UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended March 31, 2021

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to .

Commission File No. 000-26770

NOVAVAX, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

21 Firstfield Road Gaithersburg MD
(Address of principal executive offices)

22-2816046
(I.R.S. Employer Identification No.)

20878
(Zip code)

(240) 268-2000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<table>
<thead>
<tr>
<th>Title of each class</th>
<th>Trading Symbol(s)</th>
<th>Name of each exchange on which registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common Stock, Par Value $0.01 per share</td>
<td>NVAX</td>
<td>The Nasdaq Global Select Market</td>
</tr>
</tbody>
</table>

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T ($232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated Filer ☐

Non-accelerated filer ☐ Small reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The number of shares outstanding of the Registrant's Common Stock, $0.01 par value, was 74,094,435 as of April 30, 2021.
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## NOVAVAX, INC.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NOVAVAX, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share information)

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2021</th>
<th>December 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSETS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$1,995,482</td>
<td>$553,398</td>
</tr>
<tr>
<td>Marketable securities</td>
<td>2,250</td>
<td>157,649</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>32,128</td>
<td>93,880</td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>56,898</td>
<td>262,012</td>
</tr>
<tr>
<td>Unbilled services</td>
<td>45,295</td>
<td></td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>114,731</td>
<td>181,264</td>
</tr>
<tr>
<td>Total current assets</td>
<td>2,246,784</td>
<td>1,248,203</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>1,460</td>
<td>1,460</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>192,044</td>
<td>179,954</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>5,270</td>
<td>5,725</td>
</tr>
<tr>
<td>Goodwill</td>
<td>130,879</td>
<td>135,379</td>
</tr>
<tr>
<td>Other non-current assets</td>
<td>31,929</td>
<td>11,758</td>
</tr>
<tr>
<td>Total assets</td>
<td>$2,608,366</td>
<td>$1,582,479</td>
</tr>
<tr>
<td><strong>LIABILITIES AND STOCKHOLDERS’ EQUITY</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$113,605</td>
<td>$54,332</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>140,611</td>
<td>142,468</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>822,809</td>
<td>273,228</td>
</tr>
<tr>
<td>Current portion of finance lease liabilities</td>
<td>121,144</td>
<td>105,862</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>2,386</td>
<td>3,782</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>1,208,555</td>
<td>579,672</td>
</tr>
<tr>
<td>Convertible notes payable</td>
<td>322,990</td>
<td>322,035</td>
</tr>
<tr>
<td>Non-current finance lease liabilities</td>
<td>16,696</td>
<td>40,083</td>
</tr>
<tr>
<td>Other non-current liabilities</td>
<td>21,598</td>
<td>13,480</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>$1,569,239</td>
<td>$955,270</td>
</tr>
<tr>
<td>Commitments and contingencies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock, $0.01 par value, 2,000,000 shares authorized at March 31, 2021 and December 31, 2020; no shares issued and outstanding at March 31, 2021 and December 31, 2020, respectively</td>
<td>$—</td>
<td>$—</td>
</tr>
</tbody>
</table>

Stockholders’ equity:

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2021</th>
<th>December 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Common stock, $0.01 par value, 600,000,000 shares authorized at March 31, 2021 and December 31, 2020; and 74,470,583 shares issued and 74,061,594 shares outstanding at March 31, 2021 and 71,350,365 shares issued and 70,953,739 shares outstanding at December 31, 2020</td>
<td>$745</td>
<td>$714</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>3,180,114</td>
<td>2,535,476</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(2,096,918)</td>
<td>(1,874,199)</td>
</tr>
<tr>
<td>Treasury stock, 408,989 shares, cost basis at March 31, 2021 and 396,626 shares, cost basis at December 31, 2020</td>
<td>(44,457)</td>
<td>(41,806)</td>
</tr>
<tr>
<td>Accumulated other comprehensive (loss) income</td>
<td>(357)</td>
<td>7,024</td>
</tr>
<tr>
<td>Total stockholders’ equity</td>
<td>1,039,127</td>
<td>627,209</td>
</tr>
<tr>
<td>Total liabilities and shareholders’ equity</td>
<td>$2,608,366</td>
<td>$1,582,479</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
# NOVAVAX, INC.  
## CONSOLIDATED STATEMENTS OF OPERATIONS  
(in thousands, except per share information)  
(unaudited)

<table>
<thead>
<tr>
<th></th>
<th>For the Three Months Ended</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government contracts</td>
<td>$382,704</td>
<td>$—</td>
<td></td>
</tr>
<tr>
<td>Grant and other</td>
<td>64,525</td>
<td>3,377</td>
<td></td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td><strong>447,229</strong></td>
<td><strong>3,377</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>592,671</td>
<td>16,895</td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>63,190</td>
<td>9,379</td>
<td></td>
</tr>
<tr>
<td><strong>Total expenses</strong></td>
<td><strong>655,861</strong></td>
<td><strong>26,274</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Loss from operations</strong></td>
<td></td>
<td><strong>(208,632)</strong></td>
<td><strong>(22,897)</strong></td>
</tr>
<tr>
<td><strong>Other income (expense):</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment income</td>
<td>362</td>
<td>436</td>
<td></td>
</tr>
<tr>
<td>Interest expense</td>
<td>(4,839)</td>
<td>(3,403)</td>
<td></td>
</tr>
<tr>
<td><strong>Other expense</strong></td>
<td><strong>(6,593)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss before income tax expense</strong></td>
<td>$219,702</td>
<td>$25,864</td>
<td></td>
</tr>
<tr>
<td><strong>Income tax expense</strong></td>
<td>3,017</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net loss</strong></td>
<td><strong>(222,719)</strong></td>
<td><strong>(25,864)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Basic and diluted net loss per share</strong></td>
<td>$3.05</td>
<td>$(0.58)</td>
<td></td>
</tr>
</tbody>
</table>

Basic and diluted weighted average number of common shares outstanding

73,035

44,421

## CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS  
(in thousands)  
(unaudited)

<table>
<thead>
<tr>
<th></th>
<th>For the Three Months Ended</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net loss</strong></td>
<td></td>
<td><strong>(222,719)</strong></td>
<td><strong>(25,864)</strong></td>
</tr>
<tr>
<td><strong>Other comprehensive income (loss):</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net unrealized losses on marketable securities available-for-sale, net of reclassifications</td>
<td>(9)</td>
<td>(132)</td>
<td></td>
</tr>
<tr>
<td>Foreign currency translation adjustment</td>
<td>(7,372)</td>
<td>(1,846)</td>
<td></td>
</tr>
<tr>
<td><strong>Other comprehensive loss</strong></td>
<td><strong>(7,381)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Comprehensive loss</strong></td>
<td><strong>(230,100)</strong></td>
<td><strong>(27,842)</strong></td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
NOVAVAX, INC.
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
Three Months Ended March 31, 2021 and 2020
(unaudited)

<table>
<thead>
<tr>
<th>Shares</th>
<th>Amount</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Deficit</th>
<th>Treasury Stock</th>
<th>Other Comprehensive Income (Loss)</th>
<th>Stockholders' Equity (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at December 31, 2020</td>
<td>71,350,365</td>
<td>$714</td>
<td>$2,535,476</td>
<td>($1,874,199)</td>
<td>($41,806)</td>
<td>$7,024</td>
</tr>
<tr>
<td>Non-cash stock-based compensation</td>
<td>—</td>
<td>—</td>
<td>53,060</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Stock issued under incentive programs</td>
<td>541,251</td>
<td>5</td>
<td>26,745</td>
<td>—</td>
<td>(2,651)</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock, net of issuance costs of $7,292</td>
<td>2,578,967</td>
<td>26</td>
<td>564,833</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Unrealized loss on marketable securities</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(9)</td>
</tr>
<tr>
<td>Foreign currency translation adjustment</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at March 31, 2021</td>
<td>74,470,583</td>
<td>$745</td>
<td>$3,180,114</td>
<td>($2,096,919)</td>
<td>($44,457)</td>
<td>$1,039,127</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Shares</th>
<th>Amount</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Deficit</th>
<th>Treasury Stock</th>
<th>Other Comprehensive Income (Loss)</th>
<th>Stockholders' Equity (Deficit)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at December 31, 2019</td>
<td>32,399,352</td>
<td>$324</td>
<td>$1,260,551</td>
<td>($1,431,801)</td>
<td>($2,583)</td>
<td>($12,508)</td>
</tr>
<tr>
<td>Non-cash stock-based compensation</td>
<td>—</td>
<td>—</td>
<td>3,965</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Stock issued under incentive programs</td>
<td>33,239</td>
<td>—</td>
<td>60</td>
<td>—</td>
<td>(55)</td>
<td>—</td>
</tr>
<tr>
<td>Issuance of common stock, net of issuance costs of $2,498</td>
<td>21,473,371</td>
<td>215</td>
<td>185,703</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Unrealized loss on marketable securities</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Foreign currency translation adjustment</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(1,846)</td>
</tr>
<tr>
<td>Net loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at March 31, 2020</td>
<td>53,906,322</td>
<td>$539</td>
<td>$1,458,279</td>
<td>($1,457,655)</td>
<td>($2,638)</td>
<td>($14,486)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
# NOVAVAX, INC.
## CONSOLIDATED STATEMENTS OF CASH FLOWS
### (in thousands)
#### (unaudited)

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2021</th>
<th>March 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss</td>
<td>(222,719)</td>
<td>(25,864)</td>
</tr>
<tr>
<td>Reconciliation of net loss to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>net cash used in operating</td>
<td></td>
<td></td>
</tr>
<tr>
<td>activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>2,317</td>
<td>925</td>
</tr>
<tr>
<td>Non-cash stock-based</td>
<td>53,060</td>
<td>3,960</td>
</tr>
<tr>
<td>compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right-of-use assets expensed</td>
<td>951</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>6,362</td>
<td>356</td>
</tr>
<tr>
<td>Changes in operating assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Receivables, prepaid</td>
<td>220,205</td>
<td>4,521</td>
</tr>
<tr>
<td>expenses and other assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable and</td>
<td>53,325</td>
<td>(8,450)</td>
</tr>
<tr>
<td>accrued expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>549,584</td>
<td>1,437</td>
</tr>
<tr>
<td>Net cash provided by (used in)</td>
<td>663,085</td>
<td>(23,110)</td>
</tr>
<tr>
<td>operating activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Investing Activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital expenditures</td>
<td>(13,781)</td>
<td>(122)</td>
</tr>
<tr>
<td>Purchases of marketable</td>
<td>(2,167)</td>
<td>(57,606)</td>
</tr>
<tr>
<td>securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from maturities and</td>
<td>157,557</td>
<td>—</td>
</tr>
<tr>
<td>sale of marketable securities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net cash provided by (used in)</td>
<td>141,609</td>
<td>(57,728)</td>
</tr>
<tr>
<td>investing activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Financing Activities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net proceeds from sales of</td>
<td>564,859</td>
<td>185,918</td>
</tr>
<tr>
<td>common stock</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceeds from the exercise of</td>
<td>26,750</td>
<td>5</td>
</tr>
<tr>
<td>stock-based awards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Treasury stock related to tax</td>
<td>(2,651)</td>
<td>—</td>
</tr>
<tr>
<td>withholding on stock-based</td>
<td></td>
<td></td>
</tr>
<tr>
<td>awards</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance lease payments</td>
<td>(11,971)</td>
<td>—</td>
</tr>
<tr>
<td>Net cash provided by financing</td>
<td>576,987</td>
<td>185,923</td>
</tr>
<tr>
<td>activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect of exchange rate on</td>
<td>(1,349)</td>
<td>(73)</td>
</tr>
<tr>
<td>cash, cash equivalents and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>restricted cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net increase in cash, cash</td>
<td>1,380,332</td>
<td>105,012</td>
</tr>
<tr>
<td>equivalents and restricted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash, cash equivalents and</td>
<td>648,738</td>
<td>82,180</td>
</tr>
<tr>
<td>restricted cash at beginning of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>period</td>
<td>2,029,070</td>
<td>187,192</td>
</tr>
<tr>
<td>Cash, cash equivalents and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>restricted cash at end of</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>period</td>
<td>2,029,070</td>
<td>187,192</td>
</tr>
<tr>
<td>**Supplemental disclosure of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>non-cash activities:**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital expenditures included</td>
<td>$ 9,076</td>
<td>$ 125</td>
</tr>
<tr>
<td>in accounts payable and accrued</td>
<td></td>
<td></td>
</tr>
<tr>
<td>expenses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right-of-use assets from new</td>
<td>$ 9,776</td>
<td>—</td>
</tr>
<tr>
<td>lease agreements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>**Supplemental disclosure of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>cash flow information:**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash interest payments</td>
<td>$ 7,530</td>
<td>$ 6,094</td>
</tr>
<tr>
<td>Cash paid for income taxes</td>
<td>$ 3,017</td>
<td>—</td>
</tr>
<tr>
<td>**Net Increase in Cash, Cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equivalents and Restricted</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Cash at End of Period**</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
NOVAVAX, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
March 31, 2021
(unaudited)

Note 1 – Organization

Novavax, Inc. (“Novavax,” and together with its wholly owned subsidiaries, Novavax AB and Novavax CZ, the “Company”) is a biotechnology company that promotes improved global health through the discovery, development and commercialization of innovative vaccines to prevent serious infectious diseases and address urgent, global health needs. The Company’s vaccine candidates, including both its coronavirus vaccine candidate, NVX-CoV2373, and its lead influenza vaccine candidate, NanoFlu™, are genetically engineered, three-dimensional nanostructures of recombinant proteins critical to disease pathogenesis and may elicit differentiated immune responses, which may be more efficacious than naturally occurring immunity or traditional vaccines. NVX-CoV2373 and NanoFlu include the use of the Company’s proprietary Matrix-M™ adjuvant.

Note 2 – Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”) for interim financial information and the instructions to Form 10-Q and Article 10 of Regulation S-X. The consolidated balance sheet as of March 31, 2021, the consolidated statements of operations and the consolidated statements of comprehensive loss for the three months ended March 31, 2021 and 2020, the consolidated statements of changes in stockholders’ equity (deficit) for the three months ended March 31, 2021 and 2020 and the consolidated statements of cash flows for the three months ended March 31, 2021 and 2020 are unaudited, but include all adjustments (consisting of normal recurring adjustments) that the Company considers necessary for a fair presentation of the financial position, operating results, comprehensive loss, changes in stockholders’ equity (deficit) and cash flows, respectively, for the periods presented. Although the Company believes that the disclosures in these unaudited consolidated financial statements are adequate to make the information presented not misleading, certain information and footnote information normally included in consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted as permitted under the rules and regulations of the United States Securities and Exchange Commission (“SEC”).

The unaudited consolidated financial statements include the accounts of Novavax, Inc. and its wholly owned subsidiaries, Novavax AB and Novavax CZ. All intercompany accounts and transactions have been eliminated in consolidation.

The accompanying unaudited consolidated financial statements are presented in U.S. dollars. The functional currency of Novavax AB, which is located in Sweden, is the local currency (Swedish Krona), and the functional currency of Novavax CZ, which is located in the Czech Republic, is the local currency (Czech Koruna). The translation of assets and liabilities of these subsidiaries to U.S. dollars is made at the exchange rate in effect at the consolidated balance sheet date, while equity accounts are translated at historical rates. The translation of the statement of operations data is made at the average exchange rate in effect for the period. The translation of operating cash flow data is made at the average exchange rate in effect for the period, and investing and financing cash flow data is translated at the exchange rate in effect at the date of the underlying transaction. Translation gains and losses are recognized as a component of accumulated other comprehensive loss in the accompanying unaudited consolidated balance sheets. Accumulated other comprehensive (loss) income included a foreign currency translation balance of $(0.4) million and $7.0 million as of March 31, 2021 and December 31, 2020, respectively.

The accompanying unaudited consolidated financial statements should be read in conjunction with the financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2020. Results for this or any interim period are not necessarily indicative of results for any future interim period or for the entire year. The Company operates in one business segment.
Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ materially from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents consist of highly liquid investments with maturities of three months or less from the date of purchase. Cash and cash equivalents consist of the following at (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2021</th>
<th>December 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$ 135,729</td>
<td>$ 122,312</td>
</tr>
<tr>
<td>Money market funds</td>
<td>233,344</td>
<td>96,116</td>
</tr>
<tr>
<td>Government-backed securities</td>
<td>54,250</td>
<td>44,250</td>
</tr>
<tr>
<td>Treasury securities</td>
<td>25,022</td>
<td>44,052</td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>1,547,137</td>
<td>246,668</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 1,995,482</td>
<td>$ 553,398</td>
</tr>
</tbody>
</table>

Cash equivalents are recorded at cost, which approximate fair value due to their short-term nature.

 Marketable Securities

The Company invests in marketable securities that generally consist of debt securities with maturities greater than three months from the date of purchase that include commercial paper, government-backed securities, treasury securities, corporate notes and agency securities. Classification of marketable securities between current and non-current is dependent upon the maturity date at the balance sheet date taking into consideration the Company's ability and intent to hold the investment to maturity.

Interest and dividend income are recorded when earned and included in investment income in the consolidated statements of operations. Premiums and discounts, if any, on marketable securities are amortized or accreted to maturity and included in investment income in the consolidated statements of operations. The specific identification method is used in computing realized gains and losses on the sale of the Company's securities.

The Company classifies its marketable securities with readily determinable fair values as “available-for-sale.” Investments in securities that are classified as available-for-sale are measured at fair market value in the consolidated balance sheets, and unrealized gains and losses on marketable securities are reported as a separate component of stockholders' equity (deficit) until realized. Marketable securities are evaluated periodically to determine whether a decline in value is "other-than-temporary." The term “other-than-temporary” is not intended to indicate a permanent decline in value. Rather, it means that the prospects for a near term recovery of value are not necessarily favorable, or that there is a lack of evidence to support fair values equal to, or greater than, the carrying value of the security. Management reviews criteria, such as the magnitude and duration of the decline, as well as the Company's ability to hold the securities, including whether the Company will be required to sell a security prior to recovery of its amortized cost basis, the investment issuer's financial condition and business outlook to predict whether the loss in value is other-than-temporary. Realized gains and losses and declines in value determined to be other-than-temporary are recorded as other income (expense) in the consolidated statements of operations.

Restricted Cash

The Company's current and non-current restricted cash includes payments received under the Coalition for Epidemic Preparedness Innovations (“CEPI”) funding agreements, payments received under the Bill & Melinda Gates Foundation ("BMGF") grant agreements and cash collateral accounts under letters of credit that serve as security deposits for certain facility leases. The Company will utilize the CEPI and BMGF funds as it incurs expenses for services performed under these agreements.

As of March 31, 2021, the restricted cash balances (both current and non-current) consisted of $1.2 million for payments received from BMGF, $30.9 million of payments under the CEPI funding agreements and $1.5 million of security.
deposits. As of December 31, 2020, the restricted cash balances (both current and non-current) consisted of $1.5 million for payments received from BMGF, $92.4 million of payments under the CEPI funding agreements and $1.5 million of security deposits of security deposits.

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets that sum to the total of the same such amounts shown in the statement of cash flows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2021</th>
<th>December 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$1,995,482</td>
<td>$553,398</td>
</tr>
<tr>
<td>Restricted cash current</td>
<td>32,128</td>
<td>93,880</td>
</tr>
<tr>
<td>Restricted cash non-current</td>
<td>1,460</td>
<td>1,460</td>
</tr>
<tr>
<td>Cash, cash equivalents and restricted cash</td>
<td>$2,029,070</td>
<td>$648,738</td>
</tr>
</tbody>
</table>

**Income Taxes**

The Company accounts for income taxes in accordance with ASC Topic 740, *Income Taxes*. Under the liability method, deferred income taxes are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and operating loss carryforwards.

The Company has historically generated significant federal, state and foreign tax net operating losses, which may be subject to limitation in future periods. Management has fully reserved the related deferred tax assets with a valuation allowance in the current reporting period as more likely than not the related benefit will not be realized. The Company is currently subject to examination in all open tax years.

During the three months ended March 31, 2021, the Company recognized $3.0 million of income tax expense related to foreign withholding tax on an advance payment of a license fee.

**Net Loss per Share**

Net loss per share is computed using the weighted average number of shares of common stock outstanding. As of March 31, 2021 and 2020, the Company had outstanding stock options, stock appreciation rights (“SARs”) and unvested restricted stock units (“RSUs”) totaling 6,273,234 and 4,968,953, respectively.

As of March 31, 2021, the Company’s Notes (see Note 8) would have been convertible into approximately 2,385,800 shares of the Company’s common stock assuming a common stock price of $136.20 or higher. These shares, after giving effect to the add back of interest expense and unamortized debt issuance costs on the Notes (see Note 8) and any shares due to the Company upon settlement of its capped call transactions are excluded from the computation, as their effect is antidilutive.

**Recent Accounting Pronouncements**

**Not Yet Adopted**

In August 2020, the FASB issued ASU No. 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity (“ASU 2020-06”), which will simplify the accounting for certain financial instruments with characteristics of liabilities and equity, including certain convertible instruments and contracts in an entity’s own equity. Specifically, the new standard will remove the separation models required for convertible debt with cash conversion features and convertible instruments with beneficial conversion features. It will also remove certain settlement conditions that are currently required for equity contracts to qualify for the derivative scope exception and will simplify the diluted earnings per share calculation for convertible instruments. ASU 2020-06 will be effective January 1, 2022 for the Company and may be applied using a full or modified retrospective approach. Early adoption is permitted, but no earlier than January 1, 2021 for the Company. Management has evaluated the impact of adopting ASU 2020-06 and has determined that it will not have a material impact on the Company’s consolidated financial statements.
Note 3 – Fair Value Measurements

The following table represents the Company’s fair value hierarchy for its financial assets and liabilities (in thousands):

<table>
<thead>
<tr>
<th>Assets</th>
<th>Fair Value at March 31, 2021</th>
<th></th>
<th></th>
<th></th>
<th>Fair Value at December 31, 2020</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td>Level 1</td>
<td>Level 2</td>
</tr>
<tr>
<td>Money market funds(1)</td>
<td>$233,344</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>$96,116</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Government-backed securities(1)</td>
<td>—</td>
<td>54,250</td>
<td>—</td>
<td>—</td>
<td>44,250</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Treasury securities(2)</td>
<td>—</td>
<td>25,022</td>
<td>—</td>
<td>—</td>
<td>54,088</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Corporate debt securities(3)</td>
<td>—</td>
<td>1,549,387</td>
<td>—</td>
<td>—</td>
<td>373,681</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Agency securities</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>20,600</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total cash equivalents and marketable securities</td>
<td>$233,344</td>
<td>$1,628,659</td>
<td>—</td>
<td>—</td>
<td>$96,116</td>
<td>$492,619</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Fair Value at March 31, 2021</th>
<th></th>
<th></th>
<th></th>
<th>Fair Value at December 31, 2020</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td>Level 1</td>
<td>Level 2</td>
<td>Level 3</td>
<td>Level 1</td>
<td>Level 2</td>
</tr>
<tr>
<td>Convertible notes payable</td>
<td>$ —</td>
<td>$533,705</td>
<td>—</td>
<td>—</td>
<td>$ —</td>
<td>$407,238</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Classified as cash and cash equivalents as of March 31, 2021 and December 31, 2020, respectively, on the consolidated balance sheets.
(2) Includes $25,022 and $44,052 classified as cash and cash equivalents as of March 31, 2021 and December 31, 2020, respectively, on the consolidated balance sheets.
(3) Includes $1,547,137 and $246,668 classified as cash and cash equivalents as of March 31, 2021 and December 31, 2020, respectively, on the consolidated balance sheets.

Fixed-income investments categorized as Level 2 are valued at the custodian bank by a third-party pricing vendor's valuation models that use verifiable observable market data, e.g., interest rates and yield curves observable at commonly quoted intervals and credit spreads, bids provided by brokers or dealers or quoted prices of securities with similar characteristics. Pricing of the Company's Notes (see Note 8) has been estimated using other observable inputs, including the price of the Company's common stock, implied volatility, interest rates and credit spreads among others.

During the three months ended March 31, 2021 and 2020, the Company did not have any transfers between levels.

Note 4 – Marketable Securities

Marketable securities classified as available-for-sale as of March 31, 2021 and December 31, 2020 were comprised of (in thousands):

<table>
<thead>
<tr>
<th>March 31, 2021</th>
<th>December 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amortized Cost</td>
<td>Gross Unrealized Gains</td>
</tr>
<tr>
<td>Treasury securities</td>
<td>$2,250</td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>—</td>
</tr>
<tr>
<td>Total marketable securities</td>
<td>$2,250</td>
</tr>
</tbody>
</table>

The primary objective of the Company's investment policy is the preservation of capital; thus, the Company's investment policy limits investments to certain types of instruments with high-grade credit ratings, places restrictions on maturities and concentrations in certain industries and requires the Company to maintain a certain level of liquidity.

Note 5 – Acquisition of Novavax CZ

The results of operations from Novavax CZ, acquired in May 2020, have been included in the consolidated financial statements since the date of acquisition. As a result, the consolidated financial results for the three months ended March 31, 2020 do not reflect Novavax CZ results. During the three months ended March 31, 2021, Novavax CZ did not recognize any revenue, recorded an exchange rate loss on intercompany loans of $5.9 million that is included in other expense in the Consolidated Statement of Operations, and a net loss of $16.7 million from Novavax CZ operations.
The supplemental pro forma financial information for the periods set forth below gives effect to the acquisition as if it had occurred as of January 1, 2020. The pro forma financial information is presented for informational purposes only and is not necessarily indicative of the results of operations that would have been achieved had the acquisition been consummated as of that time. The unaudited pro forma financial information combines the historical results of operations of the Company and Novavax CZ for the periods presented below and reflects the application of certain pro forma adjustments (in thousands, except per share amounts):

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31, 2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue</td>
<td>$447,229</td>
<td>$3,377</td>
</tr>
<tr>
<td>Net loss</td>
<td>(222,719)</td>
<td>(27,625)</td>
</tr>
<tr>
<td>Basic and diluted net loss per share</td>
<td>$(3.05)</td>
<td>$(0.53)</td>
</tr>
</tbody>
</table>

Pro forma adjustments include the recognition of depreciation expense based on the acquisition date fair value and remaining useful lives of Novavax CZ fixed assets (net of historical depreciation expense) and the elimination of costs related to the acquisition, which are non-recurring in nature.

### Note 6 – Goodwill and Other Intangible Assets

#### Goodwill

The change in the carrying amounts of goodwill for the three months ended March 31, 2021 was as follows (in thousands):

<table>
<thead>
<tr>
<th>Amount</th>
<th>$135,379</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2020</td>
<td></td>
</tr>
<tr>
<td>Currency translation adjustments</td>
<td>$(4,500)</td>
</tr>
<tr>
<td>Balance at March 31, 2021</td>
<td>$130,879</td>
</tr>
</tbody>
</table>

#### Identifiable Intangible Assets

Purchased intangible assets consisted of the following as of March 31, 2021 and December 31, 2020 (in thousands):

<table>
<thead>
<tr>
<th>Gross Carrying Amount</th>
<th>Accumulated Amortization</th>
<th>Intangible Assets, Net</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>March 31, 2021</td>
</tr>
<tr>
<td>Finite-lived intangible assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proprietary adjuvant technology</td>
<td>$8,545</td>
<td>$(3,275)</td>
</tr>
<tr>
<td>Collaboration agreements</td>
<td>3,859</td>
<td>$(3,859)</td>
</tr>
<tr>
<td>Total identifiable intangible assets</td>
<td>$12,404</td>
<td>$(7,134)</td>
</tr>
</tbody>
</table>

Amortization expense for the three months ended March 31, 2021 and 2020 was $0.1 million and $0.2 million respectively.
Estimated amortization expense for existing intangible assets for the remainder of 2021 and for each of the five succeeding years ending December 31 will be as follows (in thousands):

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021 (remainder)</td>
<td>$320</td>
</tr>
<tr>
<td>2022</td>
<td>427</td>
</tr>
<tr>
<td>2023</td>
<td>427</td>
</tr>
<tr>
<td>2024</td>
<td>427</td>
</tr>
<tr>
<td>2025</td>
<td>427</td>
</tr>
<tr>
<td>2026</td>
<td>427</td>
</tr>
</tbody>
</table>

**Note 7 - Leases**

During the three months ended March 31, 2021, the Company determined that a supply agreement with a contract manufacturing organization was an arrangement that contained an embedded lease under ASC Topic 842, Leases (“ASC 842”) as it has the exclusive use of, and control over, a portion of the manufacturing facility and equipment of the supplier during the contractual term of the arrangement. The lease has a term of 12 months or less at the commencement date and lease payments are recognized as an expense on a straight-line basis over the lease term and variable lease payments, which do not depend on an index or rate, as an expense in the period in which the variable lease costs are incurred based on performance or usage in accordance with contractual agreements. During the three months ended March 31, 2021, the Company recognized a short-term lease expense of $127.6 million related to its embedded leases, including a new lease that commenced during the first quarter of 2021. During the three months ended March 31, 2020, the Company did not incur any short-term embedded lease expense.

**Note 8 – Long-Term Debt**

**Convertible Notes**

The Company incurred approximately $10.0 million of debt issuance costs during the first quarter of 2016 relating to the issuance of $325 million aggregate principal amount of convertible senior unsecured notes that will mature on February 1, 2023 (the “Notes”), which were recorded as a reduction to the Notes on the consolidated balance sheet. The $10.0 million of debt issuance costs is being amortized and recognized as additional interest expense over the seven years contractual term of the Notes on a straight-line basis, which approximates the effective interest rate method.

Total convertible notes payable consisted of the following at (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>March 31, 2021</th>
<th>December 31, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal amount of Notes</td>
<td>$325,000</td>
<td>$325,000</td>
</tr>
<tr>
<td>Unamortized debt issuance costs</td>
<td>(2,610)</td>
<td>(2,965)</td>
</tr>
<tr>
<td>Total convertible notes payable</td>
<td>$322,390</td>
<td>$322,035</td>
</tr>
</tbody>
</table>

Interest expense incurred in connection with the Notes consisted of the following (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31, 2020</th>
<th>Three Months Ended March 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coupon interest at 3.75%</td>
<td>$3,047</td>
<td>$3,047</td>
</tr>
<tr>
<td>Amortization of debt issuance costs</td>
<td>356</td>
<td>356</td>
</tr>
<tr>
<td>Total interest expense on Notes</td>
<td>$3,403</td>
<td>$3,403</td>
</tr>
</tbody>
</table>

**Note 9 – Stockholders’ Equity (Deficit)**

In January 2021, the Company entered into an At Market Issuance Sales Agreement (“January 2021 Sales Agreement”), which allows it to issue and sell up to $500 million in gross proceeds of its common stock. During the first quarter of 2021, the Company sold 1.7 million shares of common stock under the January 2021 Sales Agreement resulting in $452.0 million in net proceeds, leaving $42.2 million remaining.
In November 2020, the Company entered into an At Market Issuance Sales Agreement ("November 2020 Sales Agreement"), which allowed it to issue and sell up to $500 million in gross proceeds of its common stock. From January 1, 2021 through January 20, 2021, the Company sold 0.9 million shares of common stock resulting in $113.0 million in net proceeds, leaving $27.2 million remaining under the agreement. The Company terminated the November 2020 Sales Agreement by mutual agreement upon entering into the January 2021 Sales Agreement.

During the first quarter of 2020, the Company sold 21.5 million shares of common stock resulting in $185.9 million in net proceeds under its various At Market Issuance Sales Agreement.

Note 10 – Stock-Based Compensation

Stock Options

The 2015 Stock Incentive Plan, as amended ("2015 Plan"), was approved at the Company's annual meeting of stockholders in June 2015. Under the 2015 Plan, equity awards may be granted to officers, directors, employees and consultants of and advisors to the Company and any present or future subsidiary.

The 2015 Plan authorizes the issuance of up to 10.9 million shares of common stock under equity awards granted under the 2015 Plan. All such shares authorized for issuance under the 2015 Plan have been reserved. The 2015 Plan will expire on March 4, 2025.

The Amended and Restated 2005 Stock Incentive Plan ("2005 Plan") expired in February 2015 and no new awards may be made under such plan, although awards will continue to be outstanding in accordance with their terms.

The 2015 Plan permits and the 2005 Plan permitted the grant of stock options (including incentive stock options), restricted stock, stock appreciation rights and restricted stock units. In addition, under the 2015 Plan, unrestricted stock, stock units and performance awards may be granted. Stock options and stock appreciation rights generally have a maximum term of ten years and may be or were granted with an exercise price that is no less than 100% of the fair market value of the Company's common stock at the time of grant. Grants of stock options are generally subject to vesting over periods ranging from one to four years.

Stock Options and Stock Appreciation Rights

The following is a summary of stock options and SARs activity under the 2015 Plan and 2005 Plan for the three months ended March 31, 2021:

<table>
<thead>
<tr>
<th></th>
<th>2015 Plan</th>
<th></th>
<th>2005 Plan</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Stock Options and SARs</td>
<td>Weighted-Average Exercise Price</td>
<td>Stock Options</td>
<td>Weighted-Average Exercise Price</td>
</tr>
<tr>
<td>Outstanding at January 1, 2021</td>
<td>5,420,463</td>
<td>$38.05</td>
<td>214,186</td>
<td>$88.11</td>
</tr>
<tr>
<td>Granted</td>
<td>32,958</td>
<td>$132.14</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Exercised</td>
<td>(437,054)</td>
<td>$51.42</td>
<td>(35,401)</td>
<td>$106.49</td>
</tr>
<tr>
<td>Canceled</td>
<td>(6,270)</td>
<td>$27.65</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Outstanding at March 31, 2021</td>
<td>5,010,097</td>
<td>$37.52</td>
<td>178,785</td>
<td>$84.47</td>
</tr>
<tr>
<td>Shares exercisable at March 31, 2021</td>
<td>590,006</td>
<td>$72.46</td>
<td>178,785</td>
<td>$84.47</td>
</tr>
<tr>
<td>Shares available for grant at March 31, 2021</td>
<td>2,381,759</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The fair value of stock options granted under the 2015 Plan was estimated at the date of grant using the Black-Scholes option-pricing model with the following assumptions:
<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weighted average Black-Scholes fair value of stock options granted</td>
<td>$116.26</td>
<td>$5.39</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>0.5%-0.9%</td>
<td>0.6%-1.5%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
<tr>
<td>Volatility</td>
<td>124.7%-140.3%</td>
<td>133.6%-142.6%</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>4.1-5.3</td>
<td>3.9</td>
</tr>
</tbody>
</table>

The total aggregate intrinsic value and weighted-average remaining contractual term of stock options and SARs outstanding under the 2015 Plan and 2005 Plan as of March 31, 2021 was approximately $738 million and 8.4 years, respectively. The total aggregate intrinsic value and weighted-average remaining contractual term of stock options and SARs exercisable under the 2015 Plan and 2005 Plan as of March 31, 2021 was $81.6 million and 5.3 years, respectively. The aggregate intrinsic value represents the total intrinsic value (the difference between the Company's closing stock price on the last trading day of the period and the exercise price, multiplied by the number of in-the-money stock options and SARs) that would have been received by the holders had all stock option and SAR holders exercised their stock options and stock appreciation rights on March 31, 2021. This amount is subject to change based on changes to the closing price of the Company's common stock. The aggregate intrinsic value of stock options and vesting of restricted stock awards for the three months ended March 31, 2021 and 2020 was $81.5 million and $0.2 million, respectively.

**Employee Stock Purchase Plan**

The Employee Stock Purchase Plan, as amended (the “ESPP”), was approved at the Company's annual meeting of stockholders in June 2013. The ESPP currently authorizes an aggregate of 600,000 shares of common stock to be purchased. The ESPP allows employees to purchase shares of common stock of the Company at each purchase date through payroll deductions of up to a maximum of 15% of their compensation, at 85% of the lesser of the market price of the shares at the time of purchase or the market price on the beginning date of an option period (or, if later, the date during the option period when the employee was first eligible to participate). As of March 31, 2021, there were 212,897 shares available for issuance under the ESPP.

The ESPP is considered compensatory for financial reporting purposes. As such, the fair value of ESPP shares was estimated at the date of grant using the Black-Scholes option-pricing model with the following assumptions:

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Range of Black-Scholes fair values of ESPP shares granted</td>
<td>$128.70-$238.85</td>
<td>$2.57-$35.00</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>0.1%</td>
<td>1.5%-2.6%</td>
</tr>
<tr>
<td>Dividend yield</td>
<td>—%</td>
<td>—%</td>
</tr>
<tr>
<td>Volatility</td>
<td>120.4%-159.4%</td>
<td>66.6%-154.4%</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>0.5-2.0</td>
<td>0.5-2.0</td>
</tr>
</tbody>
</table>

**Restricted Stock Units**

The following is a summary of restricted stock units activity for the three months ended March 31, 2021:

<table>
<thead>
<tr>
<th></th>
<th>Number of Shares</th>
<th>Per Share Weighted-Average Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outstanding and Unvested at January 1, 2020</td>
<td>1,044,980</td>
<td>$72.59</td>
</tr>
<tr>
<td>Restricted stock units granted</td>
<td>69,732</td>
<td>$181.24</td>
</tr>
<tr>
<td>Restricted stock units vested</td>
<td>(26,097)</td>
<td>$68.44</td>
</tr>
<tr>
<td>Restricted stock units forfeited</td>
<td>(4,263)</td>
<td>$142.88</td>
</tr>
<tr>
<td>Outstanding and Unvested at March 31, 2021</td>
<td>1,084,352</td>
<td>$79.39</td>
</tr>
</tbody>
</table>
The Company recorded all stock-based compensation expense in the consolidated statements of operations as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
</tr>
<tr>
<td>Research and development</td>
<td>$23,790</td>
</tr>
<tr>
<td>General and administrative</td>
<td>29,270</td>
</tr>
<tr>
<td>Total stock-based compensation expense</td>
<td>$53,060</td>
</tr>
</tbody>
</table>

As of March 31, 2021, there was approximately $276 million of total unrecognized compensation expense related to unvested stock options, SARs, restricted stock units and the ESPP. The increase in unrecognized compensation expense is primarily due to the significant increase in the Company's common stock price in 2020. This unrecognized non-cash compensation expense is expected to be recognized over a weighted-average period of 1.1 years, and will be allocated between research and development and general and administrative expenses accordingly. This estimate does not include the impact of other possible stock-based awards that may be made during future periods and awards that require approval by the stockholders.

**Note 11 – Contingencies**

In February 2021, a Novavax stockholder filed a derivative complaint against members of the Company's board of directors and certain senior management in the Delaware Court of Chancery with Novavax as a nominal defendant. The complaint challenges equity awards made in April 2020 and in June 2020 on the ground that they were “spring-loaded,” that is, made at a time when certain board members or members of senior management allegedly possessed undisclosed positive material information concerning the Company. The complaint asserts claims for breach of fiduciary duty, waste, and unjust enrichment. The plaintiff seeks an award of damages to the Company, an order rescinding the 2020 awards or requiring disgorgement, and an award of attorneys’ fees incurred in connection with the litigation. The defendants intend to move to dismiss the complaint in its entirety. The financial impact of the plaintiff's claim is not estimable.

**Note 12 – Revenue**

**Government Contracts and Grants**

During the three months ended March 31, 2021, the Company performed research and development under government contracts and grant, license and clinical development agreements. Revenue primarily consisted of funding under U.S. government contracts and the Company's funding arrangement with the CEPI to advance the clinical development and manufacturing of NVX-CoV2373. The Company’s U.S. government contracts comprise an agreement with Advanced Technology International ("ATI"), the Consortium Management Firm acting on behalf of the Medical CBRN Defense Consortium in connection with the partnership formerly known as Operation Warp Speed ("OWS") and a contract with the U.S. Department of Defense (the "DoD"). The Company’s revenue from CEPI comprises grant and forgivable loan funding. The
latter is repayable if the proceeds from the sales of NVX-CoV2373 to one or more third parties covers the Company’s costs of manufacturing the vaccine, not including manufacturing costs funded by CEPI.

The Company recorded revenue from its government contracts and grants as follows (in thousands):

<table>
<thead>
<tr>
<th>Government contracts</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
</tr>
<tr>
<td>OWS</td>
<td>$363,560</td>
</tr>
<tr>
<td>DoD</td>
<td>$19,144</td>
</tr>
<tr>
<td>Grants and other</td>
<td></td>
</tr>
<tr>
<td>CEPI</td>
<td>61,561</td>
</tr>
<tr>
<td>BMGF</td>
<td>2,628</td>
</tr>
<tr>
<td>Other</td>
<td>336</td>
</tr>
<tr>
<td>Total</td>
<td>$447,229</td>
</tr>
</tbody>
</table>

Collaboration and License Agreements

In February 2021, the Company finalized an expanded collaboration and license agreement with SK bioscience to manufacture and commercialize NVX-CoV2373 for sale to the government of Korea. Concurrently, SK bioscience finalized an advance purchase agreement with the Korean government to supply 40 million doses of NVX-CoV2373 to the Republic of Korea beginning in 2021. The agreement is in addition to the Company’s existing manufacturing arrangement with SK bioscience entered into in August 2020. Under these agreements, SK bioscience has been granted an exclusive license to develop, manufacture and commercialize NVX-CoV2373 in the Republic of Korea. SK bioscience will expand its capacity to manufacture the antigen component of NVX-CoV2373 for use in the final drug product globally, including product distributed by the COVAX Facility. SK bioscience will also purchase a certain quantity of NVX-CoV2373 directly from the Company, subject to approval by relevant regulatory authority, and sufficient doses of Matrix-M adjuvant to manufacture the remainder of the 40 million doses of NVX-CoV2373 it expects to sell to the Korean government. SK bioscience will pay a tiered royalty in the low to middle double-digit range on the sale of NVX-CoV2373.

In February 2021, the Company finalized a collaboration agreement previously announced in August 2020, with Takeda Pharmaceutical Company Limited (“Takeda’) for the exclusive development, manufacturing and commercialization of NVX-CoV2373 in Japan. Under the agreement, the Company will transfer technology and supply the Matrix-M adjuvant to Takeda, who will manufacture the antigen component of NVX-CoV2373. Takeda will receive funding from the Government of Japan’s Ministry of Health, Labour and Welfare to support the technology transfer, establishment of infrastructure and scale-up of manufacturing. The Company will be entitled to receive royalty payments based on the achievement of certain development and commercial milestones, as well as on a portion of net profits from the sale of the vaccine.

Vaccine Supply Agreements

During the first quarter of 2021, the Company entered into various advanced purchase agreements (“APAs”), including an agreement with Her Majesty the Queen in Right of Canada as represented by the Minister of Public Works and Government Services to supply 52 million doses of NVX-CoV2373. The Company will submit an application for regulatory approval in Canada following its first submission for regulatory approval in another priority market and the Canada authority will provide reasonable assistance to the Company with obtaining such regulatory approval. As part of the agreement, Canada will have the option to purchase up to an additional 24 million doses. In February 2021, the Company reached a MOU with the Canadian government to produce NVX-CoV2373 in Canada. The Company plans to produce NVX-CoV2373 at the National Research Council’s Biologics Manufacturing Centre in Montreal once both the vaccine candidate and the facility receive Health Canada approvals.

In February 2021, the Company entered into a Memorandum of Understanding (“MOU”) with Gavi, the Vaccine Alliance (“Gavi”), to provide 1.1 billion cumulative doses of NVX-CoV2373 for the COVAX Facility. In April 2021, the Company finalized an APA with Gavi for vaccine supply and global distribution to COVAX Facility (see Note 13).

During the three months ended March 31, 2021, changes in the Company’s accounts receivables, unbilled services and deferred revenue balances were as follows (in thousands):

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As of March 31, 2021, the deferred revenue of $822.8 million primarily comprised of approximately $772 million related to upfront payments under APAs.

The aggregate amount of the transaction price allocated to performance obligations that were unsatisfied (or partially unsatisfied) was $5.0 billion as at March 31, 2021. The Company expects to fulfill its unsatisfied performance obligations within 12 months.

### Note 13 – Subsequent Events

In May 2021, the Company finalized an APA with Gavi, building upon its MOU previously announced in February 2021. Under the terms of the agreement, 1.1 billion doses of NVX-CoV2373 are to be made available to countries participating in the COVAX Facility, which was established to allocate and distribute vaccines equitably to participating countries and economies. The Company expects to manufacture and distribute 350 million of NVX-CoV2373 to countries participating under the COVAX Facility. Under a separate purchase agreement with Gavi, SIIPL is expected to manufacture and deliver the balance of the 1.1 billion doses of NVX-CoV2373 for low- and middle-income countries participating in the COVAX Facility. The Company expects to deliver doses with antigen and adjuvant manufactured at facilities directly funded under the Company's funding agreement with CEPI. The Company expects to supply significant doses that Gavi would allocate to low, middle and high income countries, subject to certain limitations, utilizing a tiered pricing schedule and Gavi may prioritize such doses to low and middle income countries, at lower prices. Additionally, the Company may provide additional doses, to the extent available from CEPI funded manufacturing facilities, in the event that SIIPL cannot materially deliver expected vaccine doses to the COVAX Facility.

Together with SIIPL, the Company expects to initiate delivery of the cumulative 1.1 billion doses in the third quarter of 2021, pending receipt of appropriate regulatory authorizations. Under the agreement, the Company expects to receive an upfront payment from Gavi and an additional payment after securing emergency use listing for NVX-CoV2373 by the World Health Organization. Under the agreement, the Company expects to receive an upfront payment from Gavi and an additional payment after securing emergency use listing for NVX-CoV2373 by the World Health Organization.

In April 2021, the Company's OWS agreement was amended to fully fund the agreement up to $1.75 billion to support certain activities related to the development of NVX-CoV2373 and the manufacture and delivery of the vaccine candidate to the U.S. Government. OWS is a partnership among components of the U.S. Department of Health and Human Services and the U.S. Department of Defense working to accelerate the development, manufacturing and distribution of COVID-19 vaccines, therapeutics, and diagnostics.

In April 2021, the Company announced the pre-print publication of data from a Phase 2b clinical trial in children demonstrating up to 77% efficacy for a malaria vaccine candidate, R21, created by the University of Oxford that includes the Company's Matrix-M adjuvant and is licensed to SIIPL. The Company will manufacture and supply the Matrix-M component of R21 to SIIPL. Additionally, SIIPL has the rights to use Matrix-M in the vaccine in regions where the disease is endemic and will pay royalties to the Company on its market sales of the vaccine. The Company will have commercial rights to sell and distribute the SIIPL-manufactured vaccine in certain countries, primarily in the travelers’ and military vaccine markets.
Overview

Novavax, Inc., together with our wholly-owned subsidiaries, Novavax AB and Novavax CZ, is a biotechnology company promoting improved global health through the discovery, development and commercialization of innovative vaccines to prevent serious infectious diseases and address urgent, global health needs. Our vaccine candidates, including both our coronavirus vaccine candidate ("NVX-CoV2373") and our seasonal quadrivalent influenza vaccine candidate ("NanoFlu"), are genetically engineered, three-dimensional nanostructures of recombinant proteins critical to disease pathogenesis. We believe that our protein-subunit-based candidates elicit differentiated immune responses that may be more efficacious than naturally occurring immunity or other vaccine approaches. To date, we have formulated many of the vaccine candidates in our pipeline with our Matrix-M adjuvant, including NVX-CoV2373 and NanoFlu. Our Matrix-M adjuvant, which enables dose-sparing, has been shown to enhance functional immune responses and has been well-tolerated in multiple clinical trials to date.

Near-term Clinical Development Pipeline

Our development pipeline encompasses vaccine candidates addressing therapeutic areas including coronavirus, seasonal influenza, respiratory syncytial virus ("RSV") and other emerging infectious diseases. At the forefront of our pipeline is NVX-CoV2373. We have also advanced our NanoFlu program through a Phase 3 clinical trial, demonstrating positive top-line results and achieving statistical significance in key secondary endpoints. We continue to evaluate the viability of certain candidates...
As the world continues to address the global COVID-19 pandemic, we remain focused today on bringing our NVX-CoV2373 vaccine candidate to market following global regulatory approvals. Through the initiation of crossover and booster studies in our clinical trials, as well as development of our variant strain vaccine candidates, we continue to collect data to optimize vaccine performance. We expect these continued clinical insights will enable us to evolve our booster strategy to most effectively address the evolving COVID-19 pandemic.

In addition to our COVID-19 clinical development, NanoFlu continues to be a priority for our team, especially as it relates to a potential combined NanoFlu / NVX-CoV2373 vaccine. Although NVX-CoV2373 and NanoFlu are our near-term priorities, we remain optimistic that the additional programs in our pipeline, including our vaccine candidates for RSV and other emerging infectious diseases, present viable opportunities for future development.

A summary and status of our near-term clinical and preclinical development program follows:

<table>
<thead>
<tr>
<th>Therapeutic Area</th>
<th>Name</th>
<th>Preclinical</th>
<th>Phase 1</th>
<th>Phase 2</th>
<th>Phase 3</th>
<th>Marketed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coronavirus</td>
<td>NVX-CoV2373&lt;sup&gt;(1)&lt;sup&gt; (Booster)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Variant Strain (Monovalent and/or Bivalent)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seasonal Influenza</td>
<td>NanoFlu (Older Adults) (Pre-BLA)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Combination Vaccines</td>
<td>NanoFlu / NVX-CoV2373</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NanoFlu / RSV</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NanoFlu / NVX-CoV2373 / RSV</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clinical Development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conducted by Partners</td>
<td>R21&lt;sup&gt;(2)&lt;sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(1) Supported by funding from OWS, DoD, CEPI and BMGF
(2) Ongoing PREVENT-19, a Phase 3 clinical trial in U.S. and Mexico; Ongoing Phase 3 in UK; Ongoing Phase 2b in South Africa
(3) Reflects malaria vaccine candidate (“R21”), created by the University of Oxford and formulated with Matrix-M adjuvant; Ongoing Phase 3 clinical trial in Africa; R21 is licensed to Serum Institute of India Private Limited (“SIPL’’); Novavax will have commercial rights to sell and distribute R21 in certain countries, primarily in travelers’ and military vaccine markets

**Matrix-M Adjuvant**

Our proprietary Matrix-M adjuvant has demonstrated potent and well-tolerated efficacy by stimulating the entry of antigen presenting cells (APCs) into the injection site and enhancing antigen presentation in local lymph nodes, which in turn activates T cell, B cell, and APC populations, thereby boosting immune response. Our Matrix-M adjuvant has been shown to increase neutralizing antibodies and induces long-lasting memory B cells, which enhances B-cell immunity and recruits and increases the frequency of CD4+ and CD8+ T cells to enhance T cell immunity in preclinical models. The potent immune-stimulating mechanism of action is designed to enable a lower dose of antigen required to achieve the desired immune response,
ultimately contributing to increased supply and manufacturing capacity. These immune-boosting and dose-sparing capabilities contribute to the adjuvant’s highly unique profile.

Coronavirus

NVX-CoV2373 Clinical Development

We have evaluated NVX-CoV2373 in various preclinical and clinical trials, including two Phase 3 trials, one Phase 2b trial, and one Phase 1/2 trial, announcing a number of significant developments in moving our program forward in the first quarter of 2021. Through our clinical development program to date, we have collected data that indicates a reassuring safety profile and high levels of efficacy for NVX-CoV2373, as well as confirmed the use of a 5 microgram dose of NVX-CoV2373 with Matrix-M adjuvant for our late-stage development. A summary and status of our clinical development of NVX-CoV2373 follows:

PREVENT-19 Pediatric Expansion

In April 2021, we initiated a pediatric expansion of our PREVENT-19 pivotal Phase 3 U.S. and Mexico trial. This expansion of PREVENT-19 will evaluate the efficacy, safety, and immunogenicity of NVX-CoV2373 in up to 3,000 adolescent participants aged 12 to 17 across up to 75 sites in the U.S. Participants will randomly receive either the vaccine candidate or placebo in two doses, administered 21 days apart. Two-thirds of participants will receive intramuscular injections of the vaccine and one-third will receive placebo. A blinded crossover is planned to take place six months after the initial set of vaccinations to ensure that all trial participants receive active vaccine. Participants will also be monitored for safety for up to two years following the final dose.

PREVENT-19 Phase 3 U.S. and Mexico

In February 2021, we completed enrollment of PREVENT-19, which we initiated in December 2020. PREVENT-19 is a randomized, placebo-controlled, observer-blinded trial to evaluate the efficacy, safety, and immunogenicity of NVX-CoV2373. The trial enrolled approximately 30,000 participants aged 18 years or older, notably representing a broad demographic subset. The trial enrolled participants who are most impacted by COVID-19, including individuals with medical co-morbidities. The participant trial population is composed of the following: 20% Latin American, 12% African American, 6% Native American, 5% Asian American, and 13% older adults aged 65 years and older. The trial design has been harmonized to align with other Phase 3 trials conducted under the auspices of OWS, including the use of a single external independent Data and Safety Monitoring Board to evaluate safety and conduct an unblinded review when predetermined interim analysis events are reached. The trial’s primary endpoint is the prevention of PCR-confirmed, symptomatic COVID-19. The primary efficacy analysis is event-driven, based on the number of participants with symptomatic mild, moderate or severe COVID-19 disease. Participants will be followed for 24 months following the second injection. We expect to collect adequate cases in order to conduct a final analysis in the second quarter of 2021. PREVENT-19 is being conducted with support from OWS, including a $1.75 billion agreement.

Phase 3 United Kingdom (“UK”)

In March 2021, we announced the results from our final analysis of the Phase 3 UK trial, which we initiated in September 2020. In the final analysis, NVX-CoV2373 demonstrated 89.7% overall efficacy, 96.4% efficacy against the original COVID-19 strain and 86.3% efficacy against the B.1.1.7 variant strain, first identified in the UK. Our Phase 3 trial in the UK was in partnership with the UK Government’s Vaccines Taskforce. The trial was a randomized, placebo-controlled, observer-blinded trial to evaluate the efficacy, safety and immunogenicity of NVX-CoV2373 in over 15,000 enrolled participants aged 18 to 84 years, including 27% of participants over the age of 65. Half of the trial participants received two intramuscular injections of NVX-CoV2373 comprising 5 micrograms of antigen with 50 micrograms of Matrix-M adjuvant, administered 21 days apart, while the other half of the trial participants received placebo. The primary endpoint was first occurrence of PCR-confirmed symptomatic COVID-19 with onset at least seven days after the second study vaccination in participants who have not been previously infected with SARS-CoV-2. Two-thirds of the participants were assigned to randomly receive two intramuscular injections of NVX-CoV2373 comprising 5 micrograms of antigen with 50 micrograms of Matrix-M adjuvant, administered 21 days apart, while one-third of the trial participants will receive placebo. The primary efficacy analysis is event-driven, based on the number of participants with symptomatic mild, moderate or severe COVID-19 disease. Participants will be followed for 24 months following the second injection. We expect to collect adequate cases in order to conduct a final analysis in the second quarter of 2021. PREVENT-19 is being conducted with support from OWS, including a $1.75 billion agreement.
cardiovascular disease, obesity, diabetes) and the vaccine efficacy was 90.9% in this group. The final analysis also showed that NVX-CoV2373 is well-tolerated, with low levels of severe, serious and medically attended adverse events ("SAEs") at day 35, balanced between vaccine and placebo groups.

**Phase 2b South Africa**

In March 2021, we announced the complete analysis of our Phase 2b South Africa trial, which we initiated in August 2020. In the complete analysis, NVX-CoV2373 demonstrated 55.4% efficacy for the prevention of mild, moderate and severe COVID-19 disease in the 95% of the trial population that was HIV-negative. Overall efficacy, including both HIV-positive and HIV-negative participants, was 48.6% predominantly against the B.1.351 escape variant, with the complete analysis showing that NVX-CoV2373 achieved its primary efficacy endpoint in the overall trial population. During the efficacy analysis, the B.1.351 variant circulating in South Africa accounted for approximately 93% of sequenced cases in our Phase 2b trial. The trial enrolled over 4,400 participants. Half of the trial participants received two intramuscular injections of NVX-CoV2373 comprising 5 micrograms of antigen with 50 micrograms of Matrix-M adjuvant, administered 21 days apart, while the other half of the trial participants received placebo. The complete analysis from this trial expanded upon an interim analysis announced in January 2021. The complete analysis showed that vaccine-induced protection began 14 days after dose one, although increased efficacy was observed seven days after dose two, the primary endpoint for the trial. There were no cases of severe disease in the NVX-CoV2373 group and all hospitalization and death occurred in the placebo group. This trial also showed that the vaccine is well-tolerated, with low levels of SAEs through day 35, balanced between vaccine and placebo groups. While an interim analysis announced in January 2021 reported that prior infection with the original COVID-19 strain may not completely protect against subsequent infection by the variant predominantly circulating in South Africa, the complete analysis indicated that there may be a late protective effect of prior exposure with the original COVID-19 strain. In placebo recipients, at 90 days the illness rate was 8.0% in baseline seronegative participants, with a rate of 5.9% in baseline seropositive participants. In May 2021, results from the Phase 2b South Africa trial were published in the *New England Journal of Medicine*. CEPI funded the manufacturing of doses of NVX-CoV2373 for this Phase 2b clinical trial, which was also supported in part by a $15.0 million grant from BMGF.

**NVX-CoV2373 Booster and Crossover Studies**

**Novavax-Led Booster and Crossover Studies**

As of May 2021, we completed the administration of six-month boost doses in the Phase 2 portion of our U.S. and Australia Phase 1/2 trial, which we began in March 2021. In this booster study, select participants in the 5 microgram dose cohort from the Phase 2 portion of the Phase 1/2 trial received booster doses at six months to examine the functional immune response of our vaccine candidate. Two treatment groups were boosted: a group that previously received only one dose (Day 0) and a group that previously received two doses (Day 0 and Day 21). Immunology results from this booster study are expected in the third quarter of 2021.

In April 2021, we announced the initiation of crossover arms in both our PREVENT-19 and UK Phase 3 trials. Under the updated clinical trial protocols, participants will be offered the opportunity to receive an additional round of injections. Participants who elect to do so will receive an additional two-dose regimen of either vaccine for those who originally received placebo or placebo for those who originally received vaccine. Participants in these trials will remain blinded to their courses of treatment to preserve the ability to assess efficacy in the trials and will continue to be followed to monitor the safety and durability of protection of the vaccine.

In April 2021, we announced the initiation of crossover arms in our Phase 2b South Africa trial. Under the updated clinical trial protocol, participants will receive either active vaccine for those who initially received placebo or a booster dose of active vaccine for those who initially received active vaccine. Participants in the trial will remain blinded to their courses of treatment to preserve the ability to assess efficacy in the trial and will continue to be followed to monitor the safety and durability of protection of the vaccine.

**Comparing COVID-19 Vaccine Schedule Combinations - Stage 2 ("Com-COV2")**

In April 2021, we announced our participation in Com-COV2, a newly expanded investigator-initiated Phase 2 clinical trial conducted by the University of Oxford and supported by the UK Vaccines Taskforce. NVX-CoV2373 is one of four COVID-19 vaccines that will be studied to evaluate the potential for combined regimens that mix vaccines from different manufacturers to achieve immune protection against COVID-19. The trial will enroll 1,050 adults 50 years of age or older who received their first vaccination during the prior 8-12 weeks. Participants will receive one of four different vaccines as a second dose, 350 of whom will be administered NVX-CoV2373. The trial will compare the immune system responses from those who
receive a heterologous regimen to those who receive a homologous regimen. Participants in this non-inferiority study will be followed for reactogenicity (safety) and immune responses. The UK Medicines Healthcare products Regulatory Agency (“MHRA”) and Joint Committee on Vaccination and Immunisation will formally assess the safety and efficacy of any new vaccination regimen before it is made available to the public. Top-line data from this clinical trial are expected in the third quarter of 2021.

**NVX-CoV2373 Clinical Development Conducted by Partners**

**Phase 2/3 India**

In March 2021, SIIPL initiated a Phase 2/3 clinical trial of NVX-CoV2373 in India. The initial cohort was fully enrolled in April 2021 and the total study includes approximately 1,600 participants aged 18 to 65 years.

**Phase 1/2 Japan**

In March 2021, Takeda Pharmaceutical Company Limited (“Takeda”) completed enrollment of a Phase 1/2 clinical trial of NVX-CoV2373 in Japan. This placebo-controlled trial will evaluate the immunogenicity and safety of NVX-CoV2373 in 200 participants aged 20 years and older.

**Variant Strain (Monovalent and/or Bivalent) Vaccine Development**

Our nanoparticle vaccine technology is purpose-built to rapidly address evolving infectious disease threats. In January 2021, we initiated development of new constructs against the emerging strains of COVID-19, and in February 2021, we selected variant strain vaccines for preclinical evaluation.

In May 2021, we announced data from a preclinical study of our B.1.351 variant strain vaccine candidate in non-human primates (“NHPs”). In this preclinical study, NHPs originally received a two-dose regimen of NVX-CoV2373. A year after initial vaccination, NHPs received two doses of our B.1.351 variant strain vaccine candidate, with Matrix-M adjuvant and administered 21 days apart. Within seven days of receiving boost doses, NHPs exhibited a strong antibody response, as well as a strong functional immune response.

We are currently conducting preclinical studies on multiple variant strain vaccine candidates. We expect to initiate clinical evaluation of one or more of our candidates.

**NVX-CoV2373 Regulatory and Licensure**

As of May 2021, we continue to work to complete various CMC requirements, which ensure that our manufacturing processes are in accordance with regulatory standards (see further discussion of our manufacturing activities below under NVX-CoV2373 Manufacturing and Supply). We expect to complete multiple filings for authorization in the third quarter of 2021. Below is a summary and status of our regulatory processes.

In February 2021, we announced the initiation of a rolling review processes with non-clinical data to the MHRA and the European Medicines Agency (“EMA”). As a part of the rolling reviews, we continue to submit information, including clinical and manufacturing data. We aim to file for authorization with these regulatory authorities in the third quarter of 2021.

Through the date of filing this Form 10-Q, we continue to be in communication with the FDA through submissions to our open investigational new drug application (“IND”) and discussions on various aspects of the program required to support the regulatory approval process. We plan to file submissions for Emergency Use Authorization (“EUA”) with the FDA and aim to complete our EUA filing in the third quarter of 2021. NVX-CoV2373 has previously been granted Fast Track designation by the FDA, which is intended for products that treat serious or life-threatening diseases or conditions and that demonstrate the potential to address unmet medical needs for such diseases or conditions.

We have also initiated the rolling review process with submissions to several other regulatory agencies worldwide, including Health Canada, Australian Therapeutic Goods Administration (“TGA”) and New Zealand Medsafe. Additionally, we anticipate starting rolling submissions to the World Health Organization for Emergency Use Listing. As part of the rolling reviews, we will continue to submit additional information, including clinical and manufacturing data as they become available. These rolling reviews are initiated to expedite the assessment of vaccines, particularly during public health emergencies.
In addition to these rolling review processes, in April 2021, SK bioscience Ltd. ("SK bioscience") initiated the regulatory submission process in collaboration with Novavax to the Republic of Korea's Ministry of Food and Drug Safety ("MFDS") for authorization of NVX-CoV2373.

**COVID-19 Vaccine Funding**

We have secured critical funding throughout 2020 and into 2021 that fueled the development of NVX-CoV2373. Through the date of filing this Form 10-Q, funding for NVX-CoV2373 encompasses over $2 billion from sources including BMGF, CEPI, the DoD, and OWS.

In April 2021, our Base Agreement and a Project Agreement (together, the “OWS Agreement”) entered into with Advanced Technology International, Inc., the Consortium Management Firm acting on behalf of the Medical CBRN Defense Consortium in connection with OWS, was amended to fully fund the agreement up to $1.75 billion to support certain activities related to the development of NVX-CoV2373. This includes the manufacture and delivery of 100 million doses of NVX-CoV2373 to the U.S. government. We expect this funding will assist in rapidly developing our large-scale manufacturing capacity and transitioning into ongoing production, including the capability to stockpile and distribute large quantities of NVX-CoV2373 for use in clinical trials and potentially for commercial sale, if authorized for emergency use or licensed. The OWS Agreement will fund the late-stage clinical studies necessary to determine the safety and efficacy of NVX-CoV2373, including PREVENT-19. Funding under the OWS Agreement is also expected to support our plans to file submissions for EUA and licensure with the FDA.

A summary and status of our historical COVID-19 funding developments follows:

<table>
<thead>
<tr>
<th>Funding Partner</th>
<th>Amount</th>
<th>Additional Detail</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMGF</td>
<td>$15 million</td>
<td>• Received $15 million grant to support our Phase 2b clinical trial in South Africa initiated in August 2020</td>
</tr>
</tbody>
</table>
| CEPI              | $399.5 million | • Entitled to receive up to $399.5 million of funding to support the development of NVX-CoV2373  
                             • To supply NVX-CoV2373 through the COVAX Facility |
| DoD               | $45.7 million | • Entitled to receive up to $45.7 million of funding to support the development of NVX-CoV2373  
                             • To manufacture and deliver 10 million doses of NVX-CoV2373 to the U.S. government |
| U.S. Government (OWS) | $1.75 billion | • Allotted funding of $1.75 billion to support the development of NVX-CoV2373  
                              • To manufacture and deliver 100 million doses of NVX-CoV2373 to the U.S. government |

**NVX-CoV2373 Manufacturing and Supply**

We have established a global manufacturing and supply chain to support the commercialization of NVX-CoV2373. With significant progress made throughout 2020 and through the first quarter of 2021, our global supply chain now spans over 10 countries and includes Novavax owned facilities in the Czech Republic and Sweden, as well as partnerships with contract manufacturing organizations around the world. In the first quarter of 2021, we took additional steps to expand our global supply chain and ready our company for commercialization. These developments included securing additional manufacturing capacity for NVX-CoV2373, as well as furthering existing collaborations with manufacturing partners globally.

During the first quarter of 2021, we experienced a shortage of raw materials, which has impacted the timing by which we expect to realize our anticipated total manufacturing capacity. In the quarter, we also continued to advance CMC activities. These include ongoing analytical testing and product characterization, as well as the qualification and validation of assays.
needed to demonstrate process consistency across our network of manufacturing facilities. Completion of these CMC activities and final determination of doses available for distribution upon potential regulatory approvals is dependent on availability of critical manufacturing supplies, results of analytical testing, and the ultimate efficiency of our manufacturing processes at each facility.

Considering the above, we expect our global manufacturing capacity of NVX-CoV2373 to be approximately 100 million doses per month by the end of the third quarter of 2021. We anticipate the remainder of our manufacturing capacity will come online in the fourth quarter of 2021, which we expect will support total global manufacturing capacity of approximately 150 million doses per month. Of this anticipated capacity, approximately one billion annualized doses will be manufactured by SIIPL.

A summary and status of key manufacturing and supply developments entered into or amended during the first quarter of 2021 follows:

**Antigen Component of NVX-CoV2373**
- National Research Council’s Biologics Manufacturing Centre in Canada

**Fill / Finish Activities**
- GlaxoSmithKline plc (“GSK”) in the UK
- Jubilant HollisterStier LLC (“Jubilant HollisterStier”) in the U.S.

**Antigen Production, Out-licensing & Collaborations**
- SK Bioscience Co., Ltd. (“SK bioscience”) in the Republic of Korea
- Takeda in Japan

In March 2021, we announced an agreement in principle with GSK and the UK Government Vaccines Taskforce to support the manufacturing of up to 60 million doses of NVX-CoV2373 for use in the UK. Under the agreement, GSK will provide fill and finish manufacturing capacity at its Barnard Castle Facility in the North East of England beginning as early as May 2021. We expect to negotiate a final agreement with GSK to include additional terms and conditions.

In February 2021, we entered into a non-exclusive manufacturing agreement with Jubilant HollisterStier. Under the terms of the agreement, Jubilant HollisterStier will provide fill and finish manufacturing services for the production of NVX-CoV2373. Jubilant HollisterStier’s facility in Spokane, Washington has begun production activities of NVX-CoV2373 final drug product intended for commercial distribution in the U.S.

In February 2021, we reached a Memorandum of Understanding (“MOU”) with the Canadian government to produce NVX-CoV2373 in Canada. We plan to produce NVX-CoV2373 at the National Research Council’s Biologics Manufacturing Centre in Montreal once both the vaccine candidate and the facility receive Health Canada approvals. The MOU also includes a broader intention for the Government of Canada and us to work together to increase our Canadian presence. We will explore a range of partnership opportunities for us to expand vaccine production in Canada, including partnerships with Canadian contract manufacturers. We recently initiated the rolling submission process for regulatory approval to Health Canada.

In February 2021, we announced a collaboration and license agreement with SK bioscience, which expanded upon our development and supply agreement entered into in August 2020. Under these agreements, SK bioscience has been granted an exclusive license to develop, manufacture and commercialize NVX-CoV2373 in the Republic of Korea. Concurrently, SK bioscience finalized an advance purchase agreement with the Republic of Korea to supply 40 million doses of NVX-CoV2373 beginning in 2021. SK bioscience will expand its capacity to manufacture the antigen component of NVX-CoV2373 for use in the final drug product globally, including product distributed by the COVAX Facility. SK bioscience will also purchase a certain quantity of NVX-CoV2373 directly from us, subject to the approval by relevant regulatory authority, and sufficient doses of our Matrix-M adjuvant to manufacture the remainder of the 40 million doses of NVX-CoV2373 SK bioscience expects to sell to the Korean government. SK bioscience will pay a tiered royalty in the low to middle double-digit range on the sale of NVX-CoV2373 in the Republic of Korea.

In February 2021, we finalized an exclusive license agreement with Takeda for the development, manufacturing and commercialization of NVX-CoV2373 in Japan. This agreement followed a collaboration agreement with Takeda announced in August 2020. We will transfer technology and supply our Matrix-M adjuvant to Takeda, who will manufacture the vaccine.
antigen. Takeda will receive funding from the Government of Japan’s Ministry of Health, Labour and Welfare ("MHLW") to support the technology transfer, establishment of infrastructure and scale-up of manufacturing. We anticipate that Takeda will have a manufacturing capacity of 250 million doses per year. In May 2021, the MHLW announced that contract discussions were ongoing with Takeda to potentially order 150 million doses of NVX-CoV2373. Distribution of NVX-CoV2373 in Japan by Takeda is expected to begin in late 2021 or early 2022 and will continue into 2022 onwards. We will be entitled to receive royalty payments based on the achievement of certain development and commercial milestones, as well as on a portion of net profits from vaccine sales. Takeda is responsible for regulatory submission to Japan’s Pharmaceutical and Medical Devices Agency ("PMDA").

**NVX-CoV2373 Supply Agreements**

We expect our global supply chain will enable us to deliver upon our supply commitments around the world. We have entered into advance purchase agreements (referred to as "APAs" or "supply agreements" throughout this Form 10-Q), as well as multiple supply and license agreements with strategic partners. The APAs typically contain terms that include upfront payments intended to assist us in funding investments related to building out and operating our manufacturing and distribution network, among other expenses, in support of our global supply commitment. Such upfront payments generally become non-refundable upon our achievement of certain development and commercial milestones. We expect to sign additional APAs or supply agreements that are currently in active discussions and negotiations.

In addition to our supply agreements, we have committed 110 million doses of NVX-CoV2373 to the U.S. government in relation to the funding received from OWS and the DoD.

A summary and status of key supply agreements executed since the beginning of 2021 and through the date of filing this Form 10-Q follows:

In May 2021, we finalized an APA with Gavi, the Vaccine Alliance ("Gavi"), building upon our MOU previously announced in February 2021. Under the terms of the agreement, 1.1 billion doses of NVX-CoV2373 are to be made available to countries participating in the COVAX Facility, which was established to allocate and distribute vaccines equitably to participating countries and economies. We expect to manufacture and distribute 350 million doses of NVX-CoV2373 to countries participating under the COVAX Facility. Under a separate purchase agreement with Gavi, SIIPL is expected to manufacture and deliver the balance of the 1.1 billion doses of NVX-CoV2373 for low- and middle-income countries participating in the COVAX Facility. We expect to deliver doses with antigen and adjuvant manufactured at facilities directly funded by the investments previously received from CEPI. We expect to supply significant doses that Gavi would allocate to low, middle and high income countries, subject to certain limitations, utilizing a tiered pricing schedule and Gavi may prioritize such doses to low and middle income countries, at lower prices. Additionally, we may provide additional doses, to the extent available from CEPI funded manufacturing facilities, in the event that SIIPL cannot materially deliver expected vaccine doses to the COVAX Facility. Together with SIIPL, we expect to initiate delivery of the cumulative 1.1 billion doses in the third quarter of 2021, pending receipt of appropriate regulatory authorizations. Under the agreement, we expect to receive an upfront payment from Gavi and an additional payment after securing emergency use listing for NVX-CoV2373 by the World Health Organization ("WHO").

In January 2021, we finalized an APA with the Government of Canada to supply up to 76 million doses of NVX-CoV2373. Canada has committed to purchase 52 million doses of NVX-CoV2373 with the option for up to an additional 24 million doses. Under the agreement, we expect to supply doses of NVX-CoV2373 to Canada following authorization by Canada’s regulatory agency.

**Seasonal Influenza**

**NanoFlu Program (Older Adults)**

To date, we have advanced NanoFlu through a Phase 3 clinical trial in which NanoFlu achieved all primary endpoints and achieved statistical significance in key secondary endpoints. In 2020, we took steps to ensure the continued advancement of NanoFlu in parallel with our COVID-19 activities and formed a leadership team solely dedicated to our NanoFlu program. This NanoFlu development unit benefits from joint shared services with key cross-functional departments and builds on the Company’s established knowledge base in the discovery and development of innovative vaccines. Our NanoFlu team remains focused on seeking regulatory approval from the FDA under the accelerated approval pathway previously granted and exploring the potential for a combination NanoFlu / NVX-CoV2373 vaccine.
Combination Vaccines

With the ongoing development of NanoFlu, NVX-CoV2373 and our RSV F Vaccine, a strong rationale exists for potentially developing combination respiratory vaccines designed to protect susceptible populations against these diseases. Although testing is at an early stage, we believe that the combination of influenza with COVID-19, influenza with RSV, and influenza with both RSV and COVID-19 may be achievable, as these vaccines all use our recombinant nanoparticle technology and include our proprietary Matrix-M adjuvant.

NanoFlu / NVX-CoV2373

In May 2021, we completed a preclinical study of our NanoFlu / NVX-CoV2373 vaccine candidate to assess its immunogenicity and protective efficacy in animal models. Preclinical data from this study showed that the combination vaccine induced strong functional antibodies, with hemagglutination inhibition ("HAI") and ACE2 receptor inhibiting titers that were comparable to immunization with the respective component vaccines alone. The combination vaccine also induced high levels of anti-S IgG and neutralizing antibody titers, as well as induced antibodies against the SARS-CoV-2 spike protein neutralizing epitopes. We expect to initiate clinical evaluation of NanoFlu / NVX-CoV2373 later in 2021.

Malaria

R21

R21 is a malaria vaccine candidate created by the Jenner Institute, University of Oxford, and is formulated with our Matrix-M adjuvant. The University of Oxford has partnered with SIIPL for commercial development of R21, as well as granted a license to SIIPL for the vaccine. We expect to manufacture and supply the Matrix-M adjuvant component of R21 to SIIPL. As of May 2021, SIIPL has committed to the provision of over 200 million doses per year of R21 after licensure. Additionally, SIIPL has rights to use Matrix-M adjuvant in the vaccine in regions where the disease is endemic and will pay royalties to us on its market sales of the vaccine. We will have commercial rights to sell and distribute the SIIPL-manufactured vaccine in certain countries, primarily in the travelers’ and military vaccine markets.

R21 Clinical Development

In May 2021, the first doses were administered in a Phase 3 licensure trial of R21 to assess the efficacy and safety of the malaria vaccine candidate. This double-blinded, randomized, controlled Phase 3 trial includes 4,800 participants aged five to 36 months across five sites in Burkina Faso, Kenya, Mali and Tanzania. Participants will receive three vaccinations four weeks apart and a booster vaccination one year later. Results from this Phase 3 trial could potentially lead to licensure of R21 by 2023.

In April 2021, we announced the pre-print publication of data in *Preprints with The Lancet* from a Phase 2b clinical trial evaluating R21. The Phase 2b randomized, controlled, double-blind trial was conducted at the Clinical Research Unit of Nanoro / Institut de Recherche en Sciences de la Santé in Africa and recruited 450 participants aged five to 17 months from the catchment area of Nanoro, Burkina Faso. In three study arms, participants received 5 micrograms of R21 with either 25 micrograms of Matrix-M adjuvant, 50 micrograms of Matrix-M adjuvant, or a rabies vaccine as a control. R21 demonstrated 77% efficacy in the higher adjuvant dose group and 71% efficacy in the lower adjuvant dose group. Both adjuvant dose levels were well tolerated in young children, with no severe reactions to the vaccine reported.

Sales of Common Stock

In January 2021, we entered into an At Market Issuance Sales Agreement ("January 2021 Sales Agreement"), which allows us to issue and sell up to $500 million in gross proceeds of our common stock. During the first quarter of 2021, we sold 1.7 million shares of common stock under the January 2021 Sales Agreement resulting in $452.0 million in net proceeds, leaving $42.2 million remaining.

In November 2020, we entered into an At Market Issuance Sales Agreement ("November 2020 Sales Agreement"), which allowed us to issue and sell up to $500 million in gross proceeds of its common stock. From January 1, 2021 through January 20, 2021, we sold 0.9 million shares of common stock resulting in $113.0 million in net proceeds, leaving $27.2 million remaining under the agreement. We terminated the November 2020 Sales Agreement by mutual agreement upon entering into the January 2021 Sales Agreement.
Critical Accounting Policies and Use of Estimates

There are no material changes to our critical accounting policies as described in Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, as filed with the SEC.

Recent Accounting Pronouncements Not Yet Adopted

See “Note 2—Summary of Significant Accounting Policies” included in our Notes to Consolidated Financial Statements (under the caption “Recent Accounting Pronouncements”).

Results of Operations

The following is a discussion of the historical financial condition and results of the Company’s operations that should be read in conjunction with the unaudited consolidated financial statements and notes set forth in this Quarterly Report.

Three Months Ended March 31, 2021 and 2020

Revenue:

<table>
<thead>
<tr>
<th>Revenue (in thousands):</th>
<th>Three Months Ended March 31,</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
<td>2020</td>
</tr>
<tr>
<td>Government contracts</td>
<td>$382,704</td>
<td>$—</td>
</tr>
<tr>
<td>Grants and other</td>
<td>64,525</td>
<td>3,377</td>
</tr>
<tr>
<td>Total revenue</td>
<td>$447,229</td>
<td>$3,377</td>
</tr>
</tbody>
</table>

Revenue for the three months ended March 31, 2021 was $447.2 million as compared to $3.4 million for the same period in 2020, an increase of $443.9 million. Revenue for the three months ended March 31, 2021 was primarily comprised of revenue for services performed under the OWS Agreement and the CEPI Funding Agreement. Revenue for the three months ended March 31, 2020 was primarily comprised of revenue for services performed under the CEPI Funding Agreement, BMGF Grant Agreement and revenue from Novavax AB. The significant increase in revenue was due to increased development activities relating to NVX-CoV2373 under the OWS Agreement and the CEPI Funding Agreement.

We expect revenue in 2021 to significantly increase as compared with 2020 due to our NVX-CoV2373 program, which we anticipate will continue to be funded by OWS and CEPI and/or other revenue sources. Further, we anticipate bringing our NVX-CoV2373 vaccine candidate to market following global regulatory approvals which, if achieved, should significantly increase revenue. In anticipation, we have entered into various advance purchase agreements as well as multiple supply and license agreements with strategic partners to supply NVX-CoV2373 in their specified territories under which we are entitled to receive royalty revenue from the sale of NVX-CoV2373 by such partners.

Expenses:

<table>
<thead>
<tr>
<th>Expenses (in thousands):</th>
<th>Three Months Ended March 31,</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
<td>2020</td>
</tr>
<tr>
<td>Research and development</td>
<td>$592,671</td>
<td>$16,895</td>
</tr>
<tr>
<td>General and administrative</td>
<td>63,190</td>
<td>9,379</td>
</tr>
<tr>
<td>Total expenses</td>
<td>$655,861</td>
<td>$26,274</td>
</tr>
</tbody>
</table>

Research and Development Expenses

In the three months ended March 31, 2021, our research and development activities were primarily focused on the development of NVX-CoV2373 and included direct external research and development expenses related to NVX-CoV2373 of $538.1 million, primarily comprised of costs related to the following:
expenses incurred under agreements with contract research organization ("CROs") that conduct our clinical trials and third-party consultants related to the development of NVX-CoV2373;

expenses incurred on developing and manufacturing the antigen drug substance and Matrix-M components of NVX-CoV2373 under agreements that we established with third-party contract manufacturing organizations ("CMOs") and contract manufacturing and development organizations ("CDMOs");

expenses incurred for the procurement of raw materials, laboratory supplies and equipment; and

other costs related to preclinical studies and regulatory consulting, as well as related program management activities to support our growing global operations.

Research and development expenses increased to $592.7 million for three months ended March 31, 2021 as compared to $16.9 million for three months ended March 31, 2020, an increase of $575.8 million primarily due to research and development of NVX-CoV2373, as summarized in the table below (in millions):

<table>
<thead>
<tr>
<th>Three Months Ended March 31,</th>
<th>2021</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>NVX-CoV2373</td>
<td>$538,125</td>
<td>$1,557</td>
</tr>
<tr>
<td>NanoFlu</td>
<td>1,126</td>
<td>3,845</td>
</tr>
<tr>
<td>Other vaccine development programs</td>
<td>304</td>
<td>1,164</td>
</tr>
<tr>
<td>Total direct external research and development expense</td>
<td>539,555</td>
<td>6,566</td>
</tr>
<tr>
<td>Employee expenses</td>
<td>24,955</td>
<td>4,568</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>23,790</td>
<td>1,908</td>
</tr>
<tr>
<td>Facility expenses</td>
<td>2,995</td>
<td>1,188</td>
</tr>
<tr>
<td>Other expenses</td>
<td>1,376</td>
<td>2,665</td>
</tr>
<tr>
<td>Total research and development expenses</td>
<td>$592,671</td>
<td>$16,895</td>
</tr>
</tbody>
</table>

For 2021, we expect research and development expenses to significantly increase over 2020 expenses due to our continued development activities for our NVX-CoV2373 program and increases in employee-related costs. Following a potential regulatory approval of NVX-CoV2373, we expect products sales will result in certain types of costs that have been previously recorded as research and development in our Consolidated Statement of Operations to be capitalized as inventory and expensed as cost of goods sold when product is delivered in 2021 and beyond. Cost of goods sold expenses could be significant in 2021 depending on our commercial shipment levels for those shipments in which the costs were recorded into inventory.

We do not provide forward-looking estimates of costs and time to complete our research programs due to the many uncertainties associated with vaccine development. As we obtain data from preclinical studies and clinical trials, we may elect to discontinue or delay clinical trials in order to focus our resources on more promising vaccine candidates. Completion of clinical trials may take several years or more, but the length of time can vary substantially depending upon the phase, size of clinical trial, primary and secondary endpoints and the intended use of the vaccine candidate. The cost of clinical trials may vary significantly over the life of a project as a result of a variety of factors, including:

- the number of participants who participate in the clinical trials;
- the number of sites included in the clinical trials;
- if clinical trial locations are domestic, international or both;
- the time to enroll participants;
- the duration of treatment and follow-up;
- the safety and efficacy profile of the vaccine candidate; and
- the cost and timing of, and the ability to secure, regulatory approvals.
As a result of these uncertainties, we are unable to determine the duration and completion costs of our research and development projects or when, and to what extent, we will generate future cash flows from our research projects.

**General and Administrative Expenses**

General and administrative expenses increased to $63.2 million for the three months ended March 31, 2021 from $9.4 million for the same period in 2020, an increase of $53.8 million. The increase in general and administrative expenses is primarily due to increased employee-related costs, primarily stock-based compensation expense, and supporting our NVX-CoV2373 program. As of March 31, 2021, we had 155 employees dedicated to general and administrative functions as compared with 40 employees as of March 31, 2020. For 2021, we expect general and administrative expenses to significantly increase due to increased activities related to supporting our NVX-CoV2373 program and increases in employee-related costs.

**Other Income (Expense):**

<table>
<thead>
<tr>
<th>Other Income (Expense) (in thousands):</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
</tr>
<tr>
<td>Investment income</td>
<td>$362</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(4,839)</td>
</tr>
<tr>
<td>Other income (expense)</td>
<td>(6,593)</td>
</tr>
<tr>
<td>Total other income (expense), net</td>
<td>$(11,070)</td>
</tr>
</tbody>
</table>

We had total other expense, net, of $11.1 million for the three months ended March 31, 2021 as compared to $3.0 for the same period in 2020. In the three months ended March 31, 2021, we recorded a $5.9 million loss on the intercompany loan with Novavax CZ due to changes in the exchange rates and additional interest expense of $2.1 million for finance leases.

**Income Tax Expense:**

During the three months ended March 31, 2021, we recognized $3.0 million of income tax expense related to foreign withholding tax on an advance payment of a license fee. We did not recognize any income tax expense for the three months ended March 31, 2020.

**Net Loss:**

<table>
<thead>
<tr>
<th>Net Loss (in thousands, except per share information):</th>
<th>Three Months Ended March 31,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2021</td>
</tr>
<tr>
<td>Net loss</td>
<td>$222,719</td>
</tr>
<tr>
<td>Net loss per share</td>
<td>$(3.05)</td>
</tr>
<tr>
<td>Weighted average shares outstanding</td>
<td>73,035</td>
</tr>
</tbody>
</table>

Net loss for the three months ended March 31, 2021 was $222.7 million, or $3.05 per share, as compared to $25.9 million, or $0.58 per share, for the same period in 2020. The increase in net loss was primarily due to a significant increase in development activities relating to NVX-CoV2373 and increase in employee-related costs, primarily stock-based compensation expense, partially offset by increased revenue under the OWS Agreement and CEPI Funding Agreement.

The increase in weighted average shares outstanding for the three months ended March 31, 2021 is primarily a result of sales of our common stock in 2021 and 2020.

**Liquidity Matters and Capital Resources**

Our future capital requirements depend on numerous factors including, but not limited to, our projected activities related to the development of NVX-CoV2373, including significant commitments under various CRO, CMO and CDMO agreements, the progress of preclinical studies and clinical trials, the time and costs involved in obtaining regulatory approvals,
the costs of filing, prosecuting, defending and enforcing patent claims and other intellectual property rights and other manufacturing, sales and distribution costs. We plan to continue developing other vaccines and product candidates, such as NanoFlu and potential combination vaccines candidates, which are in various stages of development. We believe our operating expenses and capital requirements will fluctuate depending upon the timing of events, such as the progress of our NVX-CoV2373 clinical trials and approval for the use of NVX-CoV2373 in the U.S. and internationally, as well as the scope, initiation and progress of our preclinical studies and clinical trials related to other research and development activities.

We have entered into APAs or supply agreements with various countries globally that, if our product candidate is approved, are expected to result in the delivery of approximately 200 million doses of NVX-CoV2373 throughout 2021 and into the first half of 2022. The APAs or supply agreements typically contain terms that include upfront payments intended to assist us in funding investments related to building out and operating our manufacturing and distribution network, among other expenses, in support of our global supply commitment. Such upfront payments generally become non-refundable upon our achievement of certain development and commercial milestones. We expect to sign additional APAs or supply agreements that are currently in active discussions and negotiations.

In May 2021, we finalized an APA with Gavi, building upon our MOU previously announced in February 2021. Under the terms of the agreement, 1.1 billion doses of NVX-CoV2373 are to be made available to countries participating in the COVAX Facility, which was established to allocate and distribute vaccines equitably to participating countries and economies. We expect to manufacture and distribute 350 million doses of NVX-CoV2373 to countries participating under the COVAX Facility. Under a separate purchase agreement with Gavi, SIIPL is expected to manufacture and deliver the balance of the 1.1 billion doses of NVX-CoV2373 for low- and middle-income countries participating in the COVAX Facility. We expect to deliver doses with antigen and adjuvant manufactured at facilities directly funded by the investments previously received from CEPI. We expect to supply significant doses that Gavi would allocate to low, middle and high income countries, subject to certain limitations, utilizing a tiered pricing schedule and Gavi may prioritize such doses to low and middle income countries, at lower prices. Additionally, we may provide additional doses, to the extent available from CEPI funded manufacturing facilities, in the event that SIIPL cannot materially deliver expected vaccine doses to the COVAX Facility. Together with SIIPL, we expect to initiate delivery of the cumulative 1.1 billion doses in the third quarter of 2021, pending receipt of appropriate regulatory authorizations. Under the agreement, we expect to receive an upfront payment from Gavi and an additional payment after securing emergency use listing for NVX-CoV2373 by the WHO.

We have also entered into supply and license agreements with strategic partners to supply NVX-CoV2373 in their specified territories under which we are entitled to receive royalty revenue primarily from the sale of NVX-CoV2373 by our partners.

In the three months ended March 31, 2021, we funded our operations with December 31, 2020 cash and marketable securities on hand, upfront payments under APAs, proceeds from the sale of common stock together with revenue under the OWS Agreement and our CEPI Funding Agreement that support our NVX-CoV2373 vaccine development activities. We anticipate our future operations to be funded by our cash, cash equivalents and marketable securities, upfront payments under our APAs, revenue under our OWS Agreement and CEPI Funding Agreement, and following any potential global regulatory approvals, revenue from product sales, royalty arrangements with our strategic partners and/or other potential funding sources.

As of March 31, 2021, we had $2.0 billion in cash and cash equivalents, marketable securities and restricted cash as compared to $806.4 million as of December 31, 2020. These amounts consisted of $2.0 billion in cash and cash equivalents, $2.2 million in marketable securities and $33.6 million in restricted cash as of March 31, 2021 as compared to $553.4 million in cash and cash equivalents $157.6 million in marketable securities and $95.3 million in restricted cash as of December 31, 2020.

The following table summarizes cash flows for the three months ended March 31, 2021 and 2020 (in thousands):

28
Summary of Cash Flows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>2021</th>
<th>2020</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by (used in):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating activities</td>
<td>$663,085</td>
<td>$(23,110)</td>
<td>$686,195</td>
</tr>
<tr>
<td>Investing activities</td>
<td>141,609</td>
<td>(57,728)</td>
<td>199,337</td>
</tr>
<tr>
<td>Financing activities</td>
<td>576,987</td>
<td>185,923</td>
<td>391,064</td>
</tr>
<tr>
<td>Effect on exchange rate on cash, cash equivalents and restricted cash</td>
<td>(1,349)</td>
<td>(73)</td>
<td>(1,276)</td>
</tr>
<tr>
<td>Net increase in cash, cash equivalents and restricted cash</td>
<td>1,380,332</td>
<td>105,012</td>
<td>1,275,320</td>
</tr>
<tr>
<td>Cash, cash equivalents and restricted cash at beginning of period</td>
<td>648,738</td>
<td>82,180</td>
<td>566,558</td>
</tr>
<tr>
<td>Cash, cash equivalents and restricted cash at end of period</td>
<td>$2,029,070</td>
<td>$187,192</td>
<td>$1,841,878</td>
</tr>
</tbody>
</table>

Net cash provided by operating activities increased to $663.1 million for the three months ended March 31, 2021, as compared cash used in operating activities of $23.1 million for the same period in 2020. The increase in cash provided is primarily due to payments under APAs recorded as deferred revenue and the timing of payments to third-parties.

During the three months ended March 31, 2021 and 2020, our investing activities consisted primarily of maturities and sale of marketable securities, net of purchases, and, to a much lesser extent, capital expenditures. Capital expenditures for the three months ended March 31, 2021 and 2020 were $13.8 million and $0.1 million, respectively, and the increase in capital expenditures was primarily due to the build out of our facilities and related capital expenditures to support NVX-CoV2373. For 2021, we expect an increase in our capital expenditures due to further development activities for our NVX-CoV2373 program, including the additional build-out of research and development and manufacturing facilities and related equipment, and the build-out of our new corporate office facility to accommodate anticipated increases in headcount.

Our financing activities consisted primarily of sales of our common stock under our At Market Issuance Sales Agreements, payments of finance lease liabilities and exercise of stock-based awards. In the three months ended March 31, 2021 and 2020, we received net proceeds of $564.9 million and $185.9 million, respectively, from selling shares of common stock through our At Market Issuance Sales Agreements.

Off-Balance Sheet Arrangements

We did not have any material off-balance sheet arrangements as of March 31, 2021.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

The primary objective of our investment activities is preservation of capital, with the secondary objective of maximizing income. As of March 31, 2021, we had cash and cash equivalents of $2.0 billion, $2.2 million in marketable securities, $33.6 million in restricted cash and working capital of $1.0 billion.

Our exposure to market risk is primarily confined to our investment portfolio, which historically has been classified as available-for-sale. We do not believe that a change in the market rates of interest would have any significant impact on the realizable value of our investment portfolio. Changes in interest rates may affect the investment income we earn on our marketable securities when they mature and the proceeds are reinvested into new marketable securities and, therefore, could impact our cash flows and results of operations.

Interest and dividend income is recorded when earned and included in investment income. Premiums and discounts, if any, on marketable securities are amortized or accreted to maturity and included in investment income. The specific identification method is used in computing realized gains and losses on the sale of our securities.

We are headquartered in the U.S. where we conduct the vast majority of our business activities. We have two foreign consolidated subsidiaries, Novavax AB, which is located in Sweden, and Novavax CZ, which is located in the Czech Republic. A 10% decline in the exchange rate between the U.S. dollar and Swedish Krona would result in a decline of stockholders’ equity (deficit) of approximately $6 million as of March 31, 2021. A 10% decline in the exchange rate between the U.S. dollar and Czech Koruna would result in a decline of stockholders’ equity (deficit) of approximately $8 million as of March 31, 2021.
Our Notes have a fixed interest rate and we have no additional material debt. As such, we do not believe that we are exposed to any material interest rate risk as a result of our borrowing activities.

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the assistance of our chief executive officer and chief financial officer, has reviewed and evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of March 31, 2021. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving such control objectives. Based on the evaluation of our disclosure controls and procedures as of March 31, 2021, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

**Changes in Internal Control over Financial Reporting**

Our management, including our chief executive officer and chief financial officer, has evaluated any changes in our internal control over financial reporting that occurred during the quarterly period ended March 31, 2021, and has concluded that there was no change that occurred during the quarterly period ended March 31, 2021 that materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management’s assessment of and conclusion on the effectiveness of disclosure controls and procedures and internal controls over financial reporting did not include the internal controls related to the operations acquired in the acquisition of Novavax CZ that are included in our March 31, 2021 consolidated financial statements. Our audit of internal control over financial reporting also did not include an evaluation of the internal control over financial reporting of Novavax CZ.

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

On February 26, 2021, a Novavax stockholder named Thomas Golubinski filed a derivative complaint against certain members of the Novavax board of directors and certain members of senior management in the Delaware Court of Chancery. Novavax is a nominal defendant. The plaintiff challenges two sets of equity awards, made in April 2020 and in June 2020, on the ground that they were “spring-loaded,” that is, made at a time when certain board members or members of senior management allegedly possessed undisclosed positive material information concerning the Company. The complaint asserts claims for breach of fiduciary duty, waste, and unjust enrichment. The plaintiff seeks an award of damages to the Company, an order rescinding the April 2020 and June 2020 awards or requiring disgorgement, and an award of attorneys’ fees incurred in connection with the litigation. The defendants intend to move to dismiss the complaint in its entirety.

**Item 1A. Risk Factors**

There are no material changes to the Company’s risk factors as described in Item 1A of the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

**Item 5. Other Information**

On May 5, 2021, the Company entered into an APA with Gavi (“Gavi APA”), an independent non-profit foundation organized under the laws of Switzerland, under which Gavi agreed to purchase 350 million doses of NVX-CoV2373, subject to certain conditions, solely for the purpose of vaccinating individuals within the countries participating in the COVAX Facility. The Company previously licensed its vaccine technology to SIIPL and under the Gavi APA is jointly committed with SIIPL to deliver approximately 1.1 billion doses to the countries participating under the COVAX Facility. The vaccine doses will be manufactured and distributed globally by the Company and SIIPL under an existing agreement between Gavi and SIIPL. The Company expects to supply significant doses on a first priority basis to low, middle and high income countries, as allocated by Gavi (subject to certain limitations), utilizing a tiered pricing schedule. Under the Gavi APA, the Company expects to deliver its committed doses with antigen manufactured at facilities funded in whole or in-part by the grant the Company received from
CEPI, including Novavax CZ and production at commercial manufacturing partners, SK bioscience and BioFabri. Under the Gavi APA, the Company agreed to offer COVAX Facility buyers a designated number of doses constituting a significant majority of drug substance manufactured out of Novavax CZ, SK bioscience and BioFabri. Additionally, the Company may provide additional doses, to the extent available from CEPI funded manufacturing facilities, in the event that SIIPL cannot materially deliver expected vaccine doses to the COVAX Facility.

Under the Gavi APA, the Company expects to receive two (2) significant upfront payments, the first upon Novavax’ submission of a proposed timeline for clinical and regulatory submissions and the second after it secures emergency use listing of its vaccine by the WHO.

The Company will use best efforts to obtain emergency use authorization and emergency use listing for the Vaccine from the WHO, and use commercially reasonable efforts to obtain regulatory approval in each COVAX participant country where allocated COVAX doses are intended to be sold. Gavi will reasonably support the Company with obtaining regulatory approvals.

Gavi may terminate the Gavi APA if, among other reasons, (i) the purchase condition is not satisfied by December 31, 2021, (ii) the Company’s doses are not delivered by December 31, 2022, (iii) the Company withdraws its emergency use authorization or regulatory approval, or if the emergency use authorization or regulatory approval is revoked or materially changed, (iv) a material safety, regulatory or ethical issue pauses manufacturing, or (v) upon the occurrence of a material breach or certain adverse prohibited actions. Unless extended pursuant to the terms of the Gavi APA, the Gavi APA will terminate upon the later of (a) June 30, 2022 or (b) thirty (30) days after date all the binding purchase orders have been placed for the COVAX doses or the final balancing payment has been made.

The foregoing description of the material terms of the Gavi APA does not purport to be complete and is qualified in its entirety by reference to such agreement, which will be filed with the Securities and Exchange Commission as an exhibit to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2021.
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Item 6. Exhibits

3.1 Second Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2015, filed on August 10, 2015 (File No. 000-26770))

3.2 Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant’s Current Report on Form 8-K filed on May 9, 2019 (File No. 000-26770))

3.3 Amended and Restated By-Laws of the Registrant (Incorporated by reference to Exhibit 3.2 to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2012, filed on March 12, 2013 (File No. 000-26770))

3.4 Certificate of Designation of Series A Convertible Preferred Stock of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant’s Current Report on Form 8-K filed June 19, 2020 (File No. 000-26770))

3.5 Form of Series A Convertible Preferred Stock Certificate of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant’s Current Report on Form 8-K filed June 19, 2020 (File No. 000-26770))

10.1*± Collaboration and Exclusive License Agreement between Novavax, Inc. and SK Bioscience Company Limited, dated as of February 12, 2021

10.2*± Collaboration and Exclusive License Agreement between Novavax, Inc. and Takeda Pharmaceutical Company Limited, dated as of February 24, 2021

31.1* Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or 15d-14(e) of the Securities Exchange Act

31.2* Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or 15d-14(e) of the Securities Exchange Act

32.1* Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

32.2* Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

101 The following financial information from our Quarterly Report on Form 10-Q for the quarter ended March 31, 2021, formatted in Inline Extensible Business Reporting Language (Inline XBRL): (i) the Consolidated Balance Sheets as of March 31, 2021 and December 31, 2020, (ii) the Consolidated Statements of Operations for the three-month period ended March 31, 2021 and 2020, (iii) the Consolidated Statements of Comprehensive Loss for the three-month period ended March 31, 2021 and 2020, (iv) the Consolidated Statements of Changes in Stockholders’ Equity (Deficit) for the three-month period ended March 31, 2021 and 2020, (v) the Consolidated Statements of Cash Flows for the three-month period ended March 31, 2021 and 2020, and (vi) the Notes to Consolidated Financial Statements.

104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith or furnished.
± Certain portions of this exhibit have been omitted because they are both (i) not material and (ii) would be competitively harmful if publicly disclosed.
Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

NOVAVAX, INC.

Date: May 10, 2021

By: /s/ Stanley C. Erck

Stanley C. Erck
President and Chief Executive Officer
(Principal Executive Officer)

Date: May 10, 2021

By: /s/ John J. Trizzino

John J. Trizzino
Executive Vice President, Chief Commercial Officer, Chief Business Officer and Interim Chief Financial Officer
(Principal Financial and Accounting Officer)
Collaboration and License Agreement

Between

SK Bioscience Co., Ltd.

and

Novavax, Inc.

Dated February 12, 2021
COLLABORATION AND LICENSE AGREEMENT

This Collaboration and License Agreement (this “Agreement”) is entered into as of February 12, 2021 (the “Effective Date”) by and between Novavax, Inc., a Delaware corporation having a place of business at 21 Firstfield Rd., Gaithersburg, MD 20878 (“Novavax”) and SK bioscience Co., Ltd., a company incorporated in the Republic of Korea having a place of business at 310 Pangyo-ro, Seongnam-si, Gyeonggi-do, 134949, Republic of Korea (“SK”). Novavax and SK may, from time to time, be individually referred to as a “Party” and collectively referred to as the “Parties.”

RECITALS

WHEREAS, Novavax has developed and is the exclusive owner of a coronavirus vaccine candidate, NVX-CoV2373, comprised of its proprietary (i) BV2373 antigen (“Antigen”) and (ii) Matrix-M™ adjuvant (the “Vaccine Product”);

WHEREAS, the Parties have entered into that certain Development and Supply Agreement, dated August 11, 2020 (the “Supply Agreement”), under which SK manufactures Antigen in [***] at its facilities for Novavax’ use in the Territory (as defined in Article 1);

WHEREAS, SK has elected to exercise its option under Section 7.5 of the Supply Agreement to obtain a license from Novavax to Develop, Manufacture and/or Commercialize the Antigen and Vaccine Product in the SK Territory through the sale to the government of Korea (“Korean Government”) of forty million (40,000,000) doses of Vaccine Product [***] (the “Committed Doses”);

WHEREAS, as of the Effective Date, SK is negotiating with the Korean Government an advance purchase agreement which shall set for the terms and conditions of SK’s sale, and the Korean Government’s purchase, of the Committed Doses (the “Korean APA”), which agreement shall be executed promptly following the Effective Date;

WHEREAS, SK anticipates that under the Korean APA the Committed Doses shall be delivered in two stages, in the form of Antigen into a designated storage facility and, upon the request of the Korean Government, in the form of Vaccine Product;

WHEREAS, [***]; and

WHEREAS, the Parties wish to enter into this Agreement to set forth the specific terms and conditions of such license grant to SK, the manufacture of the Antigen in [***], and each Party’s attendant rights and obligations.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

Article 1
DEFINITIONS

1.1 “Adjuvant” means the Novavax’ saponin-based adjuvant, comprised of its components, Matrix-A and Matrix-C (the “Adjuvant Components”), in an [***] ratio.

1.2 “Adjuvant Components” has the meaning set forth in the definition of “Adjuvant.”
1.3 “Affiliates” means, with respect to a Party, any Person that controls, is controlled by, or is under common control with that Party. For the purpose of this definition, “control” will refer to: (a) the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise; or (b) the ownership, directly or indirectly, of 50% or more of the voting securities of such entity.

1.4 “Agreement” has the meaning set forth in the preamble.

1.5 “Antigen” has the meaning set forth in the preamble.

1.6 “Antigen Product” means Antigen as a bulk product.

1.7 “Antigen Product Technology Transfer” means the transfer from Novavax to SK of Intellectual Property, including Novavax Supplied Items, in Novavax’ control that is necessary for SK to perform Process Development and scale-up related to the planned Development and Manufacture of Antigen Product.

1.8 “Applicable Law” means any applicable federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule or regulation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Authority, including the applicable regulations and guidance of any relevant Regulatory Authority (and national implementations thereof) that constitute good laboratory practices, GMP and good clinical practices (and, if and as appropriate under the circumstances, International Conference on Harmonization (ICH) guidance or other comparable regulation and guidance of any applicable Governmental Authority), related to the performance of this Agreement.

1.9 “Background Intellectual Property” means any and all Intellectual Property of a Party, which, as demonstrated by admissible evidence, (i) already existed as of the Effective Date of this Agreement or (ii) was developed or obtained by or on behalf of such Party independent of this Agreement, and without reliance upon the Confidential Information of the other Party.

1.10 “Batch” means a quantity of the applicable Transaction Product that is intended to have uniform character and quality and that has been or is being supplied in accordance with the applicable Product Requirements during the same cycle of Manufacturing.

1.11 “Binding Forecast” has the meaning set forth in Section 7.2 (Forecast Beyond [***]).

1.12 “Breaching Party” has the meaning set forth in Section 16.2.1 (Termination for Cause).

1.13 “Business Day” means any day other than a Saturday, Sunday, or bank or other public holiday in Washington D.C. or the Republic of Korea.

1.14 “Calendar Quarter” means the respective periods of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st in any Calendar Year.

1.15 “Calendar Year” means any calendar year beginning on January 1st and ending on December 31st.

1.16 [***].
“Certificate of Analysis” or “CoA” means, with respect to a Batch, a certificate in the applicable format for the applicable product manufactured under GMP, from time to time during the Term, issued by Supplier and executed by Supplier’s responsible person certifying that a Batch meets the Product Requirements and such other criteria as identified in the Certificate of Analysis.

“Certificate of Conformance” or “CoC” means, with respect to a Batch, a certificate in the applicable format for the applicable product from time to time during the Term, issued by Supplier’s quality department and executed by Supplier’s responsible person (a) listing the date of Manufacturing date, unique Batch number, and quantity of the applicable Product in such Batch, (b) certifying that such Batch was Manufactured in compliance with the applicable Product Requirements, and (c) certifying that all investigative and corrective action reports are completed and approved.

“Claims” means collectively, any and all Third Party demands, claims, actions, suits, and proceedings (whether criminal or civil, in contract, tort or otherwise) for damages, debts, obligations and other liabilities, losses, claims, taxes, interest obligations, deficiencies, judgments, assessments, fines, fees, penalties or expenses (including amounts paid in settlement, interest, court costs, costs of investigators, reasonable fees and expenses of attorneys, accountants, financial advisors, consultants and other experts, and other expenses of litigation).

“Collaboration Antigen Product” means Antigen Product Manufactured by SK under this Agreement, excluding SK Antigen Product, for use by Novavax in the Novavax Territory.

“Commercialize” or “Commercialization” means to market, promote, otherwise offer for sale, distribute, and sell. When used as a verb, “to Commercialize” and “Commercializing” means to engage in Commercialization and “Commercialized” has a corresponding meaning.

“Commercially Reasonable Efforts” means, [***].

“Confidential Information” has the meaning set forth in Section 13.1 (Definition).

“Cure Period” has the meaning set forth in Section 16.2.1 (Termination for Cause).

“Develop” or “Development” means to discover, research, or otherwise develop any compound or product, including conducting non-clinical research or clinical trials prior to or after receiving Regulatory Approval and any formulation, Technology Transfer or Process Development with respect to any compound or product. When used as a verb, “Develop” means to engage in Development.

“Disclosing Party” has the meaning set forth in Section 13.1 (Definition-Confidential Information).

“Dollar” means the U.S. dollar, and “$” will be interpreted accordingly.

“Effective Date” has the meaning set forth in the preamble.

“Executive Officers” has the meaning set forth in Section 2.4.2 (Decisions of the JSC).
1.31 “Exploit” means to Develop, Commercialize, Manufacture, and otherwise exploit. When used as a verb, “Exploit” and “Exploiting” means to engage in exploitation and “Exploited” has a corresponding meaning.

1.32 “Firm Order” has the meaning set forth in Section 8.1 (Forecast).

1.33 “Force Majeure” has the meaning set forth in Section 18.12 (Force Majeure).

1.34 “General Process Improvements” means Improvements that are generally applicable to Manufacture of pharmaceutical or biological products and shall not include Improvements that (i) are only applicable to the Vaccine Product, the Antigen Product and/or require the use of either the Vaccine Product and/or the Antigen Product, (ii) are developed with the aid, or require use of, Confidential Information of Novavax, and/or (iii) are Improvements of Intellectual Property of Novavax disclosed to SK under this Agreement.

1.35 “Good Manufacturing Practices” or “GMP” means all applicable current good Manufacturing practices, including, as applicable, (a) the principles detailed in the U.S. Current Good Manufacturing Practices, 21 C.F.R. Parts 4, 11, 210, 211, 601, 610 and 820, (b) European Directive 2003/94/EC and Eudralex 4, (c) the principles detailed in the International Conference on Harmonization’s Q7 guidelines, or (d) the equivalent Applicable Law in any relevant country or region, each as may be amended and applicable from time to time.

1.36 “Governmental Authority” means any arbitrator, court, judicial, legislative, administrative or Regulatory Authority, commission, department, board, bureau or body, or other government authority or instrumentality or any person or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, whether foreign or domestic, whether federal, state, provincial, municipal, or other.

1.37 “Improvements” means all discoveries, inventions, developments, modifications, innovations, updates, enhancements, improvements, writings or rights, and other Intellectual Property that are made, discovered, conceived, created, invented, developed, or reduced to practice in the performance of this Agreement.

1.38 “Indemnified Party” has the meaning set forth in Section 15.3 (Indemnification Procedure).

1.39 “Initial Adjuvant Forecast” has the meaning set forth in Section 8.1 (Forecast).

1.40 “Initial Forecast” has the meaning set forth in Section 7.2 (Initial Forecast).

1.41 “Inspectee” has the meaning set forth in Section 10.3 (Inspection).

1.42 “Intellectual Property” means all Know-How, copyrights, trademarks, patents, trade secrets, designs, information, documentation, drawings, methods, techniques, data, regulatory submissions, specifications, and other intellectual property of any kind (whether or not protected under patent, trademark, copyright or similar laws).

1.43 “Investigation Period” has the meaning set forth in Section 6.7 (Non-Conforming Batches).

1.44 “JSC” has the meaning set forth in Section 2.1 (Formation of JSC).

1.45 “JSC Chairperson” has the meaning set forth in Section 2.1 (Formation of JSC).
1.46 “Know-How” means any records, chemical or biological materials, know-how, processes, techniques, show-how, design information, formulation, technology, practices, trade secrets, inventions, methods, data (including animal data, raw data, clinical data, and quality control data) and results in any form whatsoever, whether patentable or not.

1.47 “Latent Defect” means a defect that causes a Batch to fail to conform to the Product Requirement, which condition is not capable of being discovered upon inspection and testing in accordance with Section 6.7 (Non-Conforming Batches).

1.48 “Manufacture” or “Manufacturing” means to make, produce, manufacture, process, fill, finish, package, label, perform quality assurance testing, release, deliver, or otherwise ship or store Antigen Product, Vaccine Product or any component thereof. When used as a noun, “Manufacture” or “Manufacturing” means any and all activities involved in Manufacturing any Antigen Product, Vaccine Product or any component thereof.

1.49 “Manufacturing Process” means the process, or applicable portion(s) thereof, for the Manufacture, analysis, documentation, quality evaluation, storage, and shipping of components, and intermediates, of Antigen Product or Vaccine Product, as the case may be.

1.50 “Master Batch Record” means the production record for a Batch, which will be prepared and maintained in Suppliers standard format in accordance with the applicable Quality Agreement. In case of SK, Master Batch Records and other Batch documents shall be written in Korean and, upon the request of Novavax, SK shall provide an English translation of such Master Batch Record certified to be an accurate and complete translation by SK’s quality assurance department.

1.51 “MFDS” means the Republic of Korea’s Ministry of Food and Drug Safety and any successor agency thereto.

1.52 “Minimum Order” has the meaning set forth in Section 8.1 (Forecast).

1.53 “New Delivery Date” has the meaning set forth in Section 6.9.1 (Remedy for Supplier Responsibility).

1.54 “Net Sales” means, with respect to the SK Antigen Product and/or SK Vaccine Product (the “SK Products”), the gross amounts invoiced by SK, its Affiliates and its respective sublicensees for sales of such SK Product to unaffiliated third parties, less the following deductions, to the extent reasonable and customary, provided to unaffiliated entities and actually allowed and taken with respect to such sales:

   1.54.1 [***];
   1.54.2 [***];
   1.54.3 [***];
   1.54.4 [***]; and
   1.54.5 [***].

1.55 “Non-Breaching Party” has the meaning set forth in Section 16.2.1 (Termination for Cause).
1.56 "Non-Conformance Claim" has the meaning set forth in Section 6.7 (Non-Conforming Batches).

1.57 "Novavax Improvements" has the meaning set forth in Section 12.2.2 (Novavax Improvements).

1.58 "Novavax Indemnified Party" has the meaning set forth in Section 15.1 (Indemnification by SK).

1.59 "Novavax Supplied Items" means the items provided by the Novavax to SK under this Agreement, including without limitation any other tangible items, information, or documentation supplied by Novavax in connection with the performance of this Agreement, including but not limited to the Manufacturing Process, any active pharmaceutical ingredient, critical reagents, master cell bank, working cell bank, master virus seed, plasma, component, or raw materials. For the greater clarity, any equipment supplied by Novavax to SK under the Supply Agreement shall be excluded from Novavax Supplied Items.

1.60 "Novavax Territory" means the world except for the SK Territory.

1.61 "Novavax Vaccine Product" has the meaning set forth in Section 9.1 (Supply of Novavax Vaccine Product).

1.62 "Party" has the meaning set forth in the preamble.

1.63 "Person" means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, Governmental Authority or any other form of entity not specifically listed herein.

1.64 [***].

1.65 "Process Development" means the conduct by SK of activities to develop, confirm and/or refine processes for producing the Antigen Product or Vaccine Product and/or activities to develop, scale-up, optimize, qualify and/or validate the Manufacturing Process (including process performance qualification) suitable for GMP Manufacture of the Antigen Product or Vaccine Product, as the case may be.

1.66 "Product Requirements" means the applicable Specifications, Certificate of Analysis, and Certificate of Conformance, GMP, the Master Batch Record, this Agreement, the Quality Agreement, any applicable Regulatory Approval, the requirements of all applicable Regulatory Authorities, and Applicable Law.

1.67 "Purchaser" means SK with respect to the supply of the Novavax Vaccine Product or Adjuvant and Novavax with respect to the supply of the Collaboration Antigen Product, as the case may be.

1.68 "PVA" has the meaning set forth in Section 10.6 (Adverse Event Reporting).

1.69 "Quality Agreement" means the agreement to be made between the Parties to establish the quality assurance standards and responsibilities of each Party in connection with the applicable Batch, which shall be attached hereto and incorporated herein. The Quality Agreement with respect to the Supply Agreement has been entered into between the Parties as of [***]. Quality Agreements with respect to the Transaction Product shall be
separately entered between the Parties at least [***] prior to the date of the first delivery of each Transaction Product, as applicable.

1.70 “Raw Materials” has the meaning set forth in Section 3.2 (Raw Materials).

1.71 “Recall” means any recall or market withdrawal of any Antigen Product or Vaccine Product that was Manufactured pursuant to this Agreement.

1.72 “Receiving Party” has the meaning set forth in Section 13.1 (Definition-Confidentiality).

1.73 “Records” has the meaning set forth in Section 11.4.1 (Record Retention).

1.74 “Regulatory Approval” means all technical, medical, and scientific licenses, registrations, authorizations, and approvals (including, without limitation, emergency use authorizations or approvals) of any Regulatory Authority necessary for the Exploitation of a pharmaceutical or biologic product in a given country in the Territory.

1.75 “Regulatory Authority” means any governmental agency or authority responsible for granting Regulatory Approvals for (i) the Collaboration Antigen Product in the Novavax Territory, (ii) SK Antigen Product and SK Vaccine Product in the SK Territory or (iii) Novavax Vaccine Product in the Territory.

1.76 “Release” has the meaning set forth in Section 6.4 (Release of Batch).

1.77 “Representative” has the meaning set forth in Section 13.2 (Obligations).

1.78 “SK Antigen Product” means the Antigen Product Manufactured by SK for sale in the SK Territory including the sale to the Korean Government.

1.79 “SK Facility” means [***] of the manufacturing facility [***]. [***]. [***].

1.80 “SK Improvements” has the meaning set forth in Section 12.2.1 (SK Improvements).

1.81 “SK Indemnified Party” has the meaning set forth in Section 15.2 (Indemnification by Novavax).

1.82 “SK Territory” means the Republic of Korea, which may only be extended by prior mutual written agreement between the Parties.

1.83 “SK Vaccine Product” means the Vaccine Product Manufactured by SK for sale in the SK Territory including the sale to the Korean Government.

1.84 “Specifications” means the specifications or similar requirement for the applicable product that are set by Supplier or Purchaser or changes to such specifications made at the request of a Regulatory Authority in the Territory after the applicable regulatory approval has been granted for the relevant product, as applicable.

1.85 “Statement of Work” or “SOW” means with respect to the Collaboration Antigen Product, a mutually agreed upon document setting forth the scope of the project, general statement of stages and activities, the schedule of payments and milestones, deliverables and other pertinent information, in order to initiate Technology Transfer, Process Development (if appropriate) including Manufacture of Development Antigen Product and preparation of the project plan. Once finalized and signed by both Parties, the project plan is incorporated into and deemed a part of this Agreement (Statement of Work).
1.86 “Subcontractor” means a Third Party contractor engaged by a Party to perform certain obligations or exercise certain rights on behalf of such Party under this Agreement (including all Third Party contract manufacturing organization).

1.87 [***].

1.88 “Supplier” means, with respect to the supply of the Novavax Vaccine Product or Adjuvant as, Novavax and with respect to the supply of the Collaboration Antigen Product SK, as the case may be.

1.89 “Supplier Responsibility” has the meaning set forth in Section 6.7 (Non-Conforming Batches).

1.90 “Term” has the meaning set forth in Section 16.1 (Term).

1.91 “Territory” means the combined Novavax Territory and the SK Territory.

1.92 “Third Party” means any Person other than a Party or an Affiliate of a Party.

1.93 [***].

1.94 “Transaction Product” means Novavax Vaccine Product, Adjuvant or Collaboration Antigen Product as the context dictates herein.

1.95 “U.S.” means the United States of America, including all territories and possessions, as constituted as of the Effective Date.

1.96 “Updated Adjuvant Forecast” has the meaning set forth in Section 8.1 (Forecast).

1.97 “Updated Forecast” has the meaning set forth in Section 7.2 (Forecast Beyond [***]).

1.98 “Vaccine Product” has the meaning set forth in the preamble.

1.99 “Vaccine Product Technology Transfer” means the transfer from Novavax to SK of Intellectual Property in Novavax’ control that is necessary for SK to perform Process Development and scale-up related to the planned Manufacture of Vaccine Product.

1.100 “WHO” means the World Health Organization.

1.101 “Written Confidentiality Obligations” has the meaning set forth in Section 13.2 (Obligations-Confidentiality).

Article 2

JOINT STEERING COMMITTEE

2.1. Formation of JSC. As soon as practicable, but no later than [***] following the Effective Date, the Parties will form a joint steering committee ("JSC") to monitor and coordinate the Exploitation of the SK Antigen Product, SK Vaccine Product and Collaboration Antigen Product throughout the Territory. The JSC will be composed of [***] representatives from each Party, each of whom shall have the appropriate knowledge and expertise and requisite decision-making authority. Each Party may replace any of its representatives on the JSC and appoint a person to fill the vacancy arising from each such replacement. A Party that replaces a representative will notify the other Party of such replacement at least [***] prior to the next scheduled meeting of the JSC. The JSC will have a chairperson ("JSC Chairperson"). A designated representative of Novavax will be the JSC Chairperson until
and thereafter the JSC Chairperson will be selected alternately, [***], by SK and then by Novavax. The JSC Chairperson will be responsible for setting the agenda for JSC meetings, with input from the other members, and for conducting the JSC meetings. Each Party’s representatives on the JSC will inform and coordinate within their respective organization to enable each Party to fulfill its obligations as agreed upon between the Parties under this Agreement, including within the time frames set forth hereunder.

2.2. JSC Responsibilities. The JSC will have oversight and information sharing responsibilities and functions with respect to the worldwide Development, Manufacture, Commercialization, and other Exploitation of the SK Antigen Product, SK Vaccine Product and Collaboration Antigen Product. The JSC will, amongst other duties and responsibilities:

2.2.1. review, discuss and report on activities related to and progress of the Development, Manufacture and Commercialization of the Antigen Product (including the Antigen Product being Manufactured under the Supply Agreement) and SK Vaccine Product;

2.2.2. resolve disputes between the Parties in connection with the performance of this Agreement;

2.2.3. establish subcommittees as it deems necessary in order for the JSC to carry out its oversight responsibilities; and

2.2.4. perform such other functions as expressly set forth in this Collaboration Agreement or allocated to the JSC by the Parties’ written agreement.

2.3. JSC Meetings.

2.3.1. Meeting Agendas. Each Party will disclose to the other Party the proposed agenda items for each meeting of the JSC along with appropriate information at least [***] in advance of each such meeting; provided that under exigent circumstances requiring JSC input, a Party may provide its agenda items to the other Party within a shorter period of time in advance of a meeting, or may propose that there not be a specific agenda for a particular meeting, so long as such other Party consents to such later addition of such agenda items or the absence of a specific agenda for such JSC meeting. Each Party will submit to the JSC at least [***] prior to any meeting of the JSC all reports and other information required to be submitted by such Party to the JSC at such meeting under this Agreement.

2.3.2. Meetings. The JSC will hold meetings at such times as it elects to do so, but will meet no less frequently than [***], unless otherwise agreed by the Parties. The JSC may meet in person or by means of teleconference, Internet conference, videoconference, or other similar communication method. [***].

2.3.3. Meeting Minutes. Within [***] following each meeting of the JSC, the JSC Chairperson will cause to be prepared and will provide to the other Party a draft of reasonably detailed written minutes describing all matters reviewed or considered by the JSC, together with all determinations made and actions taken by the JSC and a summary of the reasons therefor stated by the members at the meeting. Such meeting minutes must be finalized by approval of the members of the JSC within [***] after the meeting. The minutes, including all drafts thereof, will be the Confidential Information of both Parties.
2.3.4. **Non-Member Attendance.** Each Party may from time to time invite a [* ***] number of participants (which may include legal counsel), in addition to its representatives, to attend a meeting of the JSC in a non-voting capacity, if such participants have expertise that is relevant to the planned agenda for such JSC meeting; provided that if a Party intends to have any Third Party (including any consultant) attend such a meeting, then such Party will provide [* ***] notice to the other Party reasonably in advance of such meeting and will ensure that such Third Party is bound by obligations of confidentiality and non-use at least as stringent as those set forth in Article 13 (Confidentiality). Notwithstanding anything to the contrary set forth in this Agreement, if the other Party objects in good faith to the participation of such Third Party in such meeting due to a bonafide concern regarding competitively sensitive information that is reasonably likely to be discussed at such meeting, then such Third Party will not be permitted to participate in such meeting (or the portion thereof during which such competitively sensitive information is reasonably likely to be discussed).

2.4. **Decision Making.**

2.4.1. **General Process.** Unless otherwise agreed in writing between the Parties, the JSC will only have the powers expressly assigned to it in this Article 2 (Joint Steering Committee) and will not have the authority to: (a) modify or amend the terms and conditions of this Agreement; or (b) waive either Party's compliance with the terms and conditions of this Agreement. All decisions of the JSC will be made by [* ***], with each Party’s representatives having one vote (i.e., one vote per Party). No action taken at any meeting of the JSC will be effective unless there is a quorum at such meeting, and at all such meetings, a quorum will be reached if [* ***] voting representatives of each Party are present or participating in such meeting.

2.4.2. **Decisions of JSC.** The JSC will use good faith efforts, in compliance with this Section 2.4.2. (Decisions of the JSC), to [* ***] resolve any such matter for which it has authority. If, after the use of good faith efforts, the JSC is unable to resolve any such matter that is within the scope of the JSC’s authority or any other disagreement between the Parties that may be referred to the JSC, in each case, within a period of [* ***], then a Party may refer such matter for resolution in accordance with Section 18.1.1 (Escalation) to the Chief Executive Officer of Novavax (or an executive officer of Novavax designated by the Chief Executive Officer of Novavax who has the power and authority to resolve such matter) and the Chief Executive Officer of SK (or an executive officer of SK designated by the Chief Executive Officer of SK who has the power and authority to resolve such matter) (collectively, the “Executive Officers”).

2.5. **Resolution of JSC Disputes.** If a Party makes an election under Section 2.4.2(Decisions of the JSC) to refer a matter on which the JSC cannot reach a [* ***] decision for resolution by the Executive Officers, then the JSC will submit in writing the respective positions of the Parties to their respective Executive Officers. The Executive Officers will use good faith efforts to resolve any such matter so referred to them [* ***], and any final decision that the Executive Officers agree to in writing will be conclusive and binding on the Parties.

2.6. **Limitations on Decision-Making.** Notwithstanding anything to the contrary set forth in this Agreement, without the other Party’s [* ***] consent, no decision of the JSC or a Party's Executive Officers, in each case, may [* ***].
Article 3

ANTIGEN PRODUCT TECHNOLOGY TRANSFER AND PROCESS DEVELOPMENT

3.1. Antigen Product Technology Transfer. As of the Effective Date, the Parties hereby acknowledge they are completing Antigen Product Technology Transfer with respect to Manufacture of Antigen Product [***]. Novavax agrees to provide the additional materials, data, information and/or documentations required for SK’s performance under this Agreement as specified in Exhibit A of this Agreement. To the extent mutually agreed by the Parties, Novavax shall provide additional information, data or material required for SK’s performance under this Agreement. Each of the Parties shall bear their own respective internal costs associated with execution of the Antigen Product Technology Transfer under this Section 3.1.

3.2. Raw Materials.

3.2.1. Procurement. Unless specifically stated otherwise in this Agreement or agreed to be provided by Novavax, SK will take responsibility for the procurement of all required raw materials as well as consumables (collectively the “Raw Materials”) other than Novavax Supplied Items and shall cooperate with Novavax on obtaining the most favorable pricing. Novavax acknowledges that there may be circumstances outside of reasonable control of SK that could delay SK’s procurement of Raw Materials and SK is not responsible for such delays.

3.2.2. Novavax’ Assistance. Novavax shall provide reasonable support for SK’s procurement of Raw Materials. In doing so, SK may reasonably request that Novavax reallocate one or more Raw Materials procured under the Supply Agreement, which Novavax will not unreasonably refuse, provided such reallocation does not materially impact the production of Antigen Product under the Supply Agreement, as reasonably determined by Novavax. [***].

Article 4

SK VACCINE PRODUCT TECHNOLOGY TRANSFER

4.1. Vaccine Product Technology Transfer. The Parties shall perform the Vaccine Product Technology Transfer, which shall include certain materials, data, information and/or documentations required for SK’s performance under this Agreement as specified in Exhibit A of this Agreement. Notwithstanding the aforementioned, Novavax shall not be obligated to transfer Know-How relating to the Manufacture of the Adjuvant Components. Each of the Parties shall bear their own respective internal costs associated with execution of the Vaccine Product Technology Transfer under this Section 4.1.

4.2. [***]. [***]. [***]. [***].

4.3. [***]. [***]. [***]. [***].

4.4. Development Support. Novavax will provide information, data and assistance (to the extent it has resources to do so and reasonably requested by SK) relating to adjuvanted formulation Development including any data pertaining to the Adjuvant, instructions for the formulation process, information about any necessary equipment required for such formulation. SK shall have access to reasonable quantities of excess Antigen Product...
Manufactured under the Supply Agreement that will not be used by Novavax for its commercial supply or any other purpose, for purposes of formulation Development by SK under this Agreement. Novavax shall provide SK with [***], and any regulatory activities relating thereof, promptly after Effective Date, as specified in the Exhibit A.

**Article 5**

**COMMERCIAL MANUFACTURE AND SUPPLY OF ANTIGEN PRODUCT**

5.1. **Antigen Supply.** The Parties anticipate that approximately [***] Batches of Antigen Product will be Manufactured at SK Facility in [***] on condition that there will be no constraint on Manufacturing the Antigen Product beyond SK’s reasonable control, including any constraint in procuring Raw Materials or unexpected issues in Manufacturing of the Vaccine Product or maintaining Regulatory Approval of the SK Vaccine Product. Subject to Section 5.3 (Allocation of Antigen Product), the allocation of such Antigen Product produced in [***] for use as Collaboration Antigen Product after SK’s fulfillment of its obligation to supply the Committed Doses to the Korean Government under the Korean APA shall be mutually agreed in good faith by the Parties, as set forth in an SOW, within [***] after the Regulatory Approval of the SK Vaccine Product in SK Territory is granted (expected in [***]). Upon execution of SOW, SK will (itself or through one or more Subcontractors) Manufacture and supply Collaboration Antigen Product as mutually agreed by the Parties for Commercialization in the Novavax Territory by Novavax.

5.2. **Supply Beyond [***].** By [***], the Parties (i) shall make a mutual decision on whether to extend use of SK Facility for Manufacture of Antigen Product beyond [***] and (ii) if so extended, discuss and negotiate in good faith the Manufacture and supply of Collaboration Antigen Product beyond [***]. Any such agreement shall be memorialized in a separate SOW.

5.3. **Allocation of Antigen Product.** For the avoidance of doubt, the Committed Doses of SK Antigen Product to be supplied to the Korean Government shall be prioritized among any other allocation of any supply of Antigen Product and all remaining allocation shall be made available for use as Collaboration Antigen Product.

**Article 6**

**GENERAL TERMS AND CONDITIONS FOR SUPPLY OF TRANSACTION PRODUCT**

6.1. **General.** The terms and condition as set forth in this Article 6 shall apply to the supply of (i) the Novavax Vaccine Product or Adjuvant by Novavax to SK and (ii) the Collaboration Antigen Product by SK to Novavax. For the purposes of this Article 6, “Supplier” and “Purchaser” shall refer to either Novavax or SK as the context dictates.

6.2. **Specifications.** Specifications for any and all Transaction Product will be specified in SOWs or the applicable Quality Agreement. The Parties may update the Specifications from time to time by written agreement, provided, however, that Supplier may make changes to the Specifications for Release of the applicable Transaction Product upon written notice to and approval from Purchaser and otherwise in accordance with the applicable Quality Agreement. The reasonable costs for changes requested by a Party shall be borne by the Party making such request.

6.3. **Product Packing.** The applicable Transaction Product supplied by Supplier will include all packaging and labeling in accordance with the Product Requirements.
6.4. **Release of Batch.** If a Batch meets the applicable Product Requirements for a Transaction Product, then it will be released by Supplier to Purchaser when (a) the Manufacture of such Batch is complete, (b) documentation which supports the Manufacture of such Batch in compliance with GMP has been prepared, reviewed, and approved by Supplier’s quality assurance department, (c) all testing of such Batch is completed, reviewed, and approved by Supplier’s quality assurance department, (d) the Certificate of Analysis and Certificate of Conformance are issued in executed form, (e) all deviations have been reviewed and adequately addressed by Supplier’s quality assurance department, and (f) all other requirements under the applicable Quality Agreement with respect to release of such Batch have been met (“Release”). Supplier will keep Purchaser updated as to the proposed schedule and time for Release of each Batch. Supplier will [****] notify Purchaser if Supplier is aware that it will be unable to meet any deadline for Release of a Batch. Following any such Release of Batch by the Supplier, Purchaser is responsible for final release of Batch for further Manufacturing, if applicable, as specified in the applicable Quality Agreement.

6.5. **Quality Control and Quality Assurance.** Supplier’s quality assurance group will be responsible for performing the applicable quality control and quality assurance testing for each Transaction Product, as specified in the applicable Quality Agreement. Supplier will be responsible for all Batch review and Release to Purchaser. Supplier will perform all Batch review and Release responsibilities in accordance with Supplier’s standard operating procedures, the applicable Specifications, the Quality Agreement, GMP, and Applicable Law. Upon the completion of the Manufacture of a Batch, Supplier will provide Purchaser with a Certificate of Analysis and Certificate of Conformance for the Batch for commercial purposes establishing that such Batch satisfies all applicable quality and Release characteristics, including the applicable Product Requirements for such Transaction Product in such form.

6.6. **Stability Testing.** Supplier will ensure stability testing is conducted in accordance with the applicable Quality Agreement, on Transaction Products supplied under this Agreement in accordance with the protocols set forth in the applicable Specifications for each such Transaction Product. Supplier will not make any changes to any such testing protocols without prior written approval from Purchaser. If a confirmed stability test failure occurs, then Supplier will notify Purchaser within agreed timelines as specified in the applicable Quality Agreement, after which Supplier and Purchaser will jointly determine the procedures and methods to be undertaken to investigate the cause of the failure.

6.7. **Non-Conforming Batches.** Purchaser will have the right to inspect and determine whether each Batch conforms to the applicable Product Requirements. During the [****] period after delivery of each Batch or after Release of Batch, whichever occurs later, Purchaser may reject any Batch that does not conform to the applicable Product Requirements by providing written notice thereof to Supplier; provided, however, that with respect to any Batch that includes a Latent Defect, such [****] period shall not commence until Purchaser discovers or otherwise becomes aware of such Latent Defect but provided, further, that such notice must be given before the expiration of the initial shelf-life of the any such Batch prior to any re-testing period. Any claim by Purchaser that the Batch does not meet the applicable Product Requirements must be made in writing to Supplier within such applicable [****] (the “Non-Conformance Claim”). Upon Purchaser’s timely notification to Supplier of Purchaser’s rejection of a Batch, [****] shall reasonably cooperate with each other to [****]
investigate, confirm and analyze whether or not the rejected Batch meets the applicable Product Requirements and the root cause of non-conforming Batch in accordance with the applicable Quality Agreement within *** of Supplier’s receipt of the Non-Conformance Claim (the “Investigation Period”). Upon Supplier’s written request, if applicable, Purchaser shall deliver to Supplier samples of the rejected Batch for Supplier’s evaluation. If, subject to Section 6.8 (Non-Conformance Disputes), the Parties agree that the rejected Batch is in non-conformance and *** (“Supplier Responsibility”), *** will be entitled to *** with respect to such Batch.

6.8. Non-Conformance Disputes. In the event of a disagreement between the Parties concerning whether or not a Batch meets the applicable Product Requirements and/or the non-conformance is a Supplier Responsibility subject to Section 6.7 (Non-Conforming Batches), Purchaser and Supplier will appoint *** to undertake investigation and analysis of the Batch to determine whether or not it meets the applicable Product Requirements and which Party is responsible for the non-conformance. *** will be selected by a mutual agreement of Purchaser and Supplier; provided if the Parties are unable to agree on a *** within *** of the end of the Investigation Period, either Party may bypass Section 18.1.1 (Escalation) and commence arbitration proceedings under Section 18.1.2 (Arbitration) any such non-conformance dispute. Each Party will promptly and in good faith cooperate with and provide all information, documentation, and materials in its power or possession relevant to the disagreement to ***. The findings of the *** will be binding and provided in writing. If the *** determines that the Batch does not meet the applicable Product Requirements and such non-conformance is a Supplier Responsibility, *** will be entitled to *** with respect to such Batch and *** shall bear the costs associated with the engagement of ***.

6.9. Remedies for Non-Conforming or Short Orders.

6.9.1. Remedy for Supplier Responsibility. If any delivery of Transaction Product to Purchaser of (a) a Batch of is timely rejected by Purchaser or discovered to contain a Latent Defect, and such Batch does not meet the applicable Product Requirements and such non-conformance is a Supplier Responsibility, as determined in accordance with Section 6.7 (Non-Conforming Batch) and/or Section 6.8 (Non-Conformance Disputes) or (b) any quantity of Transaction Product is short against the quantity specified in a purchase order and such shortfall did not directly result from a Force Majeure, Supplier shall, [***], replace the short or non-conforming Transaction Product that conforms to the Product Requirement, [***], by a date mutually agreed by the Parties (“New Delivery Date”). If Supplier is not able to Manufacture and deliver such replacement the Transaction Product by the New Delivery Date or if the Parties are not able to agree to a New Delivery Date within [***] from the initiation of such discussion for the New Delivery Date, [***]. If Purchaser did not already pay the non-conforming Transaction Product resulting from a Supplier Responsibility or shortfall, [***].

Supplier will instruct Purchaser to destroy or return any non-conforming Transaction Product at [***] and request Purchaser to provide with a destruction certificate. The costs and expenses related thereof will be borne by [***]

Purchaser agrees and acknowledges that the foregoing is its sole remedy with respect to any non-conforming Batch that is a Supplier Responsibility under a particular SOW, if
applicable, or applicable purchase order and which are Manufactured before Supplier’s receipt of the applicable Non-Conformance Claim pursuant to Section 6.7 (Non-Conforming Batches), and hereby waives all other remedies at law or in equity with respect to such non-conforming Batch. The Parties acknowledge and agree that upon Supplier’s receipt of the applicable Non-Conformance Claim the production of the applicable Transaction Product may be suspended through a good faith discussion between the Parties for the purpose of investigating the root cause of such non-conforming Batch herein before the production of the Transaction Product is resumed.

6.10. **Recalls.** Each Party will keep the other Party [***] and fully informed of (a) any notification or other information, whether received directly or indirectly, that might result in a Recall, or (b) any quality or risk issues related to the applicable Transaction Product. Purchaser will have sole discretion, in consultation with Supplier only in case of a Recall due to a Supplier Responsibility or failure of Supplier to Manufacture the applicable Transaction Product in accordance with cGMP, Specifications or other Applicable Laws, over whether and under what circumstances to require a Recall in the Purchaser’s Territory. [***] will be responsible for all costs and expenses associated with all other Recalls. If a Recall is solely due to [***], [***] will be responsible for all costs and expenses associated with such Recall. Each Party will cooperate as requested by the Party responsible for recall. In the event of a disagreement between the Parties concerning whether or not a Recall is a Supplier Responsibility, the procedures as set forth in Section 6.8 (Non-Conformance Disputes) shall apply.

**Article 7**

**FORECASTS, PURCHASE ORDERS, DELIVERY OF COLLABORATION ANTIGEN PRODUCT**

7.1. **General.** Unless otherwise specified in this Agreement, this Article 7 governs the procedures and the Parties’ rights and obligations with respect to forecasts, purchase orders and delivery for Collaboration Antigen Product to applicable Product Requirements. The Parties agree that SK will sell and Novavax will buy [***] of Collaboration Antigen Product Manufactured in the SK Facility [***] and allocated to Novavax in accordance with Article 5 (Commercial Manufacture and Supply of Antigen Product).

7.2. **Forecast Beyond [***].** As soon as [***] and subject to Article 5, the JSC will discuss and approve a mutually developed initial non-binding forecast of Novavax’ anticipated demand for Collaboration Antigen Product for commercial sale in the Novavax Territory in [***], which will be non-binding and for planning purpose only (the **“Initial Forecast”**). The JSC will update the Initial Forecast on a [***] rolling basis no less than [***] before the beginning of each Calendar Quarter (an **“Updated Forecast”**). Beginning in the Updated Forecast containing the quantity of Collaboration Antigen Product to be supplied under the first purchase order issued in accordance with Section 7.3 (Purchase Orders), the quantity of Collaboration Antigen Product forecasted for the [***] of such and each subsequent Updated Forecast shall be binding on Novavax and SK (each a **“Binding Forecast.”**). Notwithstanding the foregoing, the Parties shall [***] upon completion of process validation or process performance qualification of the Collaboration Antigen Product and pursuant to the relating to SOW(s).

7.3. **Purchase Orders.** For the Collaboration Antigen Product Manufactured in [***], Novavax shall issue a firm written purchase order [***] after the execution of the applicable SOW(s).
For Collaboration Antigen Product Manufactured beyond [***], and based on the Updated Forecast and Binding Forecast, Novavax will issue purchase orders for SK to Manufacture and deliver specified quantities of Collaboration Antigen Products for commercial sale at least [***] prior to the applicable delivery date for such Collaboration Antigen Products. Each purchase order will specify the quantity of Collaboration Antigen Product being ordered (which will be in whole Batches), the requested delivery date, Novavax’ purchase order number, and any other information necessary to ensure the timely Manufacture and delivery of such Antigen Product.

7.3.1. Acceptance of Purchase Orders. SK will review each purchase order no later than [***] after SK’s receipt of each such purchase order, SK will confirm such purchase order and notify Novavax in writing of the actual delivery date for delivery of Collaboration Antigen Product ordered (which date may not be more than [***] later than the requested delivery date set forth in such purchase order, unless otherwise agreed by the Parties in writing); provided that [***]. If SK fails to provide such notice to Novavax within the applicable [***] period, then such purchase order will automatically be accepted for delivery upon the delivery date specified in such purchase order. The supply of any quantity of commercial Collaboration Antigen Product in a purchase order in excess of the quantity forecasted in the applicable Binding Forecast shall always be subject to SK’s express acceptance and confirmation. If Novavax desires to purchase such additional quantity of Collaboration Antigen Product and SK agrees to supply such additional quantity, the Parties shall [***] for the supply of such additional quantity.

7.3.2. Modification of Purchase Orders and Binding Forecast. Novavax may [***] the quantity of Collaboration Antigen Product set forth in an accepted purchase order or Binding Forecast by written notice to SK; provided that [***] will, subject to the other terms and conditions in this Section 7.3.2, (a) [***]; provided, further that SK will use Commercially Reasonable Efforts to mitigate [***], including [***]. The remedy in this Section 7.3.2 shall be sole and exclusive. Notwithstanding the foregoing, [***].

7.4. Unused Raw Material. Upon termination of this Agreement or any relevant SOW, or cancellation of any Batch of Collaboration Antigen Product resulting from modification of the applicable purchase order or Binding Forecast, all unused Raw Materials, acquired for the purpose of this Agreement or any applicable SOW that cannot be repurposed by SK first for use under the Supply Agreement and then its other Manufacturing activities, [***] will either be (a) held by SK for future use for the production of the Collaboration Antigen Product, (b) delivered to Novavax, or (c) disposed of by SK. If any such Raw Materials are repurposed by SK for purposes other than the performance of this Agreement or Supply Agreement, [***].

7.5. Delivery. Subject to Section 5.3 (Allocation of Antigen Product), SK will Manufacture and deliver the Collaboration Antigen Product specified in an accepted purchase order for delivery on the applicable delivery date set forth in such purchase order. Collaboration Antigen Products will be delivered by air [***] under the relevant SOW (i.e., [***]) in accordance with any delivery instructions provided by Novavax and agreed to by SK. Title and risk of loss or damage to Collaboration Antigen Products shall pass to Novavax when [***].
7.5.1. **Delivery Responsibilities.** SK will [***] notify Novavax when an order of Collaboration Antigen Product is ready to be shipped. SK will be responsible for appropriate packaging (including satisfying all Product Requirements in each country in the Novavax Territory for Collaboration Antigen Products supplied in such country), labelling, and issuance of carrier’s declaration for all Collaboration Antigen Products shipped under this Agreement. SK and Novavax will ensure that each of their respective employees involved in activities related to shipments of Collaboration Antigen Product have received adequate training to properly handle such Collaboration Antigen Product. Unless otherwise agreed in writing by the Parties, SK will not be responsible for [***].

7.6. **Storage.** Collaboration Antigen Product will be stored [***] for up to [***] from date of Manufacturing. However, in case any Collaboration Antigen Product has not completed the quality assurance Release within [***] from date of Manufacturing, Collaboration Antigen Product will be stored [***] to Novavax until a formal disposition (quality assurance Release or rejection). Novavax may request from time to time to store Collaboration Antigen Product beyond the time specified [***] (on a per [***] basis) as specified in the applicable SOW.

7.7. **Shelf-life.** At delivery, unless otherwise provided in the applicable SOW, the Collaboration Antigen Product shall have a remaining shelf life under appropriate storage conditions not shorter than [***] of its shelf life at the date of its Manufacture. The Parties shall share each other any stability data of the Collaboration Antigen Product promptly upon its availability.

**Article 8**

**FORECASTS, PURCHASE ORDERS, DELIVERY OF ADJUVANT FOR SK VACCINE PRODUCT**

8.1. **Forecast.** Within [***] of the Effective Date, SK will provide Novavax with a [***] forecast of SK's anticipated demand for the Adjuvant Components for Manufacture of the SK Vaccine Product in the SK Territory (the "**Initial Adjuvant Forecast**") for Novavax’ review and acceptance at its discretion. The Parties agree that the minimum quantity of Adjuvant Components set forth in the Initial Adjuvant Forecast shall be a quantity sufficient to Manufacture [***] doses of Adjuvant and Novavax will accept to supply such quantity of Adjuvant Components (the "**Minimum Order**"). SK will update such Initial Adjuvant Forecast on a [***] rolling basis [***] each [***] (the "**Updated Adjuvant Forecast**") for Novavax’ review and acceptance at its discretion. Upon Novavax’ acceptance, the forecast for the first [***] of the Initial Adjuvant Forecast and any and all Updated Adjuvant Forecast(s) will be binding upon both Parties and not subject to change (a "**Firm Order**"). Notwithstanding the foregoing, upon request by SK, the Parties will discuss in good faith to modify any Initial Adjuvant Forecast, Updated Adjuvant Forecast and Firm Order, except for the purchase orders subject to Section 8.3, within [***] of the close of [***] only to the extent that aggregated quantity of Adjuvant Component in each [***] set forth in the Firm Order shall remain the same.

8.2. **Initial Adjuvant Forecast.** For clarity, the Parties agree that the Initial Adjuvant Forecast shall include and require that the quantity of Adjuvant Components sufficient to Manufacture the first [***] doses of the Minimum Order shall be delivered respectively, [***] doses by the end of [***] and [***] by the end of [***]. The quantity of Adjuvant Components sufficient to Manufacture the remaining [***] doses of the Minimum Order shall be delivered
in accordance with Initial Adjuvant Forecast and any and all applicable Updated Adjuvant Forecast.

8.3. **Purchase Order.** SK will issue purchase orders for each Firm Order at least [***] prior to the applicable delivery date of each Firm Order; provided, however, that the first Firm Order shall be issued within [***] of the Effective Date and such [***] requirement shall not be applicable. Each purchase order will specify the quantity of Adjuvant Components being ordered ([***]), the requested delivery date, SK’s purchase order number, and any other information necessary to ensure the timely Manufacture and delivery of such Adjuvant Components. [***]. [***].

8.4. **Cancellation.** In case that SK desires to cancel or reduce, in a part or whole, any ordered quantity of Adjuvant Components after issuing the Firm Order or purchase order, the Parties shall [***]. If any such quantity of Adjuvant Components [***], and (i) if Novavax has received payment from SK for such Adjuvant Components, [***], or (ii) if Novavax has not received payment from SK for such Adjuvant Components, [***]. Notwithstanding the foregoing, [***].

8.5. **Delivery.** Adjuvant Components will be delivered by air [***] Incheon international airport in accordance with any reasonable delivery instructions provided by SK and agreed to by Novavax. Title and risk of loss or damage to Adjuvant Components shall pass to SK when [***].

8.6. **Shelf-life.** Upon delivery, the Adjuvant Components shall have a remaining shelf life under appropriate storage conditions not shorter than [***] or [***] of any longer shelf life as supported by stability data as of the date of its Manufacture, whichever is longer. The Parties acknowledge that the shelf-life of the Adjuvant Components secured as of the Effective Date is [***] of the date of Manufacture and stability testing of the Adjuvant Components is continuing. Novavax shall share any updated stability data of the Adjuvant Components promptly upon its availability.

**Article 9**

**PURCHASE ORDERS, DELIVERY OF NOVAVAX VACCINE PRODUCT**

9.1. **Supply of Novavax Vaccine Product.** Novavax shall use Commercially Reasonable Efforts to commence delivery in [***] and with completion in [***] of [***] doses of Vaccine Product Manufactured by or on behalf of Novavax ("Novavax Vaccine Product") in [***] vials at a price of [***] per dose, provided that such Vaccine Product has received Regulatory Approval from the relevant Regulatory Authority.

9.2. **Purchase Order.** Within [***] of the Effective Date, SK shall issue a purchase order for the entire [***] doses of Novavax Vaccine Product to be purchased hereunder. Such purchase order will contain SK’s purchase order number, and any other information necessary to ensure the timely delivery of the Novavax Vaccine Product.

9.3. **Delivery.** Novavax Vaccine Products will be delivered by air [***] Incheon international airport in accordance with any delivery instructions provided by SK and agreed to by Novavax. Title and risk of loss or damage to Novavax Vaccine Products shall pass to SK when [***].
9.4. **Shelf-life.** The Novavax Vaccine Product shall have a remaining shelf life under appropriate storage conditions not shorter than [***] on the applicable delivery date. The Parties acknowledge that the stability testing of the Novavax Vaccine Product is continuing. Novavax shall share any updated stability data of the Novavax Vaccine Product [***] upon securing such data. The Novavax Vaccine Product shall be shipped [***] following the date of its Manufacture, Release and all other post-Manufacturing activities.

## Article 10

### REGULATORY MATTERS

**10.1. Regulatory Approvals.**

10.1.1. SK will be solely responsible for obtaining and maintaining any permits or other Regulatory Approvals to the extent required under Applicable Law to Manufacture SK Antigen Product in the SK Facility. Notwithstanding the foregoing, the Parties acknowledge that [***], provided that [***].

10.1.2. Novavax shall be responsible for conducting clinical trials and obtaining and maintaining all Regulatory Approvals required to market Vaccine Product in the Novavax Territory, unless otherwise agreed between the Parties. At Novavax’ reasonable request, SK will support Novavax as may be reasonably necessary to obtain such Regulatory Approval including participation in any scheduled meeting with a Regulatory Authority regarding any Regulatory Approval of the Vaccine Product in Novavax Territory. All documents provided by SK to support Novavax pursuant to this Section 10.1.2 shall be available in English, and if translation into English is required, any such translations shall be certified to be accurate and complete by SK’s quality assurance department. If Novavax requires such documentation to be translated into a non-English language, then SK will translate such documents as a service at [***] cost pursuant to a mutually agreed SOW; provided that if SK uses a Third Party translation service to translate such documents, then SK’s choice of such translator will be subject to Novavax’ approval.

10.1.3. For the greater clarity, the Parties will cooperate to file and obtain Regulatory Approvals in SK Territory necessary for the Development, Manufacture and/or Commercialization of the Vaccine Product [***]. SK will be responsible with respect to all regulatory activities for the SK Vaccine Product in the SK Territory, as applicable, including performing nonclinical or clinical development to the extent required by relevant Regulatory Authority including MFDS for the purpose of obtaining relevant licenses (including any post Emergency Use Listing or any other Regulatory Approval clinical requirements), and maintaining, in its name or the name of its designee or Affiliates, all Regulatory Approvals required to Manufacture and Commercialize the Vaccine Product in SK Territory, and any correspondence or meetings with the relevant Governmental Authority regarding any of the foregoing. At SK’s reasonable request, Novavax will support SK as may be reasonably necessary, and to the extent Novavax has resources to do so, to obtain such Regulatory Approval including participation in any scheduled meeting with a Regulatory Authority regarding any Regulatory Approval of the SK Vaccine Product in SK Territory.

10.2. **Records by SK.** SK will keep records of the (i) Manufacture, testing, and shipping of each Collaboration Antigen Product and retain samples of all Collaboration Antigen Product as are necessary to comply with Applicable Law or any other requirements of any Regulatory Authority in any country in the Territory applicable to SK under the applicable SOW, as well
as to reasonably assist with resolving complaints and other similar investigations related to any Antigen Product, and (ii) any other records or documentation that are reasonably requested by Novavax related to the Manufacture of the Antigen Product. Copies of such records and samples will be retained in accordance with the applicable Quality Agreement and will be made available to Novavax upon written request to SK.

10.3. Inspection. Inspections of the facilities engaged in the activities under this Agreement will be conducted as specified in the Quality Agreement. Additionally, and unless as otherwise provided in the applicable Quality Agreement, a Party, which is supplying a Transaction Product in whole or part (“Inspectee”) will permit representatives of the other Party, to visit and audit Inspectee’s applicable facilities, discuss and observe the Manufacturing of the applicable Transaction Product with appropriate representatives of Inspectee and to inspect and audit records relevant to the Manufacturing of such Transaction Product. Unless provided otherwise in the Quality Agreement, such visit or audit will be limited to a maximum of [***], and Inspector will notify Inspectee thereof in writing at least [***] in advance. Notwithstanding any provision to the contrary set forth in this Agreement, there will be no limit on the number of “for cause” audits that Inspector may conduct of any facility of Inspectee, and Inspector will use reasonable efforts to notify Inspectee in writing of any “for cause” audit at least [***] in advance. An audit “for cause” will be defined as an audit of any Inspectee’s applicable facility or records requested and conducted by or on behalf of Inspector due to the existence of an operational issue in the Manufacture of any component of the product that Inspector reasonably believes in good faith may result in a GMP or other regulatory deficiency or failure of Inspectee to meet its obligations under this Agreement (such as failure of a Transaction Product to meet the Product Requirements). In the event any terms set forth in this Section 10.3 conflict with terms of the Quality Agreement, the terms of the Quality Agreement shall control.

10.4. Notification of Regulatory Inspections. If any Governmental Authority provides the Inspectee notice of its intent to conduct an inspection, audit, or investigation, or to take any other type of regulatory action with respect to any facility of Inspectee that reasonably would have an impact on the Manufacture of the Transaction Product or any components thereof, then Inspectee will give the other Party prompt notice after receipt of such notice. Unless as otherwise provided in the applicable Quality Agreement, the other Party will have the right to be present during any such inspection, audit, or investigation, and the Inspectee that received the notice from the Governmental Authority will provide to the other Party all information and findings pertaining thereto no later than [***] after receipt.

10.5. Reports. SK will supply on an [***] basis all necessary data in its control relating to the Collaboration Antigen Products, including Release test results, complaint test results, and all investigations (in Manufacturing, testing, and storage), that Novavax requires in order to complete any filing with any Regulatory Authority.

10.6. Adverse Event Reporting. Each Party (or its designee) shall be responsible for the collection, review, assessment, tracking and filing of information related to adverse events associated with the Vaccine Product in its Territory (whether or not Regulatory Approval has been achieved), in each case in accordance with Applicable Laws and this Agreement (and each Party shall ensure that, in the Development and Commercialization of the Vaccine Product, it or its designee will record, investigate, summarize, notify, report and review all adverse events in accordance with Applicable Laws). The Parties will cooperate with
regards to the monitoring, exchange, and reporting of safety information involving the Vaccine Product in accordance with Applicable Laws on pharmacovigilance and clinical safety. The Parties will negotiate in good faith and entered into a pharmacovigilance agreement (“PVA”) within [***] of the Effective Date as is necessary to ensure that all regulatory requirements are met in order to formalize their respective safety data exchange and pharmacovigilance responsibilities for the Vaccine Product (for clinical or commercial use), including serious adverse events and emerging safety issues, to enable each Party to comply with all of its legal and regulatory obligations in respect of the Vaccine Product. In the event of any conflict between any of the provisions of the PVA and this Agreement in matters of business, financial or legal nature, the terms of this Agreement shall prevail. For matters of pharmacovigilance, the terms of the PVA shall prevail.

Article 11
PAYMENTS


11.1.1. Payment and Invoice

(a) **Collaboration Antigen Product.** SK will issue to Novavax a written invoice upon delivery of the Collaboration Antigen Product set forth in the applicable purchase order, and Novavax will pay SK all undisputed amounts within [***] of receipt of each such invoice. The financial and other terms and conditions of the supply of Collaboration Antigen Product, including the [***] set forth in an SOW.

(b) **SK Antigen Product Royalty.** Subject to Section 11.1.2 (Pricing of SK Products), SK shall pay Novavax a royalty of (i) [***] on Net Sales of SK Antigen Product if total sales of SK Antigen Product to the Korean Government equals or exceeds [***] or (ii) [***] on Net Sales of SK Antigen Product if total sales of SK Antigen Product to the Korean Government is less than [***]. SK will issue a written invoice to the Korean Government (which will be denominated [***]) and provide a copy to Novavax, on a [***] basis for the accumulated SK Antigen Product batches released with issuance of CoAs during the given [***]. Upon [***], SK will [***], make payment to Novavax for the corresponding sales royalty.

(c) **SK Vaccine Product Royalty.** Subject to Section 11.1.2 (Pricing of SK Products), SK shall pay a Novavax of (i) [***] on Net Sales of SK Vaccine Product if total sales of SK Vaccine Product to the Korean Government equals or exceeds [***] or (ii) [***] on Net Sales of SK Vaccine Product if total sales of SK Vaccine Product to the Korean Government is less than [***]. SK will issue a written invoice to the Korean Government (which will be denominated [***]) and [***] provide a copy to Novavax, upon [***]. Upon [***], SK will [***] make payment to Novavax for the corresponding sales royalty.

(d) **Advance Payment For SK Products.** If SK receives an advance payment from the Korean Government for the sales of SK Antigen Product or SK Vaccine Product in the SK Territory, SK shall pay Novavax [***] of such advance payment.
Upon [***], SK will [***] pay to Novavax [***]. Within [***], SK will pay Novavax for [***].

(e) **Adjuvant.** SK shall pay [***] for the quantity of Adjuvant Components required to Manufacture each dose of Adjuvant delivered by Novavax in [***] and [***] for the quantity of Adjuvant Components required to Manufacture each dose of Adjuvant delivered by Novavax in [***]. Novavax shall issue a written invoice upon delivery of the Adjuvant Components. SK will pay Novavax all undisputed amounts within [***] of receipt of each such invoice.

(f) **Novavax Vaccine Product.** For each dose of Novavax Vaccine Product, SK shall pay Novavax [***]. Novavax shall issue a written invoice upon delivery of the Novavax Vaccine Product. SK will pay Novavax all undisputed amounts within [***] of receipt of each such invoice.

11.1.2. **Pricing of SK Products.** [***]. As of the effective date of the Korean APA, such supply price per does shall be [***] and comprise of the following components:

(a) **SK Antigen Product:** [***] per dose

(b) **Formulation, fill and finish of SK Antigen Product into SK Vaccine Product:** [***] per dose

The total price per dose of SK Vaccine Product shall be [***] per dose.

11.2. **Form of Payments.** All payments to be made between the Parties under this Agreement shall be made in Dollars and shall be paid by wire transfer in immediately available funds to a bank account designated by the receiving Party. Notwithstanding the fact that the invoices issued in accordance with Section 11.1.1(b) (SK Antigen Product Royalty) and Section 11.1.1(c) (SK Vaccine Product Royalty) to the Korean Government will be denominated in [***], all prices set forth in this Agreement shall be in [***]. [***].

**Interest.** If a Party fails to pay any amount due under this Agreement within the time set out in Section 11.1.1 (Payment and Invoice), the other Party shall be entitled to charge interest at a rate of [***] percent ([***]% [***]) on the outstanding and undisputed balance. Such interest shall accrue on a [***] basis from the due date until the date of actual payment of the overdue amount and be payable on demand. Interest shall not accrue on payments that are contested in good faith and relevant Party shall, at its sole discretion and without prejudice to any other of its accrued rights, be entitled to suspend the delivery of corresponding Transaction Product until all overdue amounts have been paid in full including interests for late payments.

11.3. **Taxes**

11.3.1. **Responsibility.** Except as expressly set forth in Section 11.3.2 (Withholding Taxes) and stated below, each Party will pay any and all taxes levied on account of all payments received by such Party from the other Party or any Third Party as a result of this Agreement, including all taxes imposed by Applicable Law.

11.3.2. **Withholding Taxes.** Each Party will provide such information and documentation to the other Party as are reasonably requested by such other Party to determine if any
withholding taxes apply to any payments to be made under this Agreement. If any taxes are required to be withheld with respect to any such payments to be made under this Agreement, the withholding Party will: (a) deduct those taxes from the remittable payment, (b) pay the taxes to the proper taxing authority, (c) send evidence of the obligation together with proof of tax payment to the other Party on a reasonable and timely basis following such tax payment, and (d) if applicable, reasonably assist the other Party in its efforts to obtain a reduced withholding tax rate or refund for such tax payment. Each Party agrees to cooperate with the other Party in claiming refunds or exemptions from such deductions or withholdings under any relevant agreement or treaty that is in effect. The Parties will discuss applicable mechanisms for minimizing such taxes to the extent possible in compliance with Applicable Law.

11.3.3. Cooperation. The Parties will cooperate in accordance with Applicable Law to minimize indirect taxes (such as value added tax, sales tax, consumption tax, and other similar taxes) in connection with payments to be made under this Agreement.


11.4.1. Record Retention; Audits. SK will maintain (and will cause its Affiliates to maintain) complete and accurate records of (i) in the case of Collaboration Antigen Product, SK’s and its Affiliates’ costs of Raw Materials used to Manufacture such product if Novavax is required to pay for the cost of such Raw Materials pursuant to an applicable SOW and (ii) sales of SK Antigen Products and SK Vaccine Products (the “Records”), in reasonable detail to permit Novavax to confirm the accuracy of such sales for the preceding [***]. SK will permit (and will cause its Affiliates to permit) Novavax’ representatives (including an independent certified public accounting firm) to inspect and audit the Records. Such inspection or audit will be limited to a maximum of [***], and Novavax will notify SK thereof in writing at least [***] in advance.

11.4.2. Audit Report. Upon completion of any audit or inspection pursuant to Section 11.4.1 (Record Retention; Audits) Novavax or its independent certified public accounting firm, as applicable, will provide SK a written report disclosing any discrepancies between the Records and any payments to SK under this Agreement.

11.4.3. Audit Disputes. Either Party may refer any disputes with respect to the findings of the report set forth in Section 11.4.2 (Audit Report) for resolution pursuant to the dispute resolution procedures set forth in Section 18.1 (Dispute Resolution). If such report determines that either Party has underpaid any amounts payable to the other Party hereunder, then the paying Party will pay the other Party any such undisputed discrepancy no later than [***] after delivery of such report. If such report determines that either Party has overpaid any amounts payable to the other Party hereunder, then such other Party will refund any such undisputed discrepancy no later than [***] after delivery of such report. The fees charged by any such accounting firm will be paid by [***]; provided, however, that if any audit or inspection discloses a net overpayment of payments by or underpayments to Novavax of more than [***] percent of the total amounts owed or paid by or to Novavax [***] covered by the audit, then [***] will pay the reasonable fees and expenses charged by such accounting firm.
Article 12
INTELLECTUAL PROPERTY

12.1. Background Intellectual Property. This Agreement does not affect the ownership of a Party’s Background Intellectual Property which remains the property of such Party (or its licensors).

12.2. Improvements.

12.2.1. SK Improvements. SK shall solely own (a) General Process Improvements and (b) Improvements of SK’s Background Intellectual Property (“SK Improvements”). Novavax hereby assigns (and shall cause its Representatives to execute and deliver binding, written agreements pursuant to which such Representatives assign and agree to assign) to SK any and all of Novavax’ right, title and interest in and to any such SK Improvements.

12.2.2. Novavax Improvements. Subject to Sections 12.2.1 (SK Improvements) and 12.2.3 (PFS Intellectual Property), Novavax shall solely own all other Improvements other than SK Improvements (“Novavax Improvements”). SK hereby assigns (and shall cause its Representatives to execute and deliver binding, written agreements pursuant to which such Representatives assign and agree to assign) to Novavax any and all of SK’s right, title and interest in and to any such Novavax Improvements.

12.2.3. ***. ***. ***.

12.3. Rights in Intellectual Property. The Party owning any Improvements shall have the worldwide right to control the drafting, filing, prosecution and maintenance of patents covering such Improvements, including decisions about the countries in which to file patent applications. Patent costs associated with the patent activities described in this Section 12.3 shall be borne by ***. Each Party shall (and shall cause its Representatives to) take any actions, including but not limited to providing good faith testimony by affidavit, declaration or in person or the execution and delivery of documents, in each case, reasonably requested by the other Party and such other Party’s reasonable expense, to effect the purposes of the foregoing. The Parties shall jointly agree upon any decisions relating to the preparation, filing, prosecution and maintenance of any Improvements jointly owned by Novavax and SK pursuant to the terms of ***.

12.4. License Grants.

12.4.1. Novavax as Licensor. Novavax hereby grants to SK an exclusive, nontransferable (except in conjunction with a permitted assignment under Section 18.2 (Assignment), paid-up, royalty-bearing license to SK and its Affiliates to use Novavax’ Background Intellectual Property (including the items listed in Exhibit A and B) and Novavax Improvements, only to the extent necessary to distribute, offer for sale, sell, import, export, make, have made, Commercialize and otherwise Exploit the Vaccine Product in the SK Territory and to supply the Collaboration Antigen Product to Novavax, provided however such license does not include the right to, and SK shall not, make, have made, Manufacture or reverse engineer the Adjuvant or Adjuvant Components. In order to perform its obligations and exercise its rights under this Agreement, SK may grant a sublicense to a Third Party in the SK Territory under Novavax’ Background Intellectual Property and Novavax Improvements with prior written consent of Novavax, which consent shall not be unreasonably withheld.
12.4.2. SK as Licensor. SK hereby grants to Novavax a perpetual, non-exclusive, transferable (in conjunction with a permitted assignment under Section 18.2 (Assignment), paid-up, royalty free, sublicensable (through multiple tiers), license to Novavax and its Affiliates to use SK's Background Intellectual Property and SK Improvements only to the extent necessary to distribute, offer for sale, sell, import, export, make, have made, Commercialize and otherwise Exploit the SK Vaccine Product in the Novavax Territory.

12.4.3. No Implied Licenses. Except as explicitly set forth in this Agreement, neither Party grants any license, express or implied, under its intellectual property rights to the other Party, whether by implication, estoppel, or otherwise. All rights not expressly granted under this Agreement are retained by the applicable Party.

Article 13
CONFIDENTIALITY

13.1. Definition. “Confidential Information” means the terms and provisions of this Agreement and other Know-How, inventions, materials, and other proprietary information and data of a financial, commercial, or technical nature that a Party (the “Disclosing Party”) or any of its Affiliates has supplied or otherwise made available to the other Party (the “Receiving Party”) or its Affiliates, which are disclosed in writing or orally and whether or not specifically marked or designated by the Disclosing Party as confidential. For clarity, Novavax’ Confidential Information includes Novavax Supplied Items.

13.2. Obligations. The Receiving Party will (a) protect all Confidential Information of the Disclosing Party against unauthorized disclosure to Third Parties and (b) not use or disclose the Confidential Information of the Disclosing Party, except as permitted by or in furtherance of exercising rights or carrying out obligations hereunder. The Receiving Party will treat all Confidential Information provided by the Disclosing Party with the same degree of care as the Receiving Party uses for its own similar information, but in no event less than a reasonable degree of care. The Receiving Party may disclose the terms and conditions of this Agreement and the Confidential Information to its Affiliates, and their respective directors, officers, employees, Subcontractors, sublicensees, consultants, attorneys and accountants (collectively, “Representatives”) who have an absolute need-to-know such information to carry out the activities and transactions or to exercise its rights contemplated by this Agreement, provided that such Representatives are bound by written obligations of confidentiality at least as restrictive as those set forth in this Agreement (“Written Confidentiality Obligations”). Each Party will promptly notify the other Party of any misuse or unauthorized disclosure of the other Party's Confidential Information.

13.3. Exceptions to Confidentiality. The obligations under this Article 13 (Confidentiality) will not apply to any information to the extent the Receiving Party can demonstrate by competent evidence that such information:

13.3.1. is (at the time of disclosure) or becomes (after the time of disclosure) known to the public or part of the public domain through no breach of this Agreement by the Receiving Party or any Representatives to whom it disclosed such information;

13.3.2. was known to, or was otherwise in the possession of, the Receiving Party prior to the time of disclosure by the Disclosing Party;
13.3.3. is disclosed to the Receiving Party on a non-confidential basis by a Third Party who is entitled to disclose it without breaching any confidentiality obligation to the Disclosing Party; or

13.3.4. is independently developed by or on behalf of the Receiving Party or any of its Affiliates, as evidenced by its written records, without use or access to the Confidential Information.

13.4. Permitted Disclosures.

13.4.1. Compliance with Law. The Receiving Party may disclose Confidential Information of the Disclosing Party that the Receiving Party is required to disclose under Applicable Laws or a court order or other governmental order, provided that the Receiving Party: (a) provides the Disclosing Party with [***] notice of such disclosure requirement if legally permitted; (b) affords the Disclosing Party an opportunity to oppose or limit, or secure confidential treatment for such required disclosure; and (c) if the Disclosing Party is unsuccessful in its efforts pursuant to clause (b), discloses only that portion of the Confidential Information that the Receiving Party is legally required to disclose as advised by the Receiving Party's legal counsel.

13.4.2. SEC Filings and Other Disclosures. Either Party may disclose the terms of this Agreement only to the extent required, in the reasonable opinion of such Party or such Party's outside legal counsel, to comply with the rules and regulations promulgated by the United States Securities and Exchange Commission or similar security regulatory authorities in Korea or other countries, including public report or notice requirements. If a Party must disclose this Agreement or any of the terms hereof in accordance with the preceding sentence, then such Party shall give prompt written notice containing the contents of such required disclosure to the other Party. The reviewing Party shall have [***] to review and provide written comment. At its own cost and expense, the requesting Party shall seek confidential treatment of portions of this Agreement or such terms as may be reasonably requested by the other Party. Notwithstanding the foregoing, the Parties acknowledge that Novavax will be required to file a Form 8-K with the United States Securities and Exchange Commission in connection with the execution of this Agreement and agrees that the [***] notice set forth in this paragraph shall be waived with respect to such filing, provided however, Novavax shall provide a copy of such Form 8-K prior to its filing with the United States Securities and Exchange Commission.

13.4.3. Other Permitted Disclosure. Notwithstanding the restrictions set forth in this Article 13 (Confidentiality), Novavax may, [***], disclose the terms and provisions of this Agreement and Confidential Information belonging to SK to any Third Party in connection with any actual or bona fide prospective acquisition, merger, financing transfer or sale of all or substantially all of the stock, assets of the business to which this Agreement relates permitted under Section 18.2(Assignment) of Novavax, provided that such Third Party is bound by written obligations of confidentiality at least as restrictive as those set forth in this Agreement. Subject to the terms and conditions set forth in Section 13.4.1 (Compliance with Law), SK may, [***], disclose to the Korean Government the term and conditions of this Agreement that are reasonably necessary for discussion, negotiation and execution of the Korean APA; which shall be subject to the CDA entered into by SK, Korean Government and Novavax, dated [***].
13.4.4. **Continuing Confidentiality Obligations.** If and whenever any Confidential Information is disclosed in accordance with Section 13.4.3 (Other Permitted Disclosure), such disclosure shall not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (other than by breach of this Agreement).

13.5. **Press Release.** Within [***] following the execution of this Agreement by the Parties herein, the Parties shall agree to issue one press release, the content of which shall be approved in writing by both Parties in advance of publication. For all other public disclosures, if at any time SK and Novavax wish to disclose to Third Parties (including media interviews and disclosures to financial analysts) the existence and/or terms of this Agreement, the publishing Party shall notify the other Party of such intended publication and will provide a copy of such publication to such other Party on at least [***] notice unless otherwise agreed separately between the Parties and no press release shall be issued by either Party without the mutual consent of the other Party.

13.6. **Ongoing Obligation for Confidentiality.** Upon expiration or termination of this Agreement, the Receiving Party will, and will cause its Representatives to, destroy, delete, or return (as requested by the Disclosing Party and any such destruction or deletion shall be certified by the Receiving Party in writing) any Confidential Information of the Disclosing Party, except for one copy, which may be retained in its confidential files for archive purposes. Notwithstanding the foregoing, the obligations set forth under this Section 13.6 shall survive the termination or expiration for [***].

13.7. **Other COVID-19 Vaccine Products.** [***]. [***]. [***].

### Article 14

**REPRESENTATIONS, WARRANTIES, AND COVENANTS**

14.1. **Mutual Representations and Warranties of the Parties.** Each Party represents and warrants to the other Party that:

14.1.1. it is a corporation duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation;

14.1.2. it has full corporate power and authority to execute, deliver, and perform under this Agreement, and has taken all corporate action required by Applicable Laws and its organizational documents to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement;

14.1.3. this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms;

14.1.4. all consents, approvals, and authorizations from all Governmental Authorities or other Third Parties required to be obtained by such Party in connection with this Agreement have been obtained;

14.1.5. the execution and delivery of this Agreement and all other instruments and documents required to be executed pursuant to this Agreement, and the consummation of the transactions contemplated hereby do not and will not: (a) conflict with or result in a breach of any provision of its organizational documents; (b) result in a breach of any
agreement to which it is a party that would impair the performance of its obligations hereunder; or (c) violate any Applicable Laws;

14.1.6. neither it nor any Person acting for or on behalf of either Party will, in connection with the performance of this Agreement, (i) use any funds for contributions, gifts, entertainment, or other payments related to political activity or (ii) make any payment to any government official, in each case in violation of the United States Foreign Corrupt Practices Act of 1977 (as amended), the U.K. Bribery Act of 2010 or any similar law.

Debarment. SK represents and warrants that it has not been debarred under the provisions of the Generic Drug Enforcement Act of 1992, including without limitation, 21 U.S.C. Section 335a, or Section 306(b)(1)(b) of the Federal Food, Drug and Cosmetic Act, or their foreign equivalents, or otherwise under Applicable Law or by any Regulatory Authority. Further, it will not use in any capacity, in connection with the performance of this Agreement, any Person who has been debarred pursuant to the foregoing. If at any time during the term of this Agreement, SK or any Person engaged by SK to perform this Agreement (a) becomes debarred, or (b) receives notice of action or threat of action with respect to its debarment, SK shall notify Novavax immediately, and Novavax shall have the right to terminate this Agreement immediately.

14.2. Representation of Novavax. Novavax represents, that to its knowledge, as of the Effective Date:

14.2.1. the use of Novavax' Background Intellectual Property, Adjuvant, or Novavax Supplied Item in strict accordance with this Agreement or the applicable SOW by SK will not violate or infringe any rights of a Third Party including Intellectual Property rights in the SK Territory;

14.2.2. Patents listed in Exhibit B to this Agreement represent all patent within Novavax' control as of the Effective Date which may be reasonably necessary for the Development, Manufacture or Commercialization of the Antigen Product or Vaccine Product;

14.2.3. Patents that are listed in Exhibit B to this Agreement that are applications at the Effective Date are being diligently prosecuted by Novavax from the respective patent offices and the patents listed in Exhibit B hereof that are granted have been maintained and all due and applicable fees have been paid;

14.2.4. Novavax has not received notice from any Third Party alleging, that (i) the patents listed in Exhibit B are invalid or (ii) activities contemplated to be used in the Development, Manufacture or Commercialization of the Antigen Product or Vaccine Product violate or infringe any Intellectual Property Right of any Third Party; and

14.3. Representation of SK. SK represents, that to its knowledge, as of the Effective Date, the use of SK’s’ Background Intellectual Property in strict accordance with this Agreement or the applicable SOW by Novavax will not violate or infringe any rights of a Third Party including Intellectual Property rights.

14.4. SK's Covenant. supplied to Novavax by SK hereunder, SK hereby covenants that all Collaboration Antigen Product Manufactured and supplied to Novavax by SK under this Agreement will:

29
14.4.1. be delivered with full title and with the applicable Certificate of Analysis, Certificate of Conformance, Master Batch Record, applicable master safety data sheet, and additional Batch-related documentation identified in the Quality Agreement;

14.4.2. be Manufactured in accordance with GMP or otherwise in accordance with all Applicable Law and the terms of the Quality Agreement; and

14.4.3. at the time of the delivery, conform to the applicable Product Requirements in all respects.

14.5. **Novavax' Covenant.** Novavax hereby covenants that Novavax Vaccine Product and Adjuvant Components supplied to SK by Novavax hereunder will:

14.5.1. be delivered with full title and with the applicable Certificate of Analysis, Certificate of Conformance, Master Batch Record, applicable master safety data sheet, and additional Batch-related documentation identified in the Quality Agreement;

14.5.2. be Manufactured in accordance with all Applicable Laws, GMP and the terms of the Quality Agreement; and

14.5.3. conform to the applicable Product Requirements in all respects at the time of delivery.

14.6. **DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

14.7. [***]. [***]

14.8. **LIMITATION OF LIABILITY.** [***].

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**Article 15**

**INDEMNIFICATION; INSURANCE**

15.1. **Indemnification by SK.** SK will indemnify, defend, and hold harmless Novavax and its Affiliates and their respective officers, directors, employees, successors, heirs and assigns, and representatives (each, a "**Novavax Indemnified Party**") from and against any Claims that any Novavax Indemnified Party may be required to pay to one or more Third Parties arising from or relating to [***]:

15.1.1. [***];

15.1.2. [***];

15.1.3. [***];

15.1.4. [***];

15.1.5. [***];

15.1.6. [***]; or

15.1.7. [***].
15.2. **Indemnification by Novavax.** Novavax will indemnify, defend, and hold harmless SK and its Affiliates and their respective officers, directors, employees, successors, heirs and assigns, and representatives (each, a “SK Indemnified Party”) from and against any Claims that any SK Indemnified Party may be required to pay to one or more Third Parties arising from or relating to [***]:

15.2.1. [***];

15.2.2. [***];

15.2.3. [***];

15.2.4. [***]; or

15.2.5. [***].

15.3. **Indemnification Procedure.** In connection with any Claim for which a Party (the “Indemnified Party”) seeks indemnification from the other Party (the “Indemnifying Party”) pursuant to this Agreement, the Indemnified Party will:

(a) give the Indemnifying Party [***] written notice of the Claim; *provided, however, that failure to provide such notice will not relieve the Indemnifying Party from its liability or obligation hereunder, except to the extent of any material prejudice as a direct result of such failure;* (b) cooperate with the Indemnifying Party, [***] in connection with the defense and settlement of the Claim; and (c) permit the Indemnifying Party to control the defense and settlement of the Claim; *provided, however, that the Indemnifying Party may not settle the Claim [***].* Further, the Indemnified Party will have the right to participate (but not control) and be represented in any suit or action by counsel of its selection and at its own expense.

15.4. **Insurance.** SK and Novavax, each at their own expense, shall obtain and thereafter maintain during the Term and for [***] thereafter: (a) commercial general liability insurance including contractual liability with minimum limits of $[***] for each occurrence and $[***] in the aggregate; (b) products liability, exclusive of the above coverage for general liability, with a per claim limit of $[***] and an aggregate limit of $[***]. Each Party will provide the other Party a certificate of insurance upon written request therefore.

**Article 16**

**TERM AND TERMINATION**

16.1. **Term.** This Agreement will commence upon the Effective Date and, if not otherwise terminated earlier pursuant to this Article 16 (Term and Termination) or not extended by mutual agreement between the Parties, will continue in full force and effect for (i) two (2) years from the Effective Date of this Agreement, the period (ii) until the completion of duties and obligations of this Agreement and the Korean APA, including sell off any remaining SK Product in its inventory or (iii) the day that the WHO declares that there is no longer a COVID-19 pandemic, whichever is later (the “Term”). [***].

16.2. **Termination for Cause.**

16.2.1. Either Party (the “Non-Breaching Party”) will have the right, without prejudice to any other remedies available to it at law or in equity, to terminate this Agreement in the event the other Party breaches (the “Breaching Party”) any of its material obligations hereunder and fails to cure such breach within [***] after receiving notice thereof;
provided, however, that (a) if the breach by its nature is not curable, then the Non-Breaching Party will be entitled to seek such relief immediately, and (b) if such breach by its nature is curable, then such period will be extended as and for so long as the Breaching Party is making Commercially Reasonable Efforts to cure such breach, but in no event will such additional period exceed [***] (for a total cure period of up to [***]) (the “Cure Period”). Any termination of this Agreement pursuant to this Section 16.2 (Termination for Cause) will become effective at the end of the Cure Period, unless (i) such termination was made effective immediately following a non-curable breach pursuant to clause (a) above; (ii) the Breaching Party has cured any such material breach prior to the expiration of such Cure Period; or (iii) such allegedly Breaching Party disputes such breach. Any termination by a Party under this Section 16.2 (Termination for Cause) will be without prejudice to any damages or other legal or equitable remedies to which it may be entitled from the other Party.

16.2.2. If the Parties reasonably and in good faith disagree as to whether there has been a material breach, including whether such breach was material, the Party that disputes whether there has been a material breach may contest the allegation in accordance with Section 18.1 (Dispute Resolution). Notwithstanding anything to the contrary in Section 16.2.1, the Cure Period for any dispute will extend from the date that written notice was first provided to the Breaching Party by the Non-Breaching Party through the resolution of such dispute pursuant to Section 18.1 (Dispute Resolution) if the Breaching Party is pursuing such resolution in good faith, and it is understood and acknowledged that, during the pendency of a dispute pursuant to this Section 16.2.2, all of the terms and conditions of this Agreement will remain in effect, and the Parties will continue to perform all of their respective obligations under this Agreement.

16.3. Termination for Product Safety or Efficacy Failure. In the event that the JSC determines that (i) the Vaccine Product cannot be safely or efficaciously Developed, Manufactured or Commercialized or (ii) the necessary Regulatory Approvals for the Vaccine Product cannot or will not be obtained, and thereafter either Party will have the right to terminate this Agreement by providing the other Party with [***] written notice.

16.4. Non-exclusive License-Competitive Vaccine. Upon SK’s first sale of another product for the prevention of COVID-19 to a Third Party in the SK Territory, Novavax, [***], may terminate the license granted under Section 12.4.1 (Novavax as Licensor) for all purposes, other than the license necessary for sell SK Antigen Product and/or SK Vaccine Product to the Korean Government. Following any such termination, SK may continue to conduct Development, Manufacturing and Commercialization activities solely in connection with the supply of SK Antigen Product and/or SK Vaccine Product to the Korean Government until this Agreement’s expiration or early termination in accordance with the other provisions of this Article 16.

Article 17  
EFFECTS OF TERMINATION  

17.1. Accrued Rights. Expiration or termination of this Agreement will not relieve the Parties of any liability that accrued hereunder prior to the effective date of such expiration or termination, nor preclude either Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement, and any such
termination will be without prejudice to the rights of either Party against the other. Except for the remedies provided in 12.1.1 through 12.1.4 (which are sole and exclusive), the remedies provided in Article 16 (Term; Termination) are not exclusive of any other remedies a Party may have in law or equity. Without limiting the generality of the foregoing, and subject to the terms of the next paragraph, upon expiration or termination of this Agreement, each Party will pay to the other Party any amounts due under or in connection with this Agreement as of the effective date of termination or expiration, including with respect to any costs incurred under any SOWs or purchase order for the purchase of Raw Materials for Collaboration Antigen Product or any reasonable non-cancelable expenses within [***] following such effective date of termination or expiration. All payments made pursuant to this Section 17.1 will be non-creditable and non-refundable.

In particular, SK shall be compensated for the following solely in connection with the Manufacture of Collaboration Antigen Product, which, if applicable, may be deducted from unused funds previously paid by Novavax to SK except if this Agreement is terminated by Novavax pursuant to Section 16.2 (Termination for Cause).

17.1.1. [***];

17.1.2. [***];

17.1.3. [***]; and

17.1.4. [***];

If Novavax has made a pre-payment and there is any remaining balance from the pre-payment after deducting all of the above and any and all other sums owed by Novavax to SK under this Agreement, SK shall arrange for a refund of such remaining balance to Novavax within [***] of the termination of this Agreement.

17.2. Expiration. Upon the expiration of this Agreement, the exclusive license granted by Novavax to SK under Section 12.4.1 (Novavax as Licensor) hereunder shall [***] revert to Novavax.

17.3. Termination for Novavax’ Breach. If this Agreement is terminated early by SK under Section 16.2 (Termination for Cause), for the remainder of what would have been the Term if this Agreement were not so terminated and subject to reduced pricing and royalty terms to be negotiated in good faith by the Parties (i) SK shall retain the exclusive license granted under Section 12.4.1 (Novavax as Licensor) to Develop, Manufacture and Commercialize the SK Antigen Product or SK Vaccine Product in the SK Territory and (ii) Novavax shall supply to SK the Adjuvant Components required for Manufacture of the SK Vaccine Product in accordance with Article 8 and Article 11, including, without limitation, the SK’s payment obligations for the Adjuvant Components as set forth in Section 11.1.1(e) (Adjuvant). Notwithstanding foregoing, in case of the termination due to Novavax’ material breach of Section 12.4.1 (Novavax as Licensor), SK shall retain a royalty free and fully paid-up exclusive license during such remaining period of Term; provided, however, SK shall remain obligated to pay for Adjuvant Components supplied by Novavax in accordance with Article 8 and Article 11.
17.4. **Termination for SK's Breach.** If this Agreement is terminated by Novavax under Section 16.2 (Termination for Cause), and in addition to its rights set forth in Section 17.1 (Accrued Rights),

17.4.1. SK shall sell all Antigen Product or Vaccine Product in its inventory to Novavax [***], which price shall [***], as applicable, in effect as of the date of such termination;

17.4.2. SK shall transfer to Novavax any and all regulatory materials including any regulatory filings or Regulatory Approvals related to the SK Vaccine Product; and

17.4.3. The JSC shall coordinate the wind-down of SK's efforts under this Agreement, and SK, as soon as reasonably practical after the effective date of such termination, shall provide to Novavax (i) any applicable Third Party contract, (ii) any information, materials, and data, including copies of all clinical trial data and results, if any, and all other information developed by or for the benefit of SK relating the SK Vaccine Product, including control of, and all information relating to, the global safety database, and (iii) other documents to the relating to the SK Vaccine Product that are necessary or reasonably useful to continue Development, Commercialization and Manufacture of the SK Vaccine Product (including material documents and agreements relating to the sourcing and Manufacture of the Vaccine or sale, promotion, distribution, or use of the SK Vaccine Product) throughout the SK Territory, to the extent that SK has the legal right to provide or assign to Novavax such materials, information or documents as set forth in paragraphs (i), (ii) and (iii). If SK does not have such legal right, SK shall use its Commercially Reasonable Efforts to provide or assign to Novavax such materials, information or documents and to cooperate with Novavax in connection with such transfer. At Novavax' written request, SK shall use Commercially Reasonable Efforts to assign to Novavax any and all agreements to which SK, or its Affiliate, and a Third Party are parties, and that relate to the Development, Commercialization and Manufacturing activities conducted in connection with the SK Vaccine Product.

17.5. **Return of Confidential Information.** Upon the expiration or early termination of this Agreement, the Receiving Party will return to the Disclosing Party (or, as directed by the Disclosing Party, destroy, in which case, the Receiving Party shall certify any such destruction in writing) all Confidential Information of the Disclosing Party that is in the Receiving Party's possession or under its control (other than any Confidential Information required to continue to exercise a Party's rights that survive termination of this Agreement). In addition, the Receiving Party will not be required to return or destroy Confidential Information contained in any computer system back-up records made in the ordinary course of business; provided that such Confidential Information may not be accessed without the Disclosing Party's prior written consent or as required by Applicable Law.

17.6. **Survival.** The following provisions, as well as any other provisions which by their nature are intended to survive termination or expiration, will survive termination or expiration of this Agreement: Article 1 (Definitions); Section 6.7 (Non-Conforming Batches); Section 6.8 (Non-Conformance Disputes); Section 6.9 (Remedies for Non-Conforming Batches or Short Orders); Section 6.10 (Recalls); Section 7.4 (Unused Raw Material); Section 10.2 (Records by SK); Section 10.5 (Reports); Section 10.6 (Adverse Event Reporting); Article 11 (Payments); Section 12.2 (Improvements); Section 12.3 (Rights in Intellectual Property); Section 12.4.2 (SK as Licensor) with the proviso that the license grant to Novavax shall
survive only if the termination is not for Novavax’ breach pursuant to Section 16.2 (Termination for Cause); Article 13 (Confidentiality); Section 14.6 (Disclaimer of Warranties); Article 14.8 (Limitation of Liability); Article 15 (Indemnification; Insurance); Article 17 (Effects of Termination); and Article 18 (Miscellaneous).

Article 18

MISCELLANEOUS

18.1. Dispute Resolution.

18.1.1. Escalation. Promptly after the written request of either Party, the Executive Officers will meet in person or by telephone to attempt in good faith to resolve any dispute that arises under this Agreement. If the Executive Officers do not resolve the dispute within [***] of such request, then either Party may commence arbitration proceedings in accordance with Section 18.1.2 (Arbitration) below.

18.1.2. Arbitration. If the designated representatives remain unable to resolve a dispute under Section 18.1.1 (Escalation), either Party may commence arbitration proceeding by providing the other Party with written notice. Such arbitration shall be binding arbitration and conducted in accordance with [***], before [***] neutral arbitrators selected in accordance with the procedures of [***]. The place of arbitration will be [***]. The arbitrators will not have the authority to grant any award or relief that is not permitted by the terms of this Agreement, or to vary the terms of this Agreement. All documents and agreements relative to any such dispute will be read, interpreted, and construed from the English versions thereof. Any arbitration subject to this Section 18.1.2 will be completed within [***] from the filing of notice of a request for such arbitration, and the decision of the arbitrators will be in written form, setting forth findings of fact and conclusions of law with the reasons for such findings and conclusions stated. The arbitration proceedings and the decision will, except as required by applicable laws, not be made public without the joint consent of the Parties and each Party will maintain the confidentiality of such proceedings and decision unless otherwise permitted by the other Party. The decision of the arbitrators will be the sole, exclusive, and binding remedy of the Parties regarding any and all disputes, controversies, claims, and counterclaims presented to the arbitrators. The decision of the arbitrators will be final and not subject to further review. Any award may be entered in a court of competent jurisdiction for a judicial recognition of the decision and an order of enforcement. Each Party has the right before or, if the arbitrators cannot hear the matter within an acceptable period, during the arbitration, to seek and obtain from the appropriate court provisional remedies such as attachment, preliminary injunction and replevin, to avoid irreparable harm, maintain the status quo, or preserve the subject matter of the arbitration.

18.2. Assignment. No Party hereto may assign any right or obligation hereunder without the [***] consent of the other Party hereto. Notwithstanding the foregoing, either Party may assign this Agreement, or all of its rights or obligations hereunder and thereunder to any of its Affiliates, to any Person that acquires all or substantially all of the stock or assets of the business to which this Agreement relates (by merger, stock or asset purchase, operation of law, or otherwise), without the other’s [***] consent, but with [***] notice to the other Party, provided that the permitted assignee or successor shall assume all assigned or transferred rights and obligations.
18.3. **Severability.** Should one or more of the provisions of this Agreement become void or unenforceable as a matter of law, then such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement, and the Parties agree to substitute a valid and enforceable provision therefor which, as nearly as possible, achieves the desired economic effect and mutual understanding of the Parties under this Agreement.

18.4. **Governing Law.** This Agreement, and all claims arising under or in connection therewith, will be governed by and interpreted in accordance with the substantive laws of [***], without regard to conflict of law principles thereof.

18.5. **Waivers and Amendments.** The failure of any Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other Party. No waiver will be effective unless it has been given in writing and signed by the Party giving such waiver. No provision of this Agreement may be amended or modified other than by a written document signed by authorized representatives of each Party.

18.6. **Relationship of the Parties.** Nothing contained in this Agreement will be deemed to constitute a partnership, joint venture, or legal entity of any type between SK and Novavax, or to constitute one Party as the agent of the other. Moreover, each Party agrees not to construe this Agreement, or any of the transactions contemplated hereby, as a partnership for any tax purposes. Each Party will act solely as an independent contractor, and nothing in this Agreement will be construed to give any Party the power or authority to act for, bind, or commit the other Party.

18.7. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

18.8. **Notices.** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when: (a) delivered by hand (with written confirmation of receipt); (b) sent by fax (with written confirmation of receipt), provided that a copy is sent by an internationally recognized overnight delivery service (receipt requested); or (c) when received by the addressee, if sent by an internationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and fax numbers set forth below (or to such other addresses and fax numbers as a Party may designate by written notice):

If to SK:

SK bioscience Co., Ltd.
310, Pangyo-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, 13494, Korea
Attention: Legal Department [***]

With a copy to:

SK bioscience Co., Ltd.
310, Pangyo-ro, Bundang-gu, Seongnam-si, Gyeonggi-do, 13494, Korea
Attention: [***]
If to Novavax:

Novavax, Inc.

21 Firstfield Road, Gaithersburg, MD 20878

Attn: [***]

18.9. Further Assurances. Novavax and SK hereby covenant and agree without the necessity of any further consideration, to execute, acknowledge, and deliver any and all such other documents and take any such other action as may be reasonably necessary or appropriate to carry out the intent and purposes of this Agreement.

18.10. No Third Party Beneficiary Rights. Except as expressly provided in this Agreement, this Agreement is not intended to and will not be construed to give any Third Party any interest or rights (including any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

18.11. Entire Agreement. This Agreement, together with any SOWs and the Quality Agreement(s), sets forth the entire agreement and understanding of the Parties as to the subject matter hereof and supersedes all proposals, oral or written, and all other prior communications between the Parties with respect to such subject matter. In the event of any conflict between a material provision of this Agreement, any Exhibit hereto and/or SOW, the order of precedence shall be as follows: Agreement, the Exhibit and the SOW, unless any such conflict is specifically and expressly identified in the applicable a SOW, in which case, such conflicting provision shall control. Notwithstanding the foregoing, the Quality Agreement shall control with respect to all quality matters.

18.12. Force Majeure. Neither Party will be liable or deemed in default for failure to perform any duty or obligation that such Party may have under this Agreement where such failure has been occasioned by any act of God, fires, earthquakes, strikes and labor disputes, acts of war, terrorism, civil unrest, epidemics, pandemics, market conditions or other factors that affect the supply or procurement of raw materials or consumables, or intervention of any Governmental Authority (a "Force Majeure"), and occurring without its fault or negligence; provided that the Party affected will [***] notify the other [***] efforts to eliminate, cure, or overcome any Force Majeure causes and to resume performance of its obligations as soon as possible.

18.13. Cumulative Remedies. Except as otherwise set forth in this Agreement and subject to the limitation of liability herein, no remedy referred to in this Agreement is intended to be exclusive, but each will be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under Applicable Law.

18.14. 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 Agreement. Accordingly, any rule of construction that any ambiguity in this Agreement will be construed against the drafting Party will not apply.

18.15. Construction; Rules of Construction. Interpretation of this Agreement will be governed by the following rules of construction: (a) words in the singular will be held to include the plural and vice versa, and words of one gender will be held to include the other gender as the context requires; (b) references to the terms “Section,” are to a Section of this Agreement.
unless otherwise specified; (c) the terms “hereof,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement; (d) references to “$” or “Dollars” will mean the currency of the United States; (e) the word “including” and words of similar import when used in this Agreement will mean “including without limitation,” unless otherwise specified; (f) the word “or” will not be exclusive; (g) references to “written” or “in writing” include in electronic form; (h) the titles and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement; (i) each of the Parties has participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or burdening either Party by virtue of the authorship of any of the provisions in this Agreement or any interim drafts of this Agreement; (j) the word “will” will be construed to have the same meaning and effect as the word “shall”; (k) references to “days” will mean calendar days, unless otherwise specified; and (l) a reference to any Person includes such Person’s successors and permitted assigns.

18.16. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile, PDF format via email or other electronically transmitted signatures and such signatures will be deemed to bind each Party as if they were original signatures.

Signature page follows;
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

SK BIOSCIENCE CO., LTD.

By: /s/[***] (Signature)
Name: [***]
Title: [***]

NOVAVAX, INC.

By: /s/ John A. Herrmann III (Signature)
Name: John A. Herrmann III
Title: Executive Vice President, Chief Legal Officer and Corporate Secretary
Exhibit A

PRODUCT DELIVERABLES

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit A setting forth the product deliverables has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit B

PATENTS

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit B setting forth the patents has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
COLLABORATION AND EXCLUSIVE LICENSE AGREEMENT

BY AND BETWEEN

TAKEDA PHARMACEUTICAL COMPANY LIMITED AND
NOVAVAX, INC.

February 24, 2021
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COLLABORATION AND EXCLUSIVE LICENSE AGREEMENT

This Collaboration and Exclusive License Agreement (this “Agreement”) is made effective as of the 24 day of February, 2021 (the “Effective Date”) by and between Takeda Pharmaceutical Company Limited, a company incorporated under the laws of Japan having its principal place of business at 1-1, Doshomachi 4-chome, Chuo-ku, Osaka 540-8645, Japan (“Takeda”) and Novavax, Inc., a Delaware corporation having its principal place of business at 21 Firstfield Rd., Gaithersburg, MD 20878, United States (“Novavax”). Novavax and Takeda are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Takeda is a pharmaceutical company engaged in the research, development and commercialization of products useful in the amelioration, treatment or prevention of human diseases and conditions;

WHEREAS, Novavax is a late-stage biotechnology company engaged in the research, development and commercialization of vaccine products for the prevention of infectious diseases based on its proprietary recombinant nanoparticle vaccine technology;

WHEREAS, Novavax is developing and testing the Vaccine (as defined below) for the prevention of the novel coronavirus disease associated with the SARS-CoV-2 virus (“COVID-19”);

WHEREAS, the Government of Japan (“GOJ”) has appealed to certain Japanese corporations to engage in a project to establish one (1) or more manufacturing plants in Japan to supply vaccines to the Japanese public in connection with the current COVID-19 pandemic and is providing certain funding to aid such Japanese corporations in this effort through a government subsidy (the “Appeal”);

WHEREAS, Takeda responded to the Appeal by applying for funding in the amount of [***] for the activities contemplated under this Agreement (the “GOJ Funding”), which included the Requested Milestone Funding (as defined below), [***] was granted by the GOJ on July 31, 2020 and [***] was granted by GOJ on August 31, 2020, in each case, such granted amounts are subject to further GOJ approval based on its review of Takeda’s use of funds; and

WHEREAS, subject to the terms and conditions of this Agreement, the Parties desire to:
(a) transfer technology from Novavax to Takeda to enable Takeda to Manufacture the Vaccine,
(b) collaborate and exchange information with respect to the clinical development and regulatory development activities for the Vaccine, and (c) enable Takeda, through the grant of an exclusive license, to further Develop, Manufacture and Commercialize the Vaccine in the Takeda Territory (each as defined below).

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:
ARTICLE 1 DEFINITIONS

1.1 “Adjuvant” means Novavax’ saponin-based adjuvant, known as Matrix-M™, which is comprised of the components [***] (the “Adjuvant Components”), and such other adjuvant(s) as may be adopted by Novavax for use in the Vaccine in the Novavax Territory and approved for such use by Regulatory Authorities in the Takeda Territory.

1.2 “Affiliate” means, with respect to a particular Party, a Person that directly or indirectly controls, is controlled by or is under common control with such Party. For the purposes of this definition, the word “control” (including, with correlative meaning, the terms “controlled by” or “under the common control with”) shall be presumed to exist with respect to a Person in the event of possession, direct or indirect, of (a) the power to direct or cause the direction of the management and policies of such Person (whether through ownership of securities, by contract or otherwise), or (b) fifty percent (50%) or more of the voting securities or other comparable equity interest of such Person. The Parties acknowledge that in the case of certain entities organized under the laws of certain countries outside of the U.S., 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 shall be substituted in the preceding sentence, provided, that such foreign investor has the power to direct or cause the direction of the management and policies of such Person.

1.3 “Alliance Manager” means the individual appointed by each Party from within his or her respective organization to coordinate and facilitate the communication, interaction and cooperation of the Parties pursuant to this Agreement. The Alliance Managers shall be the primary contact between the Parties with respect to the activities conducted pursuant to this Agreement.

1.4 “Anti-Corruption Laws” means all applicable local, national, and international laws, regulations, and industry codes dealing with government procurement, conflicts of interest, corruption or bribery, including, if applicable, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and any laws enacted to implement the Organisation of Economic Cooperation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions.

1.5 “Applicable Law” means all applicable laws, statutes, ordinances, regulations, directives, guidelines, rules, orders or other pronouncements of any kind whatsoever of any Governmental Authority, including the Japanese Act on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices (Act No. 145 of 1960), the Japanese Ministerial Ordinance on Standards for Manufacturing Control and Quality Control for Drugs and Quasi-drugs, the Japanese Ordinance of Ministry of Health, Labour and Welfare No. 179, U.S. Food, Drug and Cosmetic Act, (21 U.S.C. §§ 301 et seq.) (“FFDCA”), the Prescription Drug


1.7 “Business Day” means a day other than Saturday, Sunday or any other day on which commercial banks located in the State of New York, U.S., or Japan, are authorized or obligated by Applicable Law to close.

1.8 “Calendar Quarter” means the respective periods of three (3) consecutive calendar months ending on March 31, June 30, September 30 and December 31; provided, however, that (a) the first Calendar Quarter of the Term shall extend from the Effective Date and end on the last day of the Calendar Quarter in which the Effective Date falls, and (b) the last Calendar Quarter of the Term shall end on the termination date of this Agreement.

1.9 “Calendar Year” means the twelve (12) month period ending on December 31; provided, however, that (a) the first Calendar Year of the Term shall begin on the Effective Date and end on December 31, 2020, and (b) the last Calendar Year of the Term shall end on the termination date of this Agreement.

1.10 “Change of Control” means any of the following: [***].

1.11 “Clinical Trial” means any human clinical study or trial of the Vaccine.

1.12 “Commercialize” or “Commercialization” means all activities, whether initiated or conducted prior to or following Regulatory Approval for the Vaccine in support of the promotion, marketing, sale and distribution (including importing, exporting, transporting, customs clearance, warehousing, invoicing, handling and delivering) of the Vaccine, including: (a) sales force efforts, detailing, advertising, marketing and Promotional Materials, sales and distribution, pricing, contracting managed markets and medical affairs, including publications, medical education, medical information, clinical science liaison activities, investigator initiated sponsored research programs and health economics and outcomes research; (b) Post-Marketing Studies; (c) product security activities that may include enhancing supply chain security, implementing brand protection technologies, intelligence gathering, forensic analysis, customs recordation, and anti-counterfeiting enforcement action, such as taking internet countermeasures, collaborating with law enforcement and seeking criminal restitution; and (d) other similar activities directly relating to the Vaccine. “Commercialize” means to engage in Commercialization activities.
1.13 “Commercially Reasonable Efforts” means, with respect to the efforts to be expended, or considerations to be undertaken, by a Party or its Affiliate with respect to any objective, activity or decision to be undertaken hereunder, [***].

1.14 “Confidential Information” means, subject to ARTICLE 12, all non-public or proprietary Information disclosed by a Party to the other Party under this Agreement, which may include Information, ideas, concepts, Know-How, inventories, machines, development, skill, experience, clinical and regulatory strategies and Data, financial data (including capital investments, cost structures, staffing and overhead rates, out-of-pocket expenses and operating margins) without regard as to whether any of the foregoing is marked “confidential” or “proprietary,” or disclosed in oral, written, graphic, or electronic form. Confidential Information shall include the terms and conditions of this Agreement.

1.15 “Control” or “Controlled” means, when used in reference to any Information, Know-How, Patent, other intellectual property right, other intangible property, or materials, possession (including ownership or in-license) by a Party, including its Affiliates, of the ability (without taking into account any rights granted by one Party to the other Party under the terms of this Agreement) to grant a license or sublicense or other right to use or access such Know-How, Patent, other intellectual property right, other intangible property, or materials, as applicable, without violating the terms of any agreement or other arrangement with, or necessitating the consent of, any Third Party.

1.16 “Cover”, “Covering” or “Covered” means, with respect to any Patent and the subject matter at issue, that, in the absence of ownership of or a license granted under a Valid Claim of such Patent, the practice or Exploitation of the subject matter at issue would infringe such Valid Claim, or in the case of a Patent that is a patent application, would infringe a Valid Claim in such patent application if it were to issue.

1.17 “Data” means research, pharmacology, toxicological, preclinical, Clinical Trial, technical, chemical, formulation, Manufacturing, analytical and quality control, safety, and scientific data, including raw data, original records, investigator reports (both preliminary and final), statistical analyses, expert opinions and reports, and safety and other electronic databases.

1.18 “Development” means, with respect to the Vaccine, all research, non-clinical and clinical drug development activities, including toxicology, pharmacology, and other non-clinical efforts, statistical analysis, formulation development, delivery system development, CMC (chemistry, manufacturing and controls) activities, statistical analysis, the performance of Clinical Trials, or other activities reasonably necessary in order to obtain or maintain Regulatory Approval of the Vaccine. “Development” shall exclude all Commercialization activities. When used as a verb, “Develop” means to engage in Development activities.

1.19 “Development Plan” means the high-level overall plan provided by Takeda to the JSC for the material Development activities reasonably necessary to obtain Regulatory Approval for the Vaccine in the Takeda Territory.
1.20 “EMA” means the European Medicines Agency or any successor agency or authority having substantially the same function.

1.21 “European Union” or “EU” means all of the European Union member states as of the applicable time during the Term, and any successor thereto.

1.22 “Exploit” or “Exploitation” means to research, make, have made, distribute, import, export, use, have used, sell, have sold, offer for sale or otherwise exploit, including to Develop, Commercialize, register, modify, enhance, improve, Manufacture, have Manufactured or otherwise dispose of.

1.23 “FDA” means the U.S. Food and Drug Administration, or any successor agency thereto.

1.24 “First Sale” means the first sale of the Vaccine under this Agreement by Takeda, its Affiliates or its sublicensees to an end user or prescriber for use or resale of the Vaccine in a country in the Takeda Territory where Regulatory Approval of the Vaccine has been obtained and where the sale results in a Net Sale. Sale of a Vaccine under this Agreement by Takeda to an Affiliate of Takeda or to a sublicensee of Takeda shall not constitute a First Sale unless such Affiliate or such sublicensee is the end user of such Vaccine and such sale results in a Net Sale. For the avoidance of doubt, in no event will a sale to the GOJ that is later cancelled in its entirety by GOJ constitute a First Sale.

1.25 “Force Majeure” means any event beyond the reasonable control of the affected Party including embargoes; war or acts of war, including terrorism, insurrections, riots, or civil unrest; strikes, lockouts or other labor disturbances; epidemics, pandemics or other health crises, including any COVID-19 Effect as set forth in Section 16.4(b); fire, floods, earthquakes, tsunami or other acts of nature; or [***] and failure of plant or machinery (provided, that such event or failure could not have been prevented by the exercise of skill, diligence, and prudence that would be reasonably and ordinarily expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances).

1.26 “Good Clinical Practices”, “GCP” or “cGCP” means the applicable then-current standards, practices and procedures for the design, conduct, performance, monitoring, auditing, recording, analyses and reporting of Clinical Trials, including, as applicable (a) those standards required by the MHLW, PMDA, FDA, EMA or other Regulatory Authority, including the MHLW Ministerial Ordinance No. 36 and (b) as set forth in the guidelines adopted by the International Conference on Harmonization (“ICH”) titled “Guidance for Industry E6 Good Clinical Practice: Consolidated Guidance,” or any successor document, in each case of (a) and (b), as such standard or guideline may be updated from time to time.

1.27 “Good Laboratory Practices”, “GLP”, or “cGLP” means the applicable then-current standards, practices and procedures promulgated or endorsed by the PMDA as set forth in the Act on Securing Quality, Efficacy and Safety of Products including Pharmaceuticals and Medical Devices (Act No. 145 of 1960), the FDA as set forth in 21 C.F.R. Part 58 (or any successor statute or regulation), including related regulatory requirements imposed by the FDA.
and other comparable regulatory standards, practices and procedures promulgated by the MHLW, PMDA, EMA or other Regulatory Authority applicable to the Takeda Territory, as they may be updated from time to time, including applicable guidelines promulgated under the ICH.

1.28 “Good Manufacturing Practices”, “GMP”, or “cGMP” means the applicable then-current good manufacturing practices required (a) by the PMDA as set forth in Japanese Ministerial Ordinance on Standards for Manufacturing Control and Quality Control for Drugs and Quasi-drugs and Ordinance of Ministry of Health, Labour and Welfare No. 179, (b) by the FDA, as set forth in the FFDCA, as amended, and the regulations promulgated thereunder, for the manufacture and testing of pharmaceutical materials, or (c) by comparable Applicable Law related to the manufacture and testing of pharmaceutical materials in applicable jurisdiction in the Takeda Territory, including the quality guideline promulgated by the ICH designated ICH Q7A, titled “Q7A Good Manufacturing Practice Guidance for Active Pharmaceutical Ingredients” and the regulations promulgated thereunder, in each case to the extent applicable and as updated from time to time.

1.29 “Governmental Authority” means any multi-national, federal, state, local, municipal or other government authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal).

1.30 “IFRS” means the International Financial Reporting Standards, as promulgated by the International Standards Accounting Board.

1.31 “IND” means an application to the applicable Regulatory Authority, such as a clinical trial application or a clinical trial exemption, the filing of which is necessary to commence or conduct clinical testing of a pharmaceutical product in humans in such jurisdiction, including the Clinical Trial Notification to the MHLW and the Investigational New Drug Application to the FDA.

1.32 “Information” means information, inventions, discoveries, compounds, compositions, formulations, formulas, practices, procedures, processes, methods, knowledge, know-how, trade secrets, technology, techniques, designs, drawings, correspondence, computer programs, documents, apparatus, results, strategies, regulatory documentation, information and submissions pertaining to, or made in association with, filings with any Governmental Authority or patent office, data, including pharmacological, toxicological, non-clinical and clinical data, analytical and quality control data, manufacturing data and descriptions, market data, financial data or descriptions, devices, assays, chemical formulations, specifications, material, product samples and other samples, physical, chemical and biological materials and compounds, and the
like, in written, electronic, oral or other tangible or intangible form, now known or hereafter developed, whether or not patentable.

1.33 “Inventions” means any and all inventions, discoveries and developments, whether or not patentable, made, conceived or reduced to practice in the course of performance of this Agreement, whether made, conceived or reduced to practice solely by, or on behalf of, Novavax, Takeda, the Parties jointly, or any Affiliate of the same.

1.34 “Joint Know-How” means all Know-How jointly Controlled by Novavax (or its Affiliates) and Takeda (or its Affiliates) at any time during the Term, including any Know-How disclosed by or contained in Joint Inventions, that is [***] to Exploit the Vaccine.

1.35 “Joint Patents” means all Patents jointly Controlled by Novavax (or its Affiliates) and Takeda (or its Affiliates) at any time during the Term, including any Patents Covering any Joint Inventions that are [***] to Exploit the Vaccine.

1.36 “Joint Technology” means all Joint Know-How and Joint Patents.

1.37 “Know-How” means Information and Inventions but excludes Information contained within a Party’s Patents.

1.38 “Knowledge” means, with respect to a Party, [***].

1.39 “Manufacturing” means all activities related to the manufacturing of the Vaccine, Starting Materials, or any ingredient thereof, for Development and Commercialization, including manufacturing process development, validation, process improvements, associated analytical development and validation, the manufacture and testing of stability or consistency lots, labeling, packaging, in-process and testing, release of the Vaccine or any ingredient thereof, quality assurance activities related to manufacturing and release of the Vaccine, ongoing stability tests and regulatory activities related to any of the foregoing. When used as a verb, “Manufacture” means to engage in Manufacturing activities.

1.40 “Marketing Authorization Application” or “MAA” means an application to the appropriate Regulatory Authority for approval to sell the Vaccine (but excluding Pricing Approval) in any particular country or regulatory jurisdiction.

1.41 “MHLW” means the Japanese Ministry of Health, Labour and Welfare, or a successor agency thereto.

1.42 “NDA” means a New Drug Application or supplemental New Drug Application submitted to PMDA or to the FDA pursuant to Part 314 of Title 21 of the U.S. C.F.R., including any amendments thereto, or similar application or submission for Regulatory Approval of a Vaccine filed with a Regulatory Authority to obtain marketing approval for a biological, pharmaceutical or diagnostic product in that country or in that group of countries.
1.43 “Net Sales” shall have the meaning set forth in Exhibit B.

1.44 “Novavax Know-How” means all Know-How that is Controlled by Novavax (or its Affiliate), as of the Effective Date or at any time during the Term, including any Know-How disclosed by or contained in Novavax’ Sole Inventions or Novavax Inventions, that is [***] to Exploit the Vaccine. For clarity, “Novavax Know-How” shall not include any Know-How pertaining to the manufacture of the Adjuvant Components by themselves (i.e., prior to the first to occur of (i) mixing the Adjuvant Components to produce the Adjuvant or (ii) co-formulation/combination with the Antigen), but shall include Know-How pertaining to mixing the Adjuvant Components to produce the Adjuvant.

1.45 “Novavax Patents” means all Patents that are Controlled by Novavax (or its Affiliate), as of the Effective Date (as set forth in Exhibit A) or at any time during the Term, including any Patents Covering any of Novavax’ Sole Inventions or Novavax Inventions, that are [***] to Exploit the Vaccine. For clarity, “Novavax Patents” shall not include any Patents that pertain to the methods of Manufacture of the Adjuvant Components by themselves (i.e., prior to the first to occur of (i) mixing the Adjuvant Components to produce the Adjuvant or (ii) co-formulation/combination with the Antigen), but shall include Patents pertaining to mixing the Adjuvant Components to produce the Adjuvant.

1.46 “Novavax Technology” means all Novavax Know-How and Novavax Patents.

1.47 “Novavax Territory” means all countries and regions in the world other than the country within the Takeda Territory.

1.48 “Operating Profit” means Takeda’s profits in a given Takeda Fiscal Year resulting from the Commercialization of the Vaccine in the Takeda Territory and shall be calculated in accordance with Exhibit B. For clarity, the Operating Profit may be a negative number; provided that in no case shall Novavax share in any such loss, in whole or in part.

1.49 “Operating Profit Period” means the period from date of the First Sale of the Vaccine in the Takeda Territory until the later of (a) [***] following the First Sale of the Vaccine in the Takeda Territory, (b) all Novavax Know-How has become publicly available through no fault of Takeda and (c) expiration of the last to expire Valid Claim in the Takeda Territory included within the Novavax Patents Covering the Vaccine.

1.50 “Pandemic Period” means the period from the Effective Date until the earlier of (a) the date on which the World Health Organization (WHO) declares the end of the COVID-19 pandemic, (b) the date on which the COVID-19 pandemic has ended as agreed by the Parties acting reasonably and in good faith, or (c) the end of Calendar Year [***].

1.51 “Patents” means all: (a) patents, including any utility or design patent; (b) patent applications, including provisional, substitutions, divisionals, continuations, continuations in-part or renewals; (c) patents of addition, restorations, extensions, supplementary protection certificates, registration or confirmation patents, patents resulting from post-grant proceedings, re-issues and re-examinations; (d) other patents or patent applications claiming priority directly or indirectly to:
(i) any such specified patent or patent application specified in (a) through (c), or (ii) any patent or patent application from which a patent or patent application specified in (a) through (c) claim direct or indirect priority; (e) inventor’s certificates; and (f) in each of (a) through (e), whether such patent, patent application or other right arises in Japan, U.S. or any other jurisdiction in the Takeda Territory.

1.52 “Patent Term Extension” means any term extensions, supplementary protection certificates and equivalents thereof offering Patent protection beyond the initial term with respect to any issued Patents.

1.53 “Person” means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, incorporated association, joint venture or similar entity or organization, including a government or political subdivision, department or agency of a government.

1.54 “PMDA” means the Pharmaceuticals and Medical Devices Agency of Japan, which is an extra-ministerial bureau of the MHLW that is responsible for, among other things, the evaluation of new drugs, and offers face-to-face consultation services, or a successor agency thereto.

1.55 “Post-Marketing Study” means any study conducted by or for Takeda in the Takeda Territory with respect to a Vaccine after submission of an application for Regulatory Approval for such Vaccine, whether initiated by a Party or at the request of an applicable Governmental Authority, to delineate additional information about a Vaccine’s risks, benefits, and optimal use, including safety surveillance studies, pharmacoeconomic studies, pharmacoepidemiology studies, studies relating to different dosing or schedules of administration, studies of the use of the Vaccine in other patient populations or other stages of the disease, or studies of the use of the Vaccine over a longer period of time, but, in any case, excluding any study that is necessary to be completed in order to obtain Regulatory Approval.

1.56 “Post-Pandemic Period” means the period extending from the end of the Pandemic Period until the termination of this Agreement.

1.57 “Pricing Approval” means any approval, agreement, determination or decision by a Governmental Authority establishing prices that can be charged and/or reimbursed for a Vaccine in a jurisdiction where the applicable Governmental Authority or Regulatory Authority approves or determines the pricing of pharmaceutical products.

1.58 “Promotional Materials” means all written, printed, graphic, electronic, audio or video presentations of information, including journal advertisements, sales visual aids, formulary binders, reprints, direct mail, direct-to-consumer advertising, disease awareness materials, internet postings, broadcast advertisements and sales reminder aides (for example, note pads, pens and other such items, if appropriate) that, in each case, are permitted under Applicable Law and intended for use or used by or on behalf of Takeda, its Affiliates or its sublicensees in connection with the Commercialization of the Vaccine in the Takeda Territory.
1.59 “Regulatory Approval” means any approval (including supplement, amendment, pre- and post-approval, Pricing Approval and reimbursement approval and including, if applicable, any emergency use authorization or special approval), licenses, registrations or authorizations of any national, regional, state or local Regulatory Authority, department, bureau, commission, council or other Governmental Authority that is necessary for the Commercialization of the Vaccine.

1.60 “Regulatory Authority” means any applicable Governmental Authority involved in granting Regulatory Approval, or otherwise having jurisdiction over the Vaccine, in a country or jurisdiction, including in Japan, the MHLW and the PMDA; in the U.S., the FDA; in the EU, the EMA; and in the United Kingdom, the UK Medicines and Healthcare products Regulatory Agency (“MHRA”).

1.61 “Regulatory Documentation” means, with respect to the Vaccine, all: (a) Regulatory Materials, including all Regulatory Materials with respect to the Adjuvant, and all data (including any Development Data) contained or referenced therein and all supporting documents created for, submitted to or received from an applicable Government Authority or Regulatory Authority relating to such Regulatory Materials; and (b) other documentation and Information Controlled by a Party which (i) is necessary in order to obtain and maintain Regulatory Approval of the Vaccine, including any registrations and licenses, regulatory drug lists, advertising and promotion documents shared with Regulatory Authorities, adverse event files, complaint files and Manufacturing records or (ii) is mutually agreed by the Parties. For clarity, unless otherwise agreed by the Parties, neither Party has an obligation to the other Party to recreate or regenerate a Regulatory Documentation in any particular format or including any particular data or other content, but a Party may reasonably request that the other Party, at such other Party’s option, either (A) reformat or reorganize any existing Regulatory Documentation, or (B) provide the requesting Party the relevant underlying data in such other Party’s Control so as to permit the requesting Party to reformat or reorganize such existing Regulatory Documentation, in each case so as to satisfy the requirements of the relevant Regulatory Authority(ies).

1.62 “Regulatory Filing” means, with respect to the Vaccine, any submission to a Regulatory Authority of any appropriate regulatory application, including any submission to a regulatory advisory board, and any supplement, amendment, variations, extensions and renewals thereof. For the avoidance of doubt, Regulatory Filings shall include any IND, NDA, Biologics License Application (as defined in the FFDCA), MAA or any corresponding application for any country or group of countries.

1.63 “Regulatory Materials” means, with respect to the Vaccine, all documentation, correspondence, submissions and notifications submitted to or received from a Regulatory Authority that are [***] in order to Exploit the Vaccine. For the avoidance of doubt, Regulatory Materials shall include, with respect to the Vaccine, all Regulatory Filings, Regulatory Approvals and amendments and supplements for any of the foregoing, as well as the contents of any official minutes, if available, from meetings (whether in person or by audio conference or videoconference) with a Regulatory Authority that may support or impact any Regulatory Filings of the other Party. For clarity, unless otherwise agreed by the Parties, neither Party has an obligation to the other Party to recreate or regenerate a Regulatory Material in any particular
format or including any particular data or other content, but a Party may reasonably request the other Party to, at such other Party’s option, either (A) reformat or reorganize any existing Regulatory Material, or (B) provide the requesting Party the relevant underlying data in such other Party’s Control so as to permit the requesting Party to reformat or reorganize an existing Regulatory Material, in each case so as to satisfy the requirements of the relevant Regulatory Authority(ies).

1.64  “Takeda Fiscal Year” means the twelve (12) month period commencing on April 1 ending on March 31; provided, however, that (a) the first Takeda Fiscal Year of the Term, shall begin on the Effective Date and end on March 31, 2021; and (b) the last Takeda Fiscal Year of the Term shall end on the termination date of this Agreement.

1.65  “Takeda Inventions” shall have the meaning set forth in Section 10.1.

1.66  “Takeda Know-How” means all Know-How that is both (i) Controlled by the Takeda (or its Affiliate), as of the Effective Date or at any time during the Term, including any Know-How disclosed by or contained in Takeda’s Sole Inventions or Takeda Inventions, and (ii) incorporated by Takeda into the Vaccine during the Term as being [***] to Exploit the Vaccine.

1.67  “Takeda Patents” means all Patents that are both (i) Controlled by Takeda (or its Affiliate), as of the Effective Date or at any time during the Term, including any Patents Covering any of Takeda’s Sole Inventions or Takeda Inventions, and (ii) that Cover any technology incorporated by Takeda into the Vaccine that are [***] to Exploit the Vaccine.

1.68  “Takeda Technology” means all Takeda Know-How and Takeda Patents.

1.69  “Takeda Territory” means Japan during the Pandemic Period and Post Pandemic Period, subject to any Post-Pandemic Agreement pursuant to Section 3.6.

1.70  “Tax” or “Taxes” means any form of tax or taxation, levy, duty, charge, social security charge, contribution or withholding of whatever nature (including any related fine, penalty, surcharge or interest) imposed by, or payable to, any government, state or municipality, or any local, state, federal or other fiscal, revenue, customs, or excise authority, body, official or Governmental Authority in the Takeda Territory.

1.71  “Territory” means either the Takeda Territory or Novavax Territory, as applicable.

1.72  “Third Party” means a Person other than Novavax and Takeda and their respective Affiliates.

1.73  “U.S.” means the United States of America, its territories and possessions, including Puerto Rico.

1.74  “Vaccine” means any and all COVID-19 vaccines consisting of one or more recombinant SARs-CoV-2 spike protein(s) (the “Antigen”) formulated with Adjuvant for which Novavax or its Affiliate seeks or has sought Regulatory Approval in its Regulatory Filing(s). “Vaccine”, as of the Effective Date, means the COVID-19 vaccine candidate known as NVX-
CoV-2373. For clarity, “Antigen” shall include whichever recombinant SARs-CoV-2 spike protein(s) is/are developed by or on behalf of Novavax or its Affiliate to generate an immune response, as a component of the most recent version of the Vaccine, against whichever strain(s) and/or variant(s) of the SARS-CoV-2 virus said Vaccine is designed to protect against and/or prevent infection by. For further clarity, in no case shall “Vaccine” be deemed to include a finished pharmaceutical product comprising a combination of (i) the Antigen formulated with the Adjuvant; and (ii) any other prophylactic or therapeutic agent primarily indicated for the treatment of an indication other than COVID-19.

1.75 “Vaccine Liabilities” means all losses, damages, fees, expenses and other liabilities suffered or incurred by, or on behalf of, a Party, its Affiliate or its sublicensee and resulting from or relating to [***].

1.76 “Valid Claim” means (a) a claim of an issued and unexpired Patent to the extent such claim has not been revoked, held invalid or unenforceable by a patent office, court or other governmental agency of competent jurisdiction in a final order, from which no further appeal can be taken, and which claim has not been disclaimed, denied or admitted to be invalid or unenforceable through reissue, re-examination or disclaimer or otherwise; or (b) a claim within a patent application that has not been pending for more than [***] from the earliest filing date to which such claim or the applicable patent application is entitled to claim priority and which claim has not been revoked, cancelled, withdrawn, held invalid or abandoned.

1.77 Additional Definitions. In addition, each of the following definitions shall have the respective meanings set forth in the Section of this Agreement indicated below:

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ARTICLE 2 OVERVIEW; MANAGEMENT

2.1 Joint Steering Committee.

(a) **Formation and Purpose.** The Parties agree to establish and convene a Joint Steering Committee (“JSC”) for the overall coordination and oversight of the Parties’ activities under this Agreement, promptly after the Effective Date. The JSC shall consist of representatives and operate by the procedures in accordance with Section 2.4. Except as otherwise provided herein, the role of the JSC shall be to:

(i) discuss the overall strategy for the Development, technology transfer and Regulatory Approval (including the initial approval and any supplements and expansions thereof) of the Vaccine in the Takeda Territory;

(ii) review the progress of any other Committees;

(iii) oversee the Parties’ efforts to coordinate protection of each Party’s respective intellectual property rights related to the Vaccine, including the resolution of disputes related to the ownership of any intellectual property arising in furtherance of the Agreement, in which case neither Party will have final decision-making authority with respect to any such dispute and such dispute shall be resolved in accordance with ARTICLE 14;

(iv) to the extent not prohibited by Applicable Law, discuss and exchange information, communication and operations regarding the Parties’ efforts with respect to the Commercialization activities (A) in the Takeda Territory, including discussing an [***] and (B) to the extent mutually agreed upon, in the Novavax Territory;

(v) resolve any disputes arising within the Committees with respect to matters for which the Committees have decision-making authority hereunder, including those disputes escalated from the JD&RC and JMC as provided herein;
(vi) establish other such working groups or subcommittees, as needed to further the purposes of this Agreement, as mutually agreed by the Parties in writing at the JSC; provided, that the JSC shall not be permitted to delegate its final decision-making authority or its dispute resolution obligations;

(vii) abolish any Committee (as defined below), working group or subcommittees, as mutually agreed by the Parties at the JSC;

(viii) [***];

(ix) subject to 5.3(b)(i) (with respect to timing for disclosure of Development Data), exchange information, communication and operations regarding the Development of Vaccine(s) other than NVX-CoV-2373; and

(x) perform other obligations specifically delegated to it under this Agreement.

(b) **JSC Decisions and Actions.** Actions to be taken by the JSC shall be taken only following [***], with each Party having one (1) vote. If the JSC fails to reach [***] on a matter before it for decision for a period in excess of [***] from the date first presented to the JSC in writing, the matter shall be resolved in accordance with each Party’s final decision-making rights, as set forth in this Agreement, provided, that if neither Party has final decision-making authority over a matter under the terms of this Agreement, such matter shall be resolved in accordance with ARTICLE 14; provided, further, that neither Party shall be permitted to exercise its final decision-making authority in a manner that would materially increase the effort expended by the other Party or costs and expenses incurred by the other Party related to the Exploitation of the Vaccine in such other Party’s Territory.

### 2.2 Joint Manufacturing Committee.

(a) **Formation and Purpose.** The Parties also agree to establish a Joint Manufacturing Committee ("JMC") which shall monitor and coordinate communication and operations regarding the Parties’ efforts with respect to the technology transfer activities set forth in ARTICLE 4. The JMC shall consist of representatives and operate by the procedures in accordance with Section 2.4. The role of the JMC shall be to:

(i) review, discuss and agree upon the Technology Transfer Plan and all amendments and updates thereto;

(ii) monitor, review and coordinate and discuss the overall progress of the technology transfer activities under the Technology Transfer Plan;

(iii) discuss the then current approved shelf life for the Adjuvant Components, discuss the status of Novavax’ efforts to extend the approved shelf life for the Adjuvant Components and to share information supporting any extension of the approved shelf life for the Adjuvant Components;
discuss the then current Adjuvant Rolling Forecast and any Adjuvant Component production capacity concerns; and

perform other tasks specifically delegated to it under this Agreement.

(b) **JMC Decisions and Actions.** All JMC decisions shall be taken following [***], with each Party having one (1) vote. Except with respect to the contents of the Technology Transfer Plan (including amendments and updates thereto), the JMC and the JSC shall not have any decision-making authority over the Manufacturing activities of either Party. Novavax shall have the sole decision-making authority over the Manufacture of the Adjuvant Components; provided that Novavax shall consider Takeda’s comments in good faith with respect to such activities to the extent it [***] affects the Vaccine, including the ability to receive Regulatory Approval for the Vaccine in the Takeda Territory. Takeda shall have the sole decision-making authority regarding: (i) all decisions with respect to the Manufacture of the Vaccine in the Takeda Territory; (ii) all day-to-day Manufacturing activities performed for the Takeda Territory; and (iii) all activities occurring at Takeda’s, its Affiliate’s and its subcontractor’s manufacturing facility; provided that Takeda shall consider in good faith Novavax’ comments with respect to such activities to the extent it [***] affects the Development or Commercialization of the Vaccine (including its components, the Antigen and the Adjuvant), including the ability to receive Regulatory Approval for the Vaccine (including its components, the Antigen and the Adjuvant) in the Novavax Territory. In the event Novavax reasonably believes that Takeda’s final decision would [***] affect the Manufacture, Development, Commercialization and Exploitation of the Vaccine (or any ingredient thereof) in the Novavax Territory, Novavax may notify Takeda in writing to refer such matter to Novavax’ Chief Executive Officer and Takeda’s President of the Global Vaccine Business Unit for good faith discussions within [***] after such notice is received. Unless Novavax’ Chief Executive Officer and Takeda’s President of the Global Vaccine Business Unit agree otherwise, the decision made by Takeda shall be final. If the JMC fails to reach [***] on a matter in which Takeda does not have sole decision-making authority for a period in excess of [***] from the date first presented to the JMC in writing, the matter shall be referred immediately to the JSC.

2.3 **Joint Development and Regulatory Committee.**

(a) **Formation and Purpose.** The Parties also agree to establish a Joint Development and Regulatory Committee (“JD&RC”) which shall monitor and coordinate communication and operations regarding the Parties’ efforts with respect to the Development and Regulatory Approval of the Vaccine in the Territory. The JD&RC shall consist of representatives and operate by the procedures in accordance with Section 2.4. The role of the JD&RC shall be:

(i) to facilitate the exchange of information between the Parties with respect to their Vaccine-related Development and Regulatory Filing activities;

(ii) to draft, review and discuss the Development Plan and all amendments and updates thereto;
(iii) to monitor, review, coordinate and discuss the overall progress of Development under this Agreement; and

(iv) to perform other obligations specifically delegated to it under this Agreement.

(b) **JD&RC Decisions and Actions.** Subject to the last sentence of this paragraph, Takeda shall have sole decision-making authority regarding all JD&RC decisions, including (i) all decisions with respect to the Development Plan (including all amendments and updates thereto), (ii) all decisions with respect to the Development of the Vaccine in the Takeda Territory and (iii) all day-to-day Development activities performed in the Takeda Territory; provided that Takeda shall consider in good faith Novavax’ comments with respect to such activities to the extent it affects the Development or Commercialization of the Vaccine (including its components, the Antigen and the Adjuvant), including the ability to receive Regulatory Approval for the Vaccine (including its components, the Antigen and the Adjuvant), in the Novavax Territory; and provided further that Novavax shall have sole decision-making authority regarding any activities assigned to it under the Development Plan, including all amendments and updates thereto, so long as it is consistent with the Development Plan, and does not cause unreasonable delay or have any other material negative impact on Regulatory Approval in the Takeda Territory. Unless otherwise mutually agreed by the Parties, neither Party will Develop a formulation of the Vaccine that would reasonably be expected to have a material impact on the other Party’s Regulatory Filings in such other Party’s Territory (i.e., the Novavax Territory with respect to Novavax’ Regulatory Filings and the Takeda Territory with respect to Takeda’s Regulatory Filings). If there is a dispute with respect to clause (i) or (ii) in the first sentence of this paragraph, the Parties shall attempt to resolve such dispute in a duly called meeting of the JD&RC, and if such dispute is not time sensitive as determined by Takeda in good faith and was not resolved at such JD&RC meeting, such dispute shall automatically be referred to the JSC for resolution prior to Takeda making its final decision. In the event Novavax reasonably believes that Takeda’s final decision would affect the Development, Commercialization and Exploitation of the Vaccine in the Novavax Territory, Novavax may notify Takeda in writing to refer such matter to Novavax’ Chief Executive Officer and Takeda’s President of the Global Vaccine Business Unit for good faith discussions within [***] after such notice is received. Unless Novavax’ Chief Executive Officer and Takeda’s President of the Global Vaccine Business Unit agree otherwise, the decision made by Takeda shall be final.

2.4 **Committee Membership and Procedures.**

(a) **Membership.** Novavax and Takeda shall each designate [***] representatives to serve on each of the JSC, JMC and JD&RC (each, a “Committee”) by written notice to the other Party. Promptly after the Effective Date, each Party shall designate up to [***] such representatives for the JSC, the JMC and the JD&RC. Each Committee may elect to vary the number of representatives from time to time during the Term; provided, that, unless otherwise agreed by the Parties in writing at the JSC, each Committee shall maintain [***] representatives from each Party. Each representative shall have the appropriate level of experience in the subject area of the Committee, and at least [***] representative shall have sufficient seniority within the applicable Party’s organization to have the necessary decision-making authority in order for the Committee to fulfill its responsibilities. Either Party may
designate substitutes for its Committee representatives if [***] or more of such Party’s designated representatives is unable to be present at a meeting. From time to time each Party may replace its Committee representatives by written notice to the other Party specifying the prior representative(s) and their replacement(s).

(b) **Chairperson.** Each Committee shall have a chairperson, to be designated as described below. The chairperson shall be responsible for calling and convening meetings, but shall have no special authority over the other members of the Committee, and shall have no additional voting rights. The chairperson (or his/her designee) shall prepare and circulate an agenda reasonably in advance of each upcoming meeting and prepare and issue minutes of each Committee meeting within [***] thereafter. Such minutes shall not be finalized until each Committee representative reviews and approves such minutes in writing; provided, that any minutes shall be deemed approved unless a member of such Committee objects to the accuracy of such minutes within [***] after the circulation of the minutes. [***]. On [***] after the Effective Date, the Parties shall rotate designation of the chairperson for the JSC and JD&RC for [***]. [***] shall appoint the chairperson of the JMC.

(c) **Meetings.** Within [***] after the Effective Date, the JSC, the JMC and the JD&RC shall hold a meeting to establish each Committee’s operating procedures. After the initial meeting, unless otherwise agreed by the Parties, each Committee shall meet at least [***] each Calendar Quarter. Meetings of a Committee shall be effective only if [***] of representatives of each Party are present or participating. A Committee may meet, upon mutual agreement of the Parties, either (i) in person at either Party’s facilities or at such locations as the Parties may otherwise agree; or (ii) by audio or video teleconference. Additional meetings of a Committee may be held with the consent of each Party (such consent not to be unreasonably withheld, delayed or conditioned). In the case of any dispute referred to a Committee, such meeting shall be held within [***] following referral to the Committee or as soon as reasonably possible. [***].

(d) **Non-Member Participation.** Additional non-members of a Committee having relevant experience may from time to time be invited to participate in a Committee meeting, provided, that such participants shall have no voting rights or powers. Non-member participants who are not employees of a Party or its Affiliates shall only be allowed to attend if: (1) the other Party’s representatives have consented to the attendance (such consent not to be unreasonably withheld, delayed or conditioned); and (2) such non-member/non-employee participant is subject to confidentiality and non-use obligations at least as restrictive as those set forth in this Agreement.

2.5 **Alliance Managers.** Promptly following the Effective Date, each Party shall designate in writing an Alliance Manager to serve as the primary point of contact for the Parties regarding this Agreement. Each Alliance Manager shall facilitate communication and coordination of the Parties’ activities under this Agreement relating to the Vaccine. The Alliance Managers shall not be a member of any Committee but shall be allowed to attend any Committee meeting as a non-voting observer.
2.6 **Authority.** The Parties agree that, in voting on matters as described in this ARTICLE 2, it shall be conclusively presumed that unless otherwise explicitly stated, each voting member of a Committee has the authority and approval of such member’s respective senior management in casting his or her vote. The Committees shall each have only the powers assigned expressly to it in this ARTICLE 2 and elsewhere in this Agreement, and shall not have any power to amend, modify or waive any term of this Agreement, including a Party’s compliance with its obligations set forth herein.

**ARTICLE 3 LICENSES**

3.1 **Grant to Takeda.**

(a) Subject to the terms and conditions of this Agreement, Novavax hereby grants to Takeda an exclusive (even as to Novavax and its Affiliates), nontransferable (except as provided in Section 16.5) license or sublicense, as applicable, with the right to grant sublicenses in accordance with Section 3.4, under the Novavax Technology and Novavax’ rights in the Joint Technology, to Exploit the Vaccine in the Takeda Territory. For the avoidance of doubt, the foregoing exclusive license does not include the right to, and Takeda shall not, make, have made, Manufacture or reverse engineer the Adjuvant Components. The Parties acknowledge that Takeda has the right to mix the Adjuvant Components provided by or on behalf of Novavax to produce the Adjuvant to be used to Manufacture the Vaccine.

(b) Subject to the terms and conditions of this Agreement, Novavax hereby grants to Takeda a non-exclusive, nontransferable (except as provided in Section 16.5) license or sublicense, as applicable, with the right to grant sublicenses in accordance with Section 3.4, under Novavax Technology and Novavax’ rights in the Joint Technology, to Manufacture the Vaccine (including all components thereof besides the Adjuvant Components) outside of the Takeda Territory solely to export such Vaccine or any components thereof besides the Adjuvant Components therefrom and import into the Takeda Territory solely for use within the Takeda Territory; provided, however, Takeda may not commence any such activities until it provides Novavax written notice of any such Manufacturing activities to be conducted outside of the Takeda Territory and Novavax consents in writing, [***]. [***]. [***]. Notwithstanding the foregoing, Novavax agrees that Takeda is not required under this Section 3.1(b) to provide foregoing notice or receive the foregoing consent from Novavax to conduct any Manufacturing activities related to procuring and producing Starting Materials (to the extent such Starting Materials are covered by Novavax Technology or Novavax’ rights in Joint Technology) in U.S., EU, United Kingdom and Switzerland for the Vaccine to be distributed in the Takeda Territory. For clarity and notwithstanding any language to the contrary in this Agreement, the Parties acknowledge and agree that nothing in this Agreement shall be construed to limit Takeda’s right to Manufacture any Starting Materials to the extent that such are not covered by Novavax Technology or Novavax’ rights in Joint Technology inside or outside of the Takeda Territory, and further that Takeda may freely do so without providing notice to, or receiving any consent from, Novavax. For the purposes of this Section 3.1(b), “Starting Materials” means raw materials, intermediates, protein fragments, reagents, cell lines, working and master cell banks, working virus bank and master virus seeds and other substances and materials used in the
production and/or testing of drug substance or formulated drug product including the Vaccine, but specifically excludes the Adjuvant Components.

(c) Subject to the terms and conditions of this Agreement, Novavax hereby assigns, transfers and conveys to Takeda Novavax’ entire right, title and interest in and to the Vaccine Trademark in the Takeda Territory for use in connection with the Vaccine in the Takeda Territory. For clarity, Novavax shall retain ownership of all right, title and interest in and to the Vaccine Trademark in the Novavax Territory.

3.2 Grant to Novavax. Subject to the terms and conditions of this Agreement, Takeda hereby grants to Novavax (i) an exclusive (even as to Takeda and its Affiliates), [***] non-transferable (except as provided in Sections 3.3(b) and 16.5) license or sublicense, as applicable, with the right to grant sublicenses solely in accordance with Section 3.4, in the Novavax Territory under the Takeda Technology and Takeda’s rights in the Joint Technology to Develop and Commercialize the Vaccine in the Novavax Territory and (ii) a non-exclusive, [***] non-transferable (except as provided in Sections 3.3(b) and 16.5) license or sublicense, as applicable, with the right to grant sublicenses solely in accordance with Section 3.4, in the Novavax Territory under the Takeda Technology and Takeda’s rights in the Joint Technology to Manufacture the Vaccine in the Novavax Territory.

3.3 Exclusivity.

(a) Pandemic Period. For the purposes of maximizing public benefit from COVID-19-related treatment and prevention efforts, the Parties agree and acknowledge that, during the Pandemic Period, Takeda will not be subject to any exclusivity obligations that restrict its ability to research, develop, manufacture, commercialize or otherwise exploit any pharmaceutical composition(s), preparation(s) or formulation(s) for the treatment or prevention of COVID-19 (i) in the Takeda Territory and (ii) anywhere in the world outside of the Takeda Territory, provided that this does not expand the geographic scope of the licenses granted under this Agreement.

(b) Post-Pandemic Period.

(i) (1) Effective as of the commencement of the Post-Pandemic Period or another date on which the Parties agree and until the expiration or termination of this Agreement with respect to Takeda and (2) effective as of the Effective Date and until the expiration or termination of this Agreement with respect to Novavax, to the extent permissible by Applicable Laws, neither Party shall, directly or indirectly (including by its Affiliates or by granting any rights to a Third Party), research, develop, manufacture commercialize or otherwise exploit any vaccine candidate or vaccine product for COVID-19 prevention in the Takeda Territory, other than the Vaccine (a “Competitive Vaccine”) without the prior written consent of the other Party. Notwithstanding the foregoing, Takeda shall have the right to sell, market, distribute and otherwise dispose of any inventory of COVID-19 vaccine [***] during the Pandemic Period.

(ii) [***]
3.4 Sublicensing and Subcontracting.

(a) Each Party shall have the right to grant sublicenses under Section 3.1 or 3.2, as applicable, (i) to its Affiliates without requiring the other Party’s prior written consent, (ii) to one or more Third Party subcontractors (in accordance with Section 3.4(b)) of such Party (or its Affiliate) without requiring the other Party’s prior written consent to perform the subcontracted activities, and (iii) to Third Parties not under 3.4(b) the entire right to Manufacture or Commercialize the Vaccine through one (1) or multiple tiers of sublicense with prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Party granting a sublicense of the rights granted to it by the other Party under this Agreement shall enforce the terms of such sublicense in all material respects. Each Party shall remain responsible for the performance of this Agreement and the performance of its sublicensees hereunder.

(b) Subject to Section 8.2(h) with respect to Novavax, each Party shall have the right to subcontract the performance of its obligations hereunder at any given time during the Term; provided, however, that such Party shall ensure that each of its subcontractors accepts and complies with all applicable terms and conditions of this Agreement in all material respects and that such Party shall remain responsible for the performance of its subcontractors hereunder.

3.5 No Implied Licenses; Upstream Agreements.

(a) No Implied Licenses. Except as explicitly set forth in this Agreement, neither Party grants any license, express or implied, under its intellectual property rights to the other Party, whether by implication, estoppel, or otherwise. All rights not expressly granted under this Agreement are retained by the applicable Party.

(b) Upstream Agreements.

(i) Certain rights, if any, granted by a Party to the other Party pursuant to Section 3.1 or 3.2, as applicable, under Novavax Technology or Takeda Technology, as the case may be, were in-licensed or otherwise conveyed to such licensor Party under the agreements set forth on Exhibit C (each, an “Upstream Agreement”), which Exhibit shall be updated from time to time by the Parties to accurately reflect any new in-licensed rights. Each Party, if applicable, shall, and shall ensure that its Affiliates shall, maintain the Upstream Agreements in full force and effect and without any further amendment or replacement that would affect or impact the other Party’s rights hereunder, except with such other Party’s prior written consent. Each Party shall provide the other Party a copy of any proposed amendment of an Upstream Agreement that would affect or impact the other Party’s rights hereunder prior to execution of such amendment. The licensee Party shall have the right to comment on such amendment and the licensor Party shall consider such comments in good faith and obtain written consent from the licensee Party prior to executing such amendment, which consent shall not be unreasonably withheld, delayed or conditioned. In the event that a licensor Party, or any of its Affiliates or sublicensees is or becomes in breach or default of an Upstream Agreement, and the Third Party licensor or counterparty to such Upstream Agreement terminates or is expected to terminate the licensor Party’s rights under such Upstream Agreement, then such licensor Party shall promptly notify the licensee Party of such expectation or termination, as applicable, in writing and shall
ensure that licensee Party’s rights, as a sublicensee under such Upstream Agreement, shall continue. This provision will not restrict or eliminate any of a licensee Party’s remedies under this Agreement, or that are otherwise available for such licensee Party under any law or equity.

(ii) As of the Effective Date, Novavax hereby grants sublicenses under the [***] to each of the following Takeda entities: [***], [***]. Upon written request from Takeda, Novavax agrees to grant additional sublicenses under the [***].

3.6 Post-Pandemic Takeda Territory.

(a) Negotiation Period. Commencing on the Effective Date and ending on [***], unless otherwise extended by the Parties in writing (the “Negotiation Period”), the Parties shall discuss in good faith and document in writing the inclusion of any or all of the countries set forth in Exhibit D or any other country or region as mutually agreed upon by the Parties as part of the Takeda Territory for the Post-Pandemic Period under this Agreement, subject to mutually agreed upon financial and other terms and conditions, which terms and conditions shall be memorialized in a separate agreement (the “Post-Pandemic Agreement”). For clarity, unless and until the Parties agree to the inclusion of any such country(ies) in the Takeda Territory, the preceding sentence does not limit Novavax’ right to Exploit the Vaccine in any country set forth in Exhibit D.

(b) Notice. If at any time during [***], Novavax receives a bona fide written offer from a Third Party on commercially reasonable terms for the rights to Commercialize the Vaccine during the Post-Pandemic Period in one (1) or more country (ies) in Exhibit D not then included as part of the Takeda Territory prior to the earlier of [***] and the execution of the Post Pandemic Agreement, Novavax shall [***] notify Takeda in writing identifying the country(ies) that is(are) the subject of such offer.

ARTICLE 4 TECHNOLOGY TRANSFER

4.1 Technology Transfer Plan. Novavax shall transfer to Takeda (a) all Novavax Know-How pursuant to Section 4.2 and the initial Technology Transfer Plan (as defined below) and (b) all updates to or additional Novavax Know-How that comes into existence after the Effective Date pursuant to Section 4.3. The initial version of the written transfer plan setting forth certain details and timing for the transfer of all Novavax Know-How is set forth in Exhibit E, as may be amended from time to time by the JMC, (the “Technology Transfer Plan”).

4.2 Initial Transfer of Novavax Know-How. As set forth in the Technology Transfer Plan, Novavax, [***] shall transfer to Takeda by the applicable delivery dates set forth in the Technology Transfer Plan one (1) electronic copy of all documents, data (including any Useful Development Data) and materials Controlled by Novavax to the extent such documents, data and materials are specified in the Technology Transfer Plan. For clarity, such initial transfer under the Technology Transfer Plan shall include a transfer of all Novavax Know-How related to any aspect of Manufacturing the Vaccine, including processing of drug substance and fill/finish, but will not include any Know-How pertaining to the Manufacture of the Adjuvant.
Components by themselves (i.e., prior to the first to occur of (i) mixing the Adjuvant Components to produce the Adjuvant or (ii) co-formulation/combination with the Antigen).

4.3 **Continued Information Exchange and Assistance.** Each Party shall reasonably cooperate and cause its Affiliates to reasonably cooperate with the other Party and its Affiliates to facilitate the technology transfer of any additional Novavax Know-How generated after the Effective Date but during the Term or Takeda Know-How, as the case may be, to enable the Exploitation of the Vaccine by Takeda in the Takeda Territory or by Novavax in the Novavax Territory in accordance with this Agreement, including by amending the Technology Transfer Plan through the JMC. Such cooperation will include, at the reasonable expense of the requesting Party,

(a) providing the requesting Party with reasonable access by teleconference or in-person any of its employees or contractors involved in the creation or development of the Novavax Know-How or Takeda Know-How, as the case may be, or any employees or contractors involved in the Development or Manufacturing of the Vaccine in the Novavax Territory or the Takeda Territory,

(b) providing the requesting Party with a reasonable level of technical assistance and consultation in connection with the transfer to the requesting of Novavax Know-How or Takeda Know-How, as the case may be, and (c) responding to questions raised by the requesting Party or its Affiliates in connection with the Novavax Know-How or Takeda Know-How, as the case may be. For clarity, unless otherwise agreed by the Parties, neither Party has an obligation to the other Party to create or generate any particular Know-How.

**ARTICLE 5 DEVELOPMENT**

5.1 **Development Plan.** The Development of the Vaccine in the Takeda Territory shall be governed by the Development Plan, an initial draft of which is attached hereto as Exhibit F, subject to Section 2.3(b). The Development Plan will be summary in nature, but will include all material Development activities anticipated to be required for obtaining Regulatory Approval in the Takeda Territory. On at least [***], Takeda shall update and amend, as appropriate, the then-current Development Plan and shall submit such updates and/or amendments for review and comment by the JD&RC. Takeda shall review and consider all comments to the Development Plan from the JD&RC in good faith. For clarity, the Development Plan, including all amendments and updates thereto, shall not require the approval of the JD&RC. At the request of a Party, the Parties shall discuss in good faith whether the foregoing obligation to further amend or update the Development Plan continues to be [***] for the purposes of fulfilling the objectives of this Agreement. Following such discussion, either Party may propose in writing that the foregoing obligation to update and amend the then-current Development Plan be considered to be fully fulfilled and of no further force or effect, which proposal the other Party agrees to consider in good faith and reasonably accept.

5.2 **Development Activities.**

(a) **General.** Each of Novavax and Takeda shall use Commercially Reasonable Efforts to execute and perform the activities allocated to it under the Development Plan, and cooperate with the other Party in its efforts to execute and perform its responsibilities under the Development Plan. Each Party shall conduct such activities in good scientific manner.
and in compliance in all material respects with all Applicable Law, including applicable national and international (e.g., ICH, GCP, GLP, and GMP) guidelines.

(b) Other Development Activities.

(i) Post-Marketing Studies. If a Post-Marketing Study in the Takeda Territory is required by the applicable Regulatory Authority or the Parties agree that such a Post-Marketing Study is necessary or reasonably useful, Takeda shall be responsible for such Post-Marketing Study in the Takeda Territory. Unless required by the Regulatory Authority or otherwise agreed by the Parties, Takeda may in its sole discretion determine whether a Post-Marketing Study in the Takeda Territory is necessary and if deemed necessary, shall be responsible for such Post-Marketing Studies within the Takeda Territory. Upon reasonable request of either Party, the other Party shall, at the requesting Party’s reasonable expense for the other Party’s support, beyond an initial *** of such other Party’s personnel time which initial time shall be [***], provide the requesting Party reasonably necessary or useful technical assistance in the form of responding to questions and providing available and then-existing Information (e.g., post-marketing reports, if available) to support the conduct of such studies in regards to the Manufacturing, nonclinical or clinical area that may be required to meet post-approval commitments in the Takeda Territory or Novavax Territory, as applicable. For clarity, unless otherwise agreed by the Parties, neither Party has an obligation to the other Party to recreate or regenerate any Information in any particular format or including any particular data or other content, but the requesting Party may reasonably request that such other Party, at such other Party’s option, either (A) reformat or reorganize an existing set of Information or (B) provide the requesting Party the relevant underlying data so as to permit the requesting Party to reformat or reorganize such existing Information, in each case so as to satisfy the requirements of the relevant Regulatory Authority(ies).

(ii) Clinical Trial Registry. Novavax agrees to register any Clinical Trials conducted under an IND filed by Novavax in any clinical trial registry (e.g., clinicaltrials.gov) as required by Applicable Law. Novavax further agrees to allow Takeda to post the clinical trial results of such Clinical Trials and to link the registry to the clinical results of all studies that are the basis for the efficacy claims in the Takeda Territory, and the results of any
additional studies that are conducted post filing or approval that provide additional information that is relevant to the use of the Vaccine in the Takeda Territory. Takeda shall be responsible for registering in the appropriate clinical trial registry and posting the results of all studies conducted under an IND filed by Takeda for the Vaccine as required by Applicable Law.

5.3 Ownership, Disclosure and Use of Development Data.

(a) Any and all Data, Know-How, Information and other results generated by or otherwise known to a Party, its Affiliate or its respective licensees, collaboration partners or contract research organizations (“CROs”) concerning the Vaccine, either now existing or obtained after the Effective Date, including relevant laboratory notebook information, screening data, regulatory data, data from all preclinical studies (including toxicology studies) and clinical trials of the Vaccine, the Adjuvant and the Adjuvant Components, synthesis schemes, including descriptions in any form, data and other information, and including all such data, results and Information created for or provided to any Regulatory Authority, Investigator Review Board, principal investigator of any pre-clinical study or Clinical Trial (collectively, the “Development Data”), shall be owned solely and exclusively by the Party generating such Development Data and shall be Confidential Information of such Party (and each Party shall require that all of its Affiliates and subcontractors assign any of such Affiliates’ and subcontractors’ right, title and interest in and to such Development Data to such Party). Notwithstanding the foregoing, Development Data shall not include Data, Know-How, Information or other results generated that solely relate to the manufacture, structure or composition of matter of the Adjuvant or the Adjuvant Components.

(b) Subject to 5.3(b)(i), each Party shall [***] and fully disclose to the other Party in writing all Development Data generated by or on behalf of such Party, or otherwise Controlled by such Party, with respect to the Vaccine in its own Territory (i.e. Novavax in the Novavax Territory and Takeda in the Takeda Territory) [***] for the other Party to Develop the Vaccine in its own Territory to the extent permitted by Applicable Law and only after such Development Data has been reviewed by such Party’s quality assurance function (“Useful Development Data”). Each Party shall deliver such Useful Development Data existing as of the Effective Date to the other Party as promptly as practicable, in any event within [***] after the Effective Date and any additional Useful Development Data generated after the Effective Date shall be delivered by each Party to the other Party within [***] after such Useful Development Data becomes available to the Party upon completion of any Phase II study of Vaccine by or on behalf of a Party and [***] after such Useful Development Data becomes available to the Party upon completion of any Phase III study of the Vaccine by or on behalf of a Party.

(i) Notwithstanding anything to the contrary in this Agreement, Novavax shall have no obligation to disclose any Development Data relating or concerning a Vaccine(s) other than NVX-CoV-2373 to Takeda or its Affiliates prior to the initiation of the first Phase I study of such Vaccine(s).
(c) Takeda and its Affiliates may only use the Useful Development Data provided by Novavax for the purposes of Exploiting the Vaccine in the Takeda Territory pursuant
to this Agreement. Novavax may only use the Useful Development Data provided by Takeda for the purposes of Exploiting the Vaccine outside the Takeda Territory.

5.4 **Records.** In conformity with Applicable Law, standard pharmaceutical industry practices and the terms and conditions of this Agreement, each Party shall prepare and maintain, or shall cause to be prepared and maintained, complete and accurate written records, accounts, notes, reports and data (including Useful Development Data) with respect to activities conducted pursuant to the Development Plan; provided, that in no instance shall such records be maintained for less than the later of (a) [***] following the end of the Calendar Year to which the records pertain, (b) requirements under Applicable Law or (c) such Party’s standard operating practice. Upon a Party’s written request, the other Party shall send legible copies of the aforesaid to the requesting Party throughout the Term and for a minimum of [***] following the Term.

**ARTICLE 6 REGULATORY**

6.1 **Regulatory Documentation Disclosure.**

(a) Within [***] after the Effective Date, Novavax shall, at [***] reasonable cost and expense solely for such delivery, deliver to Takeda electronic copies (unless otherwise required by Applicable Law) of all Regulatory Documentation in its Control as of the Effective Date.

(b) Without limiting Section 6.1(a), from time to time after the Effective Date, to the extent not done so by a Party, such Party shall, and shall cause its Affiliates to disclose and make available to the other Party, [***] (with respect to Regulatory Materials, within [***] of submission to or receipt from the applicable Regulatory Authority), all of its or its Affiliates’ Regulatory Documentation which subsequently comes under the possession or Control of providing Party or its Affiliates. The providing Party will be reimbursed by the other Party for actual expenses incurred by the providing Party solely for providing such disclosure or access to the other Party.

(c) The Parties agree, unless otherwise prohibited by Applicable Law, that such disclosure of Regulatory Documentation shall be completed via electronic transmission.

(d) For the avoidance doubt, each Party’s obligation to deliver any Regulatory Documentation under this Section 6.1 will not require such Party to generate new data not otherwise generated for such Party’s regulatory purposes; provided that a Party may reasonably request the other Party to, at such other Party’s option, either (i) reformat or reorganize an existing Regulatory Documentation or (ii) provide the requesting Party the relevant underlying data for the requesting Party to reformat or reorganize an existing Regulatory Documentation.

6.2 **Preparation of Regulatory Materials.**
(a) The regulatory strategy for the Takeda Territory will be consistent with the overall objectives of facilitating Regulatory Approval of the Vaccine in the Takeda Territory in accordance with the Development Plan. All Regulatory Materials (including all Regulatory Approvals) generated by Takeda with respect to the Vaccine in the Takeda Territory under this Agreement shall be owned by, and shall be the sole property and held in the name of, Takeda or its designee. As of the Effective Date, Takeda shall have the sole responsibility and discretion, with respect to Vaccine in the Takeda Territory, to:

(i) develop and implement the overall regulatory strategy;

(ii) prepare all Regulatory Materials, including to obtain and maintain all Regulatory Filings and Regulatory Approvals; and

(iii) conduct all meetings and other communications with the Regulatory Authorities, including all discussions with MHLW or PMDA on regulatory pathway toward earliest possible marketing authorization.

(b) Takeda shall provide Novavax with an opportunity to review and comment on all material Regulatory Filings reasonably in advance of when Takeda intends to submit such Regulatory Filing. Novavax shall provide its comments within [***] (provided that Takeda shall notify Novavax in writing [***] before submitting any such Regulatory Filing to Novavax for comment), or such other period of time mutually agreed to by the Parties or reasonably requested by Takeda and Takeda shall give due consideration to any comments provided by Novavax.

(c) To the extent not prohibited by Applicable Laws and not expressly prohibited by the applicable Regulatory Authority, each Party shall notify the other Party within [***] after making or receiving any request for a meeting or substantive telephone conference call with a Regulatory Authority in a Reference Country, European Economic Area (EEA) or the Takeda Territory with respect to any Regulatory Filings related to the Vaccine. To the extent not prohibited by Applicable Laws and not expressly prohibited by the applicable Regulatory Authority, the other Party shall have the right to have one (1) employee observe, at its cost and expense, any such meeting or conference call. The foregoing rights and obligations apply with respect to meetings or conferences initiated by Novavax, Takeda or by the FDA or the PMDA. To the extent not prohibited by Applicable Laws and not expressly prohibited by the applicable Regulatory Authority in a Reference Country, European Economic Area (EEA) or the Takeda Territory, each Party shall promptly furnish the other Party with copies of all substantive correspondence it has had with a Regulatory Authority in a Reference Country, European Economic Area (EEA) or the Takeda Territory, and contact reports concerning substantive conversations or minutes from any substantive meetings with a Regulatory Authority in a Reference Country, European Economic Area (EEA) or the Takeda Territory with respect to the Vaccine. Takeda shall be the holder of all Regulatory Approvals (including the MAA) in the Takeda Territory. Novavax shall be the holder of all Regulatory Approvals in the Novavax Territory.

6.3 Cooperation, Consultation and Review. Through the JD&RC, the Parties shall cooperate with each other to achieve the regulatory objectives with respect to the Vaccine in the
Novavax Territory and the Takeda Territory in a timely, accurate and responsive manner. Each Party shall provide the other Party with copies of any proposed Regulatory Materials to be submitted by such Party (other than routine correspondence) in its own Territory in the world (i.e. Novavax in the Novavax Territory and Takeda in the Takeda Territory), as applicable, and shall reasonably consider any comments thereto provided by the other Party to the extent practicable. Novavax shall assist Takeda, as Takeda may reasonably request, in connection with the preparation and filing of all Regulatory Materials with Regulatory Authorities in the Takeda Territory as contemplated in this ARTICLE 6. Takeda shall assist Novavax, as Novavax may reasonably request, in connection with the preparation and filing of all Regulatory Materials with Regulatory Authorities in the Novavax Territory as contemplated in this ARTICLE 6. Within [***] after receipt of an invoice, the requesting Party will reimburse the assisting Party for all reasonable and documented expenses incurred by the assisting Party in connection with this Section 6.3.

6.4 Rights of Reference to Regulatory Materials. Novavax hereby grants to Takeda and its Affiliates a right of reference to all Regulatory Materials filed by Novavax or its Affiliates or its other licensees (to the extent Novavax has been granted the right to grant such right of reference to Regulatory Materials filed by its other licensees) for the Vaccine solely for the purpose of seeking, obtaining and maintaining Regulatory Approvals for, and the Commercialization of, the Vaccine in the Takeda Territory, consistent with the roles of the Parties set forth in this Agreement. Takeda hereby grants to Novavax, its Affiliates and its other licensees for the Vaccine a right of reference to all Regulatory Materials filed by Takeda and its Affiliates for the Vaccine solely for the purpose of seeking, obtaining and maintaining Regulatory Approvals for, and the Commercialization of, the Vaccine in the Novavax Territory. For the avoidance of doubt, Novavax or its Affiliates intends to directly submit all Regulatory Filings in the U.S., United Kingdom, Canada, Germany and France (collectively, the “Reference Countries”) and therefore, the foregoing right of reference of Takeda shall include a right of reference to all Regulatory Filings submitted to the Reference Countries. To the extent Novavax allows a Third Party to submit any Regulatory Filings in any of the Reference Countries, Novavax shall ensure that such Third Party expressly grant to Takeda a right of reference to all Regulatory Filings submitted by such Third Party to any Reference Country.

6.5 Packaging and Labeling. Notwithstanding anything to the contrary contained herein, Takeda, its Affiliate or its designated Third Party shall be responsible for all final product labeling and packaging (whether in commercial or clinical packaging presentation), including insertion of materials such as applicators, transfer needles, syringes, patient inserts, patient medication guides, professional inserts and any other written, printed or graphic materials accompanying the Vaccine as part of a finished product within the Takeda Territory (collectively, “Packaging and Labeling”). Takeda, its Affiliate or its designated Third Party shall ensure that all such Packaging and Labeling complies with Applicable Laws, GMPs and the Regulatory Approvals for the Vaccine in the applicable country in the Takeda Territory. Novavax shall hold the Corporate Core data sheet (CCDS) for the Vaccine label.

6.6 Adverse Event Reporting. Takeda (or its designee), as the holder of the Regulatory Approvals (including the MAA) in the Takeda Territory, shall be responsible for the collection, review, assessment, tracking and filing of information related to adverse events.
associated with the Vaccine in the Takeda Territory (whether or not Regulatory Approval has been achieved), in each case in accordance with Applicable Laws and this Agreement (and Takeda shall ensure that, in the Development and Commercialization of the Vaccine, it or its designee will record, investigate, summarize, notify, report and review all adverse events in accordance with Applicable Laws). Novavax (or its designee) shall be responsible for the collection, review, assessment, tracking and filing of information related to adverse events associated with the Vaccine in the countries in the Novavax Territory (and Novavax shall ensure that, in the Development and Commercialization of the Vaccine in the Novavax Territory, it or its designee will record, investigate, summarize, notify, report and review all adverse events in accordance with Applicable Laws). The Parties will cooperate with regard to the monitoring, exchange, and reporting of safety information involving the Vaccine in accordance with Applicable Laws on pharmacovigilance and clinical safety. The Parties have negotiated in good faith and entered into a pharmacovigilance agreement (“PVA”) prior to the Effective Date as is necessary to ensure that all regulatory requirements are met in order to formalize their respective safety data exchange and pharmacovigilance responsibilities for the Vaccine (for clinical or commercial use), including serious adverse events and emerging safety issues, to enable each Party to comply with all of its legal and regulatory obligations in respect of the Vaccine. In the event of any conflict between any of the provisions of the PVA and this Agreement in matters of business, financial or legal nature, the terms of this Agreement shall prevail. For matters of pharmacovigilance, the terms of the PVA shall prevail.

6.7 Regulatory Authority Communications Received by a Party. To the extent not prohibited by Applicable Laws and not expressly prohibited by an applicable Regulatory Authority, each Party shall keep the other Party informed in a timely manner, compliant with the reporting requirements of the applicable Regulatory Authorities, of the notification of any action by, or notification or other information which it receives (directly or indirectly) from any Regulatory Authority in the world which: (a) raises any material concerns regarding the safety or efficacy of the Vaccine; (b) indicates or suggests a potential material liability of either Party to Third Parties in connection with the Vaccine; (c) is reasonably likely to lead to a recall or market withdrawal of the Vaccine; (d) relates to expedited and periodic reports of adverse events with respect to the Vaccine and which may have a material negative impact on obtaining or maintaining Regulatory Approval or the continued Commercialization of the Vaccine, as then conducted; or (e) relates to any dissatisfaction regarding the Vaccine of such a nature and magnitude that it is required under the Applicable Law to be collected, maintained and reported to a Regulatory Authority, including reports of actual or suspected product tampering, contamination, mislabeling or inclusion of improper ingredients. To the extent not prohibited by Applicable Laws and not expressly prohibited by an applicable Regulatory Authority, each Party shall provide the other Party in a timely manner with a copy of all correspondence received from a Regulatory Authority specifically regarding the matters referred to above. Each Party shall fully cooperate with and assist the other Party in complying with regulatory obligations and communications, including by providing to the requesting Party, in a timely manner upon request, such information and documentation in the cooperating Party’s possession or Control as may be [***] for the requesting Party to prepare a response to an inquiry from a Regulatory Authority; provided that, (i) in the case where Takeda or its Affiliate is the cooperating Party, Novavax shall reimburse Takeda for its reasonable expenses incurred in connection with such
cooperation or (ii) in the case where Novavax or its Affiliate is the cooperating Party, Takeda shall reimburse Novavax for its reasonable expenses incurred in connection with such cooperation.

6.8 Audit. If a Regulatory Authority desires to conduct an inspection or audit of a Party’s facility or a facility under contract with such Party with regard to the Vaccine, in the case of Takeda or Novavax, or the Adjuvant or an Adjuvant Component, in the case of the Novavax, then the audited Party shall notify the other Party as soon as practicably possible after receipt of such notification of such audit or inspection and provide copies of any materials provided to it by the applicable Regulatory Authority to the extent permitted by Applicable Law; provided that the audited Party shall not be required to notify the other Party of audits or inspections that are of a routine nature or that do not relate to the Vaccine, the Adjuvant or any Adjuvant Component, except where such audits result in communications or actions of such Regulatory Authority which have an impact upon the Exploitation of Vaccine or use of the Adjuvant or an Adjuvant Component in the Vaccine in the Takeda Territory or the Novavax Territory. In addition, if a Regulatory Authority conducts an unannounced inspection or audit of a Party’s facility or a facility under contract with such Party with regard to the Vaccine, the Adjuvant or an Adjuvant Component in the such Party’s Territory, then the audited Party shall notify the other Party within [***] of becoming aware of the commencement of such audit or inspection, provided that the audited Party shall be required to so notify the other Party of such audits or inspections only if such audits result in communications or actions of such Regulatory Authority which have an impact upon the Exploitation of Vaccine or use of the Adjuvant or an Adjuvant Component in the Vaccine in the Takeda Territory or the Novavax Territory. Following receipt of the inspection or audit observations of such Regulatory Authority (a copy of which (with appropriate redactions), the audited Party shall promptly provide to the other Party to the extent permitted by Applicable Law), the audited Party shall also provide the other Party with copies of any written communications (with appropriate redactions) received from Regulatory Authorities with respect to such facilities in a timely manner after receipt, to the extent such written communications relate to the Exploitation of the Vaccine in the Takeda Territory or Novavax Territory, the Adjuvant, an Adjuvant Component or the Manufacture of the Vaccine, Adjuvant or Adjuvant Component and such disclosure is permitted by Applicable Law, and shall prepare the response to any such observations. To the extent permitted by Applicable Law, the audited Party shall provide the other Party with a copy(ies) of any (i) proposed and final responses (with appropriate redactions) to such communications and shall consider in good faith such other Party’s reasonable comments with respect to such proposed response in the case of an audit of a facility which Manufactures Clinical Trials Materials or Adjuvant Component provided to Takeda under this Agreement or (ii) any final response in all other cases described in this Section 6.8. The audited Party agrees to conform its activities under this Agreement to any commitments made in such a response. For the purposes of this Section 6.8, “appropriate redactions” means only redacting information solely related to the Adjuvant and/or contract manufacturer(s) who are not supplying any Adjuvant Component to Takeda hereunder.

ARTICLE 7 COMMERCIALIZATION

7.1 Commercialization in the Takeda Territory. During the Term, as between the Parties, Takeda shall have the sole right and responsibility for all aspects of the
Commercialization of the Vaccine in the Takeda Territory, including: (i) developing and executing a commercial launch and pre-launch plan; (ii) marketing and promotion; (iii) booking sales and distribution and performance of related services, including those described in Section 7.2; (iv) handling all aspects of order processing, invoicing and collection, inventory and receivables; (v) publications; (vi) providing customer support, including handling medical queries, and performing other related functions; (vii) conforming its practices and procedures in all material respects to the Applicable Law relating to the marketing, detailing and promotion of the Vaccine in the Takeda Territory; and (viii) product security activities, to be performed at its sole option and discretion notwithstanding anything in this Agreement to the contrary. Novavax shall have the sole right and responsibility for all such Commercialization activities for the Vaccine in the Novavax Territory. Takeda shall have the sole right and responsibility to review and approve of all Promotional Materials for compliance with Applicable Law in the Takeda Territory, including submission, where appropriate, to the applicable Regulatory Authority in the Takeda Territory. Except as otherwise provided in this ARTICLE 7 and subject to Exhibit B, Takeda shall bear all of the expenses incurred in connection with all such Commercialization activities in the Takeda Territory.

7.2 Sales and Distribution. Takeda shall have the sole right and responsibility for handling all sales and distribution activities, including returns, order processing, invoicing and collection, distribution (including importing, exporting, transporting, customs clearance, warehousing, invoicing, handling and delivering the Vaccine to customers), and inventory and receivables for the Vaccine in the Takeda Territory. Each Party shall not, and shall ensure that its Affiliates and other (sub)licensees do not, accept orders for the purchase of the Vaccine from Third Parties, or make sales of the Vaccine to Third Parties in the other Party’s Territory for its own account or for the other Party’s account. If either Party receives any order for the Vaccine in the other Party’s Territory, it shall refer such order to the other Party for acceptance or rejection.

7.3 Booking Sales and Setting Pricing. Takeda shall have the sole and exclusive right to book sales and determine all pricing of the Vaccine in the Takeda Territory, including (i) negotiating, establishing or modifying the terms and conditions regarding the sale of the Vaccine in the Takeda Territory, including any terms and conditions relating to or affecting (A) the price at which the Vaccine shall be sold, (B) discounts available to any Third Party payers (including managed care providers, indemnity plans, unions, self-insured entities, and government payer, insurance or contracting programs in the Takeda Territory), (C) discounts attributable to payments on receivables, (D) distribution of the Vaccine, and (E) credits, price adjustments, or other discounts and allowances to be granted or refused; and (ii) all activities relating to government price reporting with respect to the Vaccine in the Takeda Territory. Notwithstanding anything in this Agreement express or implied to the contrary, Novavax shall not have any right to direct, control, or approve Takeda’s pricing of the Vaccine for the Takeda Territory. The provision to Novavax of any pricing data, if any, is for informational purposes only.

7.4 Ownership of Promotional Materials. Takeda shall own all right, title and interest in and to any Promotional Materials created by or on behalf of Takeda hereunder relating to the Vaccine in the Takeda Territory, including copyrights.

7.5 Vaccine Trademarks.
The Parties shall mutually agree upon the trademark(s) to be used in connection with Commercializing the Vaccine in the Takeda Territory (the “Vaccine Trademark”). In determining the appropriate Vaccine Trademark, the Parties may consider linguistic or cultural particularities, Applicable Laws of the Takeda Territory, any conflict with any Third Party’s intellectual property rights in the Takeda Territory, global branding strategy, market research, regulatory research, legal searches, investigation results, and any other relevant information known to either Party that is relevant to the clearance for use and registration of a trademark or for use and registration of a trade dress.

Takeda shall have the sole right, but not the obligation, to establish, maintain and enforce the Vaccine Trademark in the Takeda Territory and, subject to Section 9.5, shall bear all cost and expenses related thereto. Subject to Section 13.6, Takeda shall own and retain all rights to the Vaccine Trademark (in each case, together with all goodwill associated therewith throughout the Takeda Territory), except in the event that Novavax filed and registered any such Vaccine Trademark in a jurisdiction that becomes part of the Takeda Territory for the Post-Pandemic Period.

7.6 **Recalls and Voluntary Withdrawals.** Each Party shall notify the other Party [***] following, but in no event later than [***] following, its determination that any event, incident, or circumstance has occurred that may result in the need for a recall, market suspension, or market withdrawal of the Vaccine in its own Territory in the world (i.e. Novavax in the Novavax Territory and Takeda in the Takeda Territory), and shall include in such notice the reasoning behind such determination, and any supporting facts. Takeda shall have the sole right to make the final determination whether to voluntarily implement any such recall, market suspension, or market withdrawal in the Takeda Territory; provided, that prior to any implementation of such a recall, market suspension, or market withdrawal, Takeda shall, to the extent practical, consult with Novavax and shall consider Novavax’ comments in good faith. For all recalls, market suspensions or market withdrawals undertaken pursuant to this Section 7.6 in the Takeda Territory, Takeda shall be solely responsible for the execution thereof, and Novavax shall reasonably cooperate in all such recall efforts. Subject to Section 9.5, [***]; [***].

ARTICLE 8
SUPPLY AND MANUFACTURING

8.1 **Clinical Supply Terms.**

(a) **Clinical Serum Sample.** The Parties agree that Novavax will perform certain services for Takeda in accordance with the terms and conditions and the Statement of Work set forth in Exhibit G. Pursuant to Exhibit G, Novavax will, at [***] cost and expense (unless otherwise agreed-upon by the Parties and set forth in a subsequent Statement of Work), (i) test certain serum samples provided by Takeda or its Affiliates (the “Samples”) in 5 IgG ELISA assay (the “Assay”), (ii) provide Takeda with the relevant qualification and validation reports, (iii) provide data derived from such testing to Takeda, and (iv) grant Takeda and its Affiliates with access to the Assay for all Clinical Trials conducted by or on behalf of Takeda or its Affiliates in connection with the Vaccine in the Takeda Territory.
(b) **Clinical Trial Materials - General.** During the Term, in order for Takeda to conduct Clinical Trials in the Takeda Territory, Novavax shall provide, Manufacture (or have Manufactured) and supply Takeda with the Vaccine for Clinical Trial use in quantities as set forth in Section 8.1(c) below and any additional quantities mutually agreed upon by the Parties (collectively, the “Clinical Trial Materials”). The Parties shall in good faith negotiate the provision of any additional quantities of the Clinical Trial Materials and timelines for delivery of Clinical Trial Materials with due consideration to the timeline and activities in the Development Plan and any reasonable capacity limitation of Novavax. Novavax shall be responsible for implementing any specific labelling specifications as instructed by Takeda.

(c) **Clinical Trial Materials Purchase Order.** Takeda shall deliver to Novavax a firm purchase order or orders of the Clinical Trial Materials for delivery as well as the location of delivery and desired delivery date for each delivery at least [***] in advance of any such delivery date unless otherwise agreed by the Parties. Such purchase orders may be delivered electronically or by other means to such location designated by Novavax. Notwithstanding the foregoing requirement, the Parties acknowledge and agree that Novavax has delivered [***] doses of the Vaccine and [***] MDVs (the “Initial Clinical Trial Materials”) to [***] at the following address on or about January 27, 2021:

[***]

(d) **Delivery and Transfer of Title.** Novavax shall deliver each order on or before the applicable delivery date. Unless otherwise agreed by the Parties in writing, Novavax shall deliver the Clinical Trial Materials [***], which as of the Effective Date is [***]. Title shall transfer to Takeda upon [***].

(e) **Quality Agreement.** On or before the Effective Date, the Parties have enter into a quality agreement governing, amongst other things, the quality control, and quality assurance of the Clinical Trial Materials.

(f) **Warranty.** Novavax warrants that the Clinical Trial Materials delivered hereunder will at the time of delivery: (i) be Manufactured and tested in accordance with the quality agreement, applicable GMP in the U.S. all Applicable Law the in the U.S., (ii) conform to the specifications as defined and approved by Novavax, if any, (iii) not be adulterated or misbranded within the meaning of the FFDCA and (iv) have an expiry date not earlier than [***] for the Initial Clinical Trial Materials, and for all other Clinical Trial Materials, (A) have a minimum shelf life [***] measured at the date of Manufacture for such Clinical Trial Materials if the approved shelf life is less than [***] or (B) have a minimum remaining shelf life of [***] of its approved shelf life measured at the time of delivery if the approved shelf life is [***] or more. For any Clinical Trial Materials delivered by Novavax that does not conform to the warranty provided in this Section 8.1(f) and are unused, Novavax will, at Takeda’s option, replace such non-conforming Clinical Trial Materials at no charge within the time reasonably requested by Takeda, which shall be Takeda’s sole and exclusive remedy. For clarity, for any Clinical Trial Materials delivered by Novavax that does not conform to the warranty provided in this Section 8.1(f) and are used, Takeda may be entitled to other remedies, including any indemnification set forth in Section 15.2 and any expenses related to a recall in accordance with Section 7.6 as a result of such non-conformance.
8.2 Adjuvant Components Supply Terms.

(a) **General.** During the Term, Novavax shall Manufacture (or have Manufactured) and supply Takeda with quantities of the Adjuvant Components set forth in Section 8.2(b) or otherwise set forth in a binding Adjuvant Rolling Forecast for clinical and commercial use in connection with the Vaccine in the Takeda Territory.

(b) **Adjuvant Forecast.** Subject to Sections 8.2(e) and 8.2(f), Takeda shall purchase, and Novavax shall supply, quantity of Adjuvant Components to manufacture two-hundred fifty million commercial doses of Vaccine (the “Minimum Order Quantity”) between the [***] and [***] (the “Initial Order Term”). In addition, in connection with Manufacturing the Minimum Order Quantity, Takeda may purchase and Novavax will supply (i) Adjuvant Components to manufacture the number of doses of the Vaccine for PPQ and engineering runs as set forth in the Adjuvant Rolling Forecast (“Development Adjuvant Components”), (ii) sufficient quantities of Adjuvant Components to accommodate for Manufacturing losses and use in quality-testing (“Overage”) and (iii) a mutually agreed upon quantity of Adjuvant Components of overfill for each dose of the Vaccine, which quantity will range from [***] (the “Overfill”), which quantities of the Adjuvant Components described in (i) through (iii) shall be set forth in each Adjuvant Rolling Forecast. The Parties acknowledge and agree that the cost of an Overfill of [***] is incorporated in the dose-equivalent prices set forth in Section 8.2(m) for the sole purpose of calculating the Adjuvant Price. The Parties acknowledge and agree that all supply of Adjuvant Components shall be manufactured and supplied in bags by or on behalf of Novavax. A non-binding initial Adjuvant Component forecast for the Minimum Order Quantity, the Development Adjuvant Component, Overage and Overfill during the Initial Order Term is attached hereto as Exhibit H (the “Initial Adjuvant Forecast”). Subject to Section 8.2(c) and the immediately following sentence, starting on, and by, [***] and [***] of [***] thereafter, Takeda will provide Novavax with a rolling forecast (each, an “Adjuvant Rolling Forecast”) of Takeda’s [***] requirements of the Adjuvant Components for the following [***], which shall be binding on each Party. For the first Adjuvant Rolling Forecast to be provided by Takeda on [***] (the “[***] Adjuvant Rolling Forecast”), the Parties agree that the first [***] of such [***] Adjuvant Rolling Forecast (i.e. [***]) will not change from the same [***] as set forth in the Initial Adjuvant Forecast. In addition, the Parties agree that Takeda may only increase or decrease by up to [***] the aggregate Adjuvant Components requirements in each subsequent [***] set forth in the [***] Adjuvant Rolling Forecast from the same [***] as set forth in the Initial Adjuvant Forecast. Within [***] after the Effective Date, the Parties shall work in good faith to refine the Initial Adjuvant Forecast. The Parties shall discuss in good faith and mutually agree upon the appropriate procedures and binding periods for the Adjuvant Rolling Forecast covering the months in and after [***].

(c) **Acceptance of Adjuvant Rolling Forecast.** Within [***] after receipt of each Adjuvant Rolling Forecast, Novavax shall notify Takeda in writing whether it accepts such Adjuvant Rolling Forecast or rejects in good faith such Adjuvant Rolling Forecast; provided that Novavax may reject an Adjuvant Rolling Forecast only if (i) subject to the second to last sentence of this Section 8.2(c), Novavax anticipates the materials and/or manufacturing capacity of Novavax or its Third Party manufacturer required to manufacture and deliver the Adjuvant
Components to be in short supply and in which case the rights and obligations of each Party as set forth in Section 8.2(q) shall apply (ii) a forecast for any *** of an Adjuvant Rolling Forecast submitted to Novavax increases by any quantity for the same *** in the immediately preceding Adjuvant Rolling Forecast (provided, that Novavax may not reject an Adjuvant Rolling Forecast if Takeda increases any *** on or after *** in an Adjuvant Rolling Forecast from the same *** in the immediately preceding Adjuvant Rolling Forecast by up to the lesser of *** and *** in a prior Adjuvant Rolling Forecast and Takeda notifies Novavax in writing of such increase at least *** prior to implementing such increase), or (iii) a forecast for any *** in the *** of an Adjuvant Rolling Forecast submitted to Novavax decreases by any quantity for the same *** in the immediately preceding Adjuvant Rolling Forecast. Takeda may decrease the forecast for any *** following the *** of any Adjuvant Rolling Forecast by up to *** from the same *** in the immediately preceding Adjuvant Rolling Forecast. Subject to the foregoing Section 8.2(c)(ii) and 8.2(c)(iii), the Parties acknowledge that Novavax will not have the right to reject an Adjuvant Rolling Forecast for the foregoing capacity reason pursuant to Section 8.2(c)(i) if the volume of Adjuvant Components set forth in a Adjuvant Rolling Forecast for the months during the Initial Order Term in addition to the volume of Adjuvant Components previously ordered is at or below the sum of the Minimum Order Quantity, the Development Adjuvant Components, the Overage and the Overfill as set forth in the *** Adjuvant Rolling Forecast. The failure to provide a written acceptance or rejection pursuant to this Section 8.2(c) within such *** shall be regarded as an acceptance of the AdjuvantRolling Forecast.

(d) Adjustments to the Adjuvant Forecast. The Parties agree that Takeda may adjust a previously accepted Adjuvant Rolling Forecast by submitting a revised Adjuvant Forecast in the event that there is a material delay by Novavax in the performance of Novavax’ technology transfer obligations set forth in the Technology Transfer Plan; provided that, such material delay was not caused by Takeda’s failure to be prepared to receive such technology transfer or to perform Takeda’s activities in the Technology Transfer Plan.

(e) Minimum Order Quantity. Between the Effective Date and end of ***, Takeda may order less than the Minimum Order Quantity to the extent (i) the average Vaccine yield obtained by Novavax in the *** litter scale is *** less than *** mg/L the average yields obtained by Novavax using the process transferred in the Technology Transfer Plan or (ii) Manufacture of the Vaccine is materially delayed by Novavax in the performance of Novavax’ technology transfer obligations set forth in the Technology Transfer Plan, provided that, such material delay was not caused by the failure to be prepared to receive such technology transfer or other act of commission or omission by Takeda or its Affiliates. In addition, notwithstanding anything to the contrary, Takeda will not be subject to the any Minimum Order Quantity obligation if Novavax does not receive Regulatory Approval (include EUA authorization) for the Vaccine in at least one (1) of the Reference Countries by the end of ***. For the avoidance of doubt, Takeda may order and Novavax may agree to Manufacture and supply volumes of Adjuvant Components beyond the Minimum Order Quantity.

(f) GOJ Purchases. In the event that the GOJ purchases less than the Minimum Order Quantity (as a result of GOJ not placing sufficient orders on or before end of *** to cover the Minimum Order Quantity or GOJ cancelling all or part its order(s)) and
Takeda does not have a Third Party purchaser in the Takeda Territory who will purchase, in combination with the amount purchased by the GOJ, at least the Minimum Order Quantity on or before end of [***], (i) for any such remaining doses of the Vaccine (the “Takeda Vaccine”) that is available for delivery before end of [***], Takeda shall sell and Novavax shall purchase such Takeda Vaccine at [***] and (ii) for any Takeda Vaccine that is available for delivery after end of [***], the Parties shall promptly discuss in good faith the commercially reasonable approach(es) from both Parties’ perspective considering, among other things, Takeda’s Manufacturing capacities and the desire for Adjuvant Components and Vaccine to not go to waste and promptly after such discussion, at Novavax’ sole discretion and option, Novavax shall promptly (A) extend the scope of the licenses granted to Takeda under this Agreement beyond the Takeda Territory so as to permit Takeda to export, distribute and sell such doses of the Takeda Vaccine to COVAX and/or markets outside of the Takeda Territory and/or (B) purchase such quantities of the Takeda Vaccine [***] (provided Novavax must at least do one of (A) or (B), and does not have the discretion or option to do neither (A) nor (B)). In each case ((i) or (ii)), Novavax’ purchase of the Takeda Vaccine will be in accordance with other customary and commercially reasonable terms and conditions (including, regulatory requirements, labelling and packaging, non-conformance, recall, payment and delivery terms and audit rights) to be mutually agreed by the Parties in good faith at such time. In the event the Parties are unable to mutually agree on [***] or other customary and commercially reasonable terms and conditions in connection with Novavax’ purchase of the Takeda Vaccine after escalation pursuant to Section 14.2, the Parties will promptly and in good faith resolve such matter using the arbitration procedures described in Exhibit J, having due regard of the shelf life of the Takeda Vaccine that are the subject of the foregoing purchase arrangement.

(g) Warranty. Takeda warrants that the Takeda Vaccine purchased by Novavax pursuant to this Section 8.2(g) will at the time of delivery: (i) be Manufactured and tested in accordance with the Japan GMP, Pharmaceutical Inspection Co-operation Scheme (PIC/S) and all Applicable Law in Japan, (ii) shall have been Manufactured and delivered in conformance with a quality agreement to negotiated and executed by the Parties prior to any such delivery of Takeda Vaccine to Novavax; (iii) conform to the specifications set forth in such quality agreement, (iv) not be adulterated or misbranded within the meaning of the FFDCA, (v) (A) have a minimum shelf life of [***] for all such Takeda Vaccine measured at the date of Manufacture for such Takeda Vaccine if the approved shelf life is less than [***] or (B) have a minimum remaining shelf life of [***] of its approved shelf life measured at the time of delivery if the approved shelf life is [***] or more.

(h) Contract Manufacturers. Novavax may use Novavax AB, AGC Copenhagen and AGC USA to supply Takeda with the required Adjuvant Components under this Agreement; provided that, Novavax promptly provides Takeda with sufficient materials with respect to these Manufacturing sites and certain sample starting materials upon reasonable request from Takeda in connection with process performance quality (PPQ) or otherwise required for process validation. Novavax shall not use any other contract manufacturer(s) to Manufacture any quantities of Adjuvant Components supplied to Takeda under this Agreement without prior written consent from Takeda, which consent shall not be unreasonably withheld or delayed.
(i) **Purchase Order.** At least [***] in advance of any such delivery date, Takeda shall deliver to Novavax a firm purchase order or orders specifying the quantities of the Adjuvant Components for delivery as well as the location of delivery and desired delivery date for each delivery in accordance with the most current Adjuvant Rolling Forecast accepted by Novavax (each a “Purchase Order”). Purchase Orders may be delivered electronically or by other means to such location designated by Novavax. Novavax shall provide written confirmation of such Purchase Order to Takeda within [***] of receipt of such Purchase Order.

(j) **Delivery and Transfer of Title.** Novavax shall deliver each order on or before the applicable delivery date. Unless otherwise agreed by the Parties in writing, Novavax shall deliver the Adjuvant Components [***]. Title shall transfer to Takeda [***].

(k) **Delay in Shipment.** The Parties acknowledge that due to operational complexities, Takeda may need to delay a shipment of Adjuvant Components ordered pursuant to an Adjuvant Rolling Forecast. Upon Takeda’s reasonable written request to delay a shipment, so long as such request is made at least [***] prior to the delivery date set forth in the Purchase Order, Novavax will in good faith attempt to reallocate the quantity of Adjuvant Components originally allocated to Takeda in such delayed shipment to itself, its Affiliate or a Third Party and will work in good faith with Takeda to accommodate a reasonable request to ship the same quantity of Adjuvant Components to Takeda at a mutually agreed upon later delivery date. For clarity, in no event will Novavax be obligated to supply to Takeda more than the Minimum Order Quantity and the Overage during the Initial Order Term. For any unallocated volume of Adjuvant Components that Novavax was not able to reallocate, Novavax will invoice Takeda for and Takeda will reimburse within [***] pursuant to such invoice for the actual out-of-pocket expenses incurred by Novavax and paid by Novavax to its Third Party contract manufacturers in order to secure the capacity to produce the volume of such unallocated Adjuvant Components.

(l) **Quality Agreement.** On or before a date to be established by the JMC, the Parties shall enter into a quality agreement governing the quality control, quality assurance and validation of the Adjuvant Components. The terms of such quality agreement shall be negotiated in good faith by the Parties.

(m) **Adjuvant Price.** The price of conforming Adjuvant Components to produce each dose-equivalent of the Adjuvant is the lesser of (i) [***] and [***] and (ii) a price based on Novavax’ or Novavax’ Affiliate’s [***] for such Adjuvant Components plus a markup of [***] (the “Adjuvant Price”). For the purposes of this Agreement, a “dose-equivalent” of Adjuvant is composed of [***], which allows for an Overfill of [***] for the sole purpose of calculating the Adjuvant Price. As of the Effective Date, Novavax’ estimate for the actual cost of Adjuvant Components to produce each dose of the Vaccine is between [***] to [***] per dose. If, at any time during or after [***], Novavax’ actual cost of any dose of the Adjuvant exceeds [***] per dose, the Parties shall renegotiate the appropriate Novavax markup percentage.

(n) **Invoicing.** Novavax shall ensure that each delivery of the Adjuvant Components as per Section 8.2(j) is accompanied by an invoice setting forth the Adjuvant Price and any reasonable delivery expense for such delivery. Takeda will make payment against each invoice within [***] after the delivery of such invoice.
(o) **Audit.** Takeda shall have the right to audit the calculation of the Adjuvant Price and amounts set forth in each invoice. Such audit shall be carried out in the same manner as the audit provisions of Section 9.7, which shall apply *mutatis mutandis* to both Parties to facilitate such right of audit. In addition, Novavax shall permit, Takeda, its Affiliates and/or representatives to inspect and audit Novavax’ facilities, production, operations, testing, storage and books and records solely and directly related to the Manufacture of the Adjuvant Components in accordance with the quality agreement described in Section 8.2(k). If Novavax uses any contract manufacturer(s) to satisfy its obligations under this Agreement, Novavax shall audit such contract manufacturer(s) and provide its quality inspection reports for such contract manufacturer(s) upon written request from Takeda. Such audits of Novavax’ facilities may be conducted no more than [***]; provided, however, if any notice or observation is made by a Regulatory Authority of significant noncompliance of such Novavax facility with Applicable Law in connection with an Adjuvant Component which could impact Novavax’ ability to meet the requirements of this Agreement, Takeda may conduct an for cause audit of such facility more frequently than as provided above in accordance with the quality agreement described in Section 8.2(k).

(p) **Warranty.** Novavax warrants that the Adjuvant Components delivered hereunder will at the time of delivery: (i) be Manufactured and tested in accordance with the EU GMP and all Applicable Law in the EU, (ii) shall have been Manufactured and delivered in conformance with this Agreement and any applicable quality agreement; (iii) conform to the specifications defined and approved by Novavax, if any, (iv) not be adulterated or misbranded within the meaning of the FFDCA, (v) have a minimum remaining shelf life of [***] of its approved shelf life, except that Adjuvant Components delivered in bags may have a minimum remaining shelf life of [***] until Novavax is able to increase the approved shelf life of such Adjuvant Components to longer than [***], (vi) sufficient quantities of each Adjuvant Component is delivered pursuant to Section 8.2(i) in order for Takeda to produce the Adjuvant and (vii) not be subjected to any Third Party rights, including intellectual property rights, except to the extent Novavax has a valid right to use and to pass such right along to Takeda. During the period when the approved shelf life of Adjuvant Components delivered in bags is limited to [***], Novavax will use Commercially Reasonable Efforts to deliver as many quantities of Adjuvant Components as practicable with a minimum shelf life of [***]. For any batch of Adjuvant Component delivered by Novavax that does not conform to the warranty provided in this Section 8.2(p) and are unused or incorporated into Vaccine that are unsold, Novavax will, at Takeda’s option, replace such non-conforming batch at no additional charge within the time reasonably requested by Takeda or provide Takeda with a credit for such non-conforming batch to be applied towards Takeda’s future orders, which shall be Takeda’s sole and exclusive remedy. For clarity, for any Adjuvant Component delivered by Novavax that does not conform to the warranty provided in this Section 8.2(p) and are used, Takeda may be entitled to other remedies, including any indemnification obligation set forth in Section 15.2 and any expenses related to a recall in accordance Section 7.6 as a result of such non-conformance.

(i) **Shortages.** In the event that Novavax anticipates the materials and/or manufacturing capacity of Novavax or its Third Party manufacturer required to manufacture and deliver the Adjuvant Components to Takeda is to be in short supply, Novavax shall promptly notify Takeda of such shortage in writing, and the Parties shall promptly meet to discuss the
shortage. Novavax shall provide a written plan of action stating in reasonable detail the root cause of the shortage and proposed measures to remedy the shortage and the date such shortage is expected to end. Novavax shall promptly use its Commercially Reasonable Efforts to minimize the duration of any shortage. During any such shortage, unless otherwise agreed by the Parties, Novavax shall fairly allocate the Adjuvant Components among: (i) Takeda, (ii) Novavax and its Affiliates, and (iii) Novavax’ Third Party licensees, in each case, for the production of Vaccine for the GOJ (which, for the sole purpose of this Section 8.2(q), shall not exceed [***] commercial doses of Vaccine, the Development Adjuvant Components and the associated Overage and Overfill for such commercial and development doses of the Vaccine), United Kingdom and COVAX on a pro rata basis with respect to the quantities of Adjuvant Components set forth in the then most recent forecast for each such purchaser or user of Adjuvant Components for the duration of the shortage. The Parties shall in good faith take into account the timing and quantities of any deliveries under any of Novavax’ advance purchase agreements to the United Kingdom and COVAX and Takeda’s advance purchase agreement and near term commitments from the GOJ in determining fair allocation of Adjuvant Components during such time of shortage, and Novavax shall implement the allocation of the Adjuvant Components consistent with any agreement reached during such discussions with Takeda.

8.3 Starting Materials. The Parties agree that Novavax shall provide to Takeda certain Starting Materials specified in and pursuant to Exhibit I.

8.4 Change in Adjuvant. If an Adjuvant other than Matrix-Μ™ is adopted by Novavax for any Vaccine and such new Adjuvant is approved by a Regulatory Authority in the Novavax Territory for any Vaccine or is in the processing of obtaining such approval, Novavax will provide written notice to Takeda with details regarding the new Adjuvant (including the components thereto). The Parties will agree in good faith on the terms of purchase and supply of the new Adjuvant (or the components thereto), including the Adjuvant Price and any other necessary amendments to the current Adjuvant obligations.

8.5 Vaccine Manufacturing. Takeda shall have sole and exclusive right, at its sole expense subject to ARTICLE 4 and Section 9.5, and sole responsibility for the Manufacture of quantities of the Vaccine for Regulatory Filing purposes and Commercialization in the Takeda Territory. The Parties acknowledge that Takeda and its Affiliates may have the capacity to manufacture quantities of the Vaccine beyond the demand within the Takeda Territory. To the extent Takeda and its Affiliates have excess capacity, Takeda will notify Novavax in writing of such excess capacity and the Parties shall negotiate in good faith the terms under which excess quantities of Vaccine would be made available to supply mutually agreed upon markets in the Novavax Territory on a non-exclusive basis. Novavax acknowledges and agrees that Takeda will be encouraged and enabled to produce quantities of the Vaccine at a certain optimum volume in order for Takeda and its Affiliates to utilize their facilities to Manufacture the Vaccine in a sustainable and economically viable manner.

ARTICLE 9 FINANCIAL PROVISIONS

9.1 Government Funding. Takeda and its Affiliates will be solely responsible for all government liaison efforts to maintain commitments from the GOJ on allocation of doses of the
Vaccine for Japan and funding for capital improvements at Takeda’s facility for Manufacturing, operating expenses, Regulatory Filings and conduct of Clinical Trials in Japan (if necessary) and other costs and expenses related to the Exploitation of the Vaccine by Takeda. Upon Takeda’s request, Novavax shall use reasonable efforts to cooperate with Takeda in such liaison process. In its application to MHLW, [***]).

9.2 **Milestone.** Subject to the terms and conditions of this Agreement, Takeda shall make the one-time milestone payments to Novavax based on the first achievement of the corresponding milestone event for the Vaccine as set forth in this Section 9.2. Each Party shall promptly notify the other Party upon its achievement of any milestone event and Takeda shall pay to Novavax the amounts set forth below within [***] after receipt of Novavax’ invoice following the achievement of the corresponding milestone event. Each milestone payment by Takeda to Novavax hereunder shall be payable only once, upon the first achievement of the applicable milestone event regardless of the number of times such milestone event is subsequently achieved.

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<th>Milestone Event</th>
<th>Milestone Payment (U.S. Dollars)</th>
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<td>[***]</td>
<td>Twenty Million Dollars ($20,000,000.00)</td>
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*The Parties agree that [***] satisfies the first milestone event set forth above and that notwithstanding the terms and conditions set forth in Section 9.2, Takeda shall pay to Novavax the amounts set forth above for the first milestone event within [***] after the Effective Date. The Parties acknowledge and agree that (a) a valid invoice for such milestone payment dated December 31, 2020 has been issued by Novavax and received by Takeda, (b) that no new or replacement invoice is necessary or required by this Agreement, and (c) the due date of such payment shall be governed by the period of time set forth in the first sentence of this paragraph.

9.3 **Payment.**

(a) **Upstream Agreement Royalties.** Each Party shall be solely responsible for the payment of any royalties, sublicense revenues, milestones or other payments due to Third Parties pursuant to such Party’s respective Upstream Agreement arising from the Development and Commercialization of the Vaccine by Takeda, its Affiliates and their respective subcontractors and sublicensees in the Takeda Territory under this Agreement.

(b) **Allocation of Third Party Obligation.**

(i) To the extent Takeda incurs any payments associated with any upfront, milestone, royalties or other amounts owed to any Third Party for intellectual property that is necessary for the Exploitation of the Vaccine in the Takeda Territory and which the use of the Novavax Technology in accordance with this Agreement would infringe such intellectual property ("Third Party Obligations for Novavax Blocking IP"), Takeda may credit up to [***].
Any share of such Third Party Obligation that remains uncredited due to the application of the foregoing floor may be carried forward to subsequent [***].

(ii) To the extent Takeda incurs any payments associated with any upfront, milestone, royalties or other amounts owed to any Third Party for intellectual property that is necessary for the Exploitation of the Vaccine in the Takeda Territory and which the use of the Takeda Technology in accordance with this Agreement would infringe such intellectual property (the “Third Party Obligations for Takeda Blocking IP”), Takeda may [***] in calculating the Operating Profit in accordance with Exhibit B.

(iii) To the extent Takeda incurs any payments associated with any upfront, milestone, royalties or other amounts owed to any Third Party for intellectual property that is reasonably useful for Exploitation of the Vaccine in the Takeda Territory (“Third Party Obligations for Useful IP”), Takeda may [***] in calculating the Operating Profit in accordance with Exhibit B.

(iv) If there is/are any Third Party Obligation(s) for Novavax Blocking IP, Third Party Obligations for Takeda Blocking IP and/or Third Party Obligations for Useful IP that solely applies to any Vaccine other than NVX-CoV-2373 or its Antigen component, the Parties agree to discuss and negotiate in good faith amending the financial arrangement(s) set forth in Sections 9.3(b)(i), (ii) and (iii).

(c) **Mode of Payment.**

All payments to Novavax under this Agreement shall be made by deposit in the requisite amount to the following bank account of Novavax or such other account as Novavax may from time to time designate by written notice to Takeda:

[***]

All payments to Takeda under this Agreement shall be made by deposit in the requisite amount to the following bank account of Takeda or such other account as Takeda may from time to time designate by written notice to Novavax:

[***]

9.4 **Operating Profit Report.** Upon the First Sale of the Vaccine in the Takeda Territory and thereafter for the Term of this Agreement, Takeda shall, within [***] after the end of each [***], submit to Novavax a report of the Operating Profit for such [***] (the “Operating Profit Report”) setting forth in reasonable detail the calculation of the Operating Profit for such [***] in accordance with Exhibit B and the amounts payable to Novavax for such [***], if any, based on the allocation of the Operating Profit between the Parties pursuant to Section 9.5. If any Operating Profit Report shows a net loss, such loss shall be borne solely and entirely by Takeda subject to the annual reconciliation set forth in Exhibit B. Takeda shall, within [***] after the end of each [***], submit Novavax a non-binding draft summary of the estimated Operating Profit for such [***] and the Net Sales, Cost of Goods Sold and operating expenses (in each case an
9.5 **Operating Profit Split.** During the Operating Profit Period, Novavax shall be entitled to [***] and Takeda shall be entitled to [***] of the Operating Profit. The Parties acknowledge and agree that Takeda's operating expenses will be offset by the GOJ Funding to the extent it is reimbursed by the GOJ.

9.6 **Taxes.**

(a) **Tax Withholding.** The amounts payable pursuant to this Agreement (“Payments”) shall not be reduced on account of any Taxes unless required by Applicable Law. Takeda shall deduct and withhold from the Payments any Taxes that it is required by Applicable Law to deduct or withhold. Notwithstanding the foregoing, if Novavax is entitled under any applicable tax treaty to a reduction of rate of, or the elimination of, or recovery of, applicable withholding tax, it may deliver to Takeda or the appropriate governmental authority the prescribed forms necessary to reduce the applicable rate of withholding or to relieve Takeda of its obligation to withhold tax. In such case, Takeda shall apply the reduced rate of withholding, or not withhold, as the case may be, provided that Takeda is in receipt of evidence, in a form reasonably satisfactory to Takeda, for example Novavax’ delivery of all applicable documentation at least [***] prior to the time that the Payments are due. If, in accordance with the foregoing, Takeda withholds any amount, it shall pay to Novavax the balance when due, make timely payment to the proper taxing authority of the withheld amount, and send Novavax proof of such payment within [***] following that payment. The Parties will cooperate and use reasonable efforts to reduce, mitigate, or eliminate adverse tax consequences for both Parties. In particular with respect to the initial payment of the milestone payments as set forth in Section 9.2, the Parties acknowledge that Novavax may not be able to deliver its Form 6166 Certification of U.S. Tax Residency to Takeda on a timely manner, and Takeda will therefore discuss with the relevant taxing authority if such delay would be acceptable as a practical manner to the extent that the Parties can reasonably demonstrate that Novavax is an eligible resident of the United States as defined under the applicable tax treaty.

(b) **Assignment.** If a Party that owes a payment under this Agreement assigns its rights and obligations to any Person and if, solely as a result of such assignment, the withholding or deduction of Taxes required by Applicable Law with respect to payments owed by such assignee under this Agreement is increased, then any amount payable under this Agreement shall be increased to take into account such withheld or deducted taxes as may be necessary so that, after making all required tax withholdings and deductions (including tax withholdings and deductions on amounts payable under this Section 9.6), the payee receives an amount equal to the sum it would have received as of the Effective Date.

9.7 **Audit.** Takeda shall maintain complete and accurate records in sufficient detail to permit Novavax to confirm the accuracy of the calculation of Operating Profit split under this Agreement. Upon [***] prior written notice, records for [***] from the end of the Takeda Fiscal Year to which they pertain shall be available for examination during Takeda’s regular business hours, at the expense of Novavax, by an independent certified public accountant selected by Novavax and reasonably acceptable to Takeda; provided, however, that (a) Novavax shall only
have the right to request such audit [***], (b) the sole purpose of such audit is to verify the accuracy of the financial reports and the correctness of payments furnished by Takeda pursuant to this Agreement, and (c) prior to any such examination taking place, such selected auditor shall enter into a confidentiality agreement with Takeda that is reasonably acceptable to Takeda in order to keep all information and data contained in such records strictly confidential. The selected auditor shall not disclose any of Takeda’s Confidential Information, except to the extent such disclosure is necessary to verify the accuracy of the financial reports furnished by Takeda or the amount of payments due by Takeda under this Agreement. Any amounts shown to be owed but unpaid shall be paid by Takeda within [***] from the accountant’s report. Any amounts shown to have been overpaid shall be refunded by Novavax within [***] from the accountant’s report. Novavax shall bear the full expense of such audit, unless such audit discloses an underpayment by Takeda of more than [***] of the amount due, in which case Takeda shall bear the full expense of such audit. The audit rights set forth in this Section 9.7 shall survive the termination of this Agreement for [***].

9.8  Late Payment. All payments due to Novavax hereunder shall be made in U.S. Dollars by wire transfer of immediately available funds into an account designated by Novavax. If Novavax does not receive payment of any sum due to it on or before the due date, simple interest shall thereafter accrue on the sum due to Novavax until the date of payment at the per annum rate of [***] over the then-current prime rate quoted by Citibank (or its successor) in New York City or the maximum rate allowable by Applicable Law, whichever is lower.

ARTICLE 10 INTELLECTUAL PROPERTY

MATTERS

10.1 Ownership of Inventions. Except for Novavax Inventions and Takeda Inventions (each as defined below in this paragraph), each Party shall own any Inventions made solely by its own employees, agents, Affiliates, or independent contractors in the course of conducting its activities under this Agreement (“Sole Inventions”). Except for Novavax Inventions and Takeda Inventions, the Parties shall jointly own any Inventions that are made jointly by employees, agents, Affiliates or independent contractors of each Party in the course of performing activities under this Agreement (“Joint Inventions”). Inventorship shall be determined in accordance with U.S. patent laws, and ownership shall follow inventorship unless otherwise expressly set forth in this Agreement. Notwithstanding the foregoing, any and all Inventions that (a)(i) solely and specifically relate to Antigen or Adjuvant, including derivatives, variations, or manufacturing processes or uses thereof and are developed with the aid, or require use of, Confidential Information of Novavax, and/or (ii) are improvements of Novavax Technology, shall be owned by Novavax regardless of inventorship (“Novavax Inventions”) and (b) are improvements of Takeda Technology shall be owned by Takeda regardless of inventorship (“Takeda Inventions”). Takeda does hereby assign, and shall cause any and all of its Affiliates, subcontractors and sublicensees, and its and their employees, agents, independent contractors to assign, all right and interest to and in such Novavax Inventions to Novavax. Novavax does hereby assign, and shall cause any and all of its Affiliates, subcontractors and sublicensees, and its and their employees, agents, independent contractors to assign, all right and interest to and in such Takeda Inventions to Takeda.
10.2 Disclosure of Inventions and Technology. Novavax shall promptly disclose to Takeda any of Novavax’ Sole Inventions that are [***] to Exploit the Vaccine in the Takeda Territory during the Term and any Novavax Technology conceived, developed or reduced to practice after the Effective Date. Takeda shall promptly disclose to Novavax any of Takeda’s Sole Inventions that are [***] to Exploit the Vaccine in the Novavax Territory during the Term and any Takeda Technology conceived, developed or reduced to practice after the Effective Date. With respect to any Joint Inventions, each Party shall promptly disclose to the other Party any invention disclosures, or other similar documents, submitted to it by its employees, agents, Affiliates or independent contractors describing the Joint Inventions, and all Information and Know-How relating to such Joint Inventions to the extent necessary for the use of such Joint Inventions in the Exploitation of the Vaccine and, to the extent patentable, for the preparation, filing and maintenance of any Patent with respect to such Joint Invention.

10.3 Prosecution of Patents.

(a) Novavax Patents. Except as otherwise provided in this Section 10.3(a), Novavax shall have the sole right and authority, [***], to prepare, file, prosecute and maintain the Novavax Patents anywhere in the world, except that, Novavax shall have the first right and Takeda shall have the second right, but not the obligation, to prepare, file, prosecute and maintain the Novavax Patents in the Takeda Territory, to the extent such Novavax Patents Cover the Antigen alone or in co-formulation or combination with the Adjuvant or Adjuvant Components. Solely to the extent a Novavax Patent Covers the Antigen alone or in co-formulation or combination with the Adjuvant or Adjuvant Components, Novavax shall provide Takeda a reasonable opportunity to review and comment on Novavax’ efforts to prepare, file, prosecute and maintain said Novavax Patents in the Takeda Territory, including by providing Takeda with a copy of material communications from any patent authority in the Takeda Territory regarding any said Novavax Patent, and by providing drafts of any material filings or responses to be made to such patent authorities in advance of submitting such filings or responses. Novavax shall consider Takeda’s comments regarding such communications and drafts in good faith. If Novavax determines in its sole discretion to not file, abandon or not maintain any Novavax Patent that is being or can be prosecuted or maintained by Novavax in the Takeda Territory, then Novavax shall provide Takeda with written notice of such determination within a period of time reasonably necessary to allow Takeda to determine, in its sole discretion, its interest in such Novavax Patent in the Takeda Territory (which notice by Novavax shall be given no later than [***] prior to the final deadline for any pending action or response that may be due with respect to such Novavax Patent with the applicable patent authority). If Takeda provides written notice expressing its interest in taking control of such Novavax Patent Covering the Antigen alone or in co-formulation or combination with the Adjuvant in the Takeda Territory in Novavax’ name as sole owner and assignee, Novavax shall, free of charge, transfer to Takeda the control of such Novavax Patent Covering the Antigen alone or in co-formulation or combination with the Adjuvant in the Takeda Territory. For clarity, as used herein, “prosecution” of any Patent shall include all communication and other interaction with any patent office or patent authority having jurisdiction over a patent application in connection with pre-grant proceedings. All reasonable expenses incurred by Takeda or its Affiliate in connection with the foregoing activities with respect to Novavax Patent(s) pursuant to this Section 10.3(a) shall be [***].
(b) Takeda Patents. Except as otherwise provided in this Section 10.3(b), Takeda shall have the sole right and authority, [***], to prepare, file, prosecute and maintain the Takeda Patents on a worldwide basis except that, Takeda shall have the first right and Novavax shall have the second right, but not the obligation, to prepare, file, prosecute and maintain the Takeda Patents to the extent such Takeda Patent Covers the composition, Manufacture or use of the Vaccine in the Novavax Territory. Solely to the extent a Takeda Patent Covers the composition, Manufacture or use of the Vaccine, Takeda shall provide Novavax a reasonable opportunity to review and comment on such efforts regarding such Takeda Patents in the Novavax Territory, including by providing Novavax with a copy of material communications from any patent authority regarding such Takeda Patents in the Novavax Territory, and by providing drafts of any material filings or responses to be made to such patent authorities in advance of submitting such filings or responses. Takeda shall consider Novavax’ comments regarding such communications and drafts in good faith. If Takeda determines in its sole discretion to not file, abandon or not maintain a Takeda Patent that Covers the composition, Manufacture or use of the Vaccine, that is being or can be prosecuted or maintained by Takeda in the Novavax Territory, then Takeda shall provide Novavax with written notice of such determination within a period of time reasonably necessary to allow Novavax to determine, in its sole discretion, its interest in such Takeda Patent that Covers the composition, Manufacture or use of the Vaccine in the Novavax Territory (which notice by Takeda shall be given no later than [***] prior to the final deadline for any pending action or response that may be due with respect to such Takeda Patent with the applicable patent authority). If Novavax provides written notice expressing its interest in taking control of such Takeda Patent with the applicable patent authority). If Novavax provides written notice expressing its interest in taking control of such Takeda Patent that Covers the composition, Manufacture or use of the Vaccine in the Novavax Territory in Takeda’s name as sole owner and assignee. All reasonable expenses incurred by Takeda or its Affiliate in connection with the foregoing activities with respect to Takeda Patent(s) that Covers the composition, Manufacture or use of the Vaccine pursuant to this Section 10.3(b) shall be [***].

(c) Joint Patents. Except as otherwise provided in this Section 10.3(c), [***] shall have the first right and authority to prepare, file, prosecute and maintain Joint Patents on a worldwide basis at its own expense. [***] shall provide [***] with a reasonable opportunity to review and comment on such efforts regarding such Joint Patent, including by providing [***] with a copy of material communications from any patent authority regarding such Joint Patent, and by providing drafts of any material filings or responses to be made to such patent authorities in advance of submitting such filings or responses. [***] shall consider [***] comments regarding such communications and drafts in good faith. If [***] determines in its sole discretion to abandon or not maintain any Joint Patent in any country(ies), then [***] shall provide [***] with written notice of such determination within a period of time reasonably necessary to allow [***] to determine its interest in such Joint Patent in such country(ies) (which notice from [***] shall be given no later than [***] prior to any final deadline for any pending action or response that may be due with respect to such Joint Patent with the applicable patent authority). If [***] provides written notice expressing its interest in taking control of such Joint Patent in such country(ies) that [***] determined to abandon or not maintain, [***] shall, free of charge, transfer to [***] the control of such Joint Patent in such country(ies). All expenses incurred by [***] or its Affiliate in connection with the exercise of its first right and authority to prepare, file, prosecute and maintain Joint Patent(s) pursuant to this Section 10.3(c) shall be [***]. If [***]
provides written notice expressing its interest in taking control of a Joint Patent in such country(ies) that [**] determined to abandon or not maintain, [**] may, in its sole discretion, elect to (i) remain the joint owner of such Joint Patent and reimburse [**] within [**] of receipt of an invoice from [**] for [**] of [**] out-of-pocket costs and expenses for prosecution and maintenance of such Joint Patent or (ii) assign to [**] [**] joint interest in such Joint Patent subject to reserving for [**] and its Affiliates a non-exclusive, royalty-free, perpetual license, (1) to practice and use the technologies claimed or Covered in such Joint Patent and to make, have made, use, sell, offer for sale, import and otherwise develop, commercialize and exploit any and all products and services for any and all purposes; and (2) to sublicense the same for purposes other than in connection with a COVID-19 vaccine product.

(d) Development Data. Each Party may reference the other Party’s Development Data in any Novavax Patent, Takeda Patent or Joint Patent subject to this Section 10.3.

(e) Cooperation in Prosecution.

(i) Each Party shall provide the other Party all reasonable assistance and cooperation in the Patent prosecution and validation efforts provided above in this Section 10.3, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution, as well as further actions as set forth below. Such assistance and cooperation shall include making a Party’s inventors and other scientific advisors reasonably available to assist the other Party’s Patent preparation, filing, prosecution and maintenance efforts. The Parties acknowledge and agree that this Agreement is a “joint research agreement” as defined in 35 U.S.C. § 100(h).

(ii) All communications between the Parties relating to the preparation, filing, prosecution or maintenance of Novavax Patents, Takeda Patents and Joint Patents, including copies of any draft or final documents or any communications received from or sent to patent offices or patenting authorities with respect to such Patents, shall be considered Confidential Information and subject to the confidentiality provisions of ARTICLE 12.

(iii) Assignments in Novavax Patents and Joint Patents shall be effected as follows: (1) employees or agents of Novavax that are named as inventors on Novavax Patents shall assign their interest in such Patents to Novavax; (2) employees or agents of Takeda or Novavax that are named as inventors on Joint Patents shall assign their interest in such Patents to their respective employer; and (3) employees or agents of Takeda that are named as inventors on Novavax Inventions hereby assign their interest in such Patents to Takeda who in turn hereby assigns to Novavax.

10.4 Patent Term Extensions.

(a) In the Takeda Territory. Takeda shall, in its sole discretion, decide for which, if any, of the Novavax Patents (to the extent such Novavax Patent Covers the Antigen alone or in co-formulation or combination with the Adjuvant), Joint Patents and Takeda Patents in the Takeda Territory the Parties should seek Patent Term Extensions. Takeda shall inform Novavax of its decision. Takeda shall be responsible for applying for the Patent Term Extension,
unless, with respect to Novavax Patents, the applicable authority requires Novavax to file such application. Novavax shall cooperate fully with Takeda in making such filings or actions, for example and without limitation, making available all required regulatory data and information and executing any required authorizations to apply for such Patent Term Extension. All expenses incurred in connection with activities of Takeda with respect to the Patent(s) for which Takeda seeks Patent Term Extensions pursuant to this Section 10.4 shall be subject to [***].

(b) In the Novavax Territory. Novavax shall, in its sole discretion, decide for which, if any, of the Novavax Patents in the Novavax Territory the Parties should seek Patent Term Extensions. Solely in the case of Joint Patents for which Takeda has decided to abandon or not maintain prosecution per Section 10.3(a) above, Novavax shall, in its sole discretion, decide for which, if any, of such Joint Patents in the Novavax Territory the Parties should seek Patent Term Extensions. Novavax shall inform Takeda of its decision. Novavax shall be responsible for applying for the Patent Term Extension, for Novavax Patents. Takeda shall cooperate fully with Novavax in making such filings or actions, for example and without limitation, making available all required regulatory data and information and executing any required authorizations to apply for such Patent Term Extension.

10.5 Infringement by Third Parties.

(a) Notification. Each Party shall promptly notify the other Party in writing of any existing, alleged or threatened infringement of any Novavax Patent, Joint Patent or Takeda Patent of which it becomes aware, and shall provide all information in such Party’s possession or control related to such infringement.

(b) Enforcement of Patents.

(i) As between Novavax and Takeda, Takeda shall have the first right (but not the obligation) to take the appropriate steps to enforce any Patent within the Novavax Patents, solely to the extent a Novavax Patent Covers the Antigen alone or in co-formulation or combination with the Adjuvant, Takeda Patents and Joint Patents against infringement by a Third Party in the Takeda Territory. Takeda may take steps including the initiation, prosecution and control of any suit, proceeding or other legal action by counsel of its own choice. Takeda shall bear the costs of such enforcement. Notwithstanding the foregoing, Novavax will have the right, [***], to be represented in any such action by counsel of its own choice. All expenses incurred by Takeda or its Affiliate in connection with the foregoing activities with respect to enforcing a Patent(s) pursuant to this Section 10.5(b) shall be [***]. For the avoidance of doubt, Takeda’s has the first right to bring suit, action or proceeding with respect to the Novavax Patents, identified in the subcategory for Section 10.5 in Exhibit A. Novavax shall update said subcategory from time to time to include Novavax Patents that Cover the Antigen alone or in co-formulation or combination with the Adjuvant filed after the Effective Date.

(ii) As between Novavax and Takeda, Novavax shall have the sole right (but not the obligation) to take the appropriate steps to enforce (1) any Patent within the Novavax Patents; (2) solely to the extent any Joint Patent Covers the composition, Manufacture or use of the Vaccine in the Novavax Territory, any Joint Patent in the Novavax Territory; and (3) in the case of Joint Patents for which Takeda has decided to abandon or not maintain
prosecution per Section 10.3(a) above, any said Joint Patents in the Novavax Territory, to its full extent. Novavax may take steps including the initiation, prosecution and control of any suit, proceeding or other legal action by counsel of its own choice. [***] shall bear the costs of such enforcement. Notwithstanding the foregoing, Takeda will have the right, [***], to be represented in any such action by counsel of its own choice.

(iii) If, pursuant to Section 10.5(b)(i), Takeda fails to institute such litigation or otherwise take steps to remedy such infringement within [***] of the date one Party has provided notice to the other Party pursuant to Section 10.5(a) of such infringement or claim, then Novavax shall have the right (but not the obligation), [***], to bring any such suit, action or proceeding by counsel of its own choice and Takeda will have the right, [***], to be represented in any such action by counsel of its own choice. Notwithstanding anything to the contrary contained herein, in no event shall Takeda have any right to bring any suit, action or proceeding with respect to any matter involving infringement of a Patent that Covers the Adjuvant or Adjuvant Components by themselves or methods of manufacture of the Adjuvant or Adjuvant Components (i.e., prior to the first to occur of (i) mixing the Adjuvant Components to produce the Adjuvant or (ii) co-formulation/combination with the Antigen) or a Novavax Patent in the Novavax Territory.

(c) Cooperation; Damages.

(i) If one Party brings any suit, action or proceeding under Section 10.5(b), the other Party agrees to be joined as party plaintiff, if necessary, to prosecute the suit, action or proceeding and to give the first Party reasonable authority to file and prosecute the suit, action or proceeding; provided, however, that neither Party will be required to transfer any right, title or interest in or to any property to the other Party or any other party to confer standing on a Party hereunder.

(ii) The Party not pursuing the suit, action or proceeding hereunder will provide reasonable assistance to the other Party, including by providing access to relevant documents and other evidence and making its employees available.

(iii) The Party pursuing the suit, action or proceeding shall not, without the prior written consent of the other Party (in its sole discretion), enter into any compromise or settlement relating to any claim, suit or action that it brought under Section 10.5(b) that admit the invalidity or unenforceability of any Novavax Patent, Takeda Patent or Joint Patent, or requires the other Party to pay any sum of money, or otherwise adversely affects the rights of the other Party with respect to such Patents or the Vaccine in the other Party’s Territory.

(iv) Any settlements, damages or other monetary awards (a “Recovery”) recovered pursuant to a suit, action or proceeding brought by Takeda or its Affiliate pursuant to Section 10.5(b)(i) will be allocated first to the costs and expenses of the Party taking such action, and second to the costs and expenses (if any) of the other Party, with any remaining Recovery amounts (if any) payable to Takeda and being considered as Net Sales subject to Section 9.5. To the extent any expenses incurred by Takeda pursuant to this Section 10.5 was deducted from Net Sales in calculating Operating Profit, the Parties shall in good faith reconcile
such prior Operating Profit calculations in the next Operating Profit Report to account for the Recovery received.

(v) Any Recovery amounts recovered pursuant to a suit, action or proceeding brought by Novavax or its Affiliate pursuant to Section 10.5(b)(iii) will be allocated first to the costs and expenses of Novavax or its Affiliate, and second to the costs and expenses (if any) of Takeda, with any remaining Recovery amounts (if any) payable to Novavax.

10.6 Infringement of Third Party Rights in the Takeda Territory.

(a) Notice. If the Vaccine used, sold, or otherwise Exploited by Takeda, its Affiliates, or sublicensees in the Takeda Territory becomes the subject of a Third Party’s claim or assertion of infringement of a Patent granted by a jurisdiction within the Takeda Territory, the Party first having notice of the claim or assertion shall promptly notify the other Party in writing.

(b) Defense. Takeda shall have the first right, but not the obligation, [*], to defend any such Third Party claim or assertion of infringement as described in Section 10.6(a) above. All expenses incurred by Takeda or its Affiliate in connection defending any such Third Party claim or assertion pursuant to this Section 10.6(b) shall be [*]. If Takeda does not commence actions to defend such claim within [*] after it receives notice thereof, then to the extent allowed by Applicable Law, Novavax shall have the right, but not the obligation, to control the defense of such claim by counsel of its choice, [*]. The non-defending Party shall, [*], reasonably cooperate with the Party conducting the defense of the claim or assertion, including if required to conduct such defense, furnishing a power of attorney.

(c) Awards.

(i) Any awards or amounts received from defending any such action by Takeda or its Affiliate pursuant to this Section 10.6 shall be allocated first to the costs and expenses of Takeda, and second to the costs and expenses (if any) of Novavax, with any remaining amounts (if any) payable to Takeda and being considered Net Sales subject to Section 9.5. To the extent any expenses incurred by Takeda pursuant to this Section 10.6 was deducted from Net Sales in calculating Operating Profit, the Parties shall in good faith reconcile such prior Operating Profit calculations in the next Operating Profit Report to account for any awards or amounts received.

(ii) Any awards or amounts received from defending any such action by Novavax or its Affiliate pursuant to this Section 10.6 shall be allocated first to the costs and expenses of Novavax or its Affiliate, and second to the costs and expenses (if any) of Takeda, with any remaining amounts (if any) payable to Novavax.

(d) Settlement. The defending Party shall have the exclusive right to settle any claim described in this Section 10.6 without the consent of the other Party, unless such settlement shall have a material negative impact on the other Party (in which case the consent of such other Party shall be required). For the purposes of this Section 10.6(d), any settlement that would involve the waiver of rights of such other Party shall be deemed a material negative impact and shall require the consent of such other Party, such consent not to be unreasonably
withheld, delayed or conditioned. The Parties shall discuss in good faith and mutually agree in writing on whether to include such settlement amount as a deduction from Net Sales in calculating Operating Profit with due consideration given to the reason for such settlement.

(e) **Licenses.** In the event that it is determined by any court of competent jurisdiction that the Exploitation of the Vaccine in the Novavax Territory or the Takeda Territory, conducted in accordance with the terms and conditions of this Agreement, infringes, or the JSC determines that such activities are likely to infringe, any valid Patent, copyright, trademark, trade secret, data exclusivity right or other intellectual property right of any Third Party in any Territory, the Parties shall use Commercially Reasonable Efforts to: (i) procure a license from such Third Party authorizing Takeda and its Affiliates and their respective (sub)licensees and (sub)contractors to continue to conduct such Exploitation; or (ii) modify such activities so as to render them non-infringing; provided, that, [***].

10.7 **Patent Oppositions and Other Proceedings.**

(a) **Third Party Patent Rights.**

(i) If either Party desires to bring an opposition, action for declaratory judgment, nullity action, interference, declaration for non-infringement, reexamination or other attack upon the validity, title or enforceability of a Patent Controlled by a Third Party and having one or more claims that covers the Vaccine in the Takeda Territory, or the use, sale, Development, Commercialization, Manufacture, offer for sale or importation of the Vaccine in the Takeda Territory (except insofar as such action is a counterclaim to or defense of, or accompanies a defense of, a Third Party’s claim or assertion of infringement under Section 10.6, in which case the provisions of Section 10.6 shall govern), such Party shall so notify the other Party and the Parties shall promptly confer to determine whether to bring such action or the manner in which to settle such action. Takeda shall have the first right, but not the obligation, to bring at [***] and in its sole control such action in the Takeda Territory. If Takeda does not bring such an action in the Takeda Territory, within [***] of notification thereof pursuant to this Section 10.7(a)(i) (or earlier, if required by the nature of the proceeding), then Novavax shall have the right, but not the obligation, to bring, at [***], such action. All expenses incurred by Takeda or its Affiliate in connection with said oppositions and other proceedings pursuant to this Section 10.7(a)(i) shall be [***].

(ii) Novavax shall have the sole right to bring any such action in the Novavax Territory.

(iii) The Party not bringing an action under this Section 10.7(a) shall be entitled to separate representation in such proceeding by counsel of its own choice and [***], and shall cooperate fully with the Party bringing such action. Any awards or amounts received in bringing any such action in the Takeda Territory shall be first allocated to reimburse the initiating Party’s expenses in such action, and any remaining amounts (if any) payable to Takeda and being considered Net Sales subject to Section 9.5. To the extent any expenses incurred by Takeda pursuant to this Section 10.7(a) were deducted from Net Sales in calculating Operating Profit, the Parties shall in good faith reconcile such prior Operating Profit calculations in the next
Operating Profit Report to account for any awards or amounts received. Any awards or amounts received in bringing any such action in the Novavax Territory shall belong to Novavax.

(b) **Parties’ Patent Rights.** If any Novavax Patent, Joint Patent or Takeda Patent that Covers the composition, Manufacture or use of the Vaccine becomes the subject of any proceeding commenced by a Third Party in connection with an opposition, reexamination request, action for declaratory judgment, nullity action, interference or other attack upon the validity, title or enforceability thereof (except insofar as such action is a counterclaim to or defense of, or accompanies a defense of, an action for infringement against a Third Party under Section 10.6, in which case the provisions of Section 10.6 shall govern), then the Party responsible for filing, preparing, prosecuting and maintaining such Patent as set forth in Section 10.3 hereof, shall control such defense [***]. The controlling Party shall permit the non-controlling Party to participate in the proceeding to the extent permissible under Applicable Law, and to be represented by its own counsel in such proceeding, [***]. If either Party decides that it does not wish to defend against such action, then the other Party shall have a backup right to assume defense of such Third-Party action [***]. All expenses incurred by Takeda or its Affiliate in connection the activities set forth in this Section 10.7(b) shall be [***]. Any awards or amounts received in defending any such action in the Takeda Territory shall be first allocated to reimburse the defending Party’s expenses in such action, and any remaining amounts (if any) payable to Takeda and being considered Net Sales subject to Section 9.5. To the extent any expenses incurred by Takeda pursuant to this Section 10.7 was deducted from Net Sales in calculating Operating Profit, the Parties shall in good faith reconcile such prior Operating Profit calculations in the next Operating Profit Report to account for any awards or amounts received. Any awards or amounts received in defending any such action in the Novavax Territory shall belong to Novavax.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 **Mutual Representations, Warranties and Covenants.** Each of the Parties hereby represents and warrants to the other Party as of the Effective Date and, as applicable, covenants that:

(a) **Organization.** It is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, and has all requisite power and authority, corporate or otherwise, to execute, deliver, and perform this Agreement.

(b) **Binding Agreement.** This Agreement is a legal and valid obligation binding upon such Party and enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, or other laws of general application affecting the enforcement of creditor rights, judicial principles affecting the availability of specific performance, and general principles of equity (whether enforceability is considered a proceeding at law or equity).

(c) **Authorization.** The execution, delivery, and performance of this Agreement by such Party have been duly authorized by all necessary corporate action and do not conflict with any agreement, instrument, or understanding, oral or written, to which it is a party or by which it is bound, or violate any Applicable Law or any order, writ, judgment, injunction,
decree, determination, or award of any court or governmental body, or administrative or other agency presently in effect applicable to such Party.

(d) **No Further Approval.** It is not aware of any government authorization, consent, approval, license, exemption of or filing or registration with any court, Governmental Authority or other Persons that is necessary for, or in connection with, the transactions contemplated by this Agreement or any other agreement or instrument executed in connection herewith, or for the performance by it of its obligations under this Agreement and such other agreements (save for Regulatory Approvals and similar authorizations from Governmental Authorities necessary for the Exploitation of the Vaccine as contemplated hereunder).

(e) **No Inconsistent Obligations.** Neither Party is under any obligation, contractual or otherwise, to any Person that conflicts with or is inconsistent in any material respect with the terms of this Agreement, or that would impede the diligent and complete fulfillment of its obligations hereunder.

(f) **No Debarment.** Neither Party nor any of its respective Affiliates has been debarred by the FDA, is not subject to any similar sanction of other Governmental Authorities in its respective Territory, and, to its Knowledge, neither Party nor any of its respective Affiliates has used, or will engage, in any capacity, in connection with this Agreement or any ancillary agreements (if any), any Person who either has been debarred by such a Regulatory Authority, or is the subject of a conviction described in Section 306 of the FFDCA. Each Party shall inform the other Party in writing promptly if it or any Person engaged by it or any of its Affiliates who is performing services under this Agreement or any ancillary agreements (if any) is debarred or is the subject of a conviction described in Section 306 of the FFDCA, or if any action, suit, claim, investigation or legal or administrative proceeding is pending or, to such Party’s Knowledge, is threatened, relating to the debarment or conviction of such Party, any of its Affiliates or any such Person performing services hereunder or thereunder.

11.2 **Additional Representations and Warranties of Novavax.** Novavax represents and warrants as of the Effective Date:

(a) Novavax has all rights necessary to grant the licenses and sublicenses under the Novavax Technology (including all rights necessary to grant sublicenses under all Upstream Agreements), Joint Technology, Vaccine Trademark and rights of cross-reference under all Regulatory Materials that it grants to Takeda under this Agreement.

(b) The Patents set forth in Exhibit A represent all Patents that Novavax or its Affiliates Control, that have been filed as of the Effective Date, and that Cover any Invention that is [***] for the Exploitation of the Vaccine in the Takeda Territory as of the Effective Date.

(c) Novavax is the sole and exclusive owner of the entire right, title and interest in the Novavax Patents free of any encumbrance, lien, or claim of ownership by any Third Party.

(d) To its Knowledge, there is no actual or threatened infringement or misappropriation of Novavax Technology by any Person.
To its Knowledge, the Exploitation of the Vaccine as it exists as of the Effective Date in the Takeda Territory will not infringe or misappropriate the Patents or other intellectual property or proprietary rights of any Third Party.

The Novavax Patents are being diligently prosecuted in the patent office in the Takeda Territory in accordance with Applicable Law. The Novavax Patents in the Takeda Territory have been filed and maintained properly and correctly and all applicable fees have been paid on or before the due date for payment.

To its Knowledge, the conception, development, and reduction to practice of the Regulatory Material by or on behalf of Novavax and the Novavax Technology have not constituted or involved the misappropriation of trade secrets or other rights or property of any Third Party.

To its Knowledge, Novavax and its Affiliates have presented all references, documents, or information for which they and the inventors had a duty to disclose under the Applicable Law, including 37 C.F.R. § 1.56 or its foreign equivalent to the relevant patent examiner at the relevant patent office for each Novavax Patent.

To its Knowledge, each of the Novavax Patents properly identifies each and every inventor of the claims thereof as determined in accordance with the Applicable Law of the jurisdiction in which such Novavax Patent is issued or such application is pending.

To its Knowledge, all current and former officers, employees, agents, advisors, consultants, contractors or other representatives of Novavax or any of its Affiliates who are inventors of any Novavax Technology have executed and delivered to Novavax or any such Affiliate an assignment of Novavax Patents and other Novavax Technology. To its Knowledge, no current officer, employee, agent advisor, consultant or other representative of Novavax or any of its Affiliates is in violation of any such assignment.

To the extent permissible under Applicable Law, all employees, agents, advisors, consultants or contractors of Novavax or its Affiliates performing activities under this Agreement are and shall be under an obligation to assign all right, title and interest in and to any Sole Inventions of Novavax and Joint Inventions, whether or not patentable, and intellectual property rights therein, to Novavax or its Affiliate(s) as the sole owner thereof.

The Inventions Covered by the Novavax Patents (i) were not conceived, discovered, developed, or otherwise made in connection with any research activities funded, in whole or in part, by the federal government of the U.S. or any agency thereof, (ii) are not a “subject invention” as that term is described in 35 U.S.C. Section 201(f), and (iii) are not otherwise subject to the provisions of the Bayh-Dole Act.

There are no claims, judgments, or settlements against, or amounts with respect thereto owed by, Novavax or any of its Affiliates relating to the Regulatory Materials, Vaccine Trademark or Novavax Technology. No claim or litigation has been brought or threatened by any Person alleging, whether or not asserted, that (i) any of the Novavax Patents is
invalid or unenforceable, or (ii) the use of the Regulatory Materials, Novavax Technology or Vaccine Trademark violates, infringes, or otherwise conflicts or interferes with, or would violate, infringe, or otherwise conflict or interfere with, any intellectual property or proprietary right of any Person.

(n) Novavax and its Affiliates have provided or made available to Takeda prior to the Effective Date, true, complete, and correct copies in the possession or Control of Novavax or any of its Affiliates of: (i) material non-public documents relating to the prosecution, defense, maintenance, validity, and enforceability of the Novavax Patents; (ii) all material Regulatory Materials; and (iii) all adverse Information with respect to the safety and efficacy of the Vaccine, and all of the foregoing Information and documents provided are true, correct, and complete.

(o) The Adjuvant as currently formulated consists of [***].

(p) Novavax and its Affiliates have generated, prepared, maintained, and retained all Regulatory Materials that are required to be maintained or retained pursuant to and in accordance with GCP as required by the FDA, GLP as required by the FDA and other Applicable Law in the U.S. or EU, and all such information is true, complete and correct and what it purports to be.

(q) To its Knowledge, neither Novavax nor any of its Affiliates, nor any of its or their respective officers, employees, agents, advisors, consultants or other representatives, has made an untrue statement of material fact or fraudulent statement to any Regulatory Authority with respect to the Vaccine, failed to disclose a material fact required to be disclosed to any Regulatory Authority with respect to the Vaccine, or committed an act, made a statement, or failed to make a statement with respect to the Vaccine that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities”, as set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto or any analogous or equivalent Applicable Law or policies in the Takeda Territory.

(r) Novavax and its Affiliates have conducted, and have caused their contractors and consultants to conduct, all pre-clinical and Clinical Trials related to the Vaccine in accordance with GLP, GCP and other Applicable Law of the countries in which such pre-clinical and Clinical Trials were or are being conducted; provided that, any deviations or variance from GLP, GCP and other Applicable Law that have been promptly remedied by Novavax or its Affiliates without material ongoing impact on the Vaccine shall not constitute a breach of this representation and warranty.

(s) To its Knowledge, there is no fact, circumstance, data, result or other Information that has not been disclosed to Takeda by Novavax that could [***] affect the acceptance, or the subsequent approval, by any Regulatory Authority of any filing, application or request for Regulatory Approval in the Takeda Territory.
Novavax has maintained and has not breached in any material respect any material agreements with Third Parties relating to the Vaccine which would have a material negative impact on Takeda’s rights under this Agreement, including any Upstream Agreements.

With respect to the Adjuvant Components, Novavax has conducted audits of its contract manufacturer organizations (CMO) that will be providing Clinical Trial Materials and Adjuvant Components under this Agreement in accordance with prevailing pharmaceutical industry standards, and has found no circumstances that it believes would be likely to have a material adverse effect on Novavax’ ability to conduct the activities as contemplated by this Agreement.

11.3 Covenant of Novavax.

(a) During the Term, Novavax shall not, and shall cause its Affiliates not to, grant to any Third Party rights that encumber, diminish or conflict with the rights granted to Takeda hereunder with respect to the Novavax Technology, Joint Technology, Vaccine Trademark or Regulatory Materials.

11.4 Additional Representations and Warranties of Takeda. Takeda represents and warrants as of the Effective Date that:

(a) Takeda is solvent and, subject to approval of the GOJ Funding, has the ability to pay and perform all of its obligations as and when such obligations become due, including payment obligations and other obligations under this Agreement.

(b) To the extent permissible under Applicable Law, all employees, agents, advisors, consultants or contractors of Takeda or its Affiliates performing activities under this Agreement are and shall be under an obligation to assign all right, title and interest in and to any Sole Inventions of Takeda and Joint Inventions, whether or not patentable, and intellectual property rights therein, to Takeda or its Affiliate(s) as the sole owner thereof.

(c) Takeda has all rights necessary to grant the licenses under the Takeda Technology, Joint Technology and rights of cross-reference under all Regulatory Materials that it grants to Novavax under this Agreement.

(d) Takeda is either the sole and exclusive owner of the entire right, title and interest in the Takeda Patents free of any encumbrance, lien, or claim of ownership by any Third Party or the licensee of the Takeda Patents.

(e) To its Knowledge, there is no actual or threatened infringement or misappropriation of Takeda Technology by any Person.

(f) To its Knowledge, all current and former officers, employees, agents, advisors, consultants, contractors or other representatives of Takeda or any of its Affiliates who are inventors of any Takeda Technology have executed and delivered to Takeda or any such Affiliate an assignment of Takeda Patents and other Takeda Technology. To its Knowledge, no current officer, employee, agent advisor, consultant or other representative of Takeda or any of its Affiliates is in violation of any term of such assignment.
(g) To its Knowledge, the use of the Takeda Technology for the Exploitation of the Vaccine in the Takeda Territory does not infringe any intellectual property right of any Third Party.

11.5 No Other Representations or Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 11, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NON-INFRINGEMENT OR AS TO THE VALIDITY OF ANY PATENTS.

ARTICLE 12 CONFIDENTIALITY

12.1 Nondisclosure. Each Party agrees that, during the Term and for a period of [***] thereafter, a Party (the “Receiving Party”) receiving Confidential Information of the other Party (the “Disclosing Party”) shall (a) maintain in confidence the other Party’s Confidential Information with the same degree of care with which Receiving Party uses to maintain its own Confidential Information of similar kind and value but in all cases no less than a reasonable degree of care, (b) not disclose the other Party’s Confidential Information to any Third Party without the prior written consent of the Disclosing Party other than to its Affiliates, employees, independent contractors, agents, consultants or sublicensees who have a need to know such Confidential Information to conduct the activities under this Agreement and who are under written obligations of confidentiality at least as restrictive as those set forth in this ARTICLE 12, and (c) not use the other Party’s Confidential Information for any purpose other than in performance of this Agreement.

12.2 Exceptions. Confidential Information shall not include any information or materials that the Receiving Party can show by competent evidence:

(a) were already known to the Receiving Party (other than under an obligation of confidentiality), at the time of disclosure by the Disclosing Party, to the extent such Receiving Party has documentary evidence to that effect;

(b) were generally available to the public or otherwise part of the public domain at the time of disclosure thereof to the Receiving Party;

(c) became generally available to the public or otherwise part of the public domain after disclosure or development thereof, as the case may be, and other than through any act or omission of the Receiving Party in breach of such Receiving Party’s confidentiality obligations under this Agreement;
(d) were disclosed to the Receiving Party, other than under an obligation of confidentiality, by a Third Party who had no obligation to the Disclosing Party not to disclose such information to others; or

(e) were independently discovered or developed by or on behalf of the Receiving Party without the use of the Disclosing Party’s Confidential Information.

12.3 **Permitted Disclosure.** The Receiving Party may disclose Confidential Information belonging to the Disclosing Party only to the extent such disclosure is reasonably necessary in the following instances:

(a) filing or prosecuting Patents as permitted by this Agreement;

(b) preparing and submitting Regulatory Materials and Regulatory Filings and obtaining and maintaining Regulatory Approvals as permitted by this Agreement;

(c) enforcing, prosecuting or defending a Patent as permitted by this Agreement, including responding to a subpoena in a Third Party litigation;

(d) complying with Applicable Law or court or administrative orders;

(e) enforcing the rights of a Party under this Agreement;

(f) in communications with and applications submitted to the GOJ (provided, that (1) the Receiving Party will either receive written assurance from the GOJ of non-disclosure in accordance with laws applicable to the GOJ or enter into a confidentiality agreement with the GOJ or (2) to the extent such disclosure will not be available to any Third Party or the public pursuant to laws applicable to the GOJ)

(g) in communications with existing or bona fide prospective acquirers, merger partners, lenders, investors, and consultants and advisors of the Receiving Party in connection with transactions or bona fide prospective transactions with the foregoing, in each case on a need-to-know basis and under appropriate written confidentiality provisions no less stringent than those of this Agreement (provided, that the Receiving Party shall use Commercially Reasonable Efforts to negotiate for a confidentiality term of [***] but in no event will the confidentiality and non-use obligations in such agreements be shorter than [***]); or

(h) to its prospective sublicensees or prospective subcontractors and such prospective sublicensees or subcontractor’s consultants, agents and advisors on a need-to-know basis in order for the Receiving Party to exercise its rights or fulfill its obligations under this Agreement, each of whom prior to disclosure must be bound by written obligations of confidentiality and restrictions on use of such Confidential Information that are no less stringent than substantially similar to those set forth in this ARTICLE 12 (provided, that the Receiving Party shall use Commercially Reasonable Efforts to negotiate for a confidentiality term of [***] but in no event will the confidentiality and non-use obligations in such agreements be shorter than[ ***]).
If and whenever any Confidential Information is disclosed in accordance with this Section 12.3, such disclosure shall not cause any such information to cease to be Confidential Information except to the extent that such disclosure results in a public disclosure of such information (other than by breach of this Agreement). If a Receiving Party deems it necessary to disclose Confidential Information of the Disclosing Party pursuant to Section 12.3(a), 12.3(b), 12.3(c), 12.3(d), or 12.3(e), such Receiving Party shall give reasonable advance written notice of such disclosure to the Disclosing Party to permit such Disclosing Party sufficient opportunity to object to such disclosure or to take measures to ensure confidential treatment of such information, including seeking a protective order or other appropriate remedy.

12.4 Terms of this Agreement. The Parties acknowledge that this Agreement and all of the respective terms of this Agreement shall be treated as Confidential Information of both Parties.

12.5 Publicity. Each Party agrees not to issue any other press release or other public statement disclosing other information relating to this Agreement or the transactions contemplated hereby that contains information not previously publicly disclosed in accordance with this Section 12.5 without the consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned.

12.6 Securities Filings. Notwithstanding anything to the contrary in this ARTICLE 12, in the event either Party proposes to file with the Securities and Exchange Commission or the securities regulators of any other jurisdiction or any disclosure document that describes or refers to the terms and conditions of this Agreement or any related agreements between the Parties, such Party shall notify the other Party of such intention and shall provide the other Party with a copy of relevant portions of the proposed filing at least prior to such filing (and any revisions to such portions of the proposed filing a reasonable time prior to the filing thereof), including any exhibits thereto that refer to the other Party or the terms and conditions of this Agreement or any related Agreements between the Parties. The Party making such filing shall cooperate in good faith with the other Party to obtain confidential treatment of the terms and conditions of this Agreement or any related agreements between the Parties that the other Party requests be kept confidential or otherwise afforded confidential treatment, and shall only disclose Confidential Information in connection with such filing that it is reasonably advised by counsel is legally required to be disclosed. No such notice shall be required if the description of or reference to this Agreement or a related agreement between the Parties contained in the proposed filing has been included in any previous filing made by the either Party in accordance with this Section 12.6 or otherwise approved by the other Party. Notwithstanding the foregoing, the Parties acknowledge that Novavax will be filing a Form 8-K with the Securities and Exchange Commission in connection with the execution of this Agreement and agrees that the notice requirement set forth in this paragraph shall be waived with respect to such filing. The Parties acknowledge that Novavax shall provide Takeda with relevant portions of this proposed Form 8-K filing that relates to the execution of this Agreement at least prior to such filing.

12.7 Relationship to Confidentiality Agreement. This Agreement supersedes the Mutual Confidential Disclosure Agreement between Novavax and Takeda, dated [***], as amended by the First Amendment to Mutual Confidential Disclosure Agreement dated [***]; provided, however, that all “Confidential Information” disclosed or received by the Parties and
their Affiliates hereunder shall be deemed Confidential Information hereunder and shall be subject to the terms and conditions of this Agreement.

12.8 **Equitable Relief.** Given the nature of the Confidential Information and the competitive damage that could result to a Party upon unauthorized disclosure, use or transfer of its Confidential Information to any Third Party, the Parties agree that monetary damages may not be a sufficient remedy for any breach of this ARTICLE 12. In addition to all other remedies, a Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any breach or threatened breach of this ARTICLE 12.

12.9 **Publications.**

(a) **Publication Plan.** Takeda shall have the right to publish summaries of, and papers and presentations regarding data and results of all Clinical Trials conducted by or on behalf of Takeda with respect to the Vaccine in the Takeda Territory after the Effective Date; provided, however, that Novavax shall have the right to review all proposed publications [***] prior to submission of such publication. Novavax shall have the right to review, comment on and approve each such proposed publication or presentation for accuracy and to ascertain whether such proposed publication or presentation includes any disclosure of Novavax’ Confidential Information. Novavax shall have the right to request Takeda in writing to remove any of its Confidential Information prior to submission for publication or presentation. Takeda shall redact or otherwise modify the proposed publication or presentation to remove any such Confidential Information of Novavax pursuant to Novavax’ written request. For clarity, publications and presentations referenced in this Section 12.9 do not include Regulatory Filings. The Parties shall discuss and reasonably cooperate in order for Takeda to publish summaries of Clinical Trials data and results as required under Applicable Law on the Clinical Trial registry.

(b) **Publication Guidelines.** All publications relating to the Vaccine shall be prepared, presented and published in accordance with pharmaceutical industry accepted guidelines including: (i) International Committee of Medical Journal Editors (ICMJE) guidelines, (ii) Uniform Requirements for Manuscripts Submitted to Biomedical Journals: Writing and Editing for Biomedical Publication, (iii) Pharmaceutical Research and Manufacturers of America (PhRMA) guidelines, and (iv) Principles on Conduct of Clinical Trials.

12.10 **Clinical Trial Transparency.** Both Parties agree to collaborate to maintain compliance with all Applicable Laws related to clinical trial transparency, as well as any industry guidelines/codes of conduct, or other obligations that may apply to either the sponsor of any Clinical Trial and/or the owner of any Regulatory Approval, all as relates to the Vaccine. The Parties shall cooperate to maintain clinical trial transparency consistent with each sponsor’s Clinical Trial registration, summary result, and data sharing transparency policies and will support disclosure of information as needed based on the needs of the sponsors of the study or the Regulatory Approval holder with respect to the Vaccine.

**ARTICLE 13**

**TERM AND TERMINATION**
13.1 **Term.** This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by either Party pursuant to this ARTICLE 13 (the “Term”).

13.2 **Unilateral Termination by Takeda.** Upon the earlier of (a) the end of Calendar Year 2022 and (b) the date during the Post-Pandemic Period on which Takeda or its Affiliate receives Regulatory Approval for the Vaccine in the Takeda Territory, Takeda shall have the right to terminate this Agreement in its entirety, for any or no reason upon providing eighteen (18) months prior written notice to Novavax. Notwithstanding the foregoing, in the event that Takeda provides such a notice of termination, Novavax may, in its sole discretion, elect to reduce the applicable notice period set forth above.

13.3 **Termination for Material Breach.**

(a) Either Party (the “Non-Breaching Party”) may terminate this Agreement in its entirety in the event the other Party (the “Breaching Party”) has materially breached this Agreement with respect to the Vaccine in such country, and such material breach has not been cured within [***] (or [***] in the case of an undisputed failure to make any payment due and payable under this Agreement) after receipt of written notice of such breach by the Breaching Party from the Non-Breaching Party, in each case subject to the toll set forth in Section 13.3(b) if applicable (the “Cure Period”). The written notice describing the alleged material breach shall provide sufficient detail to put the Breaching Party on notice of such material breach. Any termination of this Agreement pursuant to this Section 13.3(a) shall immediately become effective at the end of the Cure Period, unless the Breaching Party has cured such material breach prior to the expiration of such Cure Period, or, if such material breach is not susceptible to cure within the Cure Period, then, the Non-Breaching Party’s right of termination shall be suspended only if and for so long as the Breaching Party provides to the Non-Breaching Party a written plan during the Cure Period that is reasonably calculated to effect a cure of such material breach, such plan is accepted by the Non-Breaching Party (such acceptance not to be unreasonably withheld, conditioned, or delayed), and the Breaching Party commits to and carries out such plan.

(b) If the Parties reasonably and in good faith disagree as to whether there has been a material breach, the Party that disputes whether there has been a material breach may contest the allegation in accordance with ARTICLE 14. Notwithstanding anything to the contrary contained in Section 13.3(a), the Cure Period for any disputed breach will toll until such Dispute is resolved pursuant to ARTICLE 14, and it is understood and acknowledged that, during the pendency of such Dispute, all of the rights and licenses granted under this Agreement together with the terms and conditions of this Agreement shall remain in effect, and the Parties shall continue to perform all of their respective obligations under this Agreement.

13.4 **Termination by Takeda for Safety Reasons.** Takeda shall have the right to terminate this entire Agreement at any time upon providing [***] prior written notice to Novavax (a) if senior executives responsible for Takeda’s pharmacovigilance and clinical science functions determine in good faith that the risk/benefit profile of the Vaccine is such that the Vaccine cannot continue to be Developed or administered to patients safely; or (b) upon the occurrence of serious adverse events related to the use of the Vaccine that causes Takeda to
reasonably conclude that the continued use of the Vaccine by patients will result in patients being exposed to a product in which the risks outweigh the benefits; provided Takeda shall consider in good faith any written request by Novavax to discontinue Development or administration of Vaccine due to similar reasons affecting the Novavax Territory that caused Novavax to stop the Development and administration of the Vaccine in the Novavax Territory (“Novavax Discontinuation Request”). During the [***] notice period, the Parties shall begin to wind-down their respective activities under the Agreement. Notwithstanding anything to the contrary in this Agreement, with respect to termination by Takeda pursuant this Section 13.4, Takeda shall be relieved from making any milestone payments to Novavax under ARTICLE 9 to the extent the milestone trigger event occurs after Takeda provides Novavax with a notice of termination hereunder.

13.5 Termination for Bankruptcy.

(a) Either Party may terminate this Agreement in its entirety upon providing written notice to the other Party on or after the time that such other Party makes a general assignment for the benefit of creditors, files an insolvency petition in bankruptcy, petitions for or acquiesces in the appointment of any receiver, trustee or similar officer to liquidate or conserve its business or any substantial part of its assets, commences under the laws of any jurisdiction any proceeding involving its insolvency, bankruptcy, reorganization, adjustment of debt, dissolution, liquidation or any other similar proceeding for the release of financially distressed debtors, or becomes a party to any proceeding or action of the type described above, and such proceeding or action remains un-dismissed or un-stayed for a period of more than [***].

(b) All rights and licenses granted under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11 of the United States Code and other similar laws in any jurisdiction outside the U.S. (collectively, the “Bankruptcy Laws”), licenses of rights to “intellectual property” as defined under the Bankruptcy Laws. If a case is commenced during the Term by or against a Party under Bankruptcy Laws then, unless and until this Agreement is rejected as provided pursuant to such Bankruptcy Laws, such Party (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 trustee) shall perform all of the obligations in this Agreement intended to be performed by such Party. If a case is commenced during the Term by or against a Party under the Bankruptcy Laws, this Agreement is rejected as provided for under the Bankruptcy Laws, and the non-bankrupt Party elects to retain its rights hereunder as provided for under the Bankruptcy Laws, then the Party subject to such case under the Bankruptcy Laws (in any capacity, including debtor-in-possession) and its successors and assigns (including a Title 11 trustee), shall provide to the non-bankrupt Party copies of all Patents, Know-How and information necessary for the non-bankrupt Party to prosecute, maintain and enjoy its rights under the terms of this Agreement; provided that non-bankrupt party continues to fulfill its payment obligations under ARTICLE 9 as specified herein in full. All rights, powers and remedies of the non-bankrupt Party as provided herein are in addition to and not in substitution for any and all other rights, powers and remedies now or hereafter existing at law or in equity (including the Bankruptcy Laws) in the event of the commencement of a case by or against a Party under the Bankruptcy Laws. In particular, it is the intention and understanding of the Parties to this Agreement that the rights granted to the Parties under this Section 13.5 are
essential to the Parties’ respective businesses and the Parties acknowledge that damages are not an adequate remedy.

13.6 **Effects of Termination.** All of the following effects of termination are in addition to the other rights and remedies that may be available to either of the Parties under this Agreement and shall not be construed to limit any such rights or remedies.

(a) **Consequences of Termination by Novavax or Takeda.** In the event of termination of this Agreement by: (i) Novavax pursuant to Section 13.3 or Section 13.5; or (ii) Takeda pursuant to Section 13.2 or Section 13.4:

(i) All rights and licenses granted herein shall terminate and Takeda shall cease any and all Development, Manufacturing, and Commercialization activities with respect to the Vaccine in the Takeda Territory as soon as reasonably practical in accordance with Applicable Law and the agreed upon wind-down plan adopted by the JSC pursuant to Section 13.6(a)(iii);

(ii) All payment obligations hereunder shall terminate, other than those that are accrued and unpaid as of the effective date of such termination;

(iii) The JSC shall coordinate the wind-down of Takeda’s efforts under this Agreement, and Takeda, as soon as reasonably practical after the effective date of such termination, shall provide to Novavax, as applicable and to the extent permitted under any applicable Third Party contract, (1) any information, materials, and data, including copies of all Clinical Trial data and results, and all other information and the like developed by or for the benefit of Takeda relating to solely to the Vaccine, including control of, and all information relating to, the global safety database, and (2) other documents to the extent relating solely to the Vaccine, including material documents and agreements relating to the sourcing and Manufacture of the Vaccine or, to the extent the First Sale of the Vaccine has occurred, for sale, promotion, distribution, or use of such Vaccine) throughout the Takeda Territory. Takeda shall reasonably cooperate with Novavax to transfer such material information, materials, data and documents. At Novavax’ written request, Takeda shall use Commercially Reasonable Efforts to assign to Novavax any and all agreements to which Takeda, or its Affiliate, and a Third Party are parties, and that relate solely to the Development, Commercialization and Manufacturing activities conducted in connection with the Vaccine prior to such termination, provided, that if such assignment is not practical, the Parties shall discuss in good faith an alternative solution to enable Novavax to receive, at Novavax’ expense, the benefit of the terms of such non-assignable agreement;

(iv) Takeda shall have the right to sell or otherwise dispose of any inventory of the Vaccine on hand at the time of such termination or in the process of Manufacturing, which shall be recorded in an Operating Profit Report;
(v) Takeda shall assign and transfer any and all of its rights in the Vaccine Trademarks in the Takeda Territory and Regulatory Approvals for the Vaccine to Novavax;

(vi) Takeda shall transfer to Novavax any and all Regulatory Materials solely related to the Vaccine, including any INDs, Regulatory Filings or Regulatory Approvals. To the extent Takeda Controls any Regulatory Materials that are necessary for the Development, Manufacturing or Commercialization of the Vaccine that are not solely related to such Vaccine, Takeda shall grant Novavax a right of reference to such Regulatory Materials, solely to the extent such reference is necessary for Novavax to Develop, Manufacture and Commercialize such Vaccine; and

(vii) Novavax shall have the right to assume all preparation, filing prosecution, maintenance, and enforcement activities under ARTICLE 10 with respect to Novavax Patents. Takeda shall cooperate with Novavax and provide Novavax with reasonable assistance with the transfer of such activities. The step-in rights granted to Novavax with respect to Joint Patents under Sections 10.3(c), 10.5(b) and 10.6(b) shall remain in effect.

(b) Consequences of Termination by Takeda. In the event of termination of this Agreement by Takeda pursuant to Section 13.3 or Section 13.5:

(i) All rights and licenses granted herein shall terminate; except that the rights and licenses granted to Takeda herein shall automatically convert into a perpetual, irrevocable, transferable, sublicensable (through multiple tiers), exclusive license under Novavax Technology to Develop and Exploit the Vaccine in the Takeda Territory; provided that, during the Operating Profit Period, Novavax shall be entitled to [***] and Takeda shall be entitled to [***] of the Operating Profit accrued on or after the date of termination;

(ii) Takeda may, at its sole discretion, continue to Develop, Manufacture and Commercialize the Vaccine in the Takeda Territory; and

(iii) All payment obligations under this Agreement to Novavax with respect to the Vaccine shall cease other than those that are accrued and unpaid as of the effective date of such termination and Novavax’ portion of the Operating Profit set forth in this Section 13.6(b)(i).

(c) Additional Consequences of Termination.

(i) In addition to the consequences set forth in Section 13.6(a), upon termination by Novavax pursuant to Section 13.3 or Section 13.5, Takeda shall grant to Novavax a non-exclusive, non-transferable, fully-paid, perpetual license or sublicense, as applicable, with the right to grant sublicenses (through multiple tiers) under the Takeda Technology and Takeda’s right in the Joint Technology solely for the purposes of Exploiting the Vaccine anywhere in the world.

(ii) In addition to the consequences set forth in Section 13.6(a), upon termination by Takeda pursuant to Section 13.2 or by Novavax pursuant to Section 13.3, (1) the
Parties shall discuss and negotiate in good faith a commercially reasonable supply agreement for Takeda to Manufacture and supply to Novavax the Vaccine for distribution in the Takeda Territory and (2) in lieu of Section 13.6(a)(iv), Takeda shall, at Novavax’ sole discretion, sell and transfer its inventory of Vaccine existing as of the termination date to Novavax at a price equal to [***] (as defined in Exhibit B) for such inventory.

13.7 Remedies. Notwithstanding anything to the contrary in this Agreement, except as otherwise set forth in this Agreement, termination of this Agreement shall not relieve the Parties of any liability or obligation which accrued hereunder prior to the effective date of such termination, or prejudice either Party’s right to obtain performance of any obligation. Each Party shall be free, pursuant to ARTICLE 14, to seek, without restriction as to the number of times it may seek, damages, expenses and remedies that may be available to it under Applicable Law or in equity and shall be entitled to offset the amount of any damages and expenses obtained against the other Party in a final determination under Section 14.3, against any amounts otherwise due to such other Party under this Agreement.

13.8 Survival. In the event of termination of this Agreement, in addition to the provisions of this Agreement that continue in effect in accordance with their terms, the following provisions of this Agreement shall survive: ARTICLE 1 (to the extent such definitions are used), Section 5.3(a), Section 5.4 (for the period of time set forth therein), Section 6.6 (for so long as Takeda remains the MAA holder of the Vaccine in the Takeda Territory and for so long as Takeda is required to maintain the safety database under Applicable Law), Section 7.6, Section 8.1(f), Section 8.2(o), Section 8.2(p), Section 9.4 (for so long as Takeda incurs Net Sales for the Vaccine in the Takeda Territory and the Parties have not completed the final reconciliation process as set forth in Section 4.5 of Exhibit B), Section 9.7 (for the period of time set forth therein), Section 9.8, Section 10.1, ARTICLE 10 (with respect to Joint Patents), ARTICLE 12 (for the period of time set forth in Section 12.1), Sections 13.6 through 13.8 (inclusive), ARTICLE 14, ARTICLE 15 Section 16.2, and Sections 16.6 through 16.15 (inclusive).

ARTICLE 14 DISPUTE RESOLUTION

14.1 Exclusive Dispute Resolution Mechanism. Except as expressly set forth in this Agreement, the Parties agree that the procedures set forth in this ARTICLE 14 shall be the exclusive mechanism for resolving any dispute, controversy, or claim between the Parties that may arise from time to time pursuant to this Agreement relating to either Party’s rights or obligations hereunder (each, a “Dispute”, and collectively, the “Disputes”) that is not resolved through good faith negotiation between the Parties.

14.2 Resolution by Novavax’ Chief Executive Officer and Takeda’s President of the Global Vaccine Business Unit. Except as otherwise provided in this Section 14.2, in the event of any Dispute, regarding the construction or interpretation of this Agreement, or the rights, duties or liabilities of either Party hereunder, in each case with respect to which neither Party has final decision-making authority hereunder, the Parties shall first attempt in good faith to resolve such Dispute by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within [***], either Party may, by written notice to the other Party, refer the Dispute to Novavax’ Chief Executive Officer and Takeda’s 94065460_6
President of the Global Vaccine Business Unit for attempted resolution by good faith negotiation within [***] after such notice is received. Each Party may, in its sole discretion, seek resolution of such Dispute that is not resolved under this Section 14.2 in accordance with Section 14.3.

14.3 **Litigation.** Any unresolved Dispute that was subject to Section 14.2, shall be brought exclusively in a court of competent jurisdiction, federal or state, located in [***], and in no other jurisdiction. Each Party hereby consents to personal jurisdiction and venue in, and agrees to service of process issued or authorized by, such court.

14.4 **Waiver of Right to Jury Trial.** In connection with the Parties’ rights under Section 14.3, EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

14.5 **Equitable Relief.** Notwithstanding anything in this Agreement to the contrary, a Party may seek a temporary restraining order, a preliminary injunction or specific performance from any court of competent jurisdiction in order to prevent immediate and irreparable injury, loss, or damage on a provisional basis, pending the decision of the court.

14.6 **Payment Tolling.** During the pendency of any dispute resolution proceeding between the Parties carried out in good faith under this ARTICLE 14, the obligation of one Party to make any payment under this Agreement to the other Party, which payment is the subject, in whole or in part, to such dispute resolution proceeding, shall be tolled until the final outcome of such Dispute has been established.

14.7 **Confidentiality.** Any and all activities conducted under Section 14.2 14.3 or 14.5, including any and all proceedings and decisions under Section 14.3 or 14.5, shall be deemed Confidential Information of each of the Parties, and shall be subject to ARTICLE 12.

**ARTICLE 15 INDEMNIFICATION; LIMITATION OF LIABILITY**

15.1 **Indemnification by Takeda.** Takeda hereby agrees to defend, indemnify and hold harmless Novavax and its Affiliates, and each of their respective directors, officers, employees, agents and representatives (each, an “Novavax Indemnitee”) from and against any and all claims, suits, actions, demands, liabilities, expenses and/or losses, including reasonable legal expenses and attorneys’ fees (collectively, the “Losses”), to which any Novavax Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party (each, a “Claim”) to the extent such Losses arise directly or indirectly out of: [***].

15.2 **Indemnification by Novavax.** Novavax hereby agrees to defend, indemnify and hold harmless Takeda and its Affiliates and each of their respective directors, officers, employees, agents and representatives (each, a “Takeda Indemnitee”) from and against any and
all Losses to which any Takeda Indemnitee may become subject as a result of any Claim to the extent such Losses arise directly or indirectly out of: [***].

15.3 Indemnification Procedures.

(a) **Notice.** [***] after a Novavax Indemnitee or a Takeda Indemnitee (each, an “Indemnitee”) receives notice of a pending or threatened Claim, such Indemnitee shall give written notice of the Claim to the Party from whom the Indemnitee is entitled to receive indemnification pursuant to Section 15.1 or 15.2, as applicable (the “Indemnifying Party”); provided, that, an Indemnitee’s delay in providing or failure to provide such notice will not relieve the Indemnifying Party of its indemnification obligations, except to the extent it can demonstrate prejudice due to the delay or lack of notice.

(b) **Defense.** Upon receipt of notice under Section 15.3(a) from the Indemnitee, the Indemnifying Party shall have the duty to either settle or defend, at its own expense and using its own counsel (reasonably satisfactory to Indemnitee), such Claim. The Indemnifying Party shall promptly (and in any event not more than [***] after receipt of the Indemnitee’s original notice) notify the Indemnitee in writing that it acknowledges its obligation to indemnify (which notice shall not be deemed or construed to be an admission of liability, either under this ARTICLE 15 or otherwise) the Indemnitee with respect to the Claim and of its intention either to settle or defend such Claim. Once the Indemnifying Party gives such notice to the Indemnitee, the Indemnifying Party is not liable to the Indemnitee for the fees of Indemnitee’s counsel or any other expenses subsequently incurred by the Indemnitee in connection with such Claim, other than the Indemnitee’s reasonable expenses of investigation and cooperation. Notwithstanding the foregoing, Indemnitee shall have the right to employ its own counsel at its own expense to participate in defending the Claim.

(c) **Cooperation.** The Indemnitee shall cooperate fully with the Indemnifying Party and its legal representatives in the investigation and defense of any Claim. The Indemnifying Party shall keep the Indemnitee informed on a reasonable and timely basis as to the status of such Claim, to the extent the Indemnitee is not participating in the defense of such Claim, and conduct the defense of such Claim in a prudent manner.

(d) **Settlement.** If an Indemnifying Party assumes the defense of a Claim, no compromise or settlement of such Claim may be effected by the Indemnifying Party without [***]. Notwithstanding the foregoing, the Indemnitee’s consent shall not be required of a settlement where: (i) there is no finding or admission of any violation of law or any violation of the rights of any person and no effect on any other claims that may be made against the Indemnitee; (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party; and (iii) the Indemnitee’s rights under this Agreement are not adversely affected. If the Indemnifying Party fails to assume defense of a Claim within a reasonable time, the Indemnitee may settle such Claim on such terms as it deems appropriate [***], and the Indemnifying Party shall be obligated to indemnify the Indemnitee as provided in this ARTICLE 15, including any settlement amounts.
15.4 **Insurance.** Each Party shall, at its own expense, procure and maintain during the Term and for a period of [***] thereafter, insurance policy(ies) from an insurer that has a rating of A-Viii in the most current edition of Best’s Insurance Guide, or equivalent, including product liability insurance, adequate to cover its obligations hereunder and which are consistent with the type of coverages set forth below. Such insurance shall not be construed to create a limit of a Party’s liability with respect to its indemnification obligations under this ARTICLE 15. Each Party shall provide the other Party with written evidence of such insurance or self-insurance upon written request. The coverages required below shall not be construed to limit or circumvent Third Party’s indemnification obligations under the provisions of this Agreement. [***].

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15.5 **Limitation of Liability.** [***].

**ARTICLE 16 MISCELLANEOUS**

16.1 **Designation of Affiliates.** Each Party may discharge any obligations and exercise any rights hereunder through delegation of its obligations or rights to any of its Affiliates. Each Party hereby guarantees the performance by its Affiliates of such Party’s obligations under this Agreement, and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party’s Affiliate of any of such Party’s obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party’s Affiliate.

16.2 **Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally, or on the next Business Day after being sent by reputable overnight courier (with delivery tracking provided, signature required and delivery prepaid), in each case, to the parties at the following addresses, or by email with confirmation of receipt (which confirmation shall not be unreasonably withheld, conditioned or delayed) to the email address specified below.

(a) **If to Takeda:**

Takeda Pharmaceutical Company Limited 40 Landsdowne Street
Cambridge, MA 02139

94065460_6
16.3 **Change in Control.** Either Party (or its successor) shall provide notice to the other Party of its Change of Control within [***] after the date upon which such Change of Control closes or otherwise becomes effective. Public disclosure of such Change of Control shall be deemed to be sufficient notice under this Section 16.3.

16.4 **Force Majeure.**

(a) Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by Force Majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting Force Majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. Notwithstanding the foregoing, a Party shall not be excused from making payments owed hereunder because of a Force Majeure affecting such Party. If a Force Majeure persists for more than [***], then the
Parties shall discuss in good faith the modification of the Parties’ obligations under this Agreement in order to mitigate the delays caused by such Force Majeure.

(b) Without limiting Section 16.4(a), for sake of clarity, the Parties acknowledge and agree that a Party’s ability to perform its obligations under this Agreement after the Effective Date may be affected by the COVID-19 pandemic (the “COVID-19 Effect”) ongoing at the time of execution of this Agreement, and as such, the Parties understand and acknowledge that if a Party is actually delayed or prevented from performing any of its obligations under this Agreement due to a COVID-19 Effect to the extent that such failure or delay is caused by or results from causes beyond the reasonable control of the such Party, such non-performing Party will not be liable for breach of this Agreement with respect to such non-performance; provided that such non-affected Party will notify the other Party of such prevention as soon as reasonably practical, and will promptly undertake all reasonable efforts necessary to cure such COVID-19 Effect and resume performance of its obligations hereunder. Without limiting the foregoing, but subject to rights and remedies available to a Party hereunder, the Parties will agree on extensions to timeframes set forth in this Agreement to account for delays in carrying out activities and obligations hereunder to the extent such delays are a result of disruptions to business caused by a COVID-19 Effect or related laws and regulations.

16.5 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the consent of the other, except that a Party may make such an assignment without the other Party’s consent to its Affiliate or to a successor to substantially all of the business of such Party to which this Agreement relates, whether in a merger, sale of stock, sale of assets or other transaction. Any successor or assignee of rights, obligations or this Agreement permitted hereunder shall, in writing to the other Party, expressly assume performance of such rights, obligations or this Agreement, as applicable. Any permitted assignment shall be binding on the successors of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 16.5 shall be null, void and of no legal effect.

16.6 Severability. If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

16.7 English Language. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement, shall be in the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control. Takeda may provide copies of certain Regulatory Documentation translated into English to the extent such translation exists and was created for Takeda’s internal use. Notwithstanding the foregoing, the original copy of certain Regulatory Documentation for the Takeda Territory may be in a foreign language, such foreign language version shall govern with respect to such Regulatory Documentation.
16.8 **Waiver and Non-Exclusion of Remedies.** Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The waiver by either Party hereto of any right hereunder or of the failure to perform or of a breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other breach or failure by such other Party whether of a similar nature or otherwise. The rights and remedies provided herein are cumulative and do not exclude any other right or remedy provided by Applicable Law or otherwise available except as expressly set forth herein.

16.9 **Further Assurance.** Each Party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including the filing of such assignments, agreements, documents, and instruments, as may be necessary or as the other Party may reasonably request in connection with this Agreement or to carry out more effectively the provisions and purposes hereof.

16.10 **Relationship of the Parties.** It is expressly agreed that Novavax and its Affiliates, on the one hand, and Takeda and its Affiliates, on the other hand, shall be independent contractors and that the relationship between the two Parties shall not constitute a partnership, joint venture or agency, including for tax purposes. Neither Novavax nor Takeda shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other, without the prior written consent of the other Party to do so. All persons employed by a Party shall be employees of that Party and not of the other Party and all expenses and obligations incurred by reason of such employment shall be for the account and expense of such Party.

16.11 **Construction.** Except where the context otherwise requires, wherever used, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders. Whenever this Agreement refers to a number of days without using a term otherwise defined herein, such number refers to calendar days. The captions of this Agreement are for the convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The terms “including,” “include,” “includes” or “for example” shall not limit the generality of any description preceding such term and as used herein shall have the same meaning as “including, but not limited to” or “including, without limitation.” The words “will” and “shall” as used in this Agreement are deemed to be interchangeable. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party hereto. Each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions.

16.12 **Governing Laws.** This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this
Agreement. This Agreement and all disputes arising out of or related to this Agreement or any breach hereof shall be governed by and construed under the laws of [***], without giving effect to any choice of law principles that would require the application of the laws of a different state.

16.13 **Entire Agreement.** This Agreement, including the Exhibits hereto, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof and supersedes, as of the Effective Date, all prior and contemporaneous agreements and understandings between the Parties with respect to the subject matter hereof. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. In the event of any inconsistency between the body of this Agreement and either any Exhibits to this Agreement or any subsequent agreements ancillary to this Agreement, unless otherwise expressly stated to the contrary in such Exhibit or ancillary agreement, the terms contained in this Agreement shall control.

16.14 **Headings.** The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section.

16.15 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile, .pdf or other electronically transmitted signatures and such signatures shall be deemed to bind each Party hereto as if they were the original signatures.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives.

NOVAVAX, INC.

By: /s/ John A. Herrmann III  
Name: John A. Herrmann III  
Title: EVP, CLO & Corporate Development

TAKEDA PHARMACEUTICAL COMPANY LIMITED

By: /s/ Masayuki Imagawa  
Name: Masayuki Imagawa  
Title: VP, Head, Japan Vaccine Business Unit
[Signature Page to Collaboration and Exclusive License Agreement]
Exhibit A: Novavax Patents as of Effective Date

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit A setting forth the patents has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit B: Operating Profit

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit B setting forth the operating profit has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit C: Upstream Agreements

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit C setting forth the upstream agreements has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit D: Post-Pandemic Period Takeda Territory(ies)

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit D setting forth the Post-Pandemic Period Takeda Territory(ies) has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit E: Initial Technology Transfer Plan

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit E setting forth the initial Technology Transfer Plan has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit F: Development Plan

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit F setting forth the initial Technology Transfer Plan has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit G setting forth the clinical serum sample terms and SOW has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.
Exhibit H: Initial Adjuvant Forecast

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit H setting forth the Initial Adjuvant Forecast has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit I: Starting Material Supply Terms

[Pursuant to Regulation S-K, Item 601(a)(5), this Exhibit I setting forth the starting material supply terms has not been filed. The Registrant agrees to furnish supplementally a copy of any omitted exhibits to the Securities and Exchange Commission upon request; provided, however, that the Registrant may request confidential treatment of omitted items.]
Exhibit J: Arbitration Procedure

The arbitration shall be conducted pursuant to the [***] on an expedited basis. Notwithstanding those rules, the arbitration shall be conducted by a single arbitrator, with at least seven (7) years of experience arbitrating disputes in drug product licenses and collaborations, selected by mutual agreement of the Parties within [***] after the written election to arbitrate. If the Parties fail to agree within such [***] period, each Party shall select [***] with the foregoing experience to act as arbitrator, and the [***] so selected shall select a [***] arbitrator with such experience within [***] after the written election to arbitrate. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allotted time, the [***] arbitrator with the foregoing experience shall be appointed by [***] in accordance with its rules. All arbitrators shall serve as neutral, independent and impartial arbitrators. The [***] arbitrator or panel of [***] arbitrators, as the case may be, are herein after referred to as “Arbitrator.” Neither Party shall engage in ex parte contact with the Arbitrator. Each Party shall submit a proposed resolution of the term or set of terms for which the Parties have failed to reach agreement. The Arbitrator shall make a determination within [***] after being selected, provided that such determination is not inconsistent with the terms of the Agreement. The decision of the Arbitrator shall be final and binding upon the Parties, and a Party may petition a court to correct or vacate the decision only upon grounds that an award contained therein was procured by corruption, fraud or other undue means and may not petition a court to correct or vacate the decision for failure of the Arbitrator to apply the law or any other grounds or reasons. Judgment may be entered on the decision in any court of competent jurisdiction upon the application of any affected Party where applicable.
CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Stanley C. Erck, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Novavax, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: May 10, 2021

By: /s/ Stanley C. Erck

Stanley C. Erck
President and Chief Executive Officer
CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

I, John J. Trizzino, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Novavax, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: May 10, 2021

By: /s/ John J. Trizzino

John J. Trizzino
Executive Vice President,
Chief Commercial Officer,
Chief Business Officer and Interim Chief Financial Officer
CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO 18
UNITED STATES CODE §1350
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

In connection with the Quarterly Report of Novavax, Inc. (the “Company”) on Form 10-Q for the fiscal period ended March 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Stanley C. Erck, President and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the dates and periods covered by this Report.

Date: May 10, 2021

By: /s/ Stanley C. Erck
Stanley C. Erck
President and Chief Executive Officer

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Company specifically incorporates it by reference.
CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 UNITED STATES CODE §1350
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

In connection with the Quarterly Report of Novavax, Inc. (the “Company”) on Form 10-Q for the fiscal period ended March 31, 2021 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, John J. Trizzino, Executive Vice President, Chief Business Officer, Chief Commercial Officer and Interim Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge, that:

1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the dates and periods covered by this Report.

Date: May 10, 2021

By: /s/ John J. Trizzino

John J. Trizzino
Executive Vice President,
Chief Commercial Officer,
Chief Business Officer and Interim Chief Financial Officer

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, except to the extent that the Company specifically incorporates it by reference.