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ANNEX

to the

COMMISSION DECISION

approving an Amendment to a Purchase Agreement on vaccines against COVID-19 and Sars-Cov-2 variants

EUROPEAN COMMISSION
Directorate General for Health and Food Safety

Sensitive*
RELEASABLE TO: Need to know basis

AMENDMENT NO. 5 TO PURCHASE AGREEMENT ("**Amendment No. 5**") for the production, priority-purchasing options and supply of a successful COVID-19 vaccine for EU Member States

NUMBER — **SANTE/2021/C3/010**

1. The European Commission (the '**Commission**'), acting on behalf and in the name of the Member States listed in Annex I of the PA (hereinafter referred to as "**Participating Member States**") being represented for the purposes of signature of this Amendment No. 5 by Ms Stella Kyriakides, Commissioner for Health and Food Safety:

on the one part and

2. Moderna Switzerland GmbH

a limited liability company ("Gesellschaft mit beschränkter Haftung") organized and existing under the laws of Switzerland

Company Number CHE-344.522.989

Peter Merian-Weg 10, 4052 Basel, Switzerland

CHE-344.522.989 MWST

(the '**Contractor**'), represented for the purposes of the signature of this Amendment No. 5 by [redacted]

on the other part,

The Commission, acting on behalf and in the name of the Participating Member States, and the Contractor are together referred to as the "**Parties**" and each individually as a "**Party**"[1],

HAVE AGREED

Article I.

Amendments to the PA

The PA is amended as follows:

[1] Capitalized terms in this Amendment No. 5 that are not otherwise defined herein will have the meanings ascribed to such terms in the PA.

[redacted]

The following recitals are added:

I. On 16 December 2022, the Commission, acting on behalf and in the name of the Participating Members States, and the Contractor entered into Amendment No. 5 to the PA ("**Amendment No. 5**") to give the Participating Member States the possibility to defer the delivery of approximately [redacted] of Product due to be delivered as part of the Remaining Doses in the third quarter (Q3) and fourth quarter (Q4) of 2022 to the first calendar quarter of 2023. For the Participating Member States that do not opt for such deferral, any provision in this PA which refers to "Q3-Q4 Deferred Doses" shall not apply to that Participating Member State;

Article I.1 is replaced by the following:

"If there is any conflict between different provisions in this PA, as amended, the following rules must be applied:

(a) The provisions of Amendment No. 5 take precendence over those in the PA, Amendment No. 1, Amendment No. 2, Amendment No. 3 and Amendment No. 4.
(b) The provisions of Amendment No. 4 take precedence over those in the PA, Amendment No. 1, Amendment No. 2 and Amendment No. 3.
(c) The provisions of Amendment No. 3 take precedence over those in the PA, Amendment No. 1 and Amendment No. 2.
(d) The provisions of Amendment No. 2 take precedence over those in the PA and Amendment No. 1.
(e) The provisions of Amendment No. 1 take precedence over those in the PA.
(f) The provisions set out in the special conditions take precedence over those in the other parts of the PA.
(g) The provisions set out in the general conditions take precedence over those in the Vaccine Order Form (Annex II)."

The last paragraph at the end of Article I.4.5 is replaced by the following:

"Notwithstanding anything herein to the contrary, the Contractor may manufacture or have manufactured the Deferred Doses, the July/August Deferred Doses, the Incremental Doses and the Q3-Q4/2022 Deferred Doses at any manufacturing sites used by the Contractor as part of its supply chain for the United States, Switzerland, the European Union or the EEA [redacted]

The following sentence is added at the end of the second paragraph of Article I.4.6:

"With regard to the Q3-Q4 Deferred Doses, Contractor [redacted] to

A new Article I.4.7.1E is added as follows:

"I.4.7.1E Deferral of doses of Product currently scheduled for Delivery in Q3-Q4/2022

Subject to the terms and conditions of this Article I.4.7.1E, the Contractor agrees to defer delivery of up to [redacted] of Product currently scheduled for delivery by the Contractor to the Participating Member States as part of the Remaining Doses in Q3-Q4 2022 to the first calendar quarter of 2023. The doses of Product which are eligible for deferral by the Participating Member States are the "**Q3-Q4/2022 Deferred Doses**" and set forth as follows:

[redacted]

All deliveries shall be made in mRNA-1273.222 Booster Product and shall be completed by end of March 2023. For the avoidance of doubt, the PA continues to be in force until completion of the deliveries and payment of Additional Doses, Additional Option Doses and Incremental Doses, subject to this deferral and shall automatically expire on that date as per Article I.3.3. The Contractor and the Commission agree on the delivery schedule above for the delivery of the Q3-Q4/2022 Deferred Doses which shall become part of the Estimated Product Delivery Schedule.

In order to qualify for such deferral, each Participating Member State wishing to defer doses of Product must be in compliance with its payment obligations under the PA and its respective Vaccine Order Form, including payment due for all issued invoices for all doses of Product delivered by the Contractor to such Participating Member State at the price per dose of Product set forth in Article I.7.1 of the PA for the applicable Product ordered by such Participating Member State (Original Product, Booster Product, or Variant Product, as applicable).

The last sentence at the end of the first paragraph of Article I.4.7.2 is replaced by the following:

"For purposes of the Estimated Product Delivery Schedule and unless specified otherwise by the Contractor in writing,

Article I.13 is amended as follows:

The following definitions are included between the definition of '**Purchase Agreement (PA)**' and '

'**Q3-Q4/2022 Deferred Doses**': has the meeting set forth in Article I.4.7.1.E

Article II.

Entry into Force and Duration

1. This Amendment No. 5 shall enter into force on the date on which it is signed by the Commission, and will remain in force for the duration of the PA.

2. To avoid doubt, this Amendment No. 5 shall be binding on all Participating Member States irrespective of whether they have opted in to defer Doses in accordance with

this Amendment No. 5. However, any provision in the PA regarding the Q3-Q4/2022 Deferred Doses shall only apply to the Participating Member States that have opted in for such deferral of doses of Product and shall not apply to the Participating Member States that have not opted in for deferral.

3. Except as expressly modified herein, the terms and conditions of the PA will remain in full force and effect. The Parties agree to cooperate with each other in good faith to take such other actions (including working collaboratively to correct any clerical, typographical, or other similar errors in this Amendment No. 5) as the other Party may reasonably request for purpose of carrying out the intent of this Amendment No. 5.

Article III.

Applicable Law and Settlement of Disputes

1. This Amendment No. 5 shall be governed by the laws of Belgium.
2. For the avoidance of doubt, Article I.11 (*Applicable Law and Settlement of Disputes*) of the PA shall apply mutatis mutandis to this Amendment No. 5.

SIGNATURES

For the Contractor,

Moderna Switzerland GmbH

[redacted]

Done at Basel, 23 December 2022

For the Commission, on behalf and in the name of the Participating Member States,

Ms Stella Kyriakides, Commissioner for Health and Food Safety

Signature: [redacted]

Done at Nicosia, Cyprus, 23 December 2022

In duplicate in English.