

## **AGREEMENT**

### **Agreement on reciprocal promotion and protection of investments between Switzerland and the United States of America**

#### *Article 1*

For the purposes of this Agreement:

- (a) “investment” means every kind of asset that has the characteristics of an investment, which includes a certain duration, the commitment of capital or other resources, the expectation of gain or profit, and the assumption of risk. Forms that an investment may take include:
- (i) movable and immovable property as well as any other property rights in rem in respect of every kind of asset, such as mortgages, liens and pledges;
  - (ii) rights derived from shares, bonds and other kinds of interests in companies and joint ventures;
  - (iii) claims to money, to other assets or to any contractual performance having an economic value;
  - (iv) rights in the field of intellectual property, technical processes, goodwill and know-how;
  - (v) rights granted under public law or under contract, including rights to prospect, explore, extract and exploit natural resources.

‘Claims to money’ within the meaning of sub (iii) does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural or legal in the territory of a Contracting Party to a natural or legal person in the territory of the other Contracting Party, the domestic financing of such contracts, or any related order, judgment, or arbitral award.

Returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments.

- (b) “investor” means with regard to either Contracting Party:
- (i) any natural person having the nationality of that Contracting Party under its applicable law;
  - (ii) any legal person constituted under the law of that Contracting Party and having substantial business activities in the territory of that Contracting Party; or
  - (iii) any legal person that is constituted under the law of that Contracting Party and is directly or indirectly owned or controlled by a natural person as defined in (i) or by a legal person as defined in (ii).

A natural person who has the nationality of the Kingdom of the Netherlands and the other Contracting Party is deemed to be exclusively a natural person of the Contracting Party of his or her dominant and effective nationality.

- (c) Indications of having ‘substantive business activities’ in a Contracting Party may include:
- (i) the undertaking’s registered office and/or administration is established in that Contracting Party;
  - (ii) the undertaking’s headquarters and/or management is established in that Contracting Party;
  - (iii) the number of employees and their qualifications based in that Contracting Party;
  - (iv) the turnover generated in that Contracting Party; and
  - (v) an office, production facility and/or research laboratory is established in that Contracting Party;

These indications should be assessed in each specific case, taking into account the total number of employees and turnover of the undertaking concerned, and take account of the nature and maturity of the activities carried out by the undertaking in the Contracting Party in which it is established.

- (d) “freely convertible currency” means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.
- (e) “territory” means the territory of the Contracting Party concerned, including [if applicable] its territorial sea and any area beyond and adjacent to its territorial sea within which it exercises jurisdiction or sovereign rights in accordance with international law.

## *Article 2*

1. This Agreement shall apply to an investment, made in accordance with the applicable law of the host Contracting Party at the time the investment is made, that is directly or indirectly owned or controlled by an investor of the other Contracting Party and existing on the date of entry into force of this Agreement or made thereafter.
2. The provisions of this Agreement shall not affect the right of the Contracting Parties to regulate within their territories necessary to achieve legitimate policy objectives such as the protection of public health, safety, environment, public morals, labor rights, animal welfare, social or consumer protection or for prudential financial reasons. The mere fact that a Contracting Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor’s expectations, including its expectation of profits, is not a breach of an obligation under this Agreement.

### *Article 3*

1. Subject to its right to exercise powers conferred by its laws and regulations, each Contracting Party shall admit foreign investments.
2. The Contracting Parties strive to strengthen the promotion and facilitation of investments that contribute to sustainable development, including but not limited through regular consultations between investment promotion and facilitation agencies and the exchange of information regarding investment opportunities.

### *Article 4*

1. Neither Contracting Party shall nationalize or take any other measures depriving, directly or indirectly, the investors of the other Contracting Party of their investments, unless the following conditions are complied with:
  - (a) the measure is taken in the public interest;
  - (b) the measure is taken under due process of law;
  - (c) the measure is taken in a non-discriminatory manner; and
  - (d) the measure is taken against prompt, adequate and effective compensation.
2. The compensation referred to in paragraph 1 of this Article shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier.
3. In addition to paragraph 2 of this Article, the compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay, to the State designated by the investor and in the currency of the State of which the investor is a national or in any freely convertible currency accepted by the investor.
4. The affected investor shall have the right, under the law of the expropriating Contracting Party, to a prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Contracting Party, in accordance with the principles set out in this Article.

### *Article 5*

1. Each Contracting Party shall accord to an investor of the other Contracting Party and/or to an investment of an investor of the other Contracting Party, treatment no less favorable than the treatment it accords in like situations, to investors of a third country and to their investments with respect to the conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

2. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.

#### *Article 6*

If the investment of an investor of a Contracting Party is insured against non- commercial risks or otherwise give rise to payment of indemnification in respect of such investment under a system established by law, regulation or government contract, any subrogation of the insurer or re-insurer or agency designated by that Contracting Party to the rights of the said investor pursuant to the terms of such insurance or under any other indemnity given shall be recognized by the other Contracting Party.

#### *Article 7*

This Treaty shall also apply to investments made prior to its entry into force by nationals or companies of either Contracting Party in the territory of the other Contracting Party consistent with the latter's legislation.

#### *Article 8*

Nationals or companies of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own nationals or companies as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

#### *Article 9*

1. Divergencies between the Contracting Parties concerning the interpretation or application of this Treaty should as far as possible be settled by the governments of the two Contracting Parties.
2. If a divergency cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal under the Rules of the United Nations Commission for International Trade Law (UNCITRAL).

#### *Article 10*

1. Disputes between a Contracting Party and an Investor of the other Contracting Party relating to an Investment of the latter in the area of the former, which concern an alleged breach of an obligation of the

above Articles shall, if possible, be settled amicably.

2. If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:
  - (a) to the courts or administrative tribunals of the Contracting Party to the dispute;
  - (b) in accordance with any applicable, previously agreed dispute settlement procedure; or
  - (c) in accordance with the following paragraphs of this Article.
3. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with the provisions of this Article unless the Investor has previously submitted the dispute under subparagraph (2)(a).
4. In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to:
  - (a) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States (hereinafter referred to as the “ICSID Convention”)
  - (b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or
  - (c) an arbitral proceeding under the Vienna International Arbitration Centre Rules of Investment Arbitration and Mediation.
5. In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the following rules apply:
  - (i) The arbitral tribunal shall consist of three arbitrators.
  - (ii) The decision on any proposal to disqualify an arbitrator shall be taken by the other members of the arbitral tribunal, provided that where those members are equally divided, the rules otherwise applicable apply.
  - (iii) A proposal to disqualify an arbitrator shall not result in a suspension of the arbitral proceedings.
  - (iv) The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration apply.

## *Article 12*

This Treaty shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

### *Article 13*

1. This Treaty shall be ratified; the instruments of ratification shall be exchanged as soon as possible in,
2. This Treaty shall enter into force one month after the date of exchange of the instruments of ratification.

### *Article 14*

1. At any time after five years from the date on which this Treaty has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depositary of its withdrawal from the Treaty.
2. Any such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification of withdrawal.
3. The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from the Treaty takes effect for a period of 20 years from such date.