

PURCHASE CONTRACT NO. 1

This **PURCHASE CONTRACT NO. 1** (this "**Purchase Contract**"), entered into as of the ___ day of January 2022 (the "**PC Effective Date**"), is by and between Fondo Nacional de Gestion del Riesgo de Desastres, legal trust identified with NIT. 900.978.341-9, acting through FIDUCIARIA LA PREVISORA S.A. ("**Purchaser**") and 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 address at Peter Merian-Weg 10, 4052 Basel, Switzerland ("**Moderna**"). Purchaser and Moderna are referred to in this Purchase Contract individually as a "**Party**" and together as the "**Parties**".

WHEREAS, Purchaser and Moderna entered into that certain Supply Agreement dated as of February 5, 2021, as amended or restated from time to time (the "**Supply Agreement**");

WHEREAS, the Supply Agreement permits the Parties to enter into Purchase Contracts (as defined in the Supply Agreement); and

WHEREAS, Purchaser wishes to purchase an additional ten million eight hundred thousand (10,800,000) doses of Product in accordance with the terms and conditions set forth herein, and in connection therewith, the Parties wish to amend the Supply Agreement as provided in this Purchase Contract.

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

1. **DEFINITIONS.** Capitalized terms that are not otherwise defined herein shall have the meanings ascribed to such terms in the Supply Agreement. 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 Supply Agreement.

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

1.2 "**Delivered Product Payment**" means, for each delivery of Product, the US dollar amount equal to (a) the number of Delivered Doses in such delivery multiplied by (b) sixty percent (60%) of the Price Per Dose.

1.3 "**Delivered Product Payments**" means, collectively, all of the Delivered Product Payments hereunder.

1.4 "**End Date**" has the meaning set forth in Article 8.1.

1.5 "**Firm Order Quantity**" means ten million eight hundred thousand (10,800,000) doses of the Product.

1.6 "**Initial Upfront Payment**" means US\$72,360,000.00, representing the US dollar amount equal to forth percent (40%) of the Firm Order Quantity multiplied by the Price per Dose.

1.7 "**Minimum Product Payment**" means US\$72,360,000.00.

1.8 "**PC Term**" has the meaning set forth in Article 8.1

1.9 “**Price Per Dose**” means US\$16.75 (sixteen US dollars and seventy-five cents), assuming multi-dose vials.

1.10 “**Product**” has the meaning set forth in Appendix A.

1.11 “**Total Payments**” means the US dollar amount equal to the sum of (a) Initial Upfront Payments and (b) Delivered Product Payments, in each case, if actually paid to Moderna under this Purchase Contract.

2. **PURCHASE CONTRACT** This Purchase Contract will be considered a “Purchase Contract” for purposes of the Supply Agreement, and the terms and conditions of the Supply Agreement will apply with respect to the Product as defined herein purchased under this Purchase Contract except to the extent modified herein or unless otherwise specified herein. For clarity, (a) any references to “Product” under the Supply Agreement will be deemed to be for the “Product” as defined in this Purchase Contract, (b) “Firm Order Quantity” as defined in this Purchase Contract will not be considered “Confirmed Volume” as defined in the Supply Agreement, (c) references to “this Agreement” under the Supply Agreement shall be read and construed as references to this Purchase Contract where applicable, and (d) this Purchase Contract will not apply to any other Purchase Contracts that the Parties may execute from time to time. In the event of a conflict between the terms of the Supply Agreement and this Purchase Contract, this Purchase Contract will apply with respect to the specific terms set forth herein.

3. **ORDERS**

3.1 **Firm Order Quantity**. Subject to the terms set forth herein, Purchaser will purchase, and Moderna will Manufacture and supply, the Firm Order Quantity of the Product in accordance with this Purchase Contract. For clarity, the Firm Order Quantity is binding and non-cancellable.

3.2 **Manufacturing and Supply**. Moderna will Manufacture the Product delivered pursuant to this Purchase Contract in accordance with this Purchase Contract, the Specifications, cGMPs and Applicable Laws.

4. **PAYMENTS; REFUND**

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

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

(ii) Within thirty (30) days after receipt of Moderna’s invoice for each delivery of Delivered Doses, Purchaser will pay the Delivered Product Payment to Moderna for such delivery.

4.2 **Payment Instructions**. All amounts payable to Moderna under this Purchase Contract will be paid in US dollars, without deduction, and by authenticated and value dated Swift telegraphic transfer for any such payments made from outside the United States, to the bank account identified by Moderna.

4.3 **Taxes**.

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

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

(iii) Purchaser will make all payments in full without set-off or counterclaim and without deduction or withholding for taxes except to the extent that any such deduction or withholding is required by applicable Laws in effect at the time of payment. Purchaser may withhold from payments due to Moderna amounts for payment of any withholding tax that is required by applicable Laws to be paid to any taxing authority with respect to such payments. Purchaser will give proper evidence, as may be reasonably requested by Moderna, from time to time, as to the payment of any such tax. If Purchaser is required by applicable Laws to withhold any taxes from or in respect of any amount payable under this Purchase Contract, then any such amount payable under this Purchase Contract will be increased to take into account the taxes withheld as may be necessary so that, after making all required withholdings (including withholdings on the withheld amounts), Moderna receives an amount equal to the sum it would have received had no such withholding been made.

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

(v) Purchaser's VAT number is as follows:

VAT Number: Purchaser does not possess a VAT number

4.4 Refunds. If any refund is required to be paid by Moderna to Purchaser as a result of the PC Term expiring following the occurrence of the End Date (if any), Moderna will issue a refund to Purchaser due no later than ninety (90) days following such refund becoming due hereunder, subject always to Moderna retaining at least the Minimum Product Payment. Moderna's right of set off under Section 9.8 of the Supply Agreement (Set-off) will apply to enable Moderna, in its sole discretion, to set off any refund that is payable under this Purchase Contract against any amounts owed to any Moderna Party by Purchaser under the terms of this Purchase Contract or the Supply Agreement (including without limitation the indemnification provided in Section 9 of the Supply Agreement). Notwithstanding anything herein to the contrary, (a) until all payments are paid in full hereunder, any refund to be paid under this Article 4.4 by Moderna to Purchaser will first be satisfied through a reduction of any outstanding payments (e.g., Delivered Product Payments) prior to Moderna paying an amount to Purchaser directly under this Article 4.4 (and Moderna will have no obligation to make such payment to the extent of the reduction of the outstanding payments), and (b) in no event shall the aggregate reductions and refunds under this Purchase Contract result in Moderna receiving less than the Minimum Product Payment.

5. DELIVERY

5.1 Delivery Schedule.

(i) Appendix B contains information related to the estimated delivery of the Firm Order Quantity to Purchaser.

(ii) On or before January 31, 2022 and continuing each calendar month until the end of the Term, Moderna will give a rolling update on the status of the delivery of the Product to Purchaser, including any changes to the anticipated delivery schedule.

5.2 Incoterms. Moderna will make available each quantity of the Product required under this Purchase Contract to Purchaser DAP (Incoterms 2020) at the Delivery Site and title to the Product will transfer to Purchaser when such quantity of Product is made available to Purchaser at the Delivery Site.

5.3 Excluded Provisions. Notwithstanding anything herein to the contrary, Section 5.3 (Delivery Schedule; Delivery) and Exhibit D (Anticipated Delivery Schedule) of the Supply Agreement will not apply to Product purchased under this Purchase Contract.

6. LIABILITY.

6.1 Maximum Liability. Except as set forth in Article 4.4, 5.3 or 8.3(ii) of this Purchase Contract or as set forth in Section 5.4(i) (Product Claim) of the Supply Agreement, Moderna's maximum aggregate liability to Purchaser under or in connection with this Purchase Contract (however arising, including contract, tort, negligence, indemnity, breach of statutory duty, or otherwise) will not exceed ten percent (10%) of the Total Payment actually paid hereunder (net of any refunds due or payable hereunder).

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

6.3 Allocation of Risk. The limitations of liability reflect the allocation of risk between the Parties. The limitations specified in this Article 6 will survive and apply even if any limited remedy specified in this Purchase Contract is found to have failed its essential purpose. Purchaser acknowledges the urgent nature of the circumstances giving rise to this Purchase Contract and acknowledge that vaccine development, especially with the accelerated development time frame in respect of the Product, involves risk including in relation to safety and efficacy. However, given the nature of the current pandemic and its global health and economic impact Purchaser has determined that the potential benefits of the accelerated development, manufacture, supply, and use of the Product outweighs the potential risks and is in the best interest of the public.

7. REPRESENTATIONS AND WARRANTIES.

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

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

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

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

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

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

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

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

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

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

7.3 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS PURCHASE CONTRACT, NEITHER PARTY NOR ITS AFFILIATES OR RELATED PARTIES, AS APPLICABLE, MAKES ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OF NON-INFRINGEMENT, OR REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY PRODUCT.

8. TERM; TERMINATION

8.1 Term. The term of this Purchase Contract will commence on the Effective Date and will continue until the earliest of (i) the date that all of the then current Firm Order Quantity have been delivered by Moderna to Purchaser, (ii) March 31, 2023 (the "End Date") and (iii) the termination of this Purchase Contract in accordance with Article 8.2 (the "PC Term").

8.2 Termination.

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

(ii) Moderna may terminate this Purchase Contract, in its sole discretion, by written notice to Purchaser if the Initial Upfront Payment or any Delivered Product Payment is not paid in accordance with Article 4.1 and such non-payment is not cured within ten (10) days of Moderna's written notice of such non-payment.

(iii) [Reserved].

(iv) Either Party may terminate this Purchase Contract, by written notice to the other Party, for any material breach of this Purchase Contract by the other Party (except as set forth in Article 8.2(ii) above), if such breach is not cured within thirty (30) days after the breaching Party receives written notice of such breach from the non-breaching Party; provided, however, that if such breach is not capable of being cured within such thirty (30)-day period and the breaching Party has commenced and diligently continued actions to cure such breach within such thirty (30)-day period, except in the case of a payment default or a breach of safety and any of the security obligations set out at Sections 3.7 (Records), 5.6 (Destruction), 5.7 (Storage) 5.8 (Security) or 8.1 (Moderna Technology) or Exhibit F (Moderna Destruction Directive) of the Supply Agreement, the cure period will be extended to ninety (90) days, so long as the breaching Party is making diligent efforts to do so. Such termination will be effective upon expiration of such cure period; provided, that in the event that the breaching Party disputes in good faith the non-breaching Party's grounds for terminating this Purchase Contract pursuant to this Article 8.2(iii), then either of the Parties may refer such dispute for resolution in accordance with Section 12.3 (Dispute Resolution) of the Supply Agreement, and the provisions therein will apply.

8.3 Effects of Expiration or Termination

(i) In the event of the expiration or termination of this Purchase Contract in accordance with the terms hereof, this Purchase Contract will forthwith become void and thereafter there will be no liability on the part of any Party, any Moderna Party or any Related Party, provided, that any expiration or termination of this Purchase Contract will not affect any payments due prior to and unpaid as of the effectiveness of such expiration or termination; provided, further, that (a) the provisions of Articles 4, 6, 7.3, 8.3 and Appendix A and Articles 1 and 12 of this Purchase Contract (solely as each applies to the foregoing Articles and Appendices of this Purchase Contract) will remain in full force and effect and survive any termination or expiration of this Purchase Contract and (b) Sections 3 (Purchaser Obligations) (except for Sections 9.3 (Limitations on Indemnification) and 9.8 (Set-off) and that Section 3.1 (Purchaser Responsibilities) shall survive solely with respect to Product delivered prior to the effective date of expiration or termination), 5.4 (Acceptance/Rejection of Product), 5.5 (Disposition of Deficient Product), 5.6 (Destruction), 5.7 (Storage), 5.8 (Security), 6.3 (Safety Information Reporting), 6.4 (Product Recalls), 6.5 (Records), 7 (Confidentiality), 8 (Intellectual Property), and Exhibits B (Product Marks), C (Dispute Resolution for Technical Disputes) and E (Moderna Destruction Directive) and Sections 1 (Definitions) and 12 (Miscellaneous) of the Supply Agreement (solely as each applies to the

foregoing Sections and Exhibits of the Supply Agreement) will remain in full force and effect and survive any termination or expiration of this Purchase Contract.

(ii) In the event of a termination of this Purchase Contract by Moderna pursuant to Article 8.2(ii), 8.2(v), or 8.2(vi), any unpaid Delivered Product Payments (subject to any reductions in accordance with Article 4.4 (as applicable)) will be paid to Moderna within five (5) Business Days after such termination.

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

(iv) Upon the expiration or termination of this Purchase Contract, Purchaser shall destroy any Product that are expired or rendered unusable or otherwise dispose of or render unusable such Product as set forth in Exhibit E of the Supply Agreement (Moderna Destruction Directive).

9. MISCELLANEOUS.

9.1 Assignment. Except as expressly provided in this Purchase Contract, this Purchase Contract may not be assigned or otherwise transferred, nor may any right or obligation hereunder be delegated, assigned or transferred, by either Party without the written consent of the other Party. Notwithstanding the foregoing, Moderna may, without Purchaser's written consent, assign this Purchase Contract and its rights and obligations hereunder in whole to any Affiliate of Moderna or any party that acquires, by or otherwise in connection with, merger, sale of assets, reorganization, consolidation or otherwise, all or substantially all of the business of Moderna to which the subject matter of this Purchase Contract relates. Any purported assignment in violation of this Article 9.1 will be null, void, and of no legal effect.

9.2 Governing Law. This Purchase Contract will be construed and the respective rights of the Parties determined in accordance with the substantive Laws of the State of New York, notwithstanding any provisions of New York Laws or any other Laws governing conflicts of laws to the contrary, and the patent Laws of the relevant jurisdiction without reference to any rules of conflicts of laws to the contrary. Each Party, and its Affiliates and Related Parties, disclaims any reliance on any representation, act or omission other than what is expressly set forth in this Purchase Contract. The Parties expressly reject any application to this Purchase Contract of the United Nations Convention on Contracts for the International Sale of Goods.

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

For clarity, any other Purchase Contracts executed by the Parties will be subject to the terms and conditions of such Purchase Contracts.

9.4 Counterparts. This Purchase Contract may be executed in two or more counterparts, including electronically or by facsimile or PDF signature pages, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

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

**FONDO NACIONAL DE GESTION DEL
RIESGO DE DESASTRES, LEGAL TRUST
IDENTIFIED WITH NIT. 900.978.341-9,
ACTING THROUGH FIDUCIARIA LA
PREVISORA S.A.**

BY: 

NAME: SAÚL HERNANDO SUANCHA TALERO

TITLE: Vicepresidente de Negocios Fiduciarios

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

MODERNA SWITZERLAND GMBH

DocuSigned by:
BY: Christoph Brackmann
NAME: 4CB491C3595E45D...
TITLE:

APPENDIX A

PRODUCT

“Product” means the finished and packaged form of Moderna’s proprietary two dose, 100 microgram primary series vaccine known as “mRNA-1273” in the form that (a) exists as of the PC Effective Date of and (b) has received Marketing Approval in the Territory as of the PC Effective Date.

APPENDIX B

ANTICIPATED DELIVERY SCHEDULE FOR FIRM ORDER QUANTITY

Anticipated Delivery Schedule for the Firm Order Quantity:

Period	Doses of Product
Quarter 1 2022	1,000,000
Quarter 2 2022	6,000,000
Quarter 3 2022	3,800,000