

**AGREEMENT**

**BETWEEN**

**THE UNITED STATES OF AMERICA**

**AND**

**THE SWISS CONFEDERATION**

**on the request for information from the Internal Revenue Service of  
the United States of America regarding UBS AG, a corporation  
established under the laws of the Swiss Confederation**

THE UNITED STATES OF AMERICA

and

THE SWISS CONFEDERATION

hereinafter referred to as "the Contracting Parties",

WHEREAS,

the Contracting Parties seek to reaffirm and strengthen the long-standing and close friendship between their peoples and to continue and enrich the cooperative relationship which exists between the two countries;

the Contracting Parties share a mutual respect for each other's sovereignty and democratic traditions, and for the rule of law;

the Contracting Parties equally share a desire to amicably resolve disputes in a manner consistent with the laws of both nations;

Article 26 of the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income of October 2, 1996 (the "Tax Treaty"), the Protocol accompanying and forming an integral part of the Tax Treaty (the "Protocol"), and the Mutual Agreement of January 23, 2003 regarding the administration of Article 26 of the Treaty (the "Mutual Agreement"), provide a mutually agreed-upon mechanism pursuant to which competent authorities of the Contracting Parties are able to exchange information, as is necessary for the prevention of "tax fraud or the like";

on July 21, 2008, the Internal Revenue Service ("IRS"), pursuant to its authority under 26 U.S.C. §7602(a), issued a "John Doe Summons" (the "JDS") to UBS AG seeking information concerning client accounts;

on or about the date of the signing of this Agreement, the IRS and UBS AG entered into a separate agreement; and

the Contracting Parties wish to establish understandings that will avoid future disputes regarding requests for information;

NOW, THEREFORE, pursuant to Articles 25 and 26 of the Tax Treaty, the Contracting Parties have agreed as follows:

## Article 1 Treaty Request

1. The Swiss Confederation shall process, pursuant to the existing Tax Treaty, a request by the United States for information regarding US clients of UBS AG, incorporating the criteria set forth in the Annex to this Agreement (the “Treaty Request”). Based on the criteria set forth in the Annex, the Contracting Parties estimate and expect that the number of open or closed accounts falling under the Treaty Request is approximately 4’450.<sup>1</sup>
2. The Swiss Confederation shall establish a special task force enabling the Swiss Federal Tax Administration (“SFTA”) to render its final decisions (as described in Section 4.a., Art. 20j, of the Ordinance of the Swiss Federal Council of June 15, 1998) pursuant to the Treaty Request on an expedited basis according to the following time frames:
  - the first 500 decisions within 90 days from receipt of the Treaty Request; and
  - the remaining decisions on a continuing basis concluding no later than 360 days from receipt of the Treaty Request.
3. The SFTA shall notify UBS AG that it has received the Treaty Request immediately upon receipt of the Treaty Request by the SFTA and shall support the Treaty Request process according to this Article and the criteria set forth in the Annex with the highest priority, and is committed to discuss any issues that might arise in this regard according to the mechanism established in Article 5 of this Agreement.
4. With a view to accelerating the processing of the Treaty Request by the SFTA, the IRS will promptly request all UBS clients who enter into the voluntary disclosure program on or after the signing of this Agreement to give a waiver to UBS AG to provide account documentation to the IRS.
5. The Swiss Confederation is prepared to process additional requests for information by the IRS under Article 26 of the existing Tax Treaty regarding the UBS AG case if a future decision of the Swiss Federal Administrative Court broadens the criteria set forth in the Annex to this Agreement.

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<sup>1</sup> For these accounts UBS will provide a notice to account holders under the Treaty Request. They will (i) be subject to a final decision of the SFTA under the treaty process, or (ii) be transmitted to the IRS as a result of the account holder having provided UBS or the SFTA with a waiver to submit such account information directly, or (iii) fall out of the treaty process after the account holders have provided consent to the SFTA to request copies of the taxpayer’s FBAR returns from the IRS for the relevant years as described in the Annex under paragraph 2.A.b. and 2.B.b.

## **Article 2 Revised Tax Treaty**

The Contracting Parties are committed to the signing of the new protocol amending Article 26 (and certain other provisions) of the Tax Treaty, initialed on June 18, 2009, as soon as possible, but no later than September 30, 2009, and shall use their best efforts, consistent with their respective constitutional processes, to have the new protocol ratified promptly.

## **Article 3 Withdrawal of the John Doe Summons**

1. Immediately after the signing of this Agreement, the United States and UBS AG shall file a stipulation of dismissal with the United States District Court for the Southern District of Florida with respect to the enforcement action concerning the JDS.
2. Subject to the terms of Article 5 of this Agreement, the United States shall not seek further enforcement of the JDS while this Agreement remains in force.
3. Subject to UBS AG's compliance with Article 4 of this Agreement, the United States shall withdraw the JDS with prejudice no later than December 31, 2009 with respect to accounts not covered by the Treaty Request.
4. The United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request on or after January 1, 2010 when it has received all relevant account information, submitted on or after February 18, 2009, concerning 10'000 open or closed undisclosed UBS AG accounts from any source.<sup>2</sup> The United States shall provide the SFTA with regular updates about the number of such disclosures.
5. Subject to UBS AG's compliance with Article 4 of this Agreement and subject to the terms of Article 5 of this Agreement, the United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request no later than 370 days from the signing of this Agreement.

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<sup>2</sup> For purposes of this paragraph, the term "any source" means account information disclosed (i) under the Treaty Request, (ii) under the IRS's voluntary disclosure practice, (iii) as a result of waivers for UBS or the SFTA to submit account information to the IRS, or (iv) under the Deferred Prosecution Agreement between UBS AG and the United States of America, dated February 18, 2009. Furthermore, the IRS shall to the extent feasible, include account information disclosed through FBAR filings made after the signing of this Agreement and for which the IRS has determined that such filings are attributable to the fact that the Contracting Parties entered into this Agreement.

## **Article 4 Compliance by UBS**

1. In the separate agreement with the IRS, UBS AG has committed itself to comply with the SFTA order requesting the information covered by the Treaty Request according to the following time frames:
  - within 60 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the first 500 cases;
  - within 180 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the remaining cases referred to in the Annex under paragraphs 2.A.b and 2.B.b, respectively; and
  - within 270 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA all remaining cases.
2. In the separate agreement with the IRS, UBS AG has committed itself to continue its support for the IRS voluntary compliance practice.
3. The Swiss Federal Office of Justice (SFOJ), which shall seek the assistance of the Swiss Financial Market Supervisory Authority (FINMA), shall oversee UBS AG's strict compliance with the commitments.

## **Article 5 Assessment, Consultations and other Measures**

1. The SFTA, the SFOJ, and the IRS shall meet together with UBS on a quarterly basis to assess the progress of the process established in this Agreement, including evaluation of maximum effectiveness of the voluntary compliance of UBS US clients and additional measures that the Contracting Parties can reasonably undertake to promote the legitimate enforcement interest of the IRS.
2. Either Contracting Party may at any time request further consultations on the implementation, interpretation, application, or amendment of this Agreement. Such consultation (through discussion or correspondence) shall take place within a period of 30 days of the date of receipt of such a request, unless otherwise mutually decided.
3. If a Contracting Party fails to fulfill its obligations contained in this Agreement, the other Contracting Party may request immediate consultations in view of taking the appropriate measures to ensure the fulfillment of the Agreement.
4. If 370 days after the signing of this Agreement the actual and anticipated results differ significantly from what can reasonably be expected at that time according to the purpose of this Agreement and if the matter cannot be resolved mutually either (1) by the consultation measures according to paragraphs 2 and 3 of this Article or (2) by an amendment according to Article 9 of this Agreement, then either Contracting Party may take proportionate rebalancing measures to remedy the

effected imbalance between the rights and obligations under this Agreement. However, such measures may not go beyond preserving the legal situation of either Contracting Party, which existed immediately before they were taken.

5. Possible measures taken under this Article shall not impose any financial or new non-financial obligations on UBS AG.

## **Article 6 Confidentiality**

The initial public statements shall be made simultaneously on August 19, 2009 at 9:30 a.m. Eastern Daylight Time. To avoid impairment of tax administration in both the United States and Switzerland, the Contracting Parties agree not to publicly discuss or publish the Annex of this Agreement earlier than 90 days from the date of signing of this Agreement.<sup>3</sup> However, nothing in this Agreement shall prevent the SFTA from explaining to a particular accountholder the specific facts upon which a final determination is based. Such individuals will be under the criminally enforceable obligation under Swiss law not to disclose such facts to any third party prior to the date of publication of the Annex.

## **Article 7 Third Party Rights**

This Agreement does not confer any rights or benefits on any third party other than as provided in this Agreement with respect to UBS AG.

## **Article 8 Entry into Force**

This Agreement shall enter into force upon signature.

## **Article 9 Amendment**

This Agreement may be amended by written agreement between the Contracting Parties. Amendments shall enter into force according to Article 8 of the present Agreement.

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<sup>3</sup> The Annex will be disclosed to UBS AG under the same confidentiality requirements.

## Article 10 Duration and Termination

This Agreement shall remain in force until both Contracting Parties have confirmed in writing the fulfillment of their obligations contained under this Agreement.

IN WITNESS THEREOF, the undersigned, duly authorized thereto by their respective governments, have signed this Agreement.

Done at Washington, DC this 19<sup>th</sup> day of August 2009, in duplicate, in English.

For the  
United States of America:

For the  
Swiss Confederation:

by: \_\_\_\_\_  
Barry B. Shott  
United States Competent Authority  
Deputy Commissioner (International)  
Internal Revenue Service  
Large & Mid-Size Business

by: \_\_\_\_\_  
Guillaume Scheurer  
The Chargé d’Affaires a.i. of Switzerland