

## Updated FFI Agreement

Rev. Proc. 2017-16

### SECTION 1. PURPOSE

This revenue procedure sets forth the agreement entered into by a foreign financial institution (FFI) with the Internal Revenue Service (IRS) to be treated as a participating FFI under section 1471(b) of the Internal Revenue Code (Code) and §1.1471-4 of the Income Tax Regulations (the FFI agreement). This revenue procedure also provides guidance to FFIs and branches of FFIs treated as reporting financial institutions under an applicable Model 2 intergovernmental agreement (IGA) (reporting Model 2 FFIs) on complying with the terms of the FFI agreement, as modified by the Model 2 IGA. The FFI agreement provided in Revenue Procedure 2014-38 (2014-29 I.R.B. 131) (2014 FFI agreement) expires on December 31, 2016. The FFI agreement in this revenue procedure will apply to FFIs with an FFI agreement effective on or after January 1, 2017.

Section 2 of this revenue procedure provides background on the FFI agreement. Section 3 of this revenue procedure provides information on registering as a participating FFI (including a reporting Model 2 FFI) to comply with the terms of the FFI agreement and renewing an FFI agreement on the IRS FATCA registration website. Section 4 of this revenue procedure provides information on the scope of FFIs that are

eligible to register to enter into the FFI agreement to be treated as a participating FFI. Section 5 of this revenue procedure provides a highlight of the changes to the 2014 FFI agreement. Section 6 of this revenue procedure provides the FFI agreement. Section 7 of this revenue procedure provides the effective date; section 8 provides the effect on other documents; section 9 describes the collection of information burdens under the Paperwork Reduction Act; and section 10 provides drafting information. This revenue procedure supersedes Revenue Procedure 2014-38 with respect to the requirements of a participating FFI (including a reporting Model 2 FFI) that apply on or after January 1, 2017.

## SECTION 2. BACKGROUND

On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147, added chapter 4 of Subtitle A (chapter 4 or FATCA) of the Code, comprised of sections 1471 through 1474. On January 28, 2013, the Department of the Treasury (Treasury Department) and the IRS published final regulations (TD 9610) under chapter 4 in the Federal Register (78 FR 5874), and, on September 10, 2013, published corrections to those final regulations (collectively, the 2013 chapter 4 regulations). The 2013 chapter 4 regulations provide comprehensive guidance to withholding agents and FFIs, including the substantive requirements applicable to participating FFIs under the FFI agreement, which are contained in §1.1471-4. On January 13, 2014, the Treasury Department and the IRS issued Revenue Procedure 2014-13 (2014-3 I.R.B. 419), which provides the terms of the FFI agreement and

substantially incorporates the provisions of §1.1471-4 of the 2013 chapter 4 regulations, as modified by Notice 2013-43 (2013-31 I.R.B. 113) (for example, to reflect revised timelines for FATCA implementation).

On March 6, 2014, temporary regulations (TD 9657) under chapter 4 were published in the Federal Register (79 FR 12812) and corrections to the temporary regulations were published in the Federal Register on July 1, 2014, and November 18, 2014 (79 FR 37175 and 78 FR 68619, respectively). TD 9657 and the corrections thereto are referred to collectively as the 2014 chapter 4 regulations.

On July 14, 2014, the Treasury Department and the IRS issued Revenue Procedure 2014-38, which updated the FFI agreement published in Revenue Procedure 2014-13 consistent with the 2014 chapter 4 regulations and temporary regulations (TD 9658) under chapters 3 and 61 and sections 3406 and 6402 (79 FR 12726). The Treasury Department and the IRS are publishing regulations finalizing certain temporary regulations under chapter 4 (final chapter 4 regulations) and temporary regulations providing additional rules under chapter 4 (temporary chapter 4 regulations) shortly after the publication date of the FFI agreement (T.D. 9809). The Treasury Department and the IRS are also publishing regulations finalizing certain temporary regulations under chapters 3 and 61 and sections 3406 and 6402 and temporary regulations providing rules under chapter 3 shortly after the publication date of the FFI agreement (T.D. 9808). The FFI agreement references and incorporates certain provisions of the aforementioned regulations.

### SECTION 3. FATCA REGISTRATION FOR PARTICIPATING FFI (INCLUDING A REPORTING MODEL 2 FFI) STATUS AND RENEWAL OF THE FFI AGREEMENT

.01 New Applicants. An FFI may register on Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, via the FATCA registration website available at <https://www.irs.gov/fatca> to enter into an FFI agreement on behalf of all branches (defined in section 2.07 of the FFI agreement as including a home office), other than branches that are reporting Model 1 FFIs or U.S. branches, so that each of such branches may be treated as a participating FFI and receive a global intermediary identification number (GIIN). An FFI that is eligible to be treated as a reporting Model 2 FFI pursuant to an applicable Model 2 IGA with respect to one or more of its branches (including a home office) may also register on the FATCA registration website on behalf of such branches to obtain a GIIN and to agree to comply with the terms of the FFI agreement, as modified by an applicable Model 2 IGA, so that such branches may be treated as reporting Model 2 FFIs. The effective date of the FFI agreement with respect to an FFI or a branch of an FFI that is a participating FFI is the date on which the IRS issues a GIIN to the FFI or branch.

.02 Renewals. A participating FFI (including a reporting Model 2 FFI) that seeks to renew its FFI agreement must do so through the FATCA registration website. The IRS anticipates that the renewal function for 2017 FFI agreements will be available in May 2017. An FFI that seeks to renew its FFI agreement must renew prior to July 31, 2017, and the renewed FFI agreement shall apply beginning January 1, 2017, provided

that the FFI acts in accordance with the FFI agreement provided in section 6 of this revenue procedure beginning on January 1, 2017. An FFI that does not renew its FFI agreement by July 31, 2017, will be treated as having terminated its FFI agreement on January 1, 2017.

#### SECTION 4. SCOPE OF THE FFI AGREEMENT

An FFI that registers as a participating FFI (other than a reporting Model 2 FFI) must comply with the FFI agreement with respect to all of its branches (including a home office), other than branches that are reporting Model 1 FFIs or that are U.S. branches. In the case of an FFI that registers as a reporting Model 2 FFI with respect to a branch (including a home office) to be treated as a reporting Model 2 FFI, the FFI does not have to agree to comply with the terms of the FFI agreement for its branches that are not reporting Model 2 FFIs. However, if any branches of a reporting Model 2 FFI are not treated as reporting Model 2 FFIs and need to be treated as participating FFIs, the FFI must be able to comply with the FFI agreement with respect to all of its branches (other than branches that are reporting Model 1 FFIs or that are U.S. branches). In general, the FFI agreement does not apply to a reporting Model 1 FFI, unless the reporting Model 1 FFI has registered a branch located outside of a Model 1 IGA jurisdiction to agree to comply with the terms of the FFI agreement and to treat the branch as a participating FFI or reporting Model 2 FFI. In such a case, the terms of the FFI agreement apply to the operations of such branch.

With respect to an FFI that agrees that one or more branches (other than a branch that is a reporting Model 1 FFI or a U.S. branch) will be subject to the requirements of the FFI agreement and that has entered into a Qualified Intermediary (QI) agreement, Withholding Foreign Partnership (WP) agreement, or Withholding Foreign Trust (WT) agreement, the QI, WP, or WT agreement, as applicable, will apply in addition to the requirements of the FFI agreement, unless specifically modified by the QI, WP, or WT agreement.

## SECTION 5. HIGHLIGHTS OF AMENDMENTS TO THE FFI AGREEMENT

Section 6 of this revenue procedure sets forth the FFI agreement applicable to FFIs with agreements effective on or after January 1, 2017. The FFI agreement is updated to be consistent with the final and temporary chapter 4 regulations and to provide further clarification of certain of the requirements in the 2014 FFI agreement. The following provides a highlight of the changes to the 2014 FFI agreement.

Under the final chapter 4 regulations, a U.S. branch of an FFI that is treated as a U.S. person (as defined in §1.1441-1(b)(2)) is not required to be part of an FFI that is a participating FFI or registered deemed-compliant FFI when it is acting as an intermediary. Additionally, a U.S. branch that does not agree to be treated as a U.S. person is not required to be part of an FFI that is a participating FFI or registered deemed-compliant FFI if the branch, when acting as an intermediary, applies the rules in §1.1471-4(d)(2)(iii)(C). Section 1.1471-4(d)(2)(iii)(C) of the final chapter 4 regulations provides that such U.S. branches must report their U.S. accounts and accounts held by owner-documented FFIs under §1.1471-4(d)(3), (d)(5), or (d)(6) and apply the

withholding and due diligence rules in §1.1471-4(b) and (c)(2) to all of its accounts as if the U.S. branch were a participating FFI. Although such U.S. branch applies certain rules in §1.1471-4 as if it were a participating FFI, it is unnecessary for the U.S. branch to be registered and to agree to the terms of the FFI agreement. Accordingly, the FFI agreement removes the provisions on U.S. branches that were in the 2014 FFI agreement. See the preamble to the final chapter 4 regulations for a more detailed explanation of the changes to the regulations that apply to U.S. branches.

Section 1.02 of the FFI agreement is revised to clarify that a reporting Model 2 FFI does not need to apply the FFI agreement to all branches of the reporting Model 2 FFI, unless the reporting Model 2 FFI has other branches that need to be covered by the FFI agreement to be treated as participating FFIs (in which case all branches of the FFI other than branches that are reporting Model 1 FFIs or U.S. branches must be registered to agree to the terms of the FFI agreement).

Allowances in the temporary chapter 4 regulations for combined reporting on Forms 1042-S and 8966 following a merger or bulk acquisition of an FFI's accounts are incorporated by cross-reference to such regulations in sections 6.02(B)(2) and 6.05(F) of the FFI agreement. Additionally, rules in the temporary chapter 4 regulations that clarify information reported by participating FFIs that are partnerships on Form 8966 on financial accounts held by their partners are added by cross-reference to such regulations in section 6.02(B) of the FFI agreement. In sections 8.03 and 8.04 of the FFI agreement, the timing of certifications and the scope of IRS inquiries are updated

consistent with the final chapter 4 regulations. A coordination rule for reporting on owner-documented FFIs in the final chapter 4 regulations is added in section 9.02(B)(5) of the FFI agreement, and section 9 of the FFI agreement is reorganized for clarity.

Several revisions are made to the FFI agreement to reflect the expiration of transitional periods that were provided for in the 2014 chapter 4 regulations. Sections 1.02, 4.02(C), 6.05(E), 9.01, and 11.01(A) of the FFI agreement are revised, and sections 7.04(A) and 11.01(C) of the FFI agreement are removed, to coordinate with the expiration of limited FFI and limited branch statuses on December 31, 2016. Sections 4.02(C), 6.05(E), 7.04, 11.01(B), and 11.02(B)(6) of the FFI agreement are modified to apply to related entities or branches (as defined in section 2.67 of the FFI agreement) of reporting Model 2 FFIs due to the expiration of the transitional period for limited FFI and limited branch statuses. Section 6.02(B)(2) of the 2014 FFI agreement (relating to reporting of payments on U.S. accounts) is removed to coordinate with the expiration of the transitional reporting rules for 2014 and 2015, and section 6.02(B)(3) of the FFI agreement is renumbered as section 6.02(B)(2) of the FFI agreement.

Section 4.01(A) of the FFI agreement is revised to clarify that a participating FFI is required to withhold on a withholdable payment to a payee that is (or is presumed to be) a passive NFFE that has not identified its substantial U.S. owners or certified that it has no substantial U.S. owners, as required under §1.1471-3(d)(12)(iii), with respect to an offshore obligation that is not an account. In addition, section 6.02(A)(3) of the FFI agreement is revised to remove a reference to a trustee-documented trust subject to a

Model 1 IGA because a participating FFI when acting as a trustee of a trustee-documented trust would report such trustee-documented trust to the applicable Model 1 jurisdiction, not the IRS.

Additional revisions are made to the FFI agreement to correct and clarify certain provisions applicable to reporting Model 2 FFIs. In section 2.62 of the FFI agreement, the definition of a preexisting account is modified to include the definition of the term from the Model 2 IGA that is applied by a reporting Model 2 FFI. Under the 2014 FFI agreement, a reporting Model 2 FFI may apply the due diligence procedures in the FFI agreement or the procedures in Annex I of the applicable Model 2 IGA for the two year period after an applicable Model 2 IGA has been signed without being bound to such procedures. Section 3.01 of the FFI agreement is revised to extend such period to two years from the date the applicable Model 2 IGA enters into force (rather than the date of signature), but only with respect to accounts for which the due diligence procedures commenced prior to entry into force of the applicable Model 2 IGA.

The presumption rules for reporting Model 2 FFIs for entity accounts are updated in section 3.04(C) of the FFI agreement. Section 3.04(C) of the 2014 FFI agreement provides that, to the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, such FFI must apply the procedures of Annex I of the applicable Model 2 IGA to treat the account as held by a nonparticipating FFI or as a non-consenting U.S. account. Section 3.04(C) of the 2014 FFI agreement also provides that, with respect to a withholdable payment made to an

entity payee, a reporting Model 2 FFI must apply the presumption rules of §1.1471-3(f). A comment to the 2014 chapter 4 regulations suggested that an undocumented entity account should be treated as a non-consenting U.S. account and should not be subject to withholding. The Treasury Department and the IRS do not agree with this suggested treatment of undocumented accounts. Under Annex I of the Model 2 IGA, reporting Model 2 FFIs must apply the due diligence procedures described in Annex I to document the status of their account holders under the IGA as U.S. accounts, non-consenting U.S. accounts, or nonparticipating FFIs, and if such procedures are applied, cases in which an entity account is undocumented should not arise. If a reporting Model 2 FFI does not have information in its possession or that is publicly available based on which it can reasonably determine the status of an entity account holder, the FFI must obtain a self-certification to establish the status of such entity (or in some cases, a self-certification to establish the status of the controlling persons of a passive NFFE) consistent with Annex I of the applicable IGA. In cases where a reporting Model 2 FFI acts as an intermediary for a withholdable payment that is allocated to an entity account and is unable to document the account by obtaining such information or self-certification consistent with the procedures described in Annex I of the applicable IGA, the chapter 4 regulations and the FFI agreement provide presumption rules for withholdable payments made to such account (and if an FFI has many such undocumented accounts, the U.S. Competent Authority may determine that the FFI is significantly non-compliant with the requirements of the IGA). In such cases, the

reporting Model 2 FFI must apply the presumption rules in §1.1471-3(f) to treat such entity account as a nonparticipating FFI and provide sufficient information to the upstream withholding agent to withhold on the payment (or, if such reporting Model 2 FFI is a WP, WT, or a QI that assumes primary withholding responsibility on the payment for chapters 3 and 4, the WP, WT, or QI must withhold). Treating undocumented entity accounts as accounts of nonparticipating FFIs, and withholding on them accordingly, is consistent with the approach of the IGAs, which contemplate that nonparticipating FFIs remain subject to withholding on withholdable payments received through a reporting Model 2 FFI.

The 2014 FFI agreement provides that a reporting Model 2 FFI may document account holders and payees with documentation that meets the requirements under Annex I of an applicable Model 2 IGA. However, the due diligence procedures in Annex I of the Model 2 IGA permits a reporting Model 2 FFI to rely on certain publicly available information to document certain account holders. Section 3.03(B)(2) of the FFI agreement is revised to cover publicly available information used to document an account, and provides that a reporting Model 2 FFI may rely on such information, to the extent permitted in Annex I of an applicable Model 2 IGA, until the date there is a change in circumstances that affects the account holder's claim of chapter 4 status.

The FFI agreement includes new procedures for final certifications of compliance upon a termination of the FFI agreement. An FFI must provide to the IRS within six months of the date of termination a certification of compliance covering the period from

the end of the most recent certification period (or, if the first certification period has not ended, the effective date of the FFI agreement) to the date of termination, irrespective of whether a periodic review has been completed for such period. The FFI agreement is also revised to make clear that an FFI's obligations under the FFI agreement with respect to the period covered by the agreement when it was applicable will survive termination of the agreement. This revision is consistent with the QI, WP, and WT agreements, which provide that a termination of a QI, WP, or WT agreement does not affect the entity's reporting, tax filing, withholding, depositing, or payment responsibilities arising in the calendar years for which the QI, WP, or WT agreement was in effect, including the pre-termination portion of the calendar year during which the termination occurred.

If a jurisdiction that is not treated as having an IGA in effect is later treated as having a Model 1 IGA in effect, each participating FFI (other than a participating FFI that is a branch) in such jurisdiction should modify its registration on the FATCA registration website to reflect an updated chapter 4 status consistent with the Model 1 IGA if it chooses to comply with such IGA, and will be treated as having terminated its FFI agreement only with respect to the home office of the FFI that is treated as a reporting Model 1 FFI. A participating FFI that is a branch that is in a jurisdiction that is later treated as having a Model 1 IGA may terminate its FFI agreement and be treated as a reporting Model 1 FFI by applying the provisions of the applicable Model 1 IGA consistent with the terms of the applicable IGA. Section 12.03(C) of the FFI agreement

(survival of obligations under the FFI agreement) will apply with respect to the home office or branch. Within 30 days of the change in chapter 4 status, the FFI must provide to each withholding agent either a new withholding certificate or oral or written confirmation (including by e-mail) of the change in the FFI's chapter 4 status. The FFI agreement will continue to apply to any other branches of the reporting Model 1 FFI that are covered by the FFI agreement to be treated as participating FFIs.

## SECTION 6. FFI AGREEMENT

The text of the FFI agreement is set forth below. The IRS will not provide signed copies of the FFI agreement.

Section 1. Purpose and Scope.

Section 2. Definitions.

Section 3. Due Diligence Requirements for Documentation and Identification of Account Holders and Nonparticipating FFI Payees.

Section 4. Withholding Requirements.

Section 5. Deposit Requirements.

Section 6. Information Reporting and Tax Return Obligations.

Section 7. Legal Prohibitions on Reporting U.S. Accounts and on Withholding.

Section 8. Compliance Procedures.

Section 9. Participating FFI Withholding Certificate.

Section 10. Adjustments for Overwithholding and Underwithholding and Refunds.

Section 11. FFI Group.

Section 12. Expiration, Modification, Termination, Default, and Renewal of this Agreement.

## Section 13. Miscellaneous Provisions.

### Section 1. Purpose and Scope.

**.01 Purpose.** THIS AGREEMENT is made under, and pursuant to, section 1471(b) and §1.1471-4:

**WHEREAS**, an FFI has completed and submitted a Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, in accordance with its instructions, which registration indicated that one or more of its branches (as defined in section 2.07 of this agreement, which includes a home office) seeks to be treated as a participating FFI, and has represented that such branches (other than a branch that is a reporting Model 1 FFI or a U.S. branch) are eligible to, and will comply with, the terms of the FFI agreement;

**WHEREAS**, this agreement establishes the FFI's due diligence, withholding, information reporting, tax return filing, and other obligations as a participating FFI under sections 1471 through 1474 and §§1.1471-1 through 1.1474-6;

**NOW THEREFORE**, the terms of this agreement are as follows:

**.02 General Obligations.** An FFI that agrees to comply with the terms of this agreement applicable to all of its branches, other than a branch that is a reporting Model 1 FFI or a U.S. branch, will be treated as a participating FFI with respect to such branches, and such participating FFI branches will not be subject to withholding under section 1471. An FFI (or branch of an FFI, other than a branch that is a reporting Model 1 FFI or a U.S. branch) must act in its capacity as a participating FFI with respect to all of the accounts that it maintains for purposes of reporting such accounts and must act as a withholding agent to the extent required under this agreement. Notwithstanding the preceding sentences, an FFI that agrees to comply with the terms of this agreement applicable only to branches that are located in a jurisdiction that is treated as having a Model 2 IGA in effect will be treated as a reporting Model 2 FFI with respect to such branches, and such branches will not be subject to withholding under section 1471, even if not all branches of the FFI are able to comply with the terms of the FFI agreement. A reporting Model 2 FFI may comply with the requirements of the FFI agreement, including with respect to due diligence, reporting, and withholding, by applying the rules set forth in this agreement (applied by substituting the term "reporting Model 2 FFI" for "participating FFI" throughout the FFI agreement, except where the provisions of the FFI agreement explicitly refer to a reporting Model 2 FFI).

### Section 2. Definitions.

## 01. Scope of Definitions.

**(A) In General.** Unless specifically modified in this agreement, all terms used in this agreement have the same meaning as provided in sections 1471 through 1474, including the regulations thereunder. See § 1.1471-1(b) for a comprehensive list of chapter 4 terms and definitions.

**(B) Reporting Model 2 FFIs.** A reporting Model 2 FFI must use the definitions set forth in the applicable Model 2 IGA with respect to the accounts that it maintains in the Model 2 IGA jurisdiction, unless the Model 2 IGA jurisdiction permits the use of a definition provided in this agreement or §1.1471-1(b) in lieu of a definition set forth in the applicable Model 2 IGA, and such application does not frustrate the purposes of the Model 2 IGA.

**.02 Account/Financial account.** “Account” or “financial account” means an account described in §1.1471-1(b)(1).

**.03 Account holder.** “Account holder” has the meaning set forth in §1.1471-1(b)(2).

**.04 Account maintained by a participating FFI.** “Account maintained by a participating FFI” means an account that a participating FFI is treated as maintaining under §1.1471-5(b)(5).

**.05 Active NFFE.** In the case of a reporting Model 2 FFI, “active NFFE” means an active NFFE as defined in the applicable Model 2 IGA.

**.06 Backup withholding.** “Backup withholding” has the meaning set forth in §1.1471-1(b)(7).

**.07 Branch.** “Branch” has the meaning set forth in §1.1471-1(b)(10).

**.08 Branch that maintains the account.** A branch maintains an account if the rights and obligations of the participating FFI and the account holder with regard to such account (including any assets held in the account) are governed by the laws of the jurisdiction in which the branch is located. See §1.1471-5(b)(5) for when a participating FFI is treated as maintaining an account.

**.09 Certified deemed-compliant FFI.** “Certified deemed-compliant FFI” has the meaning set forth in §1.1471-1(b)(14).

**.10 Change in circumstances.** For a participating FFI, a “change in circumstances” has the meaning described in §1.1471-4(c)(2)(iii). In the case of a reporting Model 2 FFI that applies the procedures of Annex I of the applicable Model 2 IGA with respect to an account, a change of circumstances has the meaning that such term has under Annex I of the applicable Model 2 IGA.

**.11 Chapter 4 reportable amount.** “Chapter 4 reportable amount” has the meaning set forth in §1.1471-1(b)(18).

**.12 Chapter 4 reporting pool.** “Chapter 4 reporting pool” means a chapter 4 withholding rate pool of account holders and payees (as defined in section 2.14 of this Agreement) associated with a withholdable payment that is within a particular income code (as provided in the instructions to Form 1042-S) reported on Form 1042-S and for which a separate Form 1042-S is required to be filed.

**.13 Chapter 4 status.** “Chapter 4 status” has the meaning set forth in §1.1471-1(b)(19).

**.14 Chapter 4 withholding rate pool.** “Chapter 4 withholding rate pool” means a pool of payees that are nonparticipating FFIs provided on a chapter 4 withholding statement (as described in §1.1471-3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. “Chapter 4 withholding rate pool” also means a pool of payees that are described in paragraph (A) or (B) that is provided on an FFI withholding statement (as described in §1.1471-3(c)(3)(iii)(B)(2)) to which a withholdable payment is allocated:

(A) A pool of payees consisting of each class of recalcitrant account holders described in §1.1471-4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders without the need to subdivide into each class of recalcitrant account holders described in §1.1471-4(d)(6)), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or

(B) A pool of payees that are U.S. persons as described in §1.1471-3(c)(3)(iii)(B)(2).

**.15 Compliance FI.** “Compliance FI” means a financial institution described in §1.1471-4(f)(2)(ii)(A).

**.16 Custodial institution.** “Custodial institution” has the meaning set forth in §1.1471-1(b)(25).

**.17 Deemed-compliant FFI.** “Deemed-compliant FFI” has the meaning set forth in §1.1471-1(b)(27).

**.18 Depository institution.** “Depository institution” has the meaning set forth in §1.1471-1(b)(30).

**.19 Effective date of the FFI agreement.** The effective date of the FFI agreement with respect to an FFI or a branch of an FFI that is a participating FFI is the date on which the IRS issues a GIIN to the FFI or branch. For a participating FFI that receives a GIIN prior to June 30, 2014, the effective date of the FFI agreement is June 30, 2014.

**.20 Entity account.** “Entity account” has the meaning set forth in §1.1471-1(b)(40).

**.21 Entity payee.** “Entity payee” means a payee that is an entity and that is not an account holder.

**.22 Excepted NFFE.** “Excepted NFFE” has the meaning set forth in §1.1471-1(b)(41).

**.23 Exempt beneficial owner.** “Exempt beneficial owner” has the meaning set forth in §1.1471-1(b)(42).

**.24 Exempt recipient.** “Exempt recipient” has the meaning set forth in §1.1471-1(b)(43).

**.25 Financial institution (FI).** “Financial institution” or “FI” has the meaning set forth in §1.1471-1(b)(50).

**.26 FFI group.** “FFI group” means an expanded affiliated group (as defined in §1.1471-5(i)) that includes one or more participating FFIs or, in the case of a reporting Model 2 FFI, a group of related entities as defined in an applicable Model 2 IGA.

**.27 FFI member.** “FFI member” means an FFI that is a member of an FFI group.

**.28 FFI withholding statement.** “FFI withholding statement” means a withholding statement provided by a participating FFI or registered deemed-compliant FFI that meets the requirements of section 9.02 of this agreement.

**.29 Foreign financial institution (FFI).** “Foreign financial institution” or “FFI” has the meaning set forth in §1.1471-1(b)(47).

**.30 Foreign reportable amount.** “Foreign reportable amount” means a payment of foreign source amounts described in §1.1471-4(d)(2)(ii)(F).

**.31 Form 945.** “Form 945” means IRS Form 945, Annual Return of Withheld Federal Income Tax.

**.32 Form 1042.** “Form 1042” means IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

**.33 Form 1042-S.** “Form 1042-S” means IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

**.34 Form 1099.** “Form 1099” means IRS Form 1099-B, Proceeds From Broker and Barter Exchange Transactions; IRS Form 1099-DIV, Dividends and Distributions; IRS Form 1099-INT, Interest Income; IRS Form 1099-MISC, Miscellaneous Income; IRS Form 1099-OID, Original Issue Discount, and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

**.35 Form 8957.** “Form 8957” means IRS Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration, and includes the online version of the form on the FATCA registration website available at <https://www.irs.gov/fatca>.

**.36 Form 8966.** “Form 8966” means IRS Form 8966, FATCA Report, and includes the FATCA Report XML.

**.37 GIIN.** “GIIN” or “global intermediary identification number” has the meaning set forth in §1.1471-1(b)(57).

**.38 Grandfathered obligation.** “Grandfathered obligation” has the meaning set forth in §1.1471-2(b)(2)(i).

**.39 Individual account.** “Individual account” has the meaning set forth in §1.1471-1(b)(64).

**.40 Intergovernmental Agreement (IGA).** “Intergovernmental Agreement” or “IGA” has the meaning set forth in §1.1471-1(b)(67).

**.41 IRS FFI List.** “IRS FFI List” has the meaning set forth in §1.1471-1(b)(73).

**.42 Lead FI.** “Lead FI” means an FFI or U.S. financial institution that is designated by one or more members of the FFI group to initiate and manage FATCA registration via the FATCA registration website for such FFI members of the FFI group and that agrees to the responsibilities described in section 11.02 of this agreement.

**.43 Limited branch.** “Limited branch” has the meaning set forth in §1.1471-1(b)(76).

**.44 Limited FFI.** “Limited FFI” has the meaning set forth in §1.1471-1(b)(77).

- .45 Model 1 IGA.** “Model 1 IGA” has the meaning set forth in §1.1471-1(b)(78).
- .46 Model 2 IGA.** “Model 2 IGA” has the meaning set forth in §1.1471-1(b)(79).
- .47 New account.** “New account” means an account other than a preexisting account.
- .48 Non-consenting U.S. account.** For purposes of a reporting Model 2 FFI, “non-consenting U.S. account” has the meaning that such term has under an applicable Model 2 IGA.
- .49 Non-exempt recipient.** “Non-exempt recipient” has the meaning set forth in §1.1471-1(b)(81).
- .50 Non-financial foreign entity (NFFE).** “Non-financial foreign entity” or “NFFE” has the meaning set forth in §1.1471-1(b)(80).
- .51 Nonparticipating FFI.** “Nonparticipating FFI” has the meaning set forth in §1.1471-1(b)(82).
- .52 Nonqualified intermediary (NQI).** “Nonqualified intermediary” or “NQI” has the meaning set forth in §1.1471-1(b)(85).
- .53 Non-U.S. account.** “Non-U.S. account” has the meaning set forth in §1.1471-1(b)(84).
- .54 Non-U.S. payor.** “Non-U.S. payor” means a payor other than a U.S. payor.
- .55 Nonwithholding foreign partnership (NWP).** “Nonwithholding foreign partnership” or “NWP” has the meaning set forth in §1.1471-1(b)(86).
- .56 Nonwithholding foreign trust (NWT).** “Nonwithholding foreign trust” or “NWT” has the meaning set forth in §1.1471-1(b)(87).
- .57 Offshore obligation.** “Offshore obligation” has the meaning set forth in §1.1471-1(b)(88).
- .58 Owner-documented FFI.** “Owner-documented FFI” has the meaning set forth in §1.1471-1(b)(90).
- .59 Participating FFI.** “Participating FFI” means an FFI that has agreed to comply with the requirements of an FFI agreement with respect to all branches of the FFI, other than

a branch that is a reporting Model 1 FFI or a U.S. branch. A participating FFI also includes a reporting Model 2 FFI. See the definition of reporting Model 2 FFI in section 2.69 of this agreement.

**.60 Passive NFFE.** “Passive NFFE” means an NFFE other than an excepted NFFE (or, in the case of a reporting Model 2 FFI, other than an active NFFE).

**.61 Payee.** “Payee” has the meaning set forth in §1.1471-1(b)(96).

**.62 Preexisting account.** “Preexisting account” means an account described in §1.1471-1(b)(101). With respect to a reporting Model 2 FFI, “preexisting account” means a financial account maintained by the reporting Model 2 FFI as of the determination date (as defined in the applicable Model 2 IGA).

**.63 Preexisting obligation.** “Preexisting obligation” means an obligation described in §1.1471-1(b)(104).

**.64 Qualified intermediary.** “Qualified intermediary” or “QI” has the meaning set forth in §1.1471-1(b)(107).

**.65 Recalcitrant account holder.** “Recalcitrant account holder” has the meaning set forth in §1.1471-1(b)(110).

**.66 Registered deemed-compliant FFI.** “Registered deemed-compliant FFI” means an FFI described in §1.1471-5(f)(1), and includes a reporting Model 1 FFI, a QI branch of a U.S. financial institution that is a reporting Model 1 FFI, and an FFI treated as a registered deemed-compliant FFI under a Model 2 IGA.

**.67 Related entity or branch.** “Related entity or branch” means a related entity or branch of a reporting Model 1 FFI or a reporting Model 2 FFI that is treated as a nonparticipating FFI under Article 3(5) of the Model 2 IGA (or any analogous provision in an applicable Model 2 IGA) or Article 4(5) of the Model 1 IGA (or any analogous provision in an applicable Model 1 IGA) if the requirements in the applicable IGA with respect to such related entity or branch are satisfied.

**.68 Reporting Model 1 FFI.** “Reporting Model 1 FFI” means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 1 IGA and that has registered with the IRS to obtain a GIIN.

**.69 Reporting Model 2 FFI.** “Reporting Model 2 FFI” means an FFI or branch of an FFI that is treated as a reporting financial institution under an applicable Model 2 IGA

and that has registered with the IRS to comply with the terms of this agreement, as modified by an applicable Model 2 IGA.

**.70 Reportable payment.** “Reportable payment” has the meaning set forth in §1.1471-1(b)(113).

**.71 Responsible officer.** “Responsible officer” has the meaning set forth in §1.1471-1(b)(116).

**.72 Specified insurance company.** “Specified insurance company” has the meaning set forth in §1.1471-1(b)(119).

**.73 Territory FI.** “Territory FI” or “territory financial institution” has the meaning set forth in §1.1471-1(b)(130).

**.74 U.S. account.** “U.S. account” has the meaning set forth in §1.1471-1(b)(134).

**.75 U.S. payor.** “U.S. payor” has the meaning set forth in §1.1471-1(b)(140).

**.76 U.S. source FDAP income.** “U.S. source FDAP income” has the meaning set forth in §1.1471-1(b)(142).

**.77 Withholdable payment.** “Withholdable payment” has the meaning set forth in §1.1471-1(b)(145).

**.78 Withholding agent.** “Withholding agent” has the meaning set forth in §1.1471-1(b)(147).

**.79 Withholding certificate.** “Withholding certificate” has the meaning set forth in §1.1471-1(b)(148).

**.80 Withholding foreign partnership (WP).** “Withholding foreign partnership” or “WP” has the meaning set forth in §1.1471-1(b)(149).

**.81 Withholding foreign trust (WT).** “Withholding foreign trust” or “WT” has the meaning set forth in §1.1471-1(b)(151).

### **Section 3. Due Diligence Requirements for Documentation and Identification of Account Holders and Nonparticipating FFI Payees.**

**.01 In General.** The due diligence procedures described in this section 3 generally apply to a participating FFI. The participating FFI must perform the due diligence

procedures described in this section 3 to determine which of the accounts that it maintains are (i) U.S. accounts, (ii) accounts held by recalcitrant account holders, (iii) accounts held by nonparticipating FFIs, or (iv) non-U.S. accounts. A participating FFI that makes a withholdable payment to a payee other than an account holder must also perform due diligence procedures described in this section 3 to determine if withholding is required under section 4 of this agreement.

A reporting Model 2 FFI must perform the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to all accounts that such reporting Model 2 FFI maintains within the Model 2 IGA jurisdiction unless the reporting Model 2 FFI elects to apply the due diligence procedures of this agreement, as described in this section 3. A reporting Model 2 FFI may apply the due diligence procedures described in section 3.02 of this agreement separately for each section of Annex I (for example, preexisting entity accounts) with respect to all accounts or with respect to any clearly identified group of accounts (such as by line of business or the location where the account is maintained). Except as provided for the two year period following the date that an applicable Model 2 IGA has entered into force, a reporting Model 2 FFI that applies the due diligence procedures of section 3.02 of this agreement with respect to certain accounts must continue to apply these procedures consistently to these accounts in all subsequent years unless there has been a material modification to section 3.02 of this agreement or §1.1471-4(c). With respect to the two-year period beginning on the date that an applicable Model 2 IGA has entered into force, a reporting Model 2 FFI may apply either the due diligence procedures described in section 3.02 of this agreement or those described in Annex 1 of the applicable Model 2 IGA with respect to any clearly identified group of accounts, without being bound to a particular set of due diligence rules, so long as the application does not frustrate the purpose of the Model 2 IGA, and only to the extent due diligence procedures with respect to such accounts commenced prior to entry into force of the applicable Model 2 IGA. Notwithstanding the foregoing, a reporting Model 2 FFI must apply the due diligence procedures of section 3.02(B) of this agreement with respect to an entity payee other than an account holder that is receiving a withholdable payment.

## **.02 Due Diligence Procedures.**

**(A) Identification and Documentation of Account Holders.** A participating FFI is required to determine the chapter 4 status of each holder of an account maintained by the participating FFI and to identify each account that is a U.S. account, non-U.S. account, account held by a recalcitrant account holder, or account held by a nonparticipating FFI. For this purpose, the participating FFI is required to apply the due diligence procedures for accounts to the extent, and in the manner, required under §1.1471-4(c) within the applicable time periods described in §1.1471-4(c)(3), (c)(4), and (c)(5). As provided in §1.1471-1(b)(104)(i), an obligation held by an entity that is

opened, issued, or executed on or after July 1, 2014, and before January 1, 2015, may be treated as a preexisting obligation for purposes of implementing the applicable due diligence procedures. However, the timeframes provided in §1.1471-4(c)(3) apply to all preexisting obligations held by an entity, including those obligations described in the preceding sentence. A participating FFI that is unable to reliably associate valid documentation with an account holder to determine the chapter 4 status of such account holder under such required procedures must apply the presumption rules of section 3.04 of this agreement. See also §1.1471-4(d)(2) for other account holders to which a participating FFI's due diligence requirements apply (e.g., account holders of a territory FI, sponsored FFI, or owner-documented FFI).

**(B) Identification and Documentation of Certain Payees other than Account Holders.** For determining when withholding is required under section 4 of this agreement, a participating FFI is, prior to payment, required to reliably associate the payment with documentation that meets the requirements of section 3.03(B) of this agreement when making a withholdable payment to an entity payee. If an account holder receives a withholdable payment and is not treated as the payee of the payment, in addition to documenting the chapter 4 status of the account holder, the participating FFI is also required to establish the chapter 4 status of the payee or payees to determine whether withholding is required under section 4 of this agreement. See, however, §1.1471-3(e)(4)(vi) for when a participating FFI may rely on the chapter 4 status of a payee provided by another participating FFI or registered deemed-compliant FFI that is acting as an intermediary or that is a flow-through entity with respect to the payee. Except as otherwise provided in section 4.02(A) of this agreement, a participating FFI must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee if, prior to the time of payment, it cannot reliably associate the payment with documentation meeting the requirements of section 3.03(B) of this agreement. See, however, §1.1471-3(c)(7) for requirements that apply for documentation received after the date of a payment. With respect to a preexisting account, a participating FFI must, to the extent required under §1.1471-4(c), determine the chapter 4 status of the payee within the applicable time period described in §1.1471-4(c)(3) or, if unable to do so, must apply the presumption rules of section 3.04 of this agreement to determine the chapter 4 status of a payee.

### **.03 Additional Requirements for Identification and Documentation of Account Holders and Payees.**

**(A) In General.** To the extent that the participating FFI is required to retain a record of the documentation collected (or otherwise maintained) to establish the chapter 4 status of an account holder or payee, the participating FFI must do so in accordance with the requirements of §1.1471-4(c)(2). The participating FFI must also institute procedures that meet the requirements of §1.1471-4(c)(2) to ensure that any change in

circumstances (defined in section 2.10 of this agreement) is identified with respect to an account.

## **(B) Requirements for Documentation.**

**(1) In General.** To the extent the participating FFI obtains withholding certificates, substitute certification forms, written statements, or documentary evidence to document an account holder or payee, such documentation must meet the requirements set forth in §1.1471-3(c). Sections 1.1471-3(c)(3) through (5) provide the requirements of valid withholding certificates, written statements, and documentary evidence. Section 1.1471-3(c)(6) provides other applicable rules for withholding certificates, written statements, and documentary evidence, including their periods of validity and electronic transmission requirements. Sections 1.1471-3(c)(8) and (9) provide requirements related to the sharing of documentation and reliance by a participating FFI on documentation collected by another person. A participating FFI must obtain the documentation specified in §1.1471-3(d) to establish the chapter 4 status of an entity account holder or an entity payee. A participating FFI may rely on documentation that meets the requirements of §1.1471-3(c) until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. If the participating FFI is unable to obtain the required documentation within 90 days of a change in circumstances, the participating FFI must apply the presumption rules of section 3.04 of this agreement with respect to the account or payee until valid documentation is obtained upon which the FFI is permitted to rely.

**(2) Requirements for Reporting Model 2 FFIs.** To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA with respect to an account, such documentation or publicly available information used to document the account must meet the requirements described in the applicable Model 2 IGA. In the case of documentation, the reporting Model 2 FFI may rely on such documentation until the earlier of the expiration date of such documentation or the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. In the case of publicly available information, the reporting Model 2 FFI may rely on such information until the date there is a change in circumstances that affects the account holder or payee's claim of chapter 4 status. Upon the expiration of the documentation or a change in circumstances, the reporting Model 2 FFI must obtain new or additional documentation or must redetermine the status of the account in accordance with the due diligence procedures described in Annex I of the applicable Model 2 IGA. If an account holder of a new account (as defined in the applicable Model 2 IGA) has a change in circumstances that would cause such account to be treated as a U.S. account and the account holder refuses to provide consent for such account to be

reported, the reporting Model 2 FFI must report the account as a non-consenting U.S. account as described in section 6.03(B) of this agreement.

**.04 Presumption Rules in Absence of Valid Documentation.** If the participating FFI is required to, but is unable to, obtain documentation (or a record of documentation) that meets the requirements of this section 3 within the applicable time period described in section 3.02 of this agreement, or if the participating FFI knows or has reason to know that documentation provided for an account holder or payee is unreliable or incorrect, as determined applying the standards of knowledge described in §1.1471-4(c)(2), or as determined under Annex I of the applicable Model 2 IGA in the case of a reporting Model 2 FFI that applies such procedures with respect to an account, the FFI is required to apply the presumption rules described in this section 3.04 until valid documentation is provided for the account holder or payee upon which the FFI is permitted to rely. However, following a change in circumstances, a participating FFI may continue to treat otherwise valid documentation previously provided by an account holder or payee as valid and rely on such documentation until the earlier of 90 days following the change in circumstances or the date new documentation is obtained upon which the participating FFI may rely to document the chapter 4 status of the account holder or payee. See, however, §1.1441-1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under §1.1441-1(b)(3)(iv), to the extent a withholdable payment that is also a reportable amount (as defined in §1.1441-1(c)(22)) is made to the account holder or payee.

**(A) Entity Payee or Account Held by an Entity.** With respect to a withholdable payment made to an entity payee, a participating FFI must apply the presumption rules of §1.1471-3(f). The presumption rules of §1.1471-3(f) also apply to an account held by an entity. However, in the case of an account held by a passive NFFE that provides the documentation described in §1.1471-3(d)(12) to establish its status as a passive NFFE but fails to provide the information regarding its owners required under §1.1471-3(d)(12)(iii), the participating FFI must treat the account as held by a recalcitrant account holder in accordance with §1.1471-5(g)(2)(iv).

**(B) Account Held by an Individual.** With respect to an account held by an individual, a participating FFI must treat the account as held by a recalcitrant account holder in accordance with §1.1471-5(g) and classify the type of recalcitrant account holder in accordance with the pools described in §1.1471-4(d)(6).

**(C) Presumption Rules for an Entity Account Holder of a Reporting Model 2 FFI.** To the extent a reporting Model 2 FFI applies the due diligence procedures described in Annex I of the applicable Model 2 IGA, the FFI must determine the status of the account as a U.S. account, non-consenting account, or a nonparticipating FFI by applying such procedures. With respect to a withholdable payment made to an entity

account holder of a reporting Model 2 FFI, if the reporting Model 2 FFI is unable to document the entity account consistent with the procedures described in Annex I, the reporting Model 2 FFI must apply the presumption rules described in §1.1471-3(f). With respect to a withholdable payment made to an entity payee that is not an account holder, a reporting Model 2 FFI must apply the presumption rules of §1.1471-3(f). A reporting Model 2 FFI that has undocumented accounts may be determined to be significantly non-compliant with the requirements of an applicable IGA.

## **Section 4. Withholding Requirements.**

### **.01 Withholding Requirements.**

**(A) In General.** A participating FFI is generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to an account maintained by such participating FFI that is held by a recalcitrant account holder or a nonparticipating FFI. A participating FFI is also generally required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to a payee that is (or is presumed to be) a nonparticipating FFI or a passive NFFE that has not identified its substantial U.S. owners or certified that it has no substantial U.S. owners as required under §1.1471-3(d)(12)(iii) with respect to an offshore obligation that is not an account. There is no requirement to withhold on foreign passthru payments for payments made before January 1, 2019 and therefore this requirement is not addressed in this agreement. See section 7.03 of this agreement for the requirements of a participating FFI that is prohibited by law from withholding as required under this section 4.01.

**(B) Modification of Withholding Requirements for a Reporting Model 2 FFI.** Notwithstanding the withholding requirements described in section 4.01(A) of this agreement, a reporting Model 2 FFI is not required to deduct and withhold tax on any withholdable payment made to its non-consenting U.S. accounts, provided that the conditions under the applicable Model 2 IGA regarding the suspension of withholding relating to non-consenting U.S. accounts are met. If such conditions are not met, the reporting Model 2 FFI is required to treat its non-consenting U.S. accounts as held by recalcitrant account holders and is required to deduct and withhold a tax equal to 30 percent of any withholdable payment made to such accounts in accordance with section 4.02 of this agreement. In addition, a reporting Model 2 FFI is required to withhold in accordance with section 4.02 of this agreement on any withholdable payment made to an account holder or a payee other than an account holder that is (or is presumed to be under section 3.04(C) of this agreement) a nonparticipating FFI.

**(C) Election to Withhold under Section 3406 on Recalcitrant Account Holders.** With respect to a recalcitrant account holder that receives a withholdable payment and that is also subject to backup withholding under section 3406, a

participating FFI may elect to satisfy its withholding obligation under this section 4 and §1.1471-4(b) by applying backup withholding under section 3406 to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 with respect to payments to which backup withholding applies. Nothing in this section 4 or §1.1471-4(b) relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not withholdable payments (e.g., payments with respect to grandfathered obligations). See section 4.04(D) of this agreement for the coordination of backup withholding under section 3406 for a participating FFI that does not make the election described in this section 4.01(C) and that withholds under section 1471(b) with respect to a withholdable payment made to a recalcitrant account holder that is subject to backup withholding under section 3406.

## **.02 General Rules for Withholding.**

**(A) Withholding Determination in General.** A participating FFI that makes a withholdable payment is required to determine whether withholding under this section 4 applies at the time the withholdable payment is made by applying the requirements of §1.1471-4(b) to determine the payee of the payment and to reliably associate the payment with valid documentation to establish the payee's chapter 4 status. The exceptions to withholding described in §1.1471-2, including the exceptions for payments made under a grandfathered obligation and payments made to certain excepted accounts, apply for purposes of determining whether withholding is required under this section 4. A participating FFI is not required to withhold under this section 4 on payments made to an account holder of a preexisting account (including an entity account that is opened on or after July 1, 2014, and before January 1, 2015, that the FFI treats as a preexisting obligation under §1.1471-1(b)(104)(i)) prior to the expiration of the applicable time period described in section 3.02(A) of this agreement for identifying the account (or applying the presumption rules), unless the account is documented as held by a nonparticipating FFI.

**(B) Withholding Requirements for a Participating FFI that is an NQI, NWP, or NWT.** A participating FFI that is an NQI, NWP, or NWT, or that is a QI that elects under section 1471(b)(3) not to assume withholding responsibility for a payment is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary or as an NWP or NWT when it provides its withholding agent with an FFI withholding statement that includes sufficient information for such withholding agent to establish the portion of the payment (if any) that is allocable to recalcitrant account holders (in each of the chapter 4 withholding rate pools described in section 9.02(B) of this agreement), to payees that are nonparticipating FFIs, and to payees that are U.S. persons (U.S. payee pool) in accordance with §1.1471-4(b)(3). If a participating FFI elects to backup withhold under

section 3406 with respect to recalcitrant account holders as described in section 4.01(C) of this agreement, the participating FFI must provide its withholding agent with an FFI withholding statement that includes sufficient information for such withholding agent to report the payments made to the account holders in accordance with chapter 61 and to apply backup withholding. See §1.1471-3(c)(3)(iii) and section 9 of this agreement for the requirements applicable to a participating FFI's withholding certificate, withholding statement, and associated documentation. If the withholdable payment is exempt from chapter 4 withholding, the information provided by the participating FFI to the withholding agent must also include the payee's chapter 4 status when specific payee information is required for purposes of chapter 3. A participating FFI must also provide the withholding agent with information regarding any account holders or payees of an intermediary or flow-through entity that holds an account with the participating FFI, other than a QI, WP, or WT.

A participating FFI is required to withhold under §1.1471-4(b)(3) when it fails to provide sufficient information to its withholding agent or when it knows or has reason to know that the withholding agent has not withheld to the extent required under §1.1471-2(a)(i) with respect to its account holders. For example, if a participating FFI provides the documentation described in §1.1471-3(c)(3)(iii) to its withholding agent and, based on the amount of the payment that it receives from the withholding agent, it knows or has reason to know that the withholding agent has underwithheld on the payment, it is required to deduct and withhold tax from the payment to the extent of the underwithheld tax. A participating FFI is also required to withhold when it applies the dormant account procedures described in section 5.02 of this agreement.

**(C) Withholding Requirements with Respect to Related Entities and Branches.** A participating FFI is required to withhold on a withholdable payment it makes to a related entity or branch of a reporting Model 1 FFI or reporting Model 2 FFI to the extent required under §1.1471-4(b)(5), including when a participating FFI has reason to know that a withholdable payment was made to a related entity or branch of a reporting Model 1 FFI or reporting Model 2 FFI. A participating FFI making a withholdable payment to a reporting Model 1 FFI or reporting Model 2 FFI will have reason to know that a withholdable payment is made to a related entity or branch of such reporting Model 1 FFI or reporting Model 2 FFI when the participating FFI has reason to know under §1.1471-3(e)(3)(i). For the withholding required by a reporting Model 2 FFI making a withholdable payment to its related branch, see section 7.04 of this agreement.

**.03 Liability for Failure to Withhold.** A participating FFI that fails to withhold any tax under chapter 4 as required under section 4.02 of this agreement is liable for the amount of tax not withheld and any interest, additions to tax, and penalties that may apply under a relevant provision of the Code.

#### **.04 Coordination with Other Withholding Provisions.**

**(A) In General.** A participating FFI is a withholding agent for purposes of chapter 4, a withholding agent under chapter 3 with respect to a payment subject to withholding under §1.1441-2(a) or under sections 1445 or 1446, and a payor for purposes of withholding under section 3406. Except to the extent provided in this section 4.04, no provision of this agreement otherwise limits the requirement of a participating FFI to withhold as a withholding agent for purposes of chapters 3 and 4 or as a payor for purposes of backup withholding under section 3406 to the extent required.

**(B) Coordination of Withholding under Sections 1471(a) and 1472(a).** A participating FFI that complies with the withholding requirements of this agreement is deemed to satisfy its chapter 4 withholding obligations under sections 1471(a) and 1472(a) with respect to its account holders and entity payees.

**(C) Coordination with Withholding under Chapter 3.** In the case of a withholdable payment that is also subject to withholding under section 1441, 1442, or 1443, a participating FFI may credit the tax withheld under section 4.02 of this agreement against its liability under section 1441, 1442, or 1443 as described in §1.1474-6(b). In the case of a withholdable payment that is also subject to withholding under section 1445, withholding under section 1445 applies to the payment to the extent described under §1.1474-6(c), and withholding is not required under section 4.02 of this agreement. In the case of a withholdable payment that is also subject to withholding under section 1446, withholding under section 1446 applies to the extent described under §1.1474-6(d), and withholding is not required under section 4.02 of this agreement.

**(D) Coordination with Backup Withholding.** In the case of a withholdable payment that is also a reportable payment made by the participating FFI to a recalcitrant account holder, withholding under section 3406 will not apply to the reportable payment if tax is withheld on the payment under section 4.02 of this agreement, unless the participating FFI elects to apply backup withholding under section 3406 to a payment made to a recalcitrant account holder as described in section 4.01(C) of this agreement.

#### **Section 5. Deposit Requirements.**

**.01 In General.** A participating FFI that withholds tax as required under this agreement must deposit amounts withheld within the time period provided in §1.1474-1(b)(1) or, for amounts withheld under the election described in section 4.01(C) of this agreement, §31.6302-4. See §1.1471-2(a)(5)(ii) for an optional escrow procedure when a

withholding agent is unable to determine at the time of payment whether such payment is a withholdable payment.

**.02 Dormant Accounts.** If a participating FFI receives a withholdable payment not otherwise subject to backup withholding under section 3406, or withholding under chapter 3, on behalf of a dormant account held by a recalcitrant account holder, the participating FFI may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. The tax withheld in escrow becomes due on the date that is 90 days following the date that the account ceases to be a dormant account. A participating FFI that maintains a dormant account of a recalcitrant account holder and that elects to escrow withheld tax pursuant to this section 5.02 may not delegate the responsibility to escrow withheld tax to the withholding agent from which it receives the payment. See section 6.05(C) of this agreement for the reporting requirements and section 9 of this agreement for the requirements of an FFI withholding statement when the participating FFI applies the escrow rule for dormant accounts described in this section 5.02. Sections 1.1471-4(d)(6)(ii) and (iii) provide the rules for determining when the participating FFI must treat an account as dormant and when an account will no longer be treated as a dormant account.

## **Section 6. Information Reporting and Tax Return Obligations.**

**.01 In General.** Under section 1471(c) and §1.1471-4(d), a participating FFI is required to report annually certain specific payee information with respect to U.S. accounts that it maintains. A participating FFI is also required to report certain aggregate account information described in section 6.03 of this agreement with respect to its recalcitrant account holders classified in accordance with the pools described in §1.1471-4(d)(6) and, in the case of a reporting Model 2 FFI, its non-consenting U.S. accounts classified in accordance with the pools described in §1.1471-4(d)(6). A participating FFI has a transitional reporting obligation for payments of foreign reportable amounts made to account holders that are nonparticipating FFIs as described in section 6.04 of this agreement. A participating FFI may also be required under section 6.05 of this agreement to report certain aggregate information with respect to chapter 4 reportable amounts paid to its recalcitrant account holders, payees that are nonparticipating FFIs, and payees that are U.S. persons. If a participating FFI is required to file information returns under section 6.05 of this agreement, the participating FFI is also required under section 6.06 of this agreement to file Form 1042 to report chapter 4 reportable amounts and any tax withheld on such amounts. A participating FFI must file information returns about its account holders or payees for purposes of chapter 4 (Forms 8966, 1099, 1042-S) on magnetic media (as defined in §301.1474-1(d)(1)). See also section 7 of this agreement for the requirements of a participating FFI that is prohibited by law from reporting its U.S. accounts as required under this section 6. In the case of a reporting

Model 2 FFI, in applying this section with respect to a passive NFFE, the term “substantial U.S. owner” means a “controlling person” as defined in the applicable Model 2 IGA that is identified as a specified U.S. person.

## **.02 U.S. Account Reporting.**

### **(A) Accounts for which Reporting is Required.**

**(1) In General.** On a calendar-year basis, a participating FFI must report each U.S. account that it maintains in the manner described in section 6.02(B) of this agreement. The participating FFI is also required to report accounts held by an FFI that it has agreed to treat as an owner-documented FFI under §1.1471-3(d)(6) to the extent required under this section 6.02.

**(2) Special Reporting of Account Holders of Territory FIs.** If a participating FFI maintains an account held by a territory FI that is a flow-through entity or that acts as an intermediary with respect to a withholdable payment, and the territory FI does not agree to be treated as a U.S. person with respect to the payment, the participating FFI is required to report each specified U.S. person and each substantial U.S. owner of an entity treated as a passive NFFE with respect to which the territory FI acts as an intermediary or is a flow-through entity to the extent that the territory FI provides the participating FFI with sufficient information to report such account. See §1.1471-4(d)(2)(ii)(B)(2) for the information required to be reported for an account or payee of a territory FI.

**(3) Additional U.S. Account Reporting Requirement for a Trustee of a Trustee-Documented Trust.** In addition to the accounts required to be reported under section 6.02(A)(1) of this agreement, a participating FFI that is the trustee of a trustee-documented trust (as defined in an applicable Model 2 IGA) must report each U.S. account maintained by the trust as if the participating FFI maintained the account.

**(B) General Reporting Requirements of a Participating FFI.** A participating FFI may report its U.S. accounts on Form 8966 in the manner described in §1.1471-4(d)(3). If a participating FFI is a partnership, see §1.1471-4(d)(4)(iv)(C) for the payments required to be reported on Form 8966 with respect to an account that is a partner’s interest in the partnership. Alternatively, to the extent allowed under §1.1471-4(d)(5), a participating FFI may elect to perform chapter 61 reporting as modified in section 6.02(B)(1) of this agreement, in lieu of reporting in the manner described in §1.1471-4(d)(3). A participating FFI may elect to perform chapter 61 reporting with respect to all its U.S. accounts or with respect to any clearly identified group of U.S. accounts (such as by line of business or the location where the account is maintained) in the manner described in section 6.02(B)(1) of this agreement. With respect to a cash

value insurance contract or annuity contract held by a specified U.S. person, a participating FFI may also elect to report under section 6047(d) in the manner described in §1.1471-4(d)(5)(i)(B) and section 6.07 of this agreement.

**(1) Modified Chapter 61 Reporting.** A participating FFI that elects to perform chapter 61 reporting must report the information otherwise required to be reported under sections 6041, 6042, 6045, and 6049 and must report payments made to an account subject to reporting under the applicable section. A participating FFI that is a non-U.S. payor, however, must determine the payments subject to reporting under the applicable section as if it were a U.S. payor.

A participating FFI that elects to perform chapter 61 reporting must treat each account holder that is a specified U.S. person, passive NFFE that is a U.S.-owned foreign entity, or owner-documented FFI as if it were an account holder who is an individual and citizen of the United States and must report each such account regardless of whether the account holder of such account qualifies as an exempt recipient. With respect to each account holder of a U.S. account that is a specified U.S. person, the participating FFI must report on the appropriate Form 1099 the information described in §1.1471-4(d)(5)(ii) and the accompanying instructions to the form. With respect to an account held by an entity treated as a passive NFFE with substantial U.S. owners or held by an owner-documented FFI with specified U.S. persons identified in §1.1471-3(d)(6)(iv)(A)(1) and (2), the participating FFI must report on Form 8966 the U.S. owner information described in §1.1471-4(d)(5)(ii) and (iii) and the accompanying instructions to the form.

A participating FFI that reports an account under this section 6.02(B)(1) must report such account for the calendar year regardless of whether the participating FFI makes a reportable payment to the account during the calendar year. In such a case and with respect to a specified U.S. person, the appropriate form is Form 1099-MISC, Miscellaneous Income. For example, with respect to a custodial account, the participating FFI is required to file a Form 1099-MISC even if no reportable payments were paid or credited to the account with respect to any financial instrument, investment, or contract held in such account. A participating FFI that reports accounts under this section 6.02(B)(1) may decide at a later time to report the accounts in the manner described in §1.1471-4(d)(3) beginning on the first reporting date for the calendar year following the calendar year for which it last reports an account under this section 6.02(B)(1).

**(2) Time and Manner of Filing.** The participating FFI must file Form 8966 or Form 1099 on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying

instructions. If a participating FFI (successor) acquires substantially all of the accounts maintained by another participating FFI (predecessor), or substantially all of the accounts maintained at a branch of the predecessor, in a merger or bulk acquisition of accounts for value, the successor may assume the predecessor's obligations to report the acquired accounts on Form 8966 for the calendar in which the merger or acquisition occurs, provided the requirements in §1.1471-4(d)(2)(ii)(G)(1) through (6) are satisfied.

### **.03 Reporting With Respect to Recalcitrant Account Holders.**

**(A) In General.** A participating FFI is required to report certain aggregate information regarding accounts held by recalcitrant account holders on Form 8966 and in the manner described in §1.1471-4(d)(6). Such reporting is required regardless of whether the participating FFI makes a withholdable payment to the account during the calendar year. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

**(B) Reporting Model 2 FFIs' Reporting of Non-Consenting U.S. Accounts.** Instead of the reporting described in section 6.03(A) of this agreement, a reporting Model 2 FFI is required to report on Form 8966 certain aggregate information regarding accounts treated as non-consenting U.S. accounts classified in accordance with the pools described in §1.1471-4(d)(6) and the accompanying instructions to the form. Such reporting is required regardless of whether the reporting Model 2 FFI makes a withholdable payment to the account during the calendar year. A reporting Model 2 FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates (unless otherwise specified in the applicable Model 2 IGA) in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

**.04 Special Transitional Reporting of Payments to Nonparticipating FFIs.** For calendar years 2015 and 2016, the participating FFI must report on a specific payee basis on Form 8966 the aggregate amount of foreign reportable amounts paid with respect to an account held by a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI) that the participating FFI maintains. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the account holder and the participating FFI has not obtained such consent (i.e., the account holder is a non-consenting nonparticipating FFI), the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid to such non-consenting nonparticipating FFIs. In

either case, the participating FFI may report all income, gross proceeds, and redemptions (regardless of source) paid to the nonparticipating FFI's account (or all non-consenting nonparticipating FFIs' accounts, as applicable) by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. With respect to calendar year 2015, however, a participating FFI is not required to report gross proceeds described in §1.1471-4(d)(4)(iv)(B)(3) paid to an account held by a nonparticipating FFI. The participating FFI must file Form 8966 on magnetic media (i.e., the FATCA Report XML) with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

#### **.05 Withholdable Payment Reporting and Reporting of Tax Withheld.**

**(A) In General.** Except as otherwise provided in this section 6.05(A) and section 6.05(B) of this agreement, a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts made during the year to payees that are recalcitrant account holders, nonparticipating FFIs, and, with respect to a non-U.S. payor, U.S. persons that are included in a U.S. payee pool (see section 9.02). Forms 1042-S must identify the foreign branch of the FFI maintaining the payee's account using the GIIN assigned to such branch and the employer identification number (EIN) of the legal entity covered by this agreement.

**(1) Allowance for Specific Payee or Pooled Reporting.** A participating FFI may report chapter 4 reportable amounts made to a specific recipient or to a chapter 4 reporting pool to the extent permitted or required under section 6.05(A)(1)(i) of this agreement. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. A participating FFI that fails to file returns or furnish statements required by this agreement may be subject to penalties in accordance with sections 6721 through 6724.

**(i) Pooled Reporting.** A participating FFI may report on Form 1042-S chapter 4 reportable amounts made to recalcitrant account holders and nonparticipating FFIs in a chapter 4 reporting pool. With respect to recalcitrant account holders, a separate chapter 4 reporting pool is required for each class of recalcitrant account holders described in §1.1471-4(d)(6). Additionally, a participating FFI that is a non-U.S. payor may report payees of U.S. accounts that it reports under section 6.02 of this agreement in a chapter 4 reporting pool of U.S. payees. Section 1.1474-1(d) provides additional reporting requirements for chapter 4 reportable amounts. See also Form 1042-S and its accompanying instructions for the chapter 4 reporting pool codes for recipients and income codes.

**(ii) Specific Recipient Reporting.** As an alternative to reporting chapter 4 reportable amounts to a chapter 4 reporting pool of recalcitrant account holders and nonparticipating FFIs as described in section 6.05(A)(1)(i) of this agreement, a participating FFI may issue a Form 1042-S to a recalcitrant account holder or a nonparticipating FFI on a specific payee basis. Section 1.1474-1(d)(1)(i) specifies the information that is required to be included on Form 1042-S. See also section 10.04 of this agreement for the limitation on filing a collective refund claim on behalf of account holders or payees that are reported on a specific payee basis.

**(2) Reporting Required when Electing to Withhold under Section 3406 on Recalcitrant Account Holders.** A participating FFI that elects to satisfy its obligation to withhold on withholdable payments with respect to recalcitrant account holders by backup withholding under section 3406 with respect such payments as described in section 4.01(C) of this agreement must report on the applicable Form 1099 in the manner required under chapter 61 with respect to payments to which backup withholding applies. Forms 1099 must be filed by the legal entity covered by this agreement and must exclude payments made by its U.S. branch, if any.

**(B) Special Reporting Rules when Withholding Agent Reports on Behalf of Participating FFI.** A participating FFI is not required to report on Form 1042-S or Form 1099 as described in section 6.05(A) of this agreement amounts that the participating FFI receives on behalf of a recalcitrant account holder, nonparticipating FFI, or chapter 4 reporting pool of payees that are U.S. persons to the extent that its withholding agent has correctly reported on a Form 1042-S or Form 1099, as the context requires, and withheld the correct amount of tax on such amounts. The participating FFI is required to report, however, when the participating FFI knows, or has reason to know, that the payment is not correctly reported on Form 1042-S or Form 1099, that less than the required amount has been withheld on the payment, or that the amount of tax withheld is not correctly reported on Form 1042-S or Form 1099. In such a case, the participating FFI must report the payment on Form 1042-S or Form 1099 to the extent required under section 6.05(A) of this agreement. See section 9 of this agreement for the information that the participating FFI must include on its withholding statement to enable its withholding agent to report.

**(C) Dormant Accounts.** Notwithstanding section 6.05(B) of this agreement, a participating FFI is required to report a chapter 4 reportable amount made to a recalcitrant account holder that holds a dormant account for which the participating FFI sets aside the amount withheld in escrow, in lieu of depositing the tax withheld. See section 5.02 of this agreement for the requirements of the escrow procedure for dormant accounts. See also section 9 of this agreement for the withholding statement requirements with respect to dormant accounts and the instructions to Form 1042-S for reporting under this procedure.

**(D) U.S. Source FDAP Income Subject to Reporting under Chapter 3.** In a case in which a participating FFI reports under section 6.05(A) of this agreement a withholdable payment of U.S. source FDAP income subject to withholding under section 4 of this agreement, a separate Form 1042-S is not required to be filed for the same payment for chapter 3 reporting purposes under §1.1461-1(c)(2). A participating FFI that is reporting U.S. source FDAP income that is not subject to withholding under section 4 of this agreement must include in its reporting an exemption code for chapter 4 purposes to the extent the participating FFI is required to report the amount under §1.1461-1(c)(2).

**(E) Reporting of Withholdable Payments to Related Entities and Branches.** A participating FFI must report (or provide sufficient information to its withholding agent, as described in section 6.05(B) of this agreement, to report) withholdable payments that it makes to, or receives as an intermediary on behalf of, a related entity or branch of a reporting Model 1 FFI or reporting Model 2 FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a related entity or branch of a reporting Model 1 FFI or reporting Model 2 FFI. See Form 1042-S and its accompanying instructions for the other information that a participating FFI is required to report in such a case.

**(F) Time and Manner of Filing.** A participating FFI must file Forms 1042-S on magnetic media with the IRS on or before March 15 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions. A participating FFI required to report on Forms 1042-S under section 6.05(A) of this agreement may rely on the procedures used for chapter 3 purposes for reporting on Forms 1042-S (even if the participating FFI is not required to report under chapter 3) for combined reporting following a merger or acquisition, provided that all of the requirements for such reporting provided in the Instructions for Form 1042-S are satisfied. A participating FFI must file the relevant Forms 1099, if applicable, on magnetic media with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates in accordance with the requirements prescribed for such reporting on the form and its accompanying instructions.

## **.06 Tax Return Filing Requirements.**

If a participating FFI is required to report on Form 1042-S chapter 4 reportable amounts, it must also file an income tax return on Form 1042 to report the chapter 4 reportable amounts paid to account holders and payees that the participating FFI is required to report on Form 1042-S. A participating FFI will also be required to report on Form 1042 the amount of tax withheld and the amount of tax deposited with respect to

such payments for the calendar year, in addition to any other information required by the form and its accompanying instructions. If a participating FFI applies backup withholding, instead of withholding under chapter 4, with respect to recalcitrant account holders as described in section 4.01(C) of this agreement, the participating FFI must also file an income tax return on Form 945 to the extent the participating FFI withheld tax on withholdable payments that are reportable amounts paid to its account holders. See section 6.05(F) of this agreement for the rules on when Form 1042-S and Form 1099 are required to be filed.

Form 1042 or Form 945 must be filed by the legal entity covered by this agreement, and it must exclude payments made by any U.S. branch of such entity. Withholding certificates and other statements or information provided to the participating FFI should not be attached to the return. With respect to Form 1042, the information required for purposes of chapter 4 is in addition to the information required to be provided on Form 1042 for purposes of chapter 3. A participating FFI must file Form 1042 with the IRS on or before March 15 of the year following the calendar year to which the form relates. A participating FFI must file Form 945 with the IRS on or before January 31 of the year following the calendar year to which the form relates.

**.07 Coordination with Chapter 61 Reporting.** A non-U.S. payor that is a participating FFI will satisfy its reporting obligations under chapter 61 (Form 1099 reporting) with respect to a reportable payment made to a payee that is an account holder of the participating FFI and that is a U.S. non-exempt recipient if such participating FFI reports with respect to such an account holder pursuant to section 6.02 of this agreement (and must include the reporting of the account holder's TIN). See §1.6049-4(c)(4). A participating FFI (regardless of whether the FFI is a U.S. payor or non-U.S. payor) will satisfy its Form 1099 reporting obligations with respect to a reportable payment made to a payee that is an account holder of the participating FFI and that is treated as a U.S. non-exempt recipient under the presumption rules of chapters 3 and 61 if such participating FFI reports with respect to such an account holder pursuant to section 6.03 of this agreement. See §1.6049-4(c)(4). A participating FFI is required to report a payment on Form 1099, however, to the extent that backup withholding is required under section 3406 with respect to the payment, or the participating FFI elects to apply backup withholding to the payment under section 4.01(C) of this agreement and another payor (as defined in §1.6049-5(c)(5)) has not performed Form 1099 reporting with respect to the payment.

**.08 Retention Requirements.**

**(A) Account Statements.** A participating FFI is required to retain information that summarizes the account activity of its U.S. accounts and accounts held by

recalcitrant account holders and nonparticipating FFIs to the extent required in §1.1471-4(d).

**(B) Forms 1042-S.** A participating FFI must retain a copy of each Form 1042-S for the period of limitations on assessment and collection applicable to the tax reportable on the Form 1042 to which the Form 1042-S relates.

## **Section 7. Legal Prohibitions on Reporting U.S. Accounts and on Withholding.**

**.01 In General.** If a participating FFI (or branch thereof) is prohibited by law from reporting its U.S. accounts as required under section 6.02 of this agreement or from withholding to the extent required under section 4 of this agreement, the participating FFI (or branch thereof) must comply with the requirements of section 7.02 or 7.03 of this agreement.

**.02 Prohibitions on Reporting U.S. Accounts.** A participating FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a U.S. account as required under section 6.02 of this agreement must satisfy the requirements of §1.1471-4(i)(2) to request a valid and effective waiver of such law or otherwise close or transfer the account.

**(A) Reporting Model 2 FFI.** A reporting Model 2 FFI that is prohibited under the laws of the jurisdiction in which it is resident, established, or located from reporting a preexisting U.S. account as required under section 6.02 of this agreement must request consent to report such account and, if consent is not provided, must report certain aggregate information about such account with other non-consenting U.S. accounts in accordance with section 6.03 of this agreement. With respect to a new account (as defined in the applicable Model 2 IGA), a reporting Model 2 FFI must obtain from each account holder of a U.S. account, as a condition of account opening, the consent required under domestic law in order for such reporting Model 2 FFI to report the account as required under section 6.02 of this agreement. Additionally, a reporting Model 2 FFI must request the account holder's consent to report, if required by domestic law, after account opening for any new account that is not identified as a U.S. account at account opening and that must subsequently be treated as a U.S. account due to a change in circumstances. If consent is not provided by the account holder, the reporting Model 2 FFI must treat the account as a non-consenting U.S. account and report the account as described in section 6.03(B) of this agreement.

**.03 Legal Prohibitions Preventing Withholding with Respect to Recalcitrant Account Holders and Nonparticipating FFIs.** To the extent a participating FFI is prohibited under domestic law from withholding with respect to recalcitrant account holders and nonparticipating FFIs as required under section 4 of this agreement, the

participating FFI is required to satisfy the requirements of §1.1471-4(i)(3) to block or transfer each account or offshore obligation held by such persons.

**.04 Related Branch of a Reporting Model 2 FFI.** If a reporting Model 2 FFI maintains one or more related branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each related branch, which includes the requirements to withhold on payments made or received on behalf of such branch as described in section 4.03(C) of this agreement and to report such payments as described in section 6.05(E) of this agreement. If a branch maintained by the FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, a reporting Model 2 FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following such date that the branch will cease to be a related branch by registering such branch as a participating FFI or deemed-compliant FFI by that date. A reporting Model 2 FFI with one or more branches that are treated as nonparticipating FFIs solely due to the expiration of the transitional rule for limited branches under §1.1471-4(e)(2)(v) will continue to be a reporting Model 2 FFI, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such branches.

## **Section 8. Compliance Procedures.**

**.01 In General.** A participating FFI is required to adopt a compliance program under the authority of the responsible officer of the participating FFI or, in the case of a participating FFI that adopts a consolidated compliance program under the requirements of §1.1471-4(f)(2)(ii), under the authority of the responsible officer of a compliance FI. A participating FFI's compliance program must include policies, procedures, and processes sufficient for the participating FFI to satisfy the due diligence, reporting, and withholding requirements of this agreement. A participating FFI must also perform, or have performed on its behalf, a review of its compliance with this agreement for the certification period (described in §1.1471-4(f)(3)). The results of such review must be considered by the responsible officer in making the periodic certifications described in section 8.03 of this agreement. A participating FFI must also comply with the IRS review of compliance described in section 8.04 of this agreement.

**.02 Responsible Officer.** A participating FFI must appoint a responsible officer to establish, or to appoint one or more designees to establish, a compliance program that meets the requirements of section 8.01 of this agreement and to periodically review the sufficiency of such compliance program. The responsible officer must make the certifications described in section 8.03 of this agreement to the IRS regarding the FFI's compliance with this agreement.

### **.03 Certifications of Compliance by Responsible Officer.**

**(A) Certification Regarding the Due Diligence Procedures.** No later than the due date of the participating FFI's first certification of compliance required under section 8.03(B) of this agreement, the responsible officer of the participating FFI must make the certification described in §1.1471-4(c)(7) regarding the FFI's completion of the due diligence procedures for preexisting accounts required under section 3 of this agreement and regarding the absence of any formal or informal practices or procedures to assist account holders in the avoidance of chapter 4 as described in §1.1471-4(c)(7).

**(B) Periodic Certification of Compliance.** On or before July 1 of the calendar year following the end of the certification period defined in §1.1471-4(f)(3)(i), the responsible officer of the participating FFI must make either the certification of effective internal controls described in §1.1471-4(f)(3)(ii) or, when required, make the qualified certification under §1.1471-4(f)(3)(iii). The responsible officer must consider the results of the participating FFI's periodic review in making the periodic certification of compliance.

**(C) Method of Making Certifications.** The participating FFI (or the compliance FI with respect to such FFI) must make the certifications of compliance on the form and in such manner as the IRS may prescribe in future guidance or other instructions.

### **.04 Review of Compliance.**

**(A) General Inquiries of FFI and Account Holder Compliance.** Based upon the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS (or the absence of such reporting) for each calendar year, the IRS may request additional information with respect to the information reported, or required to be reported, on such forms, or may request the account statements described in §1.1471-4(d)(4)(v), or confirmation that the FFI has no reporting requirements. The IRS may also request any additional information to determine an FFI's compliance with its FFI agreement and to assist the IRS with its review of account holder compliance with tax reporting requirements.

**(B) Inquiries of Reporting Model 2 FFIs.** In the case of a reporting Model 2 FFI, the IRS or the U.S. Competent Authority, as provided in the applicable Model 2 IGA, may make an inquiry directly to a reporting Model 2 FFI regarding the information described in section 8.04(A) of this agreement. When the IRS or the U.S. Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting, the IRS or the U.S. Competent Authority may make such an inquiry directly to a reporting Model 2 FFI. Additionally, if a reporting Model 2 FFI reports aggregate information regarding its non-consenting U.S.

accounts and accounts held by nonparticipating FFIs as described in sections 6.03 and 6.04 of this agreement, the U.S. Competent Authority, consistent with the terms of the applicable competent authority arrangement under the applicable Model 2 IGA, may request information regarding the accounts underlying the aggregate information returns filed with respect to such accounts.

**(C) Inquiries regarding Substantial Non-Compliance.** Based on the information reporting forms and tax returns (Forms 945, 1042, 1042-S, 8966, and 1099) filed with the IRS for each calendar year, the certifications made by the responsible officer, or any other information related to a participating FFI's compliance with this agreement, the IRS may determine in its discretion that the participating FFI may not have substantially complied with the requirements of this agreement. In such a case, the IRS may request from the responsible officer (or designee) information necessary to verify the participating FFI's compliance with this agreement or the performance of specified review procedures as described in §1.1471-4(f)(4)(ii). If the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement, the IRS will notify the participating FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

**(D) Inquiries regarding Significant Non-Compliance for Reporting Model 2 FFIs.** Consistent with the terms of the applicable competent authority arrangement under the Model 2 IGA, the U.S. Competent Authority may request information necessary to verify a reporting Model 2 FFI's compliance with this agreement as described in §1.1471-4(f)(4)(ii). If the U.S. Competent Authority determines that a reporting Model 2 FFI has failed to significantly comply with the requirements of this agreement, as modified by the applicable Model 2 IGA, the U.S. Competent Authority will notify the Competent Authority of the jurisdiction in which the reporting Model 2 FFI is located, and will also notify the reporting Model 2 FFI in accordance with section 12.06 of this agreement that an event of default has occurred.

## **Section 9. Participating FFI Withholding Certificate.**

### **.01 Participating FFI Withholding Certificate.**

A participating FFI agrees to furnish a valid withholding certificate to each withholding agent from which it receives a withholdable payment and to each participating FFI or deemed-compliant FFI with whom the participating FFI holds an account.

**(A) Beneficial Owner.** When a participating FFI receives a withholdable payment as a beneficial owner of the payment (as defined in §1.1471-1(b)(7)) or otherwise holds an obligation or account for its own benefit, the withholding certificate to be furnished is a Form W-8BEN-E (or acceptable substitute form under §1.1471-

3(c)(6)(v)) that certifies that the participating FFI is the beneficial owner and that includes the GIIN of the participating FFI in its jurisdiction of residence for tax purposes (or place of organization if the FFI has no such residence) or otherwise identifies the branch of the participating FFI that is receiving the payment and the branch's GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and all of the other information required by §1.1471-3(c)(3)(ii), the form, and its accompanying instructions. Alternatively, with respect to a payment made prior to January 1, 2017, or made with respect to an offshore obligation, the participating FFI may provide its GIIN and documentation to the extent required in §1.1471-3(d)(4)(ii) or (iii). In such a case, the participating FFI will not be subject to withholding and will not be reported as a nonparticipating FFI with respect to withholdable payments it receives from a withholding agent to whom the participating FFI provided such documentation. If, however, in the case of a reporting Model 2 FFI, the branch of the reporting Model 2 FFI receiving the withholdable payment is a related branch, the reporting Model 2 FFI must identify the branch as a nonparticipating FFI on the Form W-8BEN-E that it provides to the withholding agent, and such payment will be subject to withholding and reporting for purposes of chapter 4.

**(B) Intermediary or Flow-Through Entity.** When a participating FFI receives a withholdable payment of U.S. source FDAP income as an intermediary, holds an account with a participating or registered deemed-compliant FFI as an intermediary, or is a flow-through entity, the withholding certificate that the participating FFI must furnish to the withholding agent is a Form W-8IMY that meets the requirements in §1.1471-3(c)(3)(iii) (or acceptable substitute form under §1.1471-3(c)(6)(v)). In such a case, the participating FFI will not be subject to withholding (or reporting) as a nonparticipating FFI for purposes of chapter 4 that would otherwise apply based on its status as a participating FFI, though withholding for purposes of chapter 4 may apply to the extent that it receives a payment on behalf of recalcitrant account holders or nonparticipating FFIs and fails to provide sufficient information for its withholding agent to withhold and report on Form 1042-S under chapter 4 with respect to such persons. Additionally, withholding for purposes of chapter 3 may apply with respect to payments of U.S. source FDAP income based on the status of persons for whom the participating FFI receives the payment. For the requirements of a withholding certificate provided by a foreign partnership or foreign trust receiving a chapter 3 reportable amount, see §1.1441-5(c)(2) or §1.1441-5(e)(5), respectively. For the requirements of a withholding certificate provided by a foreign intermediary that receives a chapter 3 reportable amount, see §1.1441-1(e)(3).

## **.02 Withholding Statement.**

**(A) In General.** A participating FFI agrees to provide an FFI withholding statement that includes the information described in section 9.02(B) of this agreement to

each withholding agent from which it receives a withholdable payment of U.S. source FDAP income on behalf of its account holders or other persons (including its partners, beneficiaries, or owners for a participating FFI that is a flow-through entity). See section §1.1471-3(c)(3)(iii)(B)(1) and (2) for the requirements of an FFI withholding statement. The withholding statement must be updated as often as necessary for the participating FFI to meet its withholding and reporting obligations under sections 4 and 6 of this agreement.

## **(B) Allocation of Payment on Withholding Statement.**

**(1) In General.** In general, unless a participating FFI is permitted to provide on its withholding statement pooled information for the payees described in section 9.02(B)(2) or (3), a participating FFI must allocate a withholdable payment of U.S. source FDAP income to each payee of the payment on its withholding statement by providing payee specific information. In addition, the withholding statement must include the information necessary for the withholding agent to fulfill its obligations under chapter 4, and chapters 3 and 61, if applicable.

**(2) Chapter 4 Withholding Rate Pools.** A participating FFI may include on the withholding statement information that indicates the portion of such withholdable payment that is allocated to each of its chapter 4 withholding rate pools (consisting of separate pools for each class of recalcitrant account holders, for nonparticipating FFIs, and for U.S. payees). If a participating FFI applies the escrow procedure for dormant accounts described in section 5.02 of this agreement, the participating FFI must indicate the portion of such payment allocated to a chapter 4 withholding rate pool of recalcitrant account holders that hold dormant accounts that the participating FFI (and not the withholding agent) will hold in escrow. A participating FFI must identify its pools of recalcitrant account holders in accordance with the chapter 4 reporting pools provided on Form 1042-S and its accompanying instructions. If, however, a participating FFI elects to apply backup withholding instead of withholding under chapter 4 with respect to a recalcitrant account holder that is described in section 4.01(C) of this agreement, the withholding statement provided to the withholding agent must indicate the portion of such payment subject to backup withholding under section 3406 that is allocated to the account holder and include the other information required under chapter 61 for the withholding agent to report with respect to the payment. See Form 1042-S and its accompanying instructions for information on the chapter 4 withholding rate pools applicable to recalcitrant account holders, nonparticipating FFIs, and U.S. payees.

**(3) Exempt Payee Pool.** To the extent a withholdable payment is not subject to reporting by the withholding agent on any of Forms 1042-S, 1099, and 8966, a participating FFI may allocate a portion of a withholdable payment to a group of documented payees (other than nonqualified intermediaries or flow-through entities),

provided that the participating FFI provides to the withholding agent for each account holder payee-specific information (including the payee's chapter 4 status (using the applicable status code used for filing Form 1042-S)) and any other information required for purposes of chapter 3 or 61 on the withholding statement, and the participating FFI provides documentation for each account holder in the pool (an "exempt payee pool"). For example, a participating FFI can provide an exempt payee pool for a payment of U.S. source interest on a bank deposit not subject to withholding or reporting under chapter 4 that is allocable to a group of documented foreign account holders (that is, a withholdable payment that is not reported on any of Forms 1042-S, 1099, and 8966) and provide to the withholding agent documentation for each account holder included in the pool.

**(4) Allocation of Payment to Payees Subject to Withholding or Reporting under Chapter 3 or 61 but not Chapter 4.** If any portion of a withholdable payment is allocable to payees not subject to withholding or reporting under chapter 4, but the payment is subject to withholding or reporting under chapter 3 or 61, see §§1.1441-1(e)(3)(iv) (nonqualified withholding statement), 1.1441-5(c)(3)(iv) (withholding statement of a foreign simple or grantor trust), 1.1441-5(e)(5)(iv) (withholding statement of a nonwithholding foreign partnership), and 1.6049-5(d) for the additional requirements for allocating a payment to payees with regard to chapters 3 or 61 (including the requirements applicable to the withholding statement and the appropriate documentation to be provided with respect to each such payee). In addition to allocating the portion of the payment to each such payee, the withholding statement must include the information necessary for the withholding agent to report the payment on Form 1042-S or Form 1099. See §1.1471-3(c)(3)(iii)(B)(2) for the circumstances in which a participating FFI may allocate a withholdable payment to a chapter 4 withholding rate pool of U.S. payees on an FFI withholding statement, and see §1.6049-4(c)(4)(iii) for when a participating FFI may also allocate reportable payments to a chapter 4 withholding rate pool of U.S. payees on an FFI withholding statement.

**(5) Coordination with Reporting on Form 8966.** In a case in which a withholdable payment is allocable to an account holder of the participating FFI that is a passive NFFE with one or more substantial U.S. owners, the FFI may certify on the withholding statement that it is reporting, for the year in which the payment is made, the account holder as a U.S. account (excluding a non-consenting U.S. account or an account held by a recalcitrant account holder) as required under this agreement. Further, an FFI withholding statement provided by a participating FFI may include a certification that the FFI is reporting to the IRS for the year of the payment all of the information described in §1.1471-4(d) or §1.1474-1(i)(1) (as applicable) with respect to all specified U.S. persons described in §1.1471-3(d)(6)(iv)(A)(1) and (2) with respect to an account holder or payee that the FFI has agreed to treat as an owner-documented FFI.

**(6) Documentation from Intermediaries and Flow-Through Entities.** If a participating FFI has an account holder that is acting as an intermediary or is a flow-through entity with respect to a withholdable payment and that has provided the information described in §1.1471-3(c)(2) necessary for the withholding agent to report the payment, the participating FFI must provide to its withholding agent the account holder information or pool reporting information provided to it by such other entity for determining the amount of withholding or the reporting required under chapter 4. See §1.1471-3(e)(4)(vi)(B) (providing that the participating FFI may rely on the determination of a payee's chapter 4 status that is provided by another participating FFI or registered deemed-compliant FFI unless the first-mentioned participating FFI knows or has reason to know that such information is incorrect or unreliable).

**(C) Optional Procedure for Specific Recipient Reporting for Payees that are Recalcitrant Account Holders or Nonparticipating FFIs.** For payments that are received by a participating FFI that is acting as an intermediary or that is a flow-through entity and that are subject to withholding under chapter 4, the participating FFI may provide specific recipient information instead of chapter 4 withholding rate pool information on the withholding statement regarding any (or all) recipients that are recalcitrant account holders or nonparticipating FFIs. In such a case, the withholding statement must include the information necessary to enable the withholding agent to report the payment in accordance with the requirements described in §1.1474-1(d) and the requirements of Form 1042-S or Form 1099 and its accompanying instructions. The participating FFI is not required to provide the withholding agent with the withholding certificate or other documentation for each recipient.

## **Section 10. Adjustments for Overwithholding and Underwithholding and Refunds.**

**.01 Adjustments for Overwithholding by Withholding Agent.** A participating FFI may request a withholding agent to make an adjustment for amounts paid to the participating FFI on which the withholding agent has overwithheld (as defined in §1.1474-2(a)(2)) under chapter 4 by applying either the reimbursement procedure or the set-off procedure described in this section 10.01. Nothing in this section 10 requires a withholding agent to apply these procedures.

**(A) Reimbursement Procedure.** A participating FFI may request a withholding agent to repay the participating FFI for any amount overwithheld under chapter 4, and for the withholding agent to reimburse itself under the reimbursement procedures under § 1.1474-2(a)(3), by making a request to the withholding agent prior to the earlier of the due date (without regard to extensions) for filing Form 1042 and Form 1042-S, or the actual filing of Form 1042-S, for the calendar year of overwithholding. In such a case,

the participating FFI must provide the withholding agent with sufficient information to determine the correct amount of withholding and to correctly report the payment as required under §1.1474-1(d)(4). See section 4.02 of this agreement for the circumstances in which a withholding agent may withhold on behalf of the participating FFI with respect to its account holders or payees.

**(B) Set-off Procedure.** A participating FFI may request a withholding agent repay the participating FFI by applying the amount overwithheld under chapter 4 against any amount which otherwise would be required to be withheld under chapter 3 or 4 from income paid by the withholding agent to the participating FFI under the set-off procedures of §1.1474-2(a)(4). A participating FFI must make the request before the earlier of the due date (without regard to extension) for filing Form 1042-S, or the actual filing of Form 1042-S, for the calendar year of overwithholding.

**.02 Adjustments for Overwithholding by Participating FFI.** A participating FFI may make an adjustment for amounts paid to its account holders and payees for which it has overwithheld tax under chapter 4 (as defined in §1.1474-2(a)) by applying either the reimbursement procedures or the set-off procedures described in §1.1474-2(a)(3) or (4), respectively.

**.03 Repayment of Backup Withholding.** If a participating FFI erroneously withholds (as defined in §31.6413(a)-3) an amount under section 3406 from an account holder or payee, such participating FFI may refund to such person the amount erroneously withheld as provided in §31.6413(a)-3.

**.04 Collective Credit or Refund Procedures for Overpayments.** If there has been an overpayment of tax with respect to an account holder or a payee of a participating FFI resulting from tax withheld under chapter 4 on a payment made to such account holder or payee during a calendar year, and the amount withheld has not been recovered under the reimbursement or set-off procedures described under section 10.01 or 10.02 of this agreement, the participating FFI may request a credit or refund of the amount of tax overwithheld to the extent permitted under §1.1471-4(h). The participating FFI must follow the procedures set forth under §1.1471-4(h)(4) to request the credit or refund on behalf of its account holders. No credit or refund will be allowed after the expiration of the statutory period of limitations for refunds under section 6511 with regard to the account holder or payee for whom the refund or credit is sought.

**.05 Adjustments for Underwithholding.** If a participating FFI knows that an amount should have been withheld under chapter 4 from a previous payment to an account holder or a payee but was not withheld, the participating FFI may either withhold from future payments made pursuant to chapter 3 or chapter 4 to the same account holder or payee or satisfy the tax from property that it holds in custody for such person or property

of such person over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date (without regard to extensions) of Form 1042 for the calendar year in which the underwithholding occurred. A participating FFI's responsibilities will be met under this section 10.05 if it informs the withholding agent from whom the participating FFI received the payment of the underwithholding, and the withholding agent satisfies the underwithholding.

**.06 Underwithholding after Form 1042 Filed.** If, after Form 1042 has been filed for a calendar year (or the due date for filing Form 1042 if no Form 1042 was filed), a participating FFI or the IRS determines that the participating FFI has underwithheld tax for such year, the participating FFI must file an amended Form 1042 (or original Form 1042 if no Form 1042 was filed) to report and pay the underwithheld tax. A participating FFI must pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties at the time of filing such amended (or original) Form 1042. If a participating FFI fails to file a return (if required under section 6.06 of this agreement or this section 10.06), the IRS will make such return under section 6020 and assess such tax under the procedures set forth in the Code.

## **Section 11. FFI Group.**

### **.01 FFI Group.**

**(A) In General.** With respect to a participating FFI other than a reporting Model 2 FFI, each FFI that is a member of an FFI group must have the chapter 4 status of a participating FFI, deemed-compliant FFI, or exempt beneficial owner as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI or registered deemed-compliant FFI. In addition, the participating FFI and each FFI (other than a certified deemed-compliant FFI or exempt beneficial owner) that is a member of the participating FFI's FFI group must comply with the requirements of a participating FFI or registered deemed-compliant FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. An FFI and its FFI group may register on the FATCA registration website.

**(B) Special Rule for a Reporting Model 2 FFI.** A reporting Model 2 FFI that has a related entity or branch will not cease to be a reporting Model 2 FFI, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such related entities and branches.

### **.02 Lead FI.**

**(A) Designation of the Lead FI.** If the participating FFI designates a lead FI to initiate its FATCA registration, the participating FFI must authorize the lead FI to fulfill

the responsibilities described in section 11.02(B) of this agreement. If an FFI group has in place a consolidated compliance program as described in §1.1471-4(f)(2)(ii), the FI that is designated as the compliance FI for the FFI group must act as the lead FI for each member of the FFI group that participates in such consolidated compliance program.

**(B) Responsibilities of the Lead FI.** A participating FFI or U.S. financial institution that is designated as the lead FI by one or more FFIs that are members of an FFI group agrees to meet the following responsibilities with respect to such FFIs in addition to its other obligations under this agreement:

(1) Identify itself as the lead FI as part of the registration process and to delete its status as lead FI upon termination of such status;

(2) Identify all FFIs that have designated the participating FFI as their lead FI as part of the participating FFI's registration process;

(3) Monitor the information regarding members of the FFI group for which it is acting as a lead FI by accessing the FATCA registration website every six months to review the information provided and, if needed, update the information provided with respect to any members of the FFI group for which it is acting as a lead FI;

(4) Inform the IRS within 90 days of an acquisition or sale of a member of the FFI group for which it is acting as a lead FI by updating the information on the FATCA registration website to add or delete (or instruct the member to delete) such member;

(5) Inform the IRS within 90 days of a change affecting the chapter 4 status of any member of the FFI group for which it is acting as a lead FI, including when any member of the FFI group for which it is acting as a lead FI ceases to comply with (or that does not otherwise comply with) the requirements of either a participating FFI or a registered deemed-compliant FFI by updating such member FFI's chapter 4 status on the FATCA registration website; and

(6) With respect to a lead FI of an FFI group that is a group of related entities as defined in an applicable Model 2 IGA, inform the IRS within the time period prescribed under §1.1471-4(e)(3)(iv) that a member of the FFI group for which it is acting as a lead FI ceases to be a related entity, or a branch of a member of the FFI group ceases to be a related branch, and designate on the FATCA registration website the status for which such member FFI or branch will register.

## **Section 12. Expiration, Modification, Termination, Default, and Renewal of this Agreement.**

**.01 Term of Agreement.** This agreement begins on its effective date and expires on December 31, 2018 unless terminated under section 12.03 of this agreement. This agreement may be renewed as provided in section 12.08 of this agreement.

**.02 Modification.** This agreement may be modified by the IRS before the expiration date indicated in section 12.01 of this agreement. This agreement will only be modified through published guidance. Any modification imposing additional requirements on participating FFIs will in no event become effective until the later of 120 days after the IRS issues published guidance of such modification or the beginning of the next calendar year following such published guidance.

**.03 Termination of Agreement.** This agreement may be terminated by either the IRS or the participating FFI prior to the end of its term by delivery of a notice of termination to the other party in accordance with section 12.06 of this agreement.

**(A) In General.** The IRS will not terminate this agreement unless there has been a significant change in circumstances (as defined in section 12.04 of this agreement) or an event of default (as defined in section 12.05 of this agreement), and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this agreement. The IRS will not terminate this agreement in the event of default if the participating FFI can establish to the satisfaction of the IRS that all events of default for which it has received a notice (described in section 12.06 of this agreement) have been cured within the specified time period agreed to with the IRS.

**(B) Reporting Model 2 FFI.** In the case of a reporting Model 2 FFI, the reporting Model 2 FFI will not be treated as a nonparticipating FFI unless the U.S. Competent Authority has provided the Competent Authority of a Model 2 IGA jurisdiction in which the reporting Model 2 FFI is located notice of significant non-compliance with the terms of this agreement, as modified by the applicable Model 2 IGA, and the matter is not resolved within the 12-month period following the notice of significant non-compliance.

**(C) Survival of Obligations.** The termination of this agreement shall not affect any of the participating FFI's due diligence, withholding, information reporting, tax return filing, compliance obligations, or other obligations as a participating FFI arising in or with respect to a calendar year (or a portion of a calendar year) for which this agreement was in effect.

**.04 Significant Change in Circumstances.** For purposes of this agreement, a significant change in circumstances includes--

**(A)** An acquisition of all, or substantially all, of a participating FFI's assets in any transaction in which the participating FFI is not the surviving legal entity;

**(B)** A change in U.S. federal law that affects the validity of any provision of this agreement, materially affects the provisions contained in this agreement, or materially affects the participating FFI's ability to perform its obligations under this agreement;

**(C)** A ruling of any court that materially affects the validity of any provision of this agreement;

**(D)** A case in which a participating FFI (other than a reporting Model 2 FFI) maintains a limited branch that cannot fulfill the requirements for participating FFI or deemed-compliant FFI status after the expiration of the transitional rule for limited branches under §1.1471-4(e)(2)(v) or a participating FFI (other than a reporting Model 2 FFI) is a member of an expanded affiliated group that includes a limited FFI after the expiration of the transitional rule for limited FFIs under §1.1471-4(e)(3)(iv); and

**(E)** A significant change in a participating FFI's business practices or applicable foreign law that materially affects the participating FFI's ability to meet its obligations under this agreement.

**.05 Event of Default.** For purposes of this agreement, an event of default occurs if a participating FFI fails to perform any material duty or obligation required under this agreement or if the IRS determines that a participating FFI has failed to substantially comply with the requirements of this agreement. In addition to the occurrences enumerated in §1.1471-4(g)(1), an event of default also includes the occurrence of the following:

**(A)** The participating FFI fails to inform the IRS within 90 days of any significant change in circumstances; or

**(B)** If the participating FFI is designated by one or more FFIs that are members of an FFI group as a lead FI, the FFI fails, without reasonable cause, to inform the IRS within 90 days of an acquisition, sale, or change affecting the chapter 4 status of an FFI in the FFI group for which it is acting as lead FI, including that such FFI ceases to comply with (or does not otherwise comply with) the requirements to maintain its status as a participating or registered deemed-compliant FFI.

**.06 Notice of Event of Default.** Following an event of default known by, or disclosed to, the IRS, the IRS will deliver to the participating FFI a notice of default specifying the event of default and requesting that the participating FFI remediate the event of default

as described in §1.1471-4(g)(2). See §1.1471-4(g)(3) for the remediation process for an event of default.

## **.07 Termination Procedures.**

**(A) Procedure to Appeal Notice of Termination.** If a participating FFI receives a notice of termination of this agreement from the IRS, the participating FFI may appeal the determination within 90 days by sending to the address specified in section 13.03 of this agreement a written notice explaining why this agreement should not be terminated. If a participating FFI appeals the notice of termination, this agreement will not terminate until the appeal is decided. If a participating FFI does not provide a notice of appeal within 90 days, this agreement will terminate on the date specified in the notice of termination.

**(B) Termination of Agreement.** If the participating FFI seeks to terminate this agreement, it is required to provide notice to the IRS through the FATCA registration website. After receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List. If the FFI's status as a participating FFI is terminated (whether by the FFI or by the IRS), the FFI must send notice of the termination within 30 days after the date of termination to each withholding agent from which it receives payments and each financial institution with which it holds an account to which it has provided a withholding certificate or other documentation pursuant to section 9.01 of this agreement.

### **(C) Termination of Status as Compliance FI or Lead FI.**

**(1)** If a participating FFI seeks to terminate its status as a compliance FI or lead FI, it is required to provide notice of termination on the FATCA registration website in accordance with its instructions or as provided in later published guidance. A lead FFI's notice of termination of its lead FI status will require designation of a new lead FI on the FATCA registration website in accordance with its instructions or as provided in other guidance.

**(2)** A compliance FI that terminates its status as a compliance FI will still be required to serve as the point of contact for the IRS with respect to the certification periods (as defined in §1.1471-4(f)(3)(i)) during which the FFI acted as a compliance FI unless the FFI designates another FI that has full access to the information that relates to such periods that will act as the compliance FI for such periods.

**.08 Renewal.** If a participating FFI intends to renew this agreement, it may do so via the FATCA registration website available at [www.irs.gov/fatca](http://www.irs.gov/fatca) in accordance with its instructions or as otherwise provided other guidance. This agreement will be renewed only upon the agreement of both the participating FFI and the IRS and is subject to

modifications to this agreement as the IRS prescribes pursuant to procedures described in section 12.02 of this agreement.

#### **.09 Treatment of Reporting Model 2 FFIs.**

Notwithstanding anything to the contrary in this agreement, a reporting Model 2 FFI is not entering into a binding agreement by agreeing to comply with the terms of this agreement, except to the extent that such an FFI is entering into an agreement on behalf of one or more of its branches in order for each such branch to be treated as a participating FFI. For the avoidance of doubt, compliance with the terms of this agreement requires compliance with the requirement to recertify on the FATCA registration website that the reporting Model 2 FFI shall comply with the terms of any renewed agreement, including any modified terms pursuant to section 12.02 of this agreement.

**.10 Final Certification after a Termination of the FFI Agreement.** Upon a termination of this agreement, a participating FFI must provide to the IRS the certification of compliance described in section 8.03(B) of this agreement covering the period from the end of the most recent certification period (or, if the first certification period has not ended, the effective date of the FFI agreement) to the date of termination (the “short certification period”) within six months of the date of termination, irrespective of whether a periodic review has been completed for such period.

### **Section 13. Miscellaneous Provisions.**

**.01 Waiver.** Any waiver of a provision of this agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this agreement or the same provision at a later date.

**.02 Governing Law.** This agreement is governed by the laws of the United States. Any legal action brought under this agreement will be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, the participating FFI agrees to submit to the jurisdiction of such United States court.

**.03 Notices.** Except as otherwise provided on the FATCA registration website, notices provided under this agreement are to be mailed via registered, first class airmail. All notices sent to the IRS must include the participating FFI’s name and GIIN and the name of the participating FFI’s responsible officer. Such notices should be directed as follows:

To the IRS:

Internal Revenue Service  
Office of Foreign Payments  
290 Broadway  
New York, New York 10007

To the participating FFI:

The participating FFI's responsible officer (or the responsible officer of the compliance FI for issues related to the participating FFI's compliance with this agreement). Such notices should be sent to the address indicated in the FFI's registration (as may be amended).

#### SECTION 7. EFFECTIVE DATE

The effective date of this revenue procedure is January 1, 2017.

#### SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2014-38 is superseded.

#### SECTION 9. PAPERWORK REDUCTION ACT

This revenue procedure refers to a collection of information in the following sections of the FFI agreement (set forth in section 6 of this revenue procedure): section 3 regarding the due diligence requirements for account holder and nonparticipating FFI payee identification and documentation; section 4 regarding withholding requirements; section 5 regarding deposit requirements; section 6 regarding information reporting and tax return obligations; section 7 regarding the legal prohibitions on reporting U.S. accounts and on withholding; section 8 regarding compliance procedures; section 9 regarding the participating FFI withholding certificate; and section 10 regarding adjustments for overwithholding and underwithholding and refunds. Responses to these collections of information are required for an FFI to comply with the terms of its FFI agreement and not be subject to withholding under section 1471. The likely

respondents are individuals, businesses, other for-profit institutions, and certain non-profit institutions.

The estimated information collection burden referred to in this revenue procedure will be reflected in the Forms 8957, W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY, W-9, 1040NR, 1042, 1042-S, 1120-F, 1099, and 8966, as well as various income tax returns filed for purposes of claiming a refund of tax. The information collection burden relating to the section 8 compliance procedures will be reflected in future guidance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

## SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Kamela Nelan of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Nelan at (202) 317-6942 (not a toll free call).