaser will work with Moderna to assess which exemption(s) under FOIA may apply to the request to disclose any Confidential Information and shall use its best endeavours to resist disclosure of any Confidential Information, whether using the exemption(s) identified or otherwise.

3.9. Purchaser hereby acknowledges that Purchaser and its Representatives are aware that the United States securities laws prohibit any person who has material, non-public information concerning a company from purchasing or selling securities of such company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities and Purchaser hereby acknowledges that

Purchaser and its Representatives are aware of the sanctions attaching to misuse or improper disclosure of any such material, non-public information relating to Moderna or any of its Affiliates.

4. REPRESENTATIVES

4.1. Purchaser shall be permitted disclose the Confidential Information only to the employees, public servants, professional advisors and/or representatives of Purchaser (“**Representatives**”) who: (a) have a reasonable need to know such Confidential Information for the Purpose; (b) are legally bound to Purchaser by obligations of confidentiality and non-use no less restrictive than those set forth herein and which extend to the Confidential Information; and (c) are informed of the confidential nature of such information; and (d) use such information solely for the Purpose.

4.2. For the avoidance of doubt, if Purchaser is a branch or department of a government or public administration, Purchaser shall not, without Moderna’s prior written consent, be entitled to disclose Confidential Information to directors, officers, employees, public servants, professional advisors, agents, consultants and/or representatives of any other branch or department of that government or public administration.

4.3. Purchaser shall be entitled to disclose Confidential Information to no more than 25 (twenty-five) Representatives pursuant to clause 4.1. Purchaser shall keep a restricted access list of all such Representatives and shall make such list available to Moderna promptly upon request.

4.4. Purchaser shall be liable for any breach of this Agreement by its Representatives. Representatives shall only be entitled to use Confidential Information for the Purpose.

5. PROTECTION OF CONFIDENTIAL INFORMATION

5.1. Purchaser shall take all reasonable precautions to safeguard Moderna’s Confidential Information using a standard of care no less protective than that used to protect its own proprietary and confidential information.

5.2. Purchaser shall inform Moderna immediately if it becomes aware of the possession, use or knowledge of any Confidential Information by an unauthorized person and provide any assistance in relation to such unauthorized possession, use or knowledge that Moderna may require.

6. NO WARRANTIES / NO LICENSE

6.1. Purchaser acknowledges that the Confidential Information is provided “as is” and without any warranty, express or implied.

6.2. Purchaser shall not acquire any right or license whatsoever in the Confidential Information as a result the disclosure or use of such Confidential Information.

7. RETURN OF CONFIDENTIAL INFORMATION

7.1. Purchaser and its Representatives shall discontinue and cease use of the Confidential Information and destroy, erase from its computer systems or return to Moderna the Confidential Information and all copies, summaries, compilations, memoranda, reports and analyses thereof, as may be requested in writing by Moderna at any time during the term of this Agreement and/or upon termination or expiry of this Agreement. Purchaser shall provide to Moderna a certificate, signed by an officer of Purchaser, confirming that the obligations in this clause 7 have been complied with.

7.2. Purchaser may, however, keep one copy of the Confidential Information in its legal advisor's files solely for the purpose of enabling it to comply with the provisions of this Agreement.

8. TERM

8.1. This Agreement shall become effective on the date of the last signature (the "**Effective Date**") and shall continue to apply for 15 years after the date of disclosure of the last Confidential Information hereunder as long as information disclosed hereunder still qualifies as Confidential Information.

9. FURTHER DEALINGS

9.1. Nothing in this Agreement obligates either Party to enter into any further agreement or activities with the other Party.

9.2. In particular, nothing in this Agreement shall be construed or implied as obliging Moderna to disclose any specific type of information under this Agreement, whether Confidential Information or not.

10. AMENDMENTS TO BE IN WRITING

10.1. No provision of this Agreement shall be amended except if signed by duly authorized representatives of both Parties. No Party will be deemed to have waived this requirement or any other provision of this Agreement unless the waiver is in writing.

11. ASSIGNMENT

11.1. This Agreement or the obligations and rights hereunder shall not be assigned or otherwise transferred without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, consent shall not be required for Moderna to assign the rights and obligations under this Agreement to an Affiliate of Moderna.

12. GOVERNING LAW AND JURISDICTION

12.1. This Agreement shall be governed by the laws of the State of New York.

12.2. All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration administered in accordance with the procedural rules of the International Chamber of Commerce in effect at the time of submission, by three arbitrators appointed in accordance with said Rules. Such arbitration shall be completed within 180 days of arbitrator confirmation with limited discovery rights. Arbitration shall be governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The seat, or legal place, of arbitration shall be New York, New York. The language to be used in the arbitral proceedings shall be English. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts located in New York, New York for matters related to the conduct of the arbitration. Moderna may however request preliminary injunctive relief in any court of competent jurisdiction.

13. NOTICES

13.1. Any notice given under this Agreement shall be made in English and in writing and may be delivered by hand, courier, registered mail, or fax to the address of the other Party first listed above.

14. MISCELLANEOUS

14.1. Except as otherwise permitted under this Agreement, Purchaser shall not issue any written communication in relation to this Agreement, or the subject matter hereof, without prior consultation with, and the consent of, Moderna. Either Party may subsequently publicly disclose any information previously contained in any public announcement made in accordance with this Agreement.

14.2. This Agreement may be executed in two or more counterparts, including by facsimile, by PDF signature pages, or by electronic signature software, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The Parties agree that the execution of this Agreement via facsimile, PDF signature pages or electronic signature shall have the same legal force and effect as the exchange of original signatures, even if subsequently replaced by original signatures.

14.3. All communications and proceedings of any kind related to this Agreement shall be in the English language. The Parties acknowledge that only the English language version of this Agreement shall be executed and binding upon the Parties and that any translation of this Agreement shall be provided for convenience purposes only.

Signature Page Follows

Each of the Parties has caused its duly authorized representative to execute this Agreement effective upon the date of the last of the undersigned signatures

Moderna Switzerland GmbH	[Country contracting entity]
Signed	Signed
Name:	Name:
Title: Managing Director	Title:
Place:	Place:
Date:	Date: