

## **Part III**

### **Administrative, Procedural, and Miscellaneous**

#### **FFI agreement for Participating FFI and Reporting Model 2 FFI Notice 2013-69**

##### **SECTION I. Purpose.**

This notice provides guidance to foreign financial institutions (FFIs) entering into an FFI agreement with the Internal Revenue Service (IRS) under section 1471(b) of the Internal Revenue Code and § 1.1471-4 of the Treasury Regulations<sup>1</sup> (the FFI agreement) to be treated as participating FFIs. This notice 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 an FFI agreement, as modified by the IGA.

Section II of this notice provides background on the statutory and regulatory requirements for FFIs to be exempt from withholding under chapter 4 of the Internal Revenue Code (Code). Section III of this notice provides a description of the general responsibilities of participating FFIs and reporting Model 2 FFIs and some of the intended updates to the regulations under chapters 4 and 61 and related forms. Section IV of this notice describes the procedures for FFIs to register for participating FFI or reporting Model 2 FFI status.

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<sup>1</sup> Unless otherwise provided, all citations in this notice and the draft FFI agreement are to the Internal Revenue Code of 1986 and to the income tax regulations thereunder.

Section V of this notice provides the draft FFI agreement, which substantially incorporates the provisions set forth in §1.1471-4. The FFI agreement will be finalized by December 31, 2013.

## **SECTION II. Background and Scope.**

.01 Background. On March 18, 2010, the Hiring Incentives to Restore Employment Act of 2010, Pub. L. 111-147 (H.R. 2847) (the Act) was enacted into law. Section 501(a) of the Act added chapter 4 (sections 1471-1474) to Subtitle A of the Code. Section 1471(a) generally requires a withholding agent to deduct and withhold a tax equal to 30 percent on any withholdable payment made to an FFI, unless the FFI has an agreement requiring such FFI to satisfy the obligations specified in section 1471(b). An FFI that has entered into, and has in effect with the IRS, an FFI agreement is treated as a participating FFI and is not subject to withholding under section 1471.

On January 28, 2013, the Treasury Department and the IRS issued final regulations under chapter 4 (sections 1471-1474) in T.D. 9610 (78 FR 5874). The general requirements of an FFI agreement are described in §1.1471-4, which provides the substantive requirements applicable to a participating FFI under the FFI agreement. The withholding, due diligence, reporting of U.S. accounts, and expanded affiliate group requirements of a participating FFI are described in §1.1471-4(a) through (e). A participating FFI's procedures for complying with the FFI agreement, remediating an event of default, addressing legal prohibitions against reporting U.S. accounts or withholding, and filing refund claims for account holders are described in §1.1471-4(f)

through (i). The draft FFI agreement provided in section V of this notice incorporates the requirements in §1.1471-4.

In cases in which foreign law would prevent an FFI from complying with the terms of an FFI agreement, the Treasury Department has collaborated with other governments to develop two alternative model intergovernmental agreements (IGAs) that facilitate FATCA implementation and further reduce burdens on FFIs in partner jurisdictions. Under a Model 1 IGA, reporting financial institutions under an applicable Model 1 IGA (reporting Model 1 FFIs) would satisfy their chapter 4 requirements by reporting specified information about U.S. accounts to their government, followed by the automatic exchange of that information on a government-to-government basis with the United States. Under a Model 2 IGA, reporting Model 2 FFIs would report specified information about U.S. accounts directly to the IRS in a manner consistent with the final regulations (as modified by the applicable Model 2 IGA), supplemented by a government-to-government exchange of information on request. Accordingly, an FFI, or branch of an FFI, that is a reporting Model 2 FFI will apply §1.1471-4, as well as the terms of the FFI agreement, as modified by the applicable Model 2 IGA.

.02 Covered Entities. An FFI that has one or more branches (including its home office or a U.S. branch) that can comply with the terms of the FFI agreement is eligible to enter into an FFI agreement. A branch of such an FFI that cannot, under the laws of the jurisdiction in which such branch is located, satisfy all of the terms of the FFI agreement will be treated as a limited branch (as defined in the FFI agreement) and will be subject to withholding under section 1471 as a nonparticipating FFI. A reporting

Model 1 or 2 FFI that has a branch located outside of a Model 1 or 2 IGA jurisdiction may enter into an FFI agreement with respect to such branch in order for the branch to be treated as a participating FFI.

A reporting Model 2 FFI that registers with the IRS to obtain a global intermediary identification number (GIIN) and complies with the terms of the FFI agreement, as modified by the applicable Model 2 IGA, will be treated as complying with the requirements of, and not subject to withholding under, section 1471. The FFI agreement provided in section V of this notice incorporates the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI.

The qualified intermediary (QI), withholding foreign partnership (WP), and withholding foreign trust (WT) agreements are being modified to address new requirements under chapter 4 in addition to chapter 3, and these requirements will be incorporated into all QI, WP, and WT agreements that are in effect on or after June 30, 2014. The updated QI agreement will incorporate by reference the requirements of the FFI agreement (including the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI) and shall apply to any foreign branch of the QI that is treated as a participating FFI or reporting Model 2 FFI. In the case of an FFI that is a participating FFI or reporting Model 2 FFI and is also a WP or WT, the updated WP or WT agreement, as applicable, will incorporate by reference the requirements of the FFI agreement (including the modifications to the terms of the FFI agreement that are applicable to a reporting Model 2 FFI).

In general, the FFI agreement does not apply to a reporting Model 1 FFI, or any branch of such an FFI, unless the reporting Model 1 FFI has a branch located outside of a Model 1 IGA jurisdiction that is treated as a participating FFI or reporting Model 2 FFI. In such a case, the terms of an FFI agreement apply to the operations of the branch treated as a participating FFI or reporting Model 2 FFI.

### **SECTION III. General Responsibilities and Related Updates to Regulations and Forms.**

#### .01 General Responsibilities.

**(A) Participating FFIs.** A participating FFI agrees to satisfy the obligations as generally described in this section III(01) and as further described in the FFI agreement. Pursuant to section 1471(b) and §1.1471-4, a participating FFI must comply with certain due diligence, reporting, and other requirements with respect to its financial accounts. It must also withhold and deposit tax with respect to withholdable payments made to recalcitrant account holders (as defined in § 1.1471-5(g)) and nonparticipating FFIs (as defined in § 1.1471-1(b)(75)). A participating FFI is also required to verify its compliance with the requirements of the FFI agreement by periodically certifying to the IRS about its satisfaction of the requirements. For an FFI to maintain its status as a participating FFI, the FFI agreement requires that each member of the FFI group other than an exempt beneficial owner maintains one of the following chapter 4 statuses: participating FFI (including a reporting Model 2 FFI), limited FFI, registered deemed-compliant FFI (including a reporting Model 1 FFI), or nonreporting Model 1 or 2 FFI.

**(B) Reporting Model 2 FFIs.** Unless modified by the terms of an applicable Model 2 IGA, a reporting Model 2 FFI must comply with the terms of the FFI agreement by fulfilling the responsibilities of a participating FFI provided in the FFI agreement (as generally described in section III(01)(A) of this notice), which includes, for example, the requirement to withhold on withholdable payments made to recalcitrant account holders and nonparticipating FFIs. The FFI agreement incorporates into each relevant section of the FFI agreement the modifications that apply to a reporting Model 2 FFI under the applicable Model 2 IGA, which include, for example, the suspension of withholding on non-consenting U.S. accounts. Therefore, in the absence of any modification to the terms of the FFI agreement for a reporting Model 2 FFI, a reporting Model 2 FFI may substitute “reporting Model 2 FFI” with the term “participating FFI” to determine its requirements to comply with the FFI agreement.

.02 Related Updates to Regulations.

**(A) Coordination with Chapter 61 (Form 1099 Reporting).** The Treasury Department and the IRS intend to issue regulations under chapter 61 to provide that a payor other than a U.S. payor or U.S. middleman as defined in §1.6049-5(c)(5) (i.e., a non-U.S. payor) that is a participating FFI (including a reporting Model 2 FFI) or reporting Model 1 FFI will satisfy its reporting obligations under chapter 61 with respect to a U.S. payee (or presumed U.S. payee) that is a non-exempt recipient if such FFI reports such account holder pursuant to the FFI agreement or the applicable Model 1 IGA (including if the FFI reports an account, such as a depository account with a balance or value that does not exceed \$50,000, as a U.S. account). Notwithstanding

the preceding sentence, an FFI is required to report on Form 1099 to the extent the FFI is required to apply backup withholding to the payment.

**(B) Coordination with Section 3406 (Backup Withholding).** The Treasury Department and the IRS intend to issue regulations to provide that withholding under section 3406 (backup withholding) will not apply to a reportable payment if a participating FFI (including a reporting Model 2 FFI) has withheld on the payment under §1.1471-4(b). A reportable payment that is not subject to withholding under chapter 4 remains subject to withholding under section 3406. Alternatively, a participating FFI may elect to satisfy its withholding obligations under §1.1471-4(b) with respect to accounts held by recalcitrant account holders that are known U.S. persons by withholding pursuant to section 3406 at the backup withholding rate. For example, Custodian A, a reporting Model 2 FFI that is also a nonqualified intermediary and non-U.S. payor, receives a reportable payment subject to backup withholding under section 3406 as an intermediary on behalf of its account holder, X. The reportable payment is also a withholdable payment under chapter 4. X, a known U.S. person, refuses to provide consent for Custodian A to report the account as a specified U.S. account. Therefore, Custodian A reports X's account as a non-consenting U.S. account and does not have to withhold on the account pursuant to the terms of the applicable Model 2 IGA. Even though Custodian A is not required to withhold on the withholdable payment made to the account under §1.1471-4(b) as modified by the applicable Model 2 IGA, Custodian A must, however, provide its withholding agent with sufficient information for such agent to backup withhold and report on the reportable payment to the extent

required under §31.3406(g)-1(e). If, later, the conditions under the applicable Model 2 IGA for suspending withholding are not met, and Custodian A is required to start withholding on withholdable payments made to X as a recalcitrant account holder, Custodian A may elect to continue to backup withhold on reportable payments made to X. Such backup withholding will satisfy the obligation that Custodian A would otherwise have to withhold on withholdable payments at the 30 percent rate under §1.1471-4(b), as modified by the applicable Model 2 IGA. If Custodian A does not elect to apply section 3406 backup withholding, it must withhold on withholdable payments made to X under §1.1471-4(b) as modified under the applicable Model 2 IGA, and such withholding will satisfy its obligations to backup withhold under section 3406 with respect to such payments. Custodian A is still required to backup withhold under section 3406, however, to the extent a reportable payment that is not a withholdable payment (for example, broker proceeds paid inside the U.S. by a non-U.S. payor) is made to X.

**(C) Transitional Reporting of Foreign Reportable Amounts Paid to Nonparticipating FFIs.** The Treasury Department and the IRS intend to modify the transitional reporting requirements under the chapter 4 regulations for calendar years 2015 and 2016 with respect to payments of foreign reportable amounts made to nonparticipating FFIs. The current rules provide that a participating FFI is required to report the aggregate amount of foreign reportable amounts paid to each payee that is a nonparticipating FFI, even where such payments are not associated with a financial account. The modified rules will provide that a participating FFI is only required to report foreign reportable amounts paid with respect to a financial account that it



maintains for a nonparticipating FFI. Such reporting will be required on Form 8966 instead of Form 1042-S. Additionally, a participating FFI will be permitted to report all payments made to the account if it does not want to distinguish foreign reportable amounts from other amounts paid to the account. The modified rules will further provide that if the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder, and the participating FFI is unable to obtain consent, the participating FFI may report the aggregate number of accounts held by all such nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid to such accounts.

**(D) Direct Reporting NFFEs or Sponsored Direct Reporting NFFEs.** The Treasury Department and the IRS intend to issue regulations under chapter 4 to provide that a passive nonfinancial foreign entity (NFFE) will not include an NFFE that is a direct reporting NFFE or sponsored direct reporting NFFE. A direct reporting NFFE will mean an NFFE that elects to report on Form 8966 directly to the IRS certain information about its direct or indirect substantial U.S. owners, in lieu of providing such information to withholding agents or participating FFIs with which the NFFE holds a financial account. The chapter 4 regulations will be modified to provide that a direct reporting NFFE will be treated as an excepted NFFE. A direct reporting NFFE will be required to register with the IRS to obtain a GIIN and to agree to comply with the provisions to be provided in the modified chapter 4 regulations on reporting information about its substantial U.S. owners directly to the IRS on Form 8966. Instructions to the FATCA registration website will be modified to provide instructions to direct reporting NFFEs on how to

register. In general, withholding agents and participating FFIs will identify and document a direct reporting NFFE in a manner similar to how withholding agents and participating FFIs will document a participating FFI, including by verifying that the GIIN of the direct reporting NFFE is listed on the IRS FFI List. Notwithstanding that a direct reporting NFFE will document itself to withholding agents and participating FFIs in a manner similar to a participating FFI, it will not be treated as a participating FFI and will not enter into an FFI agreement. Therefore, since the definition of a passive NFFE will be updated to exclude a direct reporting NFFE, an account held by a direct reporting NFFE will not be treated as a U.S. account and will not be reported by a participating FFI with which the direct reporting NFFE has a financial account to the IRS. The Treasury Department and the IRS intend to modify the regulations under chapter 4 to allow an entity to sponsor one or more direct reporting NFFEs (sponsored direct reporting NFFEs), which will require the sponsoring entity to report on Form 8966 directly to the IRS (on the sponsored direct reporting NFFE's behalf) information about each sponsored direct reporting NFFE's direct or indirect substantial U.S. owners.

**(E) NFFEs that are QIs, WPs, and WTs.** The Treasury Department and the IRS intend to modify the chapter 4 regulations to provide that a passive NFFE does not include an NFFE that is acting as a QI or that is a WP or WT. An NFFE that is acting as a QI and receiving a withholdable payment on behalf of a passive NFFE will be required pursuant to the updated QI agreement to report directly to the IRS information about the passive NFFE and its substantial U.S. owners, in addition to the QI's other obligations as a withholding agent under chapters 3 and 4. An NFFE that is a WP or WT will be

required pursuant to the updated WP or WT agreement, as applicable, to report directly to the IRS information about its direct or indirect substantial U.S. owners, in addition to its other obligations as a withholding agent under chapters 3 and 4.

**(F) Section 953(d) Entities.** The Treasury Department and the IRS intend to modify the definition of U.S. person in the chapter 4 regulations to include a foreign insurance company that is not a specified insurance company and that elects pursuant to section 953(d) to be subject to U.S. income tax as if it were a U.S. insurance company.

.03 Update to Relevant Forms. The IRS intends to update all relevant IRS forms to the extent necessary to incorporate and implement the changes described above in this section III. This include, for example, Form W-8BEN-E which has been posted as a draft on the IRS.gov website and does not currently include a chapter 4 status for direct reporting NFFEs.

#### **SECTION IV. Registration for Participating FFIs and Reporting Model 2 FFIs.**

.01 In General. An FFI may register on Form 8957, Foreign Account Tax Compliance Act (FATCA) registration, via the FATCA registration website available at <http://www.irs.gov/fatca> to enter into an FFI agreement on behalf of its branches (including its home office) so that each of such branches may be treated as a participating FFI. A reporting Model 2 FFI may also register on the FATCA registration website, on behalf of one or more of its branches (including its home office), to obtain a GIIN and to agree to comply with the terms of an FFI agreement, as modified by an applicable Model 2 IGA. See the FATCA registration user guide for more information

about the FATCA registration process. Each branch of a participating FFI or reporting Model 2 FFI that is registered, other than a limited branch, will be issued a GIIN to be used in connection with complying with the FFI agreement and to identify itself to withholding agents.

.02 Registration for Sponsoring Entities. An entity that agrees to perform the due diligence, withholding, and reporting obligations of one or more FFIs pursuant to §1.1471-5(f)(1)(i)(F) or §1.1471-5(f)(2)(iii) may register with the IRS via the FATCA registration website to be treated as a sponsoring entity. If a sponsoring entity also seeks to obtain status as a participating FFI or reporting Model 2 FFI, the entity must separately register for participating FFI or reporting Model 2 FFI status and may do so via the FATCA registration website. The IRS intends to update the FATCA registration user guide to the FATCA registration website to provide information on the registration process for sponsored entities.

## **SECTION V. Draft FFI Agreement.**

The text of the draft 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 AGREEMENT

Section 13. MISCELLANEOUS PROVISIONS

## **Section 1. PURPOSE AND SCOPE.**

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

**WHEREAS**, an FFI has completed and submitted a FATCA registration form in accordance with its instructions, which registration indicated that one or more of its branches seeks to be treated as a participating FFI, and has represented that such branches 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 one or more of its branches 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) must act in its capacity as a participating FFI with respect to all 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. A branch of an FFI that cannot satisfy all of the terms of this agreement under the laws of the jurisdiction in which such branch is located will be treated as a limited branch (as defined in this agreement) and will be subject to withholding under section 1471 as a nonparticipating 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 final 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 a financial account described in §1.1471-5(b).

**.03 Account holder.** “Account holder” means the person who holds an account, as determined under §1.1471-5(a)(3).

**.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” means the withholding required under section 3406.

**.07 Branch.** “Branch” means a unit, business, or office of an FFI that is treated as a branch under the regulatory regime of a jurisdiction or that is otherwise regulated under the laws of a jurisdiction as separate from other offices, units, or branches of the FFI, and includes a disregarded entity of an FFI. The term “branch” also means a unit, business, or office of an FFI that is located in a jurisdiction in which it is a resident, and a unit, business, or office in the jurisdiction in which it is created or organized. All units, businesses, and offices of a participating FFI in a single jurisdiction must be treated as a single branch.

**.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 an FFI is treated as maintaining an account.

**.09 Certified deemed-compliant FFI.** “Certified deemed-compliant FFI” means an FFI described in §1.1471-5(f)(2) and includes a nonreporting FFI under a Model 1 IGA and a nonreporting FFI treated as a certified deemed-compliant FFI under a Model 2 IGA.

**.10 Chapter 4 reportable amount.** “Chapter 4 reportable amount” means an amount described in §1.1474-1(d)(2)(i).

**.11 Chapter 4 status.** “Chapter 4 status” means the status of a person as a U.S. person, a specified U.S. person, an individual that is a foreign person, a participating FFI, a certified or registered deemed-compliant FFI, a restricted distributor, an exempt beneficial owner, a nonparticipating FFI, a territory financial institution, an excepted NFFE (or, in the case of a reporting Model 2 FFI, an active NFFE), a direct reporting NFFE, a sponsored direct reporting NFFE, or a passive NFFE.

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

**.13 Custodial institution.** “Custodial institution” means an entity described in §1.1471-5(e)(1)(ii).

**.14 Deemed-compliant FFI.** “Deemed-compliant FFI” means an FFI that is treated, pursuant to section 1471(b)(2) and §1.1471-5(f), as meeting the requirements of section 1471(b).

**.15 Depository institution.** “Depository institution” means an entity described in §1.1471-5(e)(1)(i).

**.16 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.

**.17 Entity account.** “Entity account” means an account held by one or more entities.

**.18 Excepted NFFE.** “Excepted NFFE” means an NFFE that is described in §1.1472-1(c)(1).

**.19 Exempt beneficial owner.** “Exempt beneficial owner” means any person described in §1.1471-6(b) through (g) and includes any person treated as an exempt beneficial owner under an applicable Model 1 or Model 2 IGA.

**.20 Exempt recipient.** “Exempt recipient” means a person described in §1.6049-5(c)(1)(ii) (for interest, dividends, and royalties), a person described in §1.6045-2(b)(2)(i) (for broker proceeds), and a person described in §1.6041-3(q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income).

**.21 Financial institution (FI).** “Financial institution” or “FI” means an entity described in §1.1471-5(e)(1) and includes a financial institution as defined in an applicable Model 1 or Model 2 IGA.

**.22 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.

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

**.24 Foreign financial institution (FFI).** “Foreign financial institution” or “FFI” means an entity described in §1.1471-5(d).

**.25 Foreign reportable amount.** “Foreign reportable amount” means a payment of FDAP income as defined in §1.1473-1(a)(2)(i)(A) that would be a withholdable payment if paid by a U.S. person.

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

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

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

**.29 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.

**.30 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 <http://www.irs.gov/fatca>.

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



**.32 Individual account.** “Individual account” means an account held by one or more individuals.

**.33 Intergovernmental Agreement (IGA).** “Intergovernmental Agreement” or “IGA” means any applicable Model 1 or Model 2 IGA.

**(A) Model 1 IGA.** “Model 1 IGA” means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to implement FATCA through reporting by financial institutions to such foreign government or agency thereof, followed by automatic exchange of the reported information with the IRS.

**(B) Model 2 IGA.** “Model 2 IGA” means an agreement or arrangement between the United States or the Treasury Department and a foreign government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by financial institutions directly to the IRS in accordance with the terms of this agreement, supplemented by the exchange of information between such foreign government or agency thereof and the IRS.

**.34 Lead FI.** “Lead FI” means an FFI or U.S. financial institution that is designated by 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.

**.35 Limited branch.** “Limited branch” means a branch of a participating FFI described in §1.1471-4(e)(2)(iii) and section 7.04 of this agreement. With respect to a reporting Model 2 FFI, a limited branch is another branch of the reporting Model 2 FFI that operates in a jurisdiction that prevents such branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI, or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited branches under §1.1471-4(e)(2)(v), and for which the reporting Model 2 FFI meets the terms of the applicable Model 2 IGA with respect to the branch.

**.36 Limited FFI.** “Limited FFI” means an FFI described in §1.1471-4(e)(3)(ii). With respect to a reporting Model 2 FFI, a limited FFI is a related entity that operates in a jurisdiction that prevents the entity from fulfilling the requirements of a participating FFI or deemed-compliant FFI or that cannot fulfill the requirements of a participating FFI or deemed-compliant FFI due to the expiration of the transitional rule for limited FFIs under §1.1471-4(e)(3)(iv), and for which the reporting Model 2 FFI meets the requirements of the applicable Model 2 IGA with respect to the entity.

**.37 New account.** “New account” means an account other than a preexisting account.

**.38 Non-consenting U.S. account.** For purposes of a reporting Model 2 FFI, a “non-consenting U.S. account” has the meaning that such term has under an applicable Model 2 IGA.

**.39 Non-exempt recipient.** “Non-exempt recipient” means a person that is not an exempt recipient.

**.40 Non-financial foreign entity (NFFE).** “Non-financial foreign entity” or “NFFE” means a foreign entity that is not a financial institution (including a territory NFFE as defined in §1.1471-1(b)(123)). The term also means a foreign entity treated as an NFFE under an applicable Model 1 or 2 IGA.

**.41 Nonparticipating FFI.** “Nonparticipating FFI” means an FFI other than a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner.

**.42 Nonqualified intermediary (NQI).** “Nonqualified intermediary” or an “NQI” means an entity described in §1.1441-1(c)(14).

**.43 Non-U.S. account.** “Non-U.S. account” means an account that is not a U.S. account and that does not have an account holder that is a nonparticipating FFI or recalcitrant account holder.

**.44 Non-U.S. payor.** “Non-U.S. payor” means a payor other than a U.S. payor.

**.45 Nonwithholding foreign partnership (NWP).** “Nonwithholding foreign partnership” or “NWP” means a foreign partnership other than a withholding foreign partnership.

**.46 Nonwithholding foreign trust (NWT).** “Nonwithholding foreign trust” or “NWT” means a foreign trust other than a withholding foreign trust.

**.47 Obligation.** “Obligation” means an account, instrument, contract, debt, or equity interest.

**.48 Offshore obligation.** “Offshore obligation” means an obligation described in §1.1471-1(b)(82).

**.49 Owner-documented FFI.** “Owner-documented FFI” means an FFI described in §1.1471-5(f)(3).

**.50 Participating FFI.** “Participating FFI” means an FFI, or branch of an FFI, that has registered with the IRS to comply with the terms of, and to enter into, this agreement with the IRS, and to obtain a GIIN. See also the definition of reporting Model 2 FFI.

**.51 Passive NFFE.** “Passive NFFE” means an NFFE other than an excepted NFFE (or, in the case of a reporting Model 2 FFI, an active NFFE), a qualified intermediary, a withholding foreign partnership, a withholding foreign trust, or an exempt beneficial owner.

**.52 Payee.** “Payee” means a person described in §1.1471-3(a).

**.53 Preexisting account.** “Preexisting account” means any account maintained by the participating FFI that is outstanding on or before the effective date of the FFI agreement and includes an account described in §1.1471-1(b)(98)(ii).

**.54 Recalcitrant account holder.** “Recalcitrant account holder” means an account holder described in §1.1471-5(g).

**.55 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 a nonreporting FFI treated as a registered deemed-compliant FFI under a Model 2 IGA.

**.56 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.

**.57 Reporting Model 2 FFI.** “Reporting Model 2 FFI” means an FFI or branch of an FFI 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, and to obtain a GIIN.

**.58 Reportable payment.** “Reportable payment” means a payment of interest or dividends (as defined in section 3406(b)(2)) and other reportable payments (as defined in section 3406(b)(3)).

**.59 Responsible officer.** “Responsible officer” means a person described in §1.1471-1(b)(108).

**.60 Specified insurance company.** “Specified insurance company” means an insurance company described in §1.1471-5(e)(1)(iv).

**.61 Sponsoring entity.** “Sponsoring entity” means an entity that has registered with the IRS and agrees to perform the obligations of one or more sponsored entities pursuant to §1.1471-5(f) or §1.1472-1 and includes a sponsoring entity described in an applicable Model 1 or 2 IGA.

**.62 Territory FI.** “Territory FI” means a financial institution that is incorporated or organized under the laws of any U.S. territory, excluding a territory entity that is an investment entity but is not a depository institution, custodial institution, or specified insurance company.

**.63 U.S. account.** “U.S. account” means an account described in §1.1471-5(a).

**.64 U.S. branch treated as a U.S. person.** “U.S. branch treated as a U.S. person” means a U.S. branch of a participating FFI, reporting Model 1 or 2 FFI, or registered deemed-compliant FFI that is treated as a U.S. person under §1.1441-1(b)(2)(iv)(A).

**.65 U.S. source FDAP income.** “U.S. source FDAP income” means income described in §1.1473-1(a)(2).

**.66 U.S. payor.** “U.S. payor” means a U.S. payor or U.S. middleman as defined in §1.6049-5(c)(5).

**.67 Withholding agent.** “Withholding agent” means a person described in §1.1473-1(d).

**.68 Withholdable payment.** “Withholdable payment” means a payment described in §1.1473-1(a).

### **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 (other than a U.S. branch treated as a U.S. person). 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, or (iii) accounts held by nonparticipating FFIs. If the participating FFI makes a withholdable payment to a payee other than an account holder, the participating FFI must also perform due diligence procedures to determine if withholding is required under section 4 of this agreement.

**(A) Reporting Model 2 FFIs.** A reporting Model 2 FFI must apply 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 Model 2 IGA jurisdiction permits the reporting Model 2 FFI 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).

A reporting Model 2 FFI that applies the due diligence procedures of section 3.02 of this agreement must continue to apply these procedures consistently in all subsequent years unless there has been a material modification to section 3.02 of this agreement or §1.1471-4(c). 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 that is not an account holder and that is receiving a withholdable payment.

**(B) U.S. Branch of a Participating FFI treated as a U.S. Person.** A U.S. branch of a participating FFI that is treated as a U.S. person is required to apply the due diligence requirements described in §1.1471-3 to determine the chapter 4 status of account holders and entity payees and must apply the due diligence requirements of chapter 3 or chapter 61 (as applicable) with respect to individual account holders. See section 4.02(C) of this agreement for special withholding rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

## **.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). 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 must apply the presumption rules of section 3.04 of this agreement. See §1.1471-4(d)(2) for other account holders to which a participating FFI's due diligence requirements apply.

**(B) Identification and Documentation of Certain Payees other than Account Holders.** For determining when withholding is required under section 4 of this agreement, the participating FFI is 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 with respect to an obligation that is not an account. 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. See, however, §1.1471-3(e)(4)(vi) for when the participating FFI may rely on the chapter 4 status determination of a payee provided by a participating FFI or registered deemed-compliant FFI that is acting as an intermediary or that is a flow-through entity. 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 is identified with respect to an account. For the definition of a change in circumstances, see §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 circumstance has the meaning that such term has under Annex I of the applicable Model 2 IGA.

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

**(1) In General.** To the extent the participating FFI obtains withholding certificates, substitute certification forms, written statements, or documentary evidence, 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 other than an account holder. A participating FFI may rely on documentation that meets the requirements of §1.1471-3(c) until the expiration date of such documentation or until there is a change in circumstances (as defined in §1.1471-4(c)(2)(iii)) 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 the expiration date of the documentation or 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 must meet the requirements described in the applicable Model 2 IGA, and the reporting Model 2 FFI may rely on such documentation until the expiration date of such documentation or until there is a change in circumstances (as defined in Annex I of the applicable Model 2 IGA) 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 set forth 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 a record of the documentation that meets the requirements of this section 3 within the applicable time period as referenced 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 referenced 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 30 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. Additionally, a participating FFI may choose to escrow amounts withheld (in lieu of depositing such amounts as tax withheld) with respect to an account holder or payee after the date of a change in circumstances until the earlier of the date that is 90 days after the date the first withholdable payment is made to the account following the change in circumstances or the end of the calendar year in which such withholdable payment is made.

**(A) Payee or Account Held by an Entity.** With respect to a withholdable payment made to a payee other than an account holder, a participating FFI must apply the presumption rules of §1.1471-3(f) (as applicable to entities). The presumption rules of §1.1471-3(f) (as applicable to entities) 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, the 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 chapter 4 reporting pools described in §1.1471-4(d)(6)(i).

**(C) Presumption Rules 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, such FFI must apply the procedures of the Annex I of the applicable Model 2 IGA to treat the account as held by a nonparticipating FFI or non-consenting U.S. account. A reporting Model 2 FFI that applies the due diligence procedures described in section 3.02 of this agreement with respect to an account must treat an account that would otherwise be treated as held by a recalcitrant account holder as a non-consenting U.S. account to the extent required under the applicable Model 2 IGA. With respect to a withholdable payment made to a payee other than an account holder, a reporting Model 2 FFI must apply the presumption rules of §1.1471-3(f) (as applicable to entities).

## **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 with respect to an obligation that is not an account. There is no requirement to withhold on foreign passthru payments for payments made before January 1, 2017 and therefore this requirement 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 4.02.

**(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 a nonparticipating FFI that is an account holder or a payee other than an account holder.

**(C) Special Withholding Requirements of U.S. Branch of a Participating FFI treated as a U.S. Person.** A U.S. branch of a participating FFI that is treated as a U.S. person and that satisfies its backup withholding obligations under section 3406(a) with respect to accounts it maintains that are held by U.S. non-exempt recipients (or presumed U.S. non-exempt recipients) will be treated as satisfying its withholding requirements under this section 4 and §1.1471-4(b) with respect to such account holders. For all other payees of a withholdable payment, a U.S. branch of a participating FFI must withhold to the extent required under sections 1471(a) and 1472. See section 3.01(B) of this agreement for special due diligence rules and section 6 of this agreement for special reporting rules applicable to such U.S. branches.

**(D) Election to Withhold under Section 3406 on Recalcitrant Account Holders that are Known U.S. Persons.** With respect to recalcitrant account holders that are known U.S. persons and that receive withholdable payments, to the extent that the payment also constitutes a reportable payment, a participating FFI (including its U.S. branch that is not treated as a U.S. person) 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. 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 also withholdable payments. See section 4.04(D) of this agreement for the coordination of backup withholding for a participating FFI that does not make the election described in this section 4.01(D) and that withholds under section 1471(b) with respect to a withholdable payment that is also a reportable payment that is made to a recalcitrant account holder that is a known U.S. person.

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

**(A) Withholding Determination in General.** A participating FFI is required to determine whether withholding applies at the time a withholdable payment is made by such participating FFI by applying the requirements of §1.1471-4(b) for determining the payee of the payment and reliably associating the payment with valid documentation for the payee. The exceptions to withholding described in §1.1471-2, including the exception 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 on payments made to an account holder of a preexisting account until the expiration of the applicable time period referenced in the due diligence procedures of section 3.02(A) of

this agreement for identifying (or presuming) the account as held by a nonparticipating FFI or recalcitrant account holder.

**(B) Withholding Requirements for a Participating FFI that is an NQI, NWP, or NWT.** A participating FFI that is an NQI, NWP, or NWT is generally not required to withhold with respect to a withholdable payment of U.S. source FDAP income that it receives as an intermediary, provided that it provides its withholding agent with 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 in accordance with §1.1471-4(b)(3). If a participating FFI elects to withhold under section 3406 with respect to recalcitrant account holders that are known U.S. persons as described in section 4.01(D) of this agreement, the participating FFI must provide its withholding agent with sufficient information for such withholding agent to establish the portion of the payment allocable to such account holders and to apply backup withholding. See §1.1471-3(c)(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 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.

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 Limited Branches and Limited FFIs.** A participating FFI is required to withhold on a withholdable payment it makes to, or receives on behalf of, a limited branch or limited FFI to the extent required under §1.1471-4(b)(5). A participating FFI will have reason to know that an FFI is a limited branch if it makes a withholdable payment to an address in a jurisdiction other than the jurisdiction of the branch designated by the participating FFI as the branch that will receive payment. For example, if a participating FFI has designated Branch A, located in Jurisdiction A, as the branch that will be receiving a withholdable payment,

and USFI, the withholding agent, makes a payment to Branch A at an address in Jurisdiction B, then USFI will have reason to know that the payment is made to an FFI that is a limited branch. See §1.1471-3(e)(3)(i).

**.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 backup withhold as a payor for purposes of 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 payees that are nonparticipating FFIs.

**(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 §1.1474-4(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 known U.S. persons that are recalcitrant account holders as described in section 4.01(D) 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 provided in §1.1474-1(b)(1). See §1.1471-2(a)(5)(ii) for an optional escrow procedure if 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 §31.3406(g)-1(e), or withholding under §1.1441-2(a), 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. 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 specified chapter 4 reporting pools (as described in §1.1471-4(d)(6)(i)) of its recalcitrant account holders and, in the case of a reporting Model 2 FFI, its non-consenting U.S. accounts. 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 6.06(A) of this agreement to file Form 1042 to report chapter 4 reportable amounts and any tax withheld on such payments. A participating FFI must file information 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 section 6.06(B) of this agreement for the income tax return filing requirements of a U.S. branch of a participating FFI that makes withholdable payments. 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 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 substantial U.S. owner of an entity treated as a passive NFFE with respect to which the territory FI acts as an intermediary to the extent that the territory FI provides the participating FFI with sufficient information to report such account. With respect to each entity treated as a passive NFFE, the participating FFI must report on Form 8966 the information described in §1.1474-1(i)(2)(i) and the accompanying instructions to the form.

**(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 1 or 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 (other than its U.S. Branch treated as a U.S. Person).** A participating FFI (other than its U.S. branch treated as a U.S. person) may report its U.S. accounts on Form 8966 in the manner described in §1.1471-4(d)(3). 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 4.02(C) 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)(4)(i)(B).

**(1) Modified Chapter 61 Reporting.** A participating FFI (including a U.S. branch that is not treated as a U.S. person) 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 by reporting 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, 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 a recipient exempt from reporting under sections 6041, 6042, 6045, or 6049. 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 following the calendar year for which it last reports an account under this section 6.02(B)(1).

**(2) Transitional Reporting Rules.** For calendar years 2014 and 2015, a participating FFI that reports under §1.1471-4(d)(3) is only required to report the account information specified in §1.1471-4(d)(7)(ii) for its U.S. accounts. For calendar years 2014 and 2015, a participating FFI that reports under §1.1471-4(d)(5) is only required to report the account information specified in §1.1471-4(d)(7)(iii) with respect to its U.S. accounts.

**(3) 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.

**(C) Special Reporting Rules for U.S. Branches treated as U.S. Persons.** In the case of a U.S. branch of a participating FFI that is treated as a U.S. person, such branch must report under chapter 61 with respect to account holders that are U.S. non-exempt recipients (or presumed U.S. non-exempt recipients), including any account holders subject to backup withholding under section 3406, and under §1.1474-1(i) with respect to entities treated as passive NFFEs with substantial U.S. owners and owner-documented FFIs with specified U.S. persons identified in §1.1471-3(d)(6)(iv)(A)(1) and (2).

### **.03 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 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 as 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 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 paid to the nonparticipating FFI's account by the participating FFI during the calendar year instead of reporting only foreign reportable amounts. The participating FFI must file Form 8966 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.

#### **.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 U.S. persons that hold a U.S. account which is reported by the participating FFI under section 6.02 of this agreement. 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. A U.S. branch of a participating FFI is required to file separate Forms 1042-S using the EIN assigned to such U.S. branch to report chapter 4 reportable amounts that it paid to its account holders and payees.

**(1) Allowance for Specific Payee or Pooled Reporting.** A participating FFI may report chapter 4 reportable amounts made to a specific recipient in a chapter 4 reporting pool to the extent permitted or required under section 6.05(A)(1)(i) of this agreement. A chapter 4 reporting pool is a chapter 4 withholding rate pool with respect to the account holders and payees described in section 6.05(A)(1)(i) of this agreement of a payment that is within a particular income code (as provided in the instructions to Form 1042-S) and for which a separate Form 1042-S is required to be filed. 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 with respect to chapter 4 reportable amounts paid 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 must report payees of U.S. accounts that it reports under section 6.02 of this agreement in a chapter 4 reporting pool. 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) Pooled Reporting for Reporting Model 2 FFI.** In addition to the reporting requirements described in section 6.05(A)(1)(i) of this agreement, for a reporting Model 2 FFI, the chapter 4 reporting pool of payees that are U.S. persons also consists of account holders of non-consenting U.S. accounts that are not subject to chapter 4 withholding under the applicable Model 2 IGA but only to the extent such account holders do not receive payments subject to withholding under chapter 3 and are not known U.S. persons subject to backup withholding under section 3406. A reporting Model 2 FFI must report these non-consenting U.S. accounts in accordance with the chapter 4 reporting pools shown on Form 1042-S instructions.

**(iii) Specific Recipient Reporting.** As an alternative to chapter 4 pooled reporting of chapter 4 reportable amounts paid to 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 when withholding was applied to the payment. 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 that are Known U.S. Persons.** A participating FFI that elects to satisfy its obligation to withhold on withholdable payments with respect to recalcitrant account holders that are known U.S. persons by backup withholding under section 3406 with respect to such payments as described in section 4.01(D) of this agreement must report on the applicable Form 1099 reportable amounts made during the year to such known U.S. persons. 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. A U.S. branch of a participating FFI that has not agreed to be treated as a U.S. person and makes the election described in section 4.01(D) of this agreement is required to file separate Forms 1099 using the EIN assigned to such U.S. branch.

**(3) U.S. Branch of a Participating FFI.** A U.S. branch of a participating FFI (regardless of whether it is treated as a U.S. person) must report separately on Form 1042-S or 1099 with respect to amounts paid or received by the U.S. branch during the year on behalf of its account holders. A U.S. branch of a participating FFI that is not treated as a U.S. person is only required to report on Form 1042-S or Form 1099, however, to the extent described in section 6.05(B) of this agreement. See section 6.06(B) of this agreement for the requirement for a U.S. branch to file a separate Form 1042 or Form 945.

**(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 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 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 a chapter 4 reportable amount 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 Limited Branches and Limited FFIs.** 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 receives on behalf of a limited branch or limited FFI. See section 4.02(C) of this agreement for the withholding requirements of a participating FFI with respect to payments made to a limited branch or limited 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 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.**

**(A) In General.** 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 that are known U.S. persons as described in section 4.01(D) 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(B) 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.

**(B) U.S. Branch of a Participating FFI.** A U.S. branch of a participating FFI that is required to report on Form 1042-S chapter 4 reportable amounts must file a separate Form 1042 to report the chapter 4 reportable amounts that it paid to account holders and payees. Form 1042 should include the information described in section 6.06(A) of this agreement. A U.S. branch of a participating FFI that is treated as a U.S. person may also be required to file an income tax return on Form 945 if such branch backup withheld under section 3406(a) with respect to reportable amounts paid to accounts held by U.S. non-exempt recipients (as defined under chapter 61). See section 4.02(C) of this agreement for the withholding requirements of a U.S. branch of a participating FFI that is treated as a U.S. person.

**.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 payee that is a non-exempt recipient (or presumed U.S. non-exempt recipient) if such participating FFI reports such an account holder pursuant to this section 6. Notwithstanding the preceding sentence, a participating FFI is required to report on Form 1099 to the extent the participating FFI applies backup withholding 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 domestic law 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 domestic law 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 obligation held by such persons.

#### **.04 Limited Branches.**

**(A) In General.** If a participating FFI maintains one or more limited branches, the participating FFI must meet the requirements described in §1.1471-4(e)(2)(iii). Such requirements include withholding on payments made or received on behalf of a limited branch as described in section 4.03(C) of this agreement and reporting such payments as described in section 6.05(E) of this agreement. After the expiration of the transitional rule for limited branches under §1.1471-4(e)(2)(v), a participating FFI with one or more limited branches will cease to be a participating FFI. If a limited branch maintained by a participating FFI is no longer prohibited from complying with the requirements of this agreement or otherwise being treated as a deemed-compliant FFI, the participating FFI must notify the IRS on the FATCA registration website by the beginning of the third calendar quarter following the date that the branch ceases to be a limited branch.

**(B) Limited Branch of a Reporting Model 2 FFI.** If a reporting Model 2 FFI maintains one or more limited branches, the reporting Model 2 FFI must comply with the requirements described in the applicable Model 2 IGA with respect to each limited 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 limited branch. A reporting Model 2 FFI with one or more limited branches will continue to be a reporting Model 2 FFI after the expiration of the transitional rule for limited branches under §1.1471-4(e)(2)(v), 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 60 days following the date that is two years after the effective date 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 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 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, 1099) filed with the IRS 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 on the account statements described in section 6.07 of this agreement as described in §1.1471-4(f)(4)(i).

**(B) Inquiries of Reporting Model 2 FFIs.** In the case of a reporting Model 2 FFI, subject to the terms set forth in an applicable competent authority arrangement under the applicable Model 2 IGA, the U.S. Competent Authority 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 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 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, 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. 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 or 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 or other documentation as described 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 for purposes of chapter 4 with respect to withholdable payments it receives from a withholding agent to whom the participating FFI provided such documentation. If, however, the branch receiving the withholdable payment is a limited branch, the participating FFI must identify itself 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. See §1.1471-4(e)(2)(iv)(E) for rules applicable to a limited branch of a participating FFI.

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 (or acceptable substitute form under §1.1471-3(c)(6)(v)) that certifies that the participating FFI is a flow-through entity or is acting as an intermediary (as applicable) 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 receiving the payment and its GIIN if the branch receiving the payment operates in a jurisdiction other than the participating FFI's jurisdiction of residence, and includes all of the other information required by §1.1471-3(c)(3)(iii), section 4.03(B) of this agreement, the form, and its accompanying instructions. Alternatively, with respect to an offshore obligation, the participating FFI (or the branch



of the participating FFI receiving the payment) may provide the branch's GIIN and the documentation described in §1.1471-3(d)(4)(iii). 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 3 with respect to payments of U.S. source FDAP income may apply 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)(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.** A participating FFI must allocate a withholdable payment of U.S. source FDAP income to each payee of the payment on its withholding statement. A participating FFI may include, however, 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 classes of recalcitrant account holders, nonparticipating FFIs, and 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 withholding rate 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 recalcitrant account holders that are known U.S. persons as described in section 4.01(D) 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 chapter 4 withholding rate pool of recalcitrant account holders that are known U.S. persons. A chapter 4 withholding rate pool of U.S. payees should include only those holders of U.S. accounts that the

participating FFI reports under chapter 4. 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.

If any portion of a withholdable payment is attributable to payees not subject to withholding or reporting under chapter 4, but the payment is subject to withholding or reporting under chapters 3 or 61, see §§1.1441-1(e)(3)(iv), 1.1441-5(c)(3)(iv), and 1.6049-5(d) for the applicable requirements (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 recipient, the withholding statement must include the information necessary for the withholding agent to report the payment on Form 1042-S or Form 1099.

If a participating FFI has an account holder that is a participating FFI (including a reporting Model 2 FFI), registered deemed-compliant FFI (including a reporting Model 1 FFI), territory FI, or QI (including a QI branch of a U.S. financial institution) that is acting as an intermediary or is a flow-through entity and that has provided the information described in §1.1471-3(c)(2) necessary for the withholding agent to report on 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) Allocation of Payment on Withholding Statement for Reporting Model 2 FFIs.** In addition to the information described in section 9.02(B) of this agreement, a withholding statement provided by a reporting Model 2 FFI must include in its chapter 4 withholding rate pool of U.S. payees any account holder of a non-consenting U.S. account that is not subject to chapter 4 withholding under an applicable Model 2 IGA (described in section 4.02(B)(2) of this agreement), but only to the extent that the payment is not subject to withholding under chapter 3 or backup withholding under section 3406.

**(D) Procedure for Specific Recipient Reporting.** For payments that a participating FFI receives as an intermediary and that are subject to withholding under chapter 4 or backup withholding under section 3406 (described in section 4.01(D) of this agreement), that participating FFI may provide specific recipient information instead of pooled chapter 4 withholding rate 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 for filing Form 1042 and Form 1042-S (without regard to extensions), 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 4.03 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 for filing Form 1042-S (without regard to extensions), 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 U.S. branch of a participating FFI treated as a U.S. person erroneously withholds (as defined in §31.6413(a)-3) an amount under section 3406 from an account holder or payee, such branch 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 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 of Form 1042 (without regard to extensions) 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.** Each FFI that is a member of an FFI group, other than an exempt beneficial owner, must obtain its chapter 4 status as a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for any member of such FFI group obtaining chapter 4 status as a participating FFI, registered deemed-

compliant FFI, or limited FFI. In addition, the participating FFI and each FFI that is a member of the participating FFI's FFI group must comply with the requirements of a participating FFI, registered deemed-compliant FFI, or limited FFI as a condition for the participating FFI maintaining its chapter 4 status as a participating FFI. If the participating FFI is a member of an FFI group, the participating FFI will cease to be a participating FFI after the expiration of the transitional rule for limited FFIs and limited branches under §1.1471-4(e)(3)(iv), unless each limited FFI in the group becomes a participating or registered deemed-compliant FFI and no member of the FFI group (including the participating FFI) maintains a limited branch. 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 limited branch or is a member of an expanded affiliated group that includes a limited FFI or FFI member with a limited branch will not cease to be a reporting Model 2 FFI solely due to the expiration of the transitional rule for limited branches or limited FFIs under §1.1471-4(e)(2) or (3), respectively, provided that the reporting Model 2 FFI continues to comply with the requirements of the applicable Model 2 IGA with respect to such limited branches and limited FFIs.

**(C) Limited FFIs.** A participating FFI that is a member of an FFI group that includes one or more limited FFIs must treat such FFIs as nonparticipating FFIs for withholding and reporting purposes. See sections 4.03(C), 6.04, and 6.05(E) of this agreement for the participating FFI's requirements with respect to limited FFIs under this agreement.

## **.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.

**(B) Responsibilities of the Lead FI.** A participating FFI that is designated as the lead FI by one or more FFIs that are members of an FFI group agrees meet to 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 FFI group information 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;

(4) Inform the IRS within 90 days of an acquisition or sale of a member of the FFI group by updating the FFI group information on the FATCA registration website to add or 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, including when any member of the FFI group 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 the member FFI's chapter 4 status on the FATCA registration website; and

(6) Inform the IRS within the time period prescribed under §1.1471-4(e)(3)(iv) that a member of the FFI group ceases to be a limited FFI and designate on the FATCA registration website the status for which such FFI 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, 2016, 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 such modification 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. In no event will the IRS modify this agreement for any year before 2017 to expand the class of payments for which withholding or reporting is required under this agreement or to include additional requirements for a participating FFI.

**.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.

**.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 or policy, or applicable foreign law or policy, 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 FFIs and 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 and limited branches under §1.1471-4(e)(3)(iv); and

**(E)** A significant change in a participating FFI's business practices 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 13.05 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. If the FFI's status as a participating FFI is terminated, the FFI must send notice of the termination within 30 days after the date of termination to all withholding agents and FFIs to which it has provided a withholding certificate pursuant to section 9.01 of this agreement. Shortly after receipt of the notice of termination, the IRS will remove the FFI from the IRS FFI List (defined in §1.1471-1(b)(87)).

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

**(1)** If a participating FFI seeks to terminate its status as either 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 in later published guidance. A lead FFI's notice of termination of its lead FI status will require members of the FFI group to designate a new lead FI on the FATCA registration website in accordance with its instructions or in later published 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 will act as the compliance FI for such periods and that has full access to the information that relates to 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 in later published 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.

## **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 VI. DRAFTING INFORMATION**

The principal author of this notice is Tara. N. Ferris of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact John J. Sweeney on (202) 622-3840 (not a toll free call).