



# Federal Funding Programme for COVID-19 Medicines: Model Subsidy Contract

According to the relevant provisions of the Federal Subsidies Act of 5 October 1990 (SuG, SR 616.1)

between **Swiss Confederation**

represented by **Federal Office of Public Health ("FOPH")**  
Schwarzenburgstrasse 157  
3003 Bern  
Innovative-Covid-Drugs@bag.admin.ch

hereinafter referred to as **Contributor**

and **[Name of Organisation]**

hereinafter referred to as **Recipient**

Project Titel

Duration Start: [From the date on which both parties sign the Subsidy Contract]  
End: [upon final payment or reimbursement]

Maximum amount of the project contribution **CHF**

Contract No./ Reg-No / Dos-No

Type of Costs/Credit

Task-No. / Unit

Responsible Person:

- for the Contributor: **FOPH, 3003 Bern – xxxxxxxx**  
**058 xxx xx xx**  
**xxx.xxx@bag.admin.ch**

- for the Recipient  
**xxx@xxx.xx**

Invoice Adresse

E-Bill (eBill Account ID)

Order Number

# 1 Background / Recitals

**WHEREAS**; in May 2021, the Swiss Federal Council approved the Federal Funding Programme for COVID-19 medicines to the tune of 50 million Swiss francs;

**WHEREAS**, the aim of the programme is to promote the research, development and production of COVID-19 medicinal products in order to provide the Swiss population with access to innovative new medicines

**WHEREAS**, the funding programme will expire by the end of 2022 and call for applications for this funding programme took place between 19 July 2021 and 16 August 2021 [12pm (noon) CEST];

**WHEREAS**, the Recipient submitted an application for funding to implement its project **TITLE** to the Contributor on **dd.mm.yyyy** (hereinafter the "**Application**") such project to be described as follows:

**[abstract from application]**

(hereinafter referred to as "**Project**") whereby it is understood that the term "Project" refers only to the project described above and for which funding has been requested. The research project as a whole may have started before, yet only the research and development that is subject to the current funding application, which is subject of this subsidy contract (hereinafter the "**Agreement**" and / or the "**Subsidy Contract**"), is to be understood under the term "Project";

**WHEREAS**, the Recipient submitted all required documents for submission to Contributor and the Application has been assessed thereafter by the Contributor in collaboration with the Swiss Innovation Agency (hereinafter "**Innosuisse**"), and deemed eligible for a contribution which result has been communicated to the Recipient in writing;

**WHEREAS**, this Agreement shall set forth the dates as well as the conditions for the milestone payments to be made by the Contributor as well as the rights and obligations of both Parties to this Subsidy Contract.

Therefore, the Parties agree as follows:

# 2 Legal Basis

This Subsidy Contract shall be based on the following legal foundations:

- article 9 Ordonnance of 28 June 2000 on the organisation of the Federal Department of Home Affairs (OV-EDI, SR 172.212.1);
- the relevant provisions of the Federal Subsidies Act of 5 October 1990 (SubA, SR 616.1);
- the relevant provisions of the Federal Epidemics Act of 18 December 1970 (EpG, SR 818.101);
- article 3 Paragraph 2 letter e COVID-19 Act of 25 September 2020 (SR 818.102);
- the relevant provisions of the Ordinance 3 on Measures to Combat the Coronavirus (COVID-19) (Covid-19 Ordinance 3, SR 818.101.24);
- the relevant provisions of the Federal Act on Medicinal Products and Medical Devices of 15 December 2000 (Therapeutic Products Act, TPA, SR 812.21).

# 3 Subject matter of the Subsidy Contract

This Subsidy Contract governs the Contributor's financial support of the Project by setting forth the milestone payments of Contributor and the conditions of such payments as well as the rights, obligations and contributions of the Recipient.

## 4 Elements of the Subsidy Contract / Order of Preference

The rights and obligations of the Parties to this Subsidy Contract shall be governed by the following documents:

- the Subsidy Contract, including any supplements thereto which form an integral part to the Subsidy Contract;
- the Application, including all subsequent submissions made before the conclusion of the Subsidy Contract;
- Swiss law

In the event of any conflict or discrepancies between the provisions of this Subsidy Contract and the Application, the provisions of this Subsidy Contract shall prevail.

## 5 Terms of contribution

### 5.1 Maximum amount of the Project contribution

A contribution of a maximum of CHF **X** is to be granted for the above-mentioned Project.

### 5.2 Milestones and Final Report

No	Description of Milestones
1	TBD
2	TBD
<b>X</b>	TBD
<b>Final Report (not a milestone)</b>	

### 5.3 Terms of payment

The contribution is expected to be paid to the Recipient in the following instalments, whereby a maximum of 80% of the amount is paid before the final payment upon completion and approval of the final reports:

Instalment	Contribution amount (all amounts in CHF)	Reason and payment date
1. instalment	[amount]	After signing of the Subsidy Contract by both parties and once Recipient has communicated the date of the Project start in writing to the Contributor (latest 3 months after signature)
2. instalment	[amount]	First Milestone (cf. Sec. 5.2; TBD) completed, DATE latest
3. instalment	[amount]	Second Milestone (cf. Sec. 5.2; TBD) completed, DATE latest
x <sup>th</sup> instalment	amount	x <sup>th</sup> Milestone (cf. Sec. 5.2; TBD) completed, DATE latest
Final payment	[amount] (20% of total contribution )	Upon completion of the Project and approval of the final scientific and financial report

Apart from the 1<sup>st</sup> instalment all subsequent instalments will only be paid once the respective Milestone is completed by the date set out in the table above. All Milestones must be completed before the end of 2022. Milestones reached after the end of 2022 cannot be remunerated. Upon completion of the Project or latest by [DATE], the Recipient shall submit the Final Report to the Contributor (cf. Clause 7.1). Only the costs actually incurred and required for the sound implementation of the Project may be claimed as part of the definitive contribution yet the total cost must not exceed the maximum amount granted (cf. Clause 5.1).

During the term of this Subsidy Contract and thereafter for a period of 48 months, the Recipient must keep at its principal office true and correct accounts and records necessary to (i) provide the information required by the Contributor in accordance with Art. 15c of the Federal Law on Financial Aid and Compensation (SR 616.1), (ii) to produce and examine the report set forth in Clause 8.2 of this Subsidy Contract. If requested by Contributor, such report has to be examined and reviewed by an auditor and the Recipient agrees to provide access to such auditor to the extent required.

The Contributor or its duly authorised representatives after giving reasonable notice may during business hours during this period inspect and audit the accounts and records of the Recipient. Such representatives may take copies of or extracts from any such records.

In order for the execution of the Final payment the Recipient has to submit a financial report which has been approved by an external auditor.

The Contributor shall assess the final scientific and financial report and use it as a basis for determining the final payment and any claims for repayment. The Recipient shall communicate any objections to the decision to the Contributor within 30 days. In this case, the Contributor shall assess the complaint and make amendments to the definitive amount if the complaints are justified. If the Recipient is not in agreement with the decision, it can submit a complaint to the Federal Administrative Court.

If the contributions already paid exceed the final definitive amount, the Contributor shall request that the excess paid be reimbursed to the Contributor. The Recipient shall reimburse this amount within 30 days of the final accounts statement being issued.

The programme is limited until the end of 2022. The Project must be designed in such a way that the medicinal product can be made available to the Swiss population through the legally possible channels by the end of 2022. Any milestone that is not reached until the end of 2022 cannot be remunerated.

The payments are subject to the approval of the relevant budgets by the Swiss Federal Parliament.

The Recipient agrees to cause a Partner (as defined in Clause 7.7) to fulfill the obligations above as if such Partner was the Recipient.

#### **5.4 Payment details**

The Recipient invoices the Contributor for its services by means of an electronic invoice (e-bill). Information from the Federal Administration on e-bill, namely the eBill Account ID of the SAG and requirements for PDF invoices by e-mail, is available on the following website:

<http://www.e-rechnung.admin.ch/index.php>

The following information must be provided on the invoice:

- Contract number
- Order number
- Billing period

The Contributor checks the invoice and pays it in the normal course of business, i.e. usually within 30 days.

The final payment is made after approval of the final invoice for the entire contract amount. The final account must provide information on:

- Contract number
- Billing period
- Detailed credit utilisation: target/actual comparison with budget
- Cost types: according to the template provided by the Contributor
- Revenues: All payments by the Contributor must be reported. A total cost and financing overview must be attached if second or third party financing has been provided.

Copies of receipts and accounting statements must be enclosed with the final statement of account. Where the compilation of receipts is time-consuming, the final account must bear a corresponding note. In addition, the contact person from whom all original vouchers or copies of invoices relevant to the contract can be inspected or requested must be indicated. If requested by the Contributor, audit or trustee reports must be attached to the final account.

## 6 Special conditions and requirements

### 6.1 Intellectual property rights and rights of use

The Recipient shall inform the Contributor in writing (Innovative-Covid-Drugs@bag.admin.ch) about every application for intellectual property rights (patent, design and trademark protection) and any property rights granted in connection with this Project, whereby it is understood that such information rights cover also intellectual property rights applied for by and / or granted to third parties. In such cases, the Recipient warrants and represents that the Recipient has all rights necessary to fulfil its obligations under this Agreement.

The Recipient confirms as far as his rights are concerned, that:

- he is the sole and exclusive legal owner of (i) its patents and patent applications as well as its trademarks and trademark applications, (ii) all copyrights and/or industrial designs, whether registered or not, and applications to register and registrations therefore; and (iii) any forms of know how or other information which is confidential and proprietary in nature and which is used by such Recipient (hereinafter the **"Intellectual Property Rights"**), free and clear of all liens and of any rights of any employees to inventions made by such employees;
- he has the right to use all the intellectual property rights (patent, design and / or trademarks) required and / or developed in connection with and / or in the course of the Project or has adequate and valid licenses to such relevant intellectual property rights all of which to the extent required to fulfil Recipient's obligations under this Agreement (such intellectual property rights hereinafter: the **"New Intellectual Property Rights"**);
- there have been no claims or objections made or pending or threatened against him asserting the invalidity, misuse or unenforceability of any of the Intellectual Property Rights and or the New Intellectual Property Rights. The Recipient has not received and not been threatened with any notices of any infringement or misappropriation by, or conflict with, any third party with respect to such Intellectual Property Rights and / or the New Intellectual Property Rights.
- the conduct of business as presently conducted, does not and will not infringe, misappropriate or conflict with any patents, trademarks or designs of other persons (nor has it done so in the past), and the Intellectual Property Rights and / or the New Intellectual Property Rights are not infringed, misappropriated or conflicted by other persons;
- it will take or cause the respective party to take appropriate measures for the protection of the New Intellectual Property Rights.

## **7 Rights and obligations of the Recipient**

### **7.1 Reporting obligations**

The Recipient undertakes to notify the Contributor in writing of any significant expected or unexpected change or deviation that it intends to make without delay and before the change is implemented (Innovative-Covid-Drugs@bag.admin.ch). The changes may only be made with the consent of the Contributor.

Significant changes or deviations are in particular:

- changes to the Industry Partner as designated in the application (if recipient is a research institution or a hospital);
- changes as far as the Partner (as defined in Clause 7.7) is concerned;
- changes to the Project plan or the aim of the Project;
- changes to the Project contact person;
- relocation of the registered offices of the Recipient or the Industry Partner as designated in the application (if recipient is a research institution or a hospital);
- delays in reaching milestones.

The Recipient shall communicate to the Contributor significant changes that are beyond its control as soon as it becomes aware of them (e.g. unforeseeable loss of key personnel, changes to the Project plan on the basis of unforeseeable incidents etc.). It shall inform the Contributor of the urgent measures necessary for the continuation of the Project.

The Recipient shall provide pursuant to Section 7 the Contributor with unsolicited reports during the course of the Project latest on the date as specified for each milestone in Clause 5.3. Reports have to be submitted in accordance with the templates provided by FOPH. Non-compliant reports will not be assessed and need to be resubmitted in conformity with the template.

Upon completion of the Project, the Recipient shall submit to the Contributor an unsolicited final report with information on their satisfaction, the success of the Project and Project benefits, results, market implementation and commercial and/or economic benefits, costs (final budget) among other things; the required financial reports have to be approved by an external auditor before submission to the Contributor.

The Contributor can request more reports if they are considered necessary during the course of the Project.

All reports shall be submitted to: Innovative-Covid-Drugs@bag.admin.ch.

### **7.2 Use of the contribution**

The Recipient is obliged to use the contribution only for the implementation of the Project in accordance with the requirements of this Subsidy Contract (including all elements of the Subsidy Contract according to Section 4).

### **7.3 Execution of the Project**

The execution of the Project is based on the requirements of this Subsidy Contract (including all elements of the Subsidy Contract according to Section 4).

The Recipient shall carefully select the specialist persons with the relevant expertise required to execute the Project as per the Subsidy Contract.

The Recipient shall conduct the Project pursuant to sound scientific and accounting principles. The Contributor reserves the right to reclaim a portion or the entire amount for which the Recipient cannot account for (cf. article 28 SubA).

#### **7.4 Project start and duration**

The Project may only start once this Subsidy Contract has been signed by both parties and once the exact date of the start of the Project has been communicated in writing to the Contributor.

The Project must be start within three months of this Subsidy Contract being signed by both parties; otherwise, the contractual relationship can be terminated by the Contributor without notice.

The Project must be concluded by the end of 2022 at the latest.

After execution of the Project, Recipient shall use its reasonable best efforts to seek, obtain and maintain from Swissmedic an authorisation to use the medicinal product in accordance with article 9 and article 9a.

#### **7.5 Communication obligations**

If the Recipient becomes aware that the obligations laid down in this Subsidy Contract have not been adhered to, it is obliged to notify the Contributor thereof immediately.

#### **7.6 Confidentiality, publications**

The Recipient undertakes to keep confidential all matters concerning the Contributor that are neither evident nor accessible to the general public. This shall not affect any additional data protection provisions.

Other information given to media representatives or disclosed during interviews or advertising activities etc. is to be agreed with the Contributor. The Recipient agrees not to disclose without prior permission of the Contributor the maximum amount of the funding granted.

#### **7.7 Guarantee for a pre-purchase right**

The Contributor shall have an exclusive and irrevocable option to purchase products stemming from the Project. The Recipient agrees to grant and agrees to cause any partner it uses for an authorisation according to article 9, article 9a or article 9b paragraph 1 TPA (hereinafter the "**Partner**") to grant the Contributor such option to purchase products whereby it is understood that such option to purchase shall cover an amount/number of such products as determined by the Contributor.

The Contributor shall notify the Recipient in writing of its intention to exercise its option to purchase products within 2 months after such product has obtained from Swissmedic an authorisation to use the medicinal product in accordance with article 9, article 9a or article 9b paragraph 1 TPA. Upon receipt of the written exercise of the option, the Contributor and the Recipient and/or the Partner will enter into good faith negotiation on a purchase agreement for the product under the following non-negotiable conditions:

- The advance purchase agreement will be subject to the general terms and conditions for purchase contract of the federal government ([LINK](#)).
- The Recipient (or any successor and / or Partner) shall warrant a priority delivery of the Contributor of the product (treatment courses), the delivery and the delivery conditions will and shall remain as favourable as the conditions offered to any other High Income Countries.
- The Contributor shall pay a price for the product, which will and shall remain as favourable a price for the sale of the product hereunder as the price for product offered to any other High Income Countries.
- The Parties agree that in relation to liability they revert to the Applicable Law. Contributor hereby represents and warrants and agrees to cause any Partner to represent and warrant to Recipient that any liability and indemnity clause is as favourable as offered by Contributor to any Third Party in respect of any equivalent product in connection with an advance purchase agreement based on such a funding agreement. If Contributor gives an indemnity in respect of any equivalent product on any terms that (individually or as a whole) are more preferable to that other party than to the Recipient, then Contributor will promptly notify Recipient of such preferential terms, which preferential

terms will be substituted for and apply to this Agreement (in substitution of the less preferential terms) unless Recipient objects to such substitution; provided, however, that any such substitution will have no retroactive effect.

As far as potential Partners are concerned, the Recipient agrees to

- submit to the Contributor in writing all information about such Partner reasonably requested by Contributor;
- ensure that the above guarantee for a pre-purchase right and all subsequent conditions are accepted in its entirety by such Partner;
- have such Partner sign an accession declaration pursuant to which such Partner agrees to be fully bound by the terms and conditions of the Clauses 5.3, 6, 7.1, 7.7, 8.2, 10.5 and 10.6 of this Agreement in the same capacity as the Recipient.

Non-compliance with this condition by the Recipient is deemed as a material breach of the Subsidy Contract.

## **8 Rights and obligations of the Contributor**

### **8.1 Funding**

The Contributor undertakes to pay the contributions to the Recipient in accordance with the requirements found in Section 7.

### **8.2 Assessing the reporting and rights of inspection**

The Contributor shall assess the Recipient's (and to the extent produced the Partner's) reports in accordance with Clause 7.1. Where necessary, the Contributor shall hold discussions with the Recipient on the follow-up or termination of the Project and make the necessary decisions, insofar as such discussions are intended as part of the reporting process in accordance with Clause 7.1. The duty to provide information and the right of inspection pursuant to Art. 15c SuG can be outsourced by the FOPH to a third party (including the commission of an external auditor to verify the correct use of funds).

The Contributor reserves the right to ask the Recipient and / or the Partner access to all documents required to assess the reports and to check compliance with this Subsidy Contract at any time. On-site inspections are also possible. Entry is to be guaranteed by the Recipient to the Contributor and Recipient causes potential Partner's to grant access and entry to the Contributor. This right shall remain in place after the Project contributions have been granted for a period of five years after the Project has been concluded so that the Contributor can carry out the necessary checks and clarify any claims for repayment.

### **8.3 Use of tangible assets**

The Contributor may decide on the further use of tangible assets acquired with its assistance within the framework of this Project. It will receive a share of any proceeds arising from the sale of the tangible assets in question based on its share in the funding.

## **9 Inadequate fulfilment or non-fulfilment**

If the Recipient does not adequately fulfil or fail to fulfil his obligations as per Sections 5-8 of this Subsidy Contract, the Contributor may:

- remind the Recipient to fulfil his obligations;
- enforce fulfilment by legal means;
- partly or wholly withdraw the right to funding;
- terminate the contractual relationship in serious cases.



In the event of a contribution being withdrawn, the Recipient is obliged to reimburse to the Contributor for any payments already received in line with the amount of the withdrawal. Art. 28 of the Federal law on Federal Subsidies (SR 616.1) prevails.

## **10 Final provisions**

### **10.1 Amendments and supplements to the Subsidy Contract**

Any amendment and supplement to the Subsidy Contract is to be made in writing.

### **10.2 Integrity clause**

Parties undertake to take all necessary measures to avoid corruption, so that in particular no gratuities or other advantages are offered or accepted.

In the event of non-compliance with the integrity clause, Recipient shall pay the Contributor a contractual penalty. This shall amount to 10 % of the contract sum, with a minimum of CHF 3 000 per violation.

Parties acknowledge that a breach of the integrity clause will generally lead to the cancellation of the award and to an early termination of the Subsidy Contract for good cause by the Contributor.

### **10.3 Secrecy**

The Recipient expressly agrees that the Contributor may provide information on the content of this agreement within the meaning of the Public Information Act (Freedom of Information Act, FoIA, c; SR 152.3), namely on the specific contribution and the name and address of the Recipient.

### **10.4 Social benefits**

The Contributor has no social security obligations towards the Recipient. The Recipient settles the AHV/ALV/EO/IV contributions, the UVG contributions and the BVG contributions for himself or his employees directly with the competent authorities, if there is an obligation to pay contributions.

### **10.5 Entry into force, duration and termination of the Subsidy Contract and budget reservation**

This Subsidy Contract shall enter into force once it has been signed by all parties and expires on the date of final payment or any reimbursement, whichever is later.

This Subsidy Contract may be terminated by the non-breaching Party if a Party to this Subsidy Contract has fundamentally breached any of its obligations under this Agreement; provided, however, that the breaching Party shall be given thirty (30) days prior written notice to cure such breach before such termination becomes effective. The Party being in breach of its contractual obligations shall be obligated to compensate the other Party for any damages incurred due to such breach. A breach of this Subsidy Contract shall be deemed to exist in particular if:

- it is shown to be sufficiently probable that the objectives of the Project cannot be achieved;
- the requirements for Project funding are no longer fulfilled due to Project changes;
- there is a serious failure to (adequately) fulfil the contractual obligations;
- breach of contract;
- serious legal violation has occurred.

The withdrawal from this Subsidy Contract by the Contributor shall also be subject to the relevant provisions of the SubA.

The contractual relationship must be terminated in writing.

Any reclamation of contributions shall be subject to the provisions of the SubA.

Upon expiry and / or termination of this Agreement for any of the reasons set forth in Clause 10.5 hereof, all rights and obligations of the Parties hereunder shall cease except rights or obligations stemming from Clauses 5.2, 6, 7, 8.2, 10.5 and 10.6.

#### **10.6 Any disputes arising from the Subsidy Contract and applicable law**

The Parties agree to seek an amicable solution to any and all disputes.

Legal protection shall be afforded under general federal judicial provisions for the relationship between the Contributor and the Recipient. The Federal Administrative Court shall have sole jurisdiction over claims.

The relevant civil law regulations shall apply in the event of disputes between the Parties relating solely to their relationship. This contractual relationship shall be governed exclusively by Swiss law.

### **11 Distribution list / Signatures**

Originals: - Contributor (1 copy)  
- Recipient (1 copy)

Model

**On behalf of the Contributor:**

Name, first name: .....

Function: .....

City, ..... Signature: .....

Name, first name: .....

Function: .....

City, ..... Signature: .....

**On behalf of the Recipient:**

Name, first name: .....

Function: .....

City, ..... Signature: .....

Name, first name: .....

Function: .....

City, ..... Signature: .....

**12 Annex**