

HOST STATE AGREEMENT

BETWEEN

THE PORTUGUESE REPUBLIC

AND

THE PERMANENT COURT OF ARBITRATION

Preamble

THE PORTUGUESE REPUBLIC AND THE PERMANENT COURT OF ARBITRATION,

CONSIDERING THAT:

International arbitration is a preferred means for the peaceful resolution of international disputes;

The Permanent Court of Arbitration was established by the 1899 Convention for the Pacific Settlement of International Disputes (the “1899 Convention”) at the first Hague Peace Conference, which was convened “with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace”;

The 1899 Convention was revised by the 1907 Convention for the Pacific Settlement of International Disputes (the “1907 Convention”), adopted at the second Hague Peace Conference;

In the 1899 and 1907 Conventions, the Contracting Parties undertook to maintain the Permanent Court of Arbitration accessible at all times, as a global institution for the settlement of international disputes through third-party intervention;

To further the objectives of the 1899 and 1907 Conventions, it is material that Member States in all regions of the world enjoy access to international dispute resolution services provided by the Permanent Court of Arbitration;

The Portuguese Republic is a Contracting Party to both the 1899 and the 1907 Conventions, and the Secretary-General of the Permanent Court of Arbitration has invited the Portuguese Republic to become a host State for arbitration, mediation, conciliation, and fact-finding commissions of inquiry administered by the Permanent Court of Arbitration; and

The Portuguese Republic has accepted the invitation of the Secretary-General of the Permanent Court of Arbitration;

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

For the purposes of the present Agreement:

- (a) “1961 Vienna Convention” shall mean the Vienna Convention on Diplomatic Relations, adopted at Vienna on 18 April 1961;
- (b) “Appropriate Authority”, within the meaning of Article 11 of this Agreement, shall mean such authorities of the Portuguese Republic as may be appropriate in the context of the relevant provisions of this Agreement and in accordance with the laws and customs applicable in the Portuguese Republic;

- (c) “International Bureau” shall mean the International Bureau of the Permanent Court of Arbitration;
- (d) “Members of their Family” shall mean spouse or the person living together as spouse, and relatives dependent on them;
- (e) “Officials of the PCA” shall mean the Secretary-General and all members of the staff of the International Bureau;
- (f) “Participant in Proceedings” shall mean any person (whether natural or legal person) taking part in a hearing, meeting, or other activity in relation to PCA Proceedings, including but not limited to a witness, expert, counsel, party, agent or other party representative, interpreter, translator, court reporter or any person appointed to assist PCA Adjudicators such as tribunal assistant, secretary or registrar;
- (g) “PCA Adjudicator” shall mean any arbitrator, mediator, conciliator, or member of a commission of inquiry taking part in a hearing, meeting, or other activity in relation to PCA Proceedings;
- (h) “PCA Meetings” shall mean any meeting, including hearings in the context of PCA Proceedings and conferences, convened by the PCA or under the sponsorship or auspices of the PCA;
- (i) “PCA Proceedings” shall mean any dispute resolution proceedings administered by or under the auspices of the PCA, whether or not pursuant to the 1899 or 1907 Convention or any of the PCA’s optional rules of procedure;
- (j) “Personnel of the Portuguese Republic” shall mean any person assigned by the Portuguese Republic to assist in the conduct of any PCA Proceeding or PCA Meeting in the territory of the Portuguese Republic;
- (k) “Permanent Court of Arbitration” or “PCA” shall mean the Permanent Court of Arbitration, based in The Hague; and
- (l) “Secretary-General” shall mean the head of the International Bureau.

Article 2 – Legal Capacity

The Permanent Court of Arbitration shall have the legal capacity necessary to fulfill its purposes and objectives in the territory of the Portuguese Republic.

Article 3 – Cooperation

- (1) The Portuguese Republic shall be a host State for the PCA and as such, it shall strive to facilitate the work of the PCA in the peaceful resolution of international disputes through arbitration, mediation, conciliation, and fact-finding commissions of inquiry

and in providing other appropriate assistance to governments, inter-governmental organizations, and other entities.

- (2) The Portuguese Republic shall make available, on an as-needed basis and at no cost to the PCA, such office and meeting space (including all public utilities therefor) and such secretarial services as may reasonably be deemed necessary by the Secretary-General or other Officials of the PCA for activities undertaken in connection with PCA Proceedings, as well as for PCA Meetings, in its territory.
- (3) In making office or meeting space available to the PCA under the terms of this Agreement, the Portuguese Republic shall make available, at no cost to the PCA, the means for such telephonic, fax, internet, or other communications as may reasonably be deemed necessary by Secretary-General or other Officials of the PCA.

Article 4 – Point of Contact

- (1) On the part of the Portuguese Republic, the Ministry of Foreign Affairs shall coordinate all issues that may arise with respect to implementation of this Agreement.
- (2) On the part of the PCA, the Deputy Secretary-General shall serve as the principal point of contact for the Portuguese Republic.

Article 5– Privileges and Immunities of the PCA

- (1) The PCA, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.
- (2) The premises of the PCA shall be inviolable. The property and assets of the PCA, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- (3) The archives of the PCA, and in general all documents belonging to it or held by it, shall be inviolable wherever located.
- (4) Without being restricted by financial controls, regulations or moratoria of any kind,
 - (a) the PCA may hold funds, currency of any kind, or other assets and operate accounts in any currency; and
 - (b) the PCA shall be free to transfer its funds, currency, and assets to, from, or within the territory of the Portuguese Republic and to convert any currency held by it into any other currency.

- (5) In exercising its rights under paragraph 4 above, the PCA shall pay due regard to any representations made by the Portuguese Republic insofar as it is considered that effect can be given to such representations without detriment to the interests of the PCA.
- (6) The PCA, its assets, income and other property shall be :
 - (a) exempt from all direct taxes; it is understood, however, that the PCA will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the PCA for its official use. It is understood, however, that articles imported under such exemption will not be sold in the State into which they were imported except under conditions agreed with the Portuguese Republic; and
 - (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.
- (7) While the PCA will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the PCA is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Portuguese Republic will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.
- (8) The Portuguese Republic shall permit and protect free communication on the part of the PCA for all official purposes.
- (9) The PCA shall enjoy in the territory of the Portuguese Republic for its official communications treatment not less favourable than that accorded by the Portuguese Republic to any other State including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communications; and press rates for information to the press and radio.
- (10) The official correspondence of the PCA shall be inviolable. The PCA shall have the right to use codes and to dispatch and receive its papers or correspondence by courier or in bags, which shall be subject to the same privileges and immunities as diplomatic couriers and bags.

Article 6 – Privileges and Immunities of Officials of the PCA and PCA Adjudicators

- (1) Officials of the PCA and PCA Adjudicators shall enjoy, *mutatis mutandis*, the same immunities and privileges as the Portuguese Republic accords to members of diplomatic missions of comparable rank pursuant to the 1961 Vienna Convention. In according privileges and immunities pursuant to this Article, notwithstanding the provisions of paragraph 3 of this Article, the Portuguese Republic shall not discriminate based on the nationality of Officials of the PCA or PCA Adjudicators.

- (2) The privileges and immunities accorded by the Portuguese Republic to all Officials of the PCA and PCA Adjudicators who are not nationals or permanent residents of the Portuguese Republic shall in no event include less than:
- (a) immunity from personal arrest or detention and from seizure of their personal baggage;
 - (b) in respect of words spoken or written and acts done by them in the course of the discharge of their duties, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded, even after the person has ceased to exercise his or her functions in connection with the PCA;
 - (c) inviolability for all papers and documents;
 - (d) for the purpose of their communications with the PCA and in relation to PCA Proceedings, the right to use codes and to dispatch and receive papers or correspondence by courier or in sealed bags, which shall be subject to the same privileges and immunities as diplomatic couriers and bags;
 - (e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign States on temporary official missions;
 - (f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys;
 - (g) exemption from taxation on any fees, salaries, and emoluments paid to them by the PCA;
 - (h) immunity from national service obligations;
 - (i) immunity, together with the Members of their Families, from immigration restrictions and alien registration;
 - (j) together with the Members of their Families, the same repatriation facilities in time of international crises as diplomatic envoys; and
 - (k) the right to import free of duty their furniture and effects at the time of first taking up their post in the Portuguese Republic.
- (3) Officials of the PCA and PCA Adjudicators who are nationals or permanent residents of the Portuguese Republic shall enjoy the following privileges, immunities and facilities that are necessary for their participation in PCA Proceedings:
- (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings, which immunity shall continue in perpetuity;

- (c) inviolability of all papers, documents in whatever form and materials relating to their participation in PCA Proceedings, which immunity shall continue in perpetuity;
- (d) for purposes of their communications in relation to PCA Proceedings, the right to receive and send papers and documents in whatever form by courier or in sealed bags; and
- (e) exemption from taxation on any fees, salaries, and emoluments paid to them by the PCA.

Article 7 – Immunity of Personnel of the Portuguese Republic

Personnel of the Portuguese Republic shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the work of the PCA, which immunity shall continue after the person has ceased to exercise his or her functions in connection with the PCA.

Article 8 – Privileges and Immunities of Participants in Proceedings

- (1) Participants in Proceedings who are not nationals or permanent residents of the Portuguese Republic shall be accorded the following privileges, immunities and facilities that are necessary for the independent exercise of their functions, subject to the production of the document referred to in paragraph 3 of this Article:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from seizure of their personal baggage;
 - (c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings, which immunity shall continue in perpetuity;
 - (d) inviolability of all papers and documents in whatever form and materials relating to their participation in PCA Proceedings, which immunity shall continue in perpetuity;
 - (e) for purposes of their communications in relation to PCA Proceedings, the right to receive and send papers and documents in whatever form by courier or in sealed bags;
 - (f) exemption from immigration restrictions or alien registration when they travel for purposes of their participation in PCA Proceedings;
 - (g) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the 1961 Vienna Convention.

- (2) Participants in Proceedings who are nationals or permanent residents of the Portuguese Republic shall enjoy the following privileges, immunities and facilities that are necessary for their participation in PCA Proceedings:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings, which immunity shall continue in perpetuity;
 - (c) inviolability of all papers, documents in whatever form and materials relating to their participation in PCA Proceedings, which immunity shall continue in perpetuity;
 - (d) for purposes of their communications in relation to PCA Proceedings, the right to receive and send papers and documents in whatever form by courier or in sealed bags;
- (3) Participants in Proceedings shall be provided by the PCA with a document certifying that their participation is required by the PCA and specifying a time period during which such participation is necessary. This document shall be withdrawn prior to its expiry if the Participant's appearance in PCA Proceedings or his or her presence within the territory of the Portuguese Republic is no longer required.
- (4) Except where specified herein, the privileges, immunities and facilities referred to in paragraphs 1 and 2 of this Article shall cease to apply after fifteen consecutive days following the date on which the presence of the Participant in Proceedings concerned is no longer required by the PCA, provided such Participant had an opportunity to leave the territory of the Portuguese Republic during that period.
- (5) Participants in Proceedings shall not be subjected by the Portuguese Republic to any measure which may affect their participation in PCA Proceedings.

Article 9 – Acquisition and Waiver of Privileges and Immunities

- (1) Officials of the PCA shall be entitled to privileges and immunities from the moment of their employment with the PCA, whether or not they are present in the territory of the Portuguese Republic. PCA Adjudicators shall be entitled to privileges and immunities from the moment of their appointment as such, whether or not they are present in the territory of the Portuguese Republic.
- (2) When an Official of the PCA or PCA Adjudicator will be present in the territory of the Portuguese Republic, or may have need to invoke privileges and immunities under this Agreement, a certification of the status of such person shall be provided to the Portuguese Republic under the signature of the Secretary-General. Where Officials of the PCA and PCA Adjudicators will be present in the territory of the Portuguese Republic for only a limited time, the accreditation and notification procedures set forth

in Articles 4 through 7, 10, and 13 of the 1961 Vienna Convention shall not be applicable.

- (3) When Personnel of the Portuguese Republic are assigned to assist in the conduct of PCA Proceedings in the territory of the Portuguese Republic, they shall enjoy immunities under this Agreement from the moment of their assignment.
- (4) Upon receipt of notification from parties to PCA Proceedings as to the appointment of a Participant in Proceedings, a certification of the status of such person shall be provided to the Portuguese Republic under the signature of an Official of the PCA. The authorities of the Portuguese Republic shall accord the privileges and immunities provided for in Article 8 upon production of this certification.
- (5) Whenever a determination is required as to whether a person enjoys status under this agreement entitling him or her to privileges and immunities, or of whether words or acts are connected to the discharge of that person's official duties, such determination shall be made by the competent authority.
- (6) The privileges and immunities provided for in Articles 6 to 8 of this Agreement are granted in the interests of the good administration of justice and not for the personal benefit of the individuals themselves. The competent authority has the right and the duty to waive the immunity in any case where, in the opinion of such authority, the immunity would impede the course of justice and can be waived without prejudice to the interests of the PCA or to any PCA Proceedings in connection with which those privileges and immunities are granted.
- (7) For the purposes of this Article, the competent authority shall be:
 - (a) in the case of PCA Adjudicators and Officials of the PCA (other than the Secretary-General), the Secretary General;
 - (b) in the case of the Secretary-General, the Administrative Council of the PCA;
 - (c) in the case of Personnel of the Portuguese Republic, the Secretary-General;
 - (d) in the case of Participants in Proceedings representing or designated by a State which is a party to the relevant PCA Proceedings, that State;
 - (e) in the case of other individuals appearing at the instance of a party to PCA Proceedings, the Secretary-General.

Article 10 – Abuse of Privileges and Immunities

- (1) Without prejudice to the privileges and immunities provided for in Articles 6 to 8 of this Agreement, the individuals referred to in those Articles shall observe the laws and regulations of the Portuguese Republic, and they shall not interfere in its internal affairs.

- (2) The Secretary-General shall take every precaution to ensure that no abuse of the privileges and immunities provided for in Articles 6 to 8 of this Agreement shall occur. If the Portuguese Republic considers that there has been abuse of a privilege or immunity provided for in Articles 6 to 8 of this Agreement, the Secretary-General shall, when so requested, enter into consultations with the relevant authorities of the Portuguese Republic to determine whether such abuse has occurred. If the consultations fail to achieve a result satisfactory to the Portuguese Republic and to the Secretary-General, the matter shall be resolved according to the procedures established in Article 15 of this Agreement.
- (3) In case of abuse of the privileges and immunities committed by the individuals referred to in Articles 6 to 8 in the course of activities carried out in the territory of the Portuguese Republic outside of their official duties, the Portuguese Republic may require these individuals to leave the territory of the Portuguese Republic, provided that:
 - (a) in the case of persons entitled to privileges and immunities as well as exemptions and facilities under Article 6, they shall not be required to leave the territory of the Portuguese Republic otherwise than according to the diplomatic procedure applicable to diplomatic envoys accredited to the Portuguese Republic; and
 - (b) in the case of all other individuals to whom Article 6 is not applicable, no order to leave the territory of the Portuguese Republic shall be issued unless the Ministry of Foreign Affairs has approved it and the Secretary-General has been notified beforehand.

Article 11 – Security

- (1) The Portuguese Republic is under a special duty to take all appropriate steps to protect PCA Proceedings and Meetings conducted in its territory. The Appropriate Authorities shall ensure the security and tranquility of PCA Proceedings and Meetings and protect against any intrusion, disturbance of the peace, or impairment of the dignity of PCA Proceedings and Meetings. As may be required for the purpose, the Appropriate Authorities shall provide adequate physical protection on the boundaries and in the vicinity of any office or meeting space provided to the PCA. In all cases, security arrangements shall be made in consultation with the Secretary-General or an Official of the PCA designated as his representative.
- (2) The Portuguese Republic shall treat PCA Adjudicators and their partners, Officials of the PCA and their partners, Participants in Proceedings, and other persons attending PCA Meetings with due respect and shall take all appropriate steps to prevent any attack on their person, freedom, or dignity. As may be required for the purpose, to be determined in consultation with the Secretary-General or an Official of the PCA designated as his representative, the Appropriate Authorities shall provide adequate physical protection for such persons during their travel within and sojourn in the territory of the Portuguese Republic.

Article 12 – Entry into Host State and Facilitation of Travel

- (1) The Portuguese Republic shall take all reasonable measures to facilitate and allow the entry into and sojourn in its territory of non-residents and non-nationals who enter as PCA Adjudicators or Members of their Families, Officials of the PCA or Members of their Families, Participants in Proceedings, and other persons attending PCA Meetings.
- (2) The Portuguese Republic shall take all reasonable measures to ensure that any visas which may be required for any of the persons referred to in paragraph 1 are issued as promptly as possible, and without charge, in order to allow the timely conduct of official business pertaining to the PCA.
- (3) No activity performed by any person referred to in paragraph 1 performed in his capacity with respect to the PCA shall constitute a reason for preventing his or her entry into or departure from the territory of the Portuguese Republic or for requiring him or her to leave the territory of the Portuguese Republic.
- (4) Subject to its laws and regulations concerning zones into which entry is prohibited or regulated for reasons of national security, the Portuguese Republic shall ensure freedom of movement and travel in its territory to the persons referred to in paragraph 1. As may be required for the purpose, to be determined in consultation with the Secretary-General or an Official of the PCA designated as his representative, the Portuguese Republic shall make available appropriate transportation to enable such persons to attend any PCA Proceeding or Meeting.

Article 13 – Regional Cooperation

The Portuguese Republic recognizes the importance of regional cooperation for the effective settlement of international and regional disputes. The Portuguese Republic shall therefore communicate the existence of the facilities designated pursuant to this Agreement to the competent officials in other States of the same region and encourage their use for PCA Proceedings.

Article 14 – International Responsibility

The Portuguese Republic shall not incur any international responsibility for acts or omissions of the PCA or of Officials of the PCA acting or abstaining from acting within the scope of their functions, other than the international responsibility which the Portuguese Republic would incur as a Contracting Party to the 1899 and 1907 Convention.

Article 15 – Dispute Settlement

- (1) Any dispute among the Parties to the present Agreement that is not settled by negotiation shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States (the “Rules”), as in force on the date of signature of this

Agreement. The number of arbitrators shall be one. The appointing authority shall be the President of the International Court of Justice.

- (2) In any such arbitration proceedings, the registry, archive, and secretariat services of the PCA, referred to in Article 1, paragraph 3, and Article 25, paragraph 3, of the Rules, will not be available, and the PCA shall not be empowered to request, hold, or disburse deposits of costs as provided for in Article 41, paragraph 1, of the Rules.

Article 16 – Final Provisions

- (1) The present Agreement shall enter into force thirty (30) days after the date of receipt by the Secretary-General of the notification of the Portuguese Republic, in writing through diplomatic channels, conveying the completion of its internal procedures required for that purpose.
- (2) The present Agreement may be amended by request of one of the Parties.
- (3) Any amendments shall enter into force in accordance with the terms specified in paragraph 1 of this Article.
- (4) This Agreement may be terminated:
 - (a) by mutual consent of the Permanent Court of Arbitration and the Portuguese Republic; or
 - (b) by either Party by giving notice to the other Party at least one year in advance of the effective date of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed and sealed this Agreement.

Done at Lisbon, on the 16th of July of 2017, in two originals, in the Portuguese and English languages, both texts being equally authentic.

FOR THE PORTUGUESE REPUBLIC

**FOR THE PERMANENT COURT
OF ARBITRATION**

Ambassador Ana Martinho
Secretary-General of the Ministry of Foreign
Affairs of the Portuguese Republic

Hugo H. Siblesz
Secretary-General