

## CONFIDENTIALITY AGREEMENT

**THIS CONFIDENTIALITY AGREEMENT** (this “Agreement”) is entered into as of 8 January 2021 (the “Effective Date”) by and between Moderna Switzerland GmbH with its registered office at 5.1.2e Aeschenvorstadt 48, 4051 Basel, Switzerland (“Moderna Switzerland”), and Movianto Nederland BV, Keltenweg 70, 5342 LP Oss, the Netherlands (“Recipient”). Each of Moderna Switzerland and Recipient may be referred to herein individually as a “Party” and collectively as the “Parties”.

WHEREAS Moderna Switzerland and the European Commission have entered into Advance Purchase Agreement N° SANTE/2020/C3/054-SI 2.838958 (“APA”), with respect to the supply of Moderna’s mRNA-1273 Covid Vaccine (the “Product”) to Member States of the European Union, and the Netherlands (“Member State”) (has placed a Vaccine Order Form with Moderna in accordance with the APA, and has appointed Recipient to act as its local warehouse and recipient of the Product as confirmed in a Letter of Nomination to Moderna dated January 8<sup>th</sup>, 2021.

WHEREAS in order to facilitate delivery of the Product to Recipient on behalf of Member State, Moderna Switzerland and its Affiliates will need to disclose certain commercially sensitive and confidential supply chain, technical and other information to Recipient and the Parties have agreed to enter into this Agreement.

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

**1. Purpose.** This Agreement is made in order for Moderna Switzerland and its Affiliates (collectively, “Moderna”) to disclose to Recipient, during the term of this Agreement, such technical, supply chain and business information as Moderna may elect to disclose so that Recipient may use the same solely for the performance of its importation and distribution obligations with respect to the Product in the Member State (the “Purpose”). As used herein, the term “Affiliate” means with respect to a given entity any person or legal entity directly or indirectly controlling, controlled by or under common control with such entity, where control shall mean the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities of an entity or such other relationship as results in the actual control over the management, assets, business and affairs of an entity.

**2.**

**3. Confidential Information.** As used herein, “Confidential Information” means any and all information relating to Moderna that is made available or disclosed, in whatever form or medium (regardless of whether tangible, intangible, visual, or oral, and regardless of whether or not marked or otherwise identified as confidential), to Recipient, before or after the Effective Date. “Confidential Information” includes without limitation: information disclosed in non-public patent applications, sequences, samples, chemical compounds, biological materials, techniques, sketches, works of authorship, models, inventions, know-how and processes, information concerning research, experimental work, development, design details and specifications, engineering, financing, procurement requirements, purchasing, manufacturing, supply chain, quality, customers, investors, employees, business and contractual relationships, business forecasts, analyst reports, sales and merchandising and marketing plans, and related to the Product.

**4.**

**5. Obligations.** Recipient agrees: (a) to use the Confidential Information solely for the Purpose and for no other reason; (b) to take adequate measures to protect the confidentiality of the Confidential Information; (c) not to disclose or make available, directly or indirectly, any of the Confidential Information to anyone, except to the Member State and/or Recipient’s (i) employees and consultants, (ii) professional advisers (e.g., lawyers and accountants), and (iii) other authorized

representatives approved in advance in writing by Moderna ((i) through (iii) collectively, “Representatives”), who have a “need to know” the information for the Purpose and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein; (d) to notify appropriately such Representatives that the disclosure is made in confidence, to require them to keep the same in confidence in accordance with the terms and conditions of this Agreement, and to enforce the terms and conditions of this Agreement; and (e) if directed by Moderna, to limit as directed the number of copies made of the Confidential Information. Recipient agrees that in the event permission is granted by Moderna to copy Confidential Information, each such copy will contain and state the same confidential or proprietary notices or legends, if any, that appear on the original, unless otherwise authorized in writing by Moderna. Recipient agrees to immediately notify Moderna upon discovery of any loss or unauthorized disclosure of the Confidential Information, and to remedy any such loss or unauthorized disclosure as reasonably requested by Moderna.

6.

7. **Exceptions.** The obligations and restrictions imposed by this Agreement will not apply to any Confidential Information that: (a) Recipient can establish by written record was already known to a Representative of Recipient on a non-confidential basis prior to Moderna’s disclosure; (b) is or becomes generally publicly available through no fault of Recipient; or (c) is obtained by Recipient on a non-confidential basis from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed. Notwithstanding the foregoing, (i) any Confidential Information shall not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in the public domain or in the possession of Recipient, and (ii) any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the possession of Recipient, but only if the combination itself and its principle of operation are in the public domain or in the possession of Recipient. If Recipient is required by law to make any disclosure of any of the Confidential Information, by subpoena, judicial or administrative order or otherwise, Recipient shall first give written notice of such requirement to Moderna, permit Moderna to intervene in any relevant proceedings to protect its interests in the Confidential Information and provide full cooperation and assistance to Moderna in seeking to obtain such protection.

8.

9. **Handling of Information and Materials.** Recipient will not reproduce Confidential Information in any form except as required to accomplish the Purpose. All reproductions of any Confidential Information, whether supplied by Moderna or made by or for Recipient, will remain the property of Moderna. Upon termination of this Agreement, or upon written request of Moderna, Recipient will promptly return to Moderna or destroy, at Moderna’s election, all documents and other tangible materials representing Confidential Information and all copies thereof and will certify the return or destruction of all such documents and other tangible materials; provided, however, that Recipient may retain a summary description of the Confidential Information for archival purposes and so that any continuing obligations may be determined, and provided further that the Recipient shall not be required to return or destroy Confidential Information which is located on electronic back-up tapes (in accordance with Recipient’s normal data back-up procedures) where such tapes are not readily accessible to the Recipient’s employees or partners.

10. **No Other Rights.** Recipient recognizes and agrees that nothing contained in this Agreement will be construed as granting Recipient any property rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Recipient will not make, have made, use, sell or otherwise exploit for any purpose any product or other item using, incorporating or derived from any Confidential Information. This Agreement imposes no obligations on Moderna to disclose or make available any Confidential Information or to purchase, sell, license or otherwise transact in any technology, services or products.

**11. Term and Termination.** This Agreement may be terminated by either Party at any time upon thirty (30) days written notice to the other Party. The terms and conditions of this Agreement shall survive any such termination with respect to Confidential Information that is disclosed prior to the effective date of termination.

**12.**

**13. Notice.** Any notice to be given hereunder by a Party to the other will be in writing addressed to the address of the other Party set forth in the introductory paragraph above or another known address (unless such other Party provides written notice of a different address) and will be deemed given: (a) upon delivery if sent by facsimile, email or by overnight courier; (b) three (3) days after deposit in the mail if sent by pre-paid, certified mail, return receipt requested mail; or (c) upon confirmation of sending when sent by facsimile or email (if sent during normal business hours or the next business day if sent at any other time).

**14.**

**15. No Warranty.** NO WARRANTY IS MADE BY MODERNA UNDER THIS AGREEMENT. ANY INFORMATION DISCLOSED UNDER THIS AGREEMENT IS PROVIDED "AS IS."

**16.**

**17. Publicity.** Neither Party will disclose to any third party (excluding Representatives), (a) the existence or terms of this Agreement or (b) the nature or content of any discussion between the Parties with respect to the Purpose, in each case without the other Party's prior written approval or except as may be required by applicable law, provided that if either Party is required by law to make such a disclosure, it will, (i) if legally permissible, first give written notice of such requirement to the other Party and (ii) use commercially reasonable efforts to secure confidential treatment for such disclosure.

**18.**

**19. Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with Swiss Law, under exclusion of its conflict of law rules and under exclusion of the provisions of the Vienna Convention on the Sales of Goods. Any dispute under this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (in force as from 1 March 2017) by three arbitrators appointed in accordance with said Rules. 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 Zurich, Switzerland. The language to be used in the arbitral proceedings shall be English. No course of dealing, usage of trade, or course of performance shall be applicable to this Agreement. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts located Zurich, Switzerland for matters related to the conduct of the arbitration.

**20.**

**21. General.** This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement. Neither this Agreement nor any of the Parties' rights or obligations hereunder may be assigned except by a writing signed by both Parties, provided however that either Party may assign this Agreement to any of its Affiliates or to a successor in connection with the merger, consolidation, sale or transfer of substantially all of its assets or business to which this Agreement relates; provided that no such assignment will relieve the assigning Party of its obligations hereunder. This Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns. This Agreement supersedes all previous agreements between the Parties relating to the subject matter hereof. The headings to sections of this Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of any provision hereof. No provision of this Agreement will be deemed waived, amended or modified by either Party, unless such waiver, amendment or modification is made in writing and signed by both Parties. Recipient acknowledges that it and its Representatives are aware that Confidential Information may include material non-public information, and that the United States securities laws impose restrictions on

trading securities when in possession of such information. Recipient acknowledges that its breach of this Agreement will cause irreparable damage and hereby agrees that Moderna will be entitled to seek injunctive relief under this Agreement for any actual or threatened breach, as well as such further relief as may be granted by a court of competent jurisdiction without the necessity of proving actual damages or posting any bond or other security. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. Facsimile signatures will have the same legal effect as original signatures.

**IN WITNESS WHEREOF**, the parties have caused this Confidentiality Agreement to be executed by their duly authorized officers as of the Effective Date.

**MODERNA SWITZERLAND GMBH**

**[Insert Counterparty Name]**

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*By*

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