

## **Agreement Between the United States of America and the Kingdom of Spain to Improve International Tax Compliance and to Implement FATCA**

Whereas, the United States of America and the Kingdom of Spain (each, a “Party”) have a longstanding and close relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve international tax compliance by further building on that relationship,

Whereas, Article 27 of the Convention between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its Protocol, done at Madrid on February 22, 1990, (“the Convention”) authorizes exchange of information for tax purposes, including on an automatic basis,

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts,

Whereas, the Kingdom of Spain is supportive of the underlying policy goal of FATCA to improve tax compliance,

Whereas, FATCA has raised a number of issues, including that Spanish financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments,

Whereas, the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by residents of Spain and is committed to exchanging such information with the Kingdom of Spain and pursuing equivalent levels of exchange,

Whereas, the Parties are committed to working together over the longer term towards achieving common reporting and due diligence standards for financial institutions,

Whereas, the United States of America acknowledges the need to coordinate the reporting obligations under FATCA with other U.S. tax reporting obligations of Spanish financial institutions to avoid duplicative reporting,

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for Spanish financial institutions,

Whereas, the Parties desire to conclude an agreement to improve international

tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the Convention and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the Convention.

Now, therefore, the Parties have agreed as follows:

## **Article 1** **Definitions**

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:
  - a) The term **“United States”** means the United States of America, including the States thereof, and, when used in a geographical sense, means the territory of the United States of America, including inland waters, the air space, the territorial sea thereof and any maritime area beyond the territorial sea within which the United States may exercise sovereign rights or jurisdiction in accordance with international law; the term, however, does not include the U.S. Territories. Any reference to a **“State”** of the United States includes the District of Columbia.
  - b) The term **“U.S. Territory”** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.
  - c) The term **“IRS”** means the U.S. Internal Revenue Service.
  - d) The term **“Spain”** means the Kingdom of Spain and, when used in a geographical sense, means the territory of the Kingdom of Spain, including inland waters, the air space, the territorial sea and any maritime area outside the territorial sea upon which, in accordance with international law and on application of its domestic legislation, the Kingdom of Spain exercises or may exercise in the future jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources.
  - e) The term **“Partner Jurisdiction”** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
  - f) The term **“Competent Authority”** means:

- (1) in the case of the United States, the Secretary of the Treasury or his delegate; and
  - (2) in the case of Spain, the Minister of Finance and Public Administrations or his authorized representative.
- g) The term “**Financial Institution**” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
  - h) The term “**Custodial Institution**” means any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.
  - i) The term “**Depository Institution**” means any entity that accepts deposits in the ordinary course of a banking or similar business.
  - j) The term “**Investment Entity**” means any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
    - (1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
    - (2) individual and collective portfolio management; or
    - (3) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

- k) The term “**Specified Insurance Company**” means any entity that is an insurance company (or the holding company of an insurance

company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

- l) The term “**Spanish Financial Institution**” means (i) any Financial Institution resident in Spain, but excluding any branches of such Financial Institution that are located outside Spain, and (ii) any branch of a Financial Institution not resident in Spain, if such branch is located in Spain.
- m) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution resident in a Partner Jurisdiction, but excluding any branches of such Financial Institution that are located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not resident in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- n) The term “**Reporting Financial Institution**” means a Reporting Spanish Financial Institution or a Reporting U.S. Financial Institution, as the context requires.
- o) The term “**Reporting Spanish Financial Institution**” means any Spanish Financial Institution that is not a Non-Reporting Spanish Financial Institution.
- p) The term “**Reporting U.S. Financial Institution**” means (i) any Financial Institution that is resident in the United States, but excluding any branches of such Financial Institution that are located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.
- q) The term “**Non-Reporting Spanish Financial Institution**” means any Spanish Financial Institution, or other entity resident in Spain that is identified in Annex II as a Non-Reporting Spanish Financial Institution or that otherwise qualifies as a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI under relevant U.S. Treasury Regulations.
- r) The term “**Nonparticipating Financial Institution**” means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a Spanish Financial Institution or other Partner Jurisdiction Financial Institution other

than a Financial Institution identified as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 5.

- s) The term “**Financial Account**” means an account maintained by a Financial Institution, and includes:
- (1) in the case of an entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;
  - (2) in the case of a Financial Institution not described in subparagraph 1(s)(1) above, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and
  - (3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II.

Notwithstanding the foregoing, the term “Financial Account” does not include any account, product, or arrangement identified as excluded from the definition of Financial Account in Annex II.

- t) The term “**Depository Account**” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.
- u) The term “**Custodial Account**” means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another

person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).

- v) The term **“Equity Interest”** means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person shall be treated as being a beneficiary of a foreign trust if such Specified U.S. Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.
- w) The term **“Insurance Contract”** means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- x) The term **“Annuity Contract”** means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.
- y) The term **“Cash Value Insurance Contract”** means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50,000.
- z) The term **“Cash Value”** means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the

foregoing, the term “Cash Value” does not include an amount payable under an Insurance Contract as:

- (1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - (2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
  - (3) a policyholder dividend based upon the underwriting experience of the contract or group involved.
- aa) The term “**Preexisting Account**” means a Financial Account maintained by a Reporting Financial Institution as of December 31, 2013.
- bb) The term “**Reportable Account**” means a U.S. Reportable Account or a Spanish Reportable Account, as the context requires.
- cc) The term “**Spanish Reportable Account**” means a Financial Account maintained by a Reporting U.S. Financial Institution if:  
(i) in the case of a Depository Account, the account is held by an individual resident in Spain and more than \$10 of interest is paid to such account in any given calendar year; or (ii) in the case of a Financial Account other than a Depository Account, the Account Holder is a resident of Spain, including entities that certify that they are resident in Spain for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 or chapter 61 of subtitle A of the U.S. Internal Revenue Code is paid or credited.
- dd) The term “**U.S. Reportable Account**” means a Financial Account maintained by a Reporting Spanish Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.

- ee) The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of this Agreement, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holders are any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.
- ff) The term “**U.S. Person**” means a U.S. citizen or resident individual, a partnership or corporation organized in the United States or under the laws of the United States or any State thereof, a trust if (i) a court within the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1(ff) shall be interpreted in accordance with the U.S. Internal Revenue Code.
- gg) The term “**Specified U.S. Person**” means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i); (iii) the United States or any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501(a) or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code; (vi) any bank as defined in section



581 of the U.S. Internal Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the Securities Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; or (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code.

- hh) The term **“Entity”** means a legal person or a legal arrangement such as a trust.
- ii) The term **“Non-U.S. Entity”** means an Entity that is not a U.S. Person.
- jj) The term **“U.S. Source Withholdable Payment”** means any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.
- kk) An Entity is a **“Related Entity”** of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 percent of the vote or value in an Entity. Notwithstanding the foregoing, Spain may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471(e)(2) of the U.S. Internal Revenue Code.
- ll) The term **“U.S. TIN”** means a U.S. federal taxpayer identifying number.

- mm) The term **“Spanish TIN”** means a Spanish taxpayer identifying number.
- nn) The term **“Controlling Persons”** means the natural persons who exercise control over an entity. In the case of a trust, such term means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term **“Controlling Persons”** shall be interpreted in a manner consistent with the Recommendations of the Financial Action Task Force.

2. Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying the Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## **Article 2**

### **Obligations to Obtain and Exchange Information with Respect to Reportable Accounts**

- 1. Subject to the provisions of Article 3, each Party shall obtain the information specified in paragraph 2 of this Article with respect to all Reportable Accounts and shall annually exchange this information with the other Party on an automatic basis pursuant to the provisions of Article 27 of the Convention.
- 2. The information to be obtained and exchanged is:
  - a) In the case of Spain with respect to each U.S. Reportable Account of each Reporting Spanish Financial Institution:
    - (1) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;
    - (2) the account number (or functional equivalent in the absence

- of an account number);
- (3) the name and identifying number of the Reporting Spanish Financial Institution;
  - (4) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
  - (5) in the case of any Custodial Account:
    - (A) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
    - (B) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Spanish Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
  - (6) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
  - (7) in the case of any account not described in subparagraph (5) or (6) of this paragraph, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Spanish Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- b) In the case of the United States, with respect to each Spanish Reportable Account of each Reporting U.S. Financial Institution:

- (1) the name, address, and Spanish TIN of any person that is a resident of Spain and is an Account Holder of the account;
- (2) the account number (or the functional equivalent in the absence of an account number);
- (3) the name and identifying number of the Reporting U.S. Financial Institution;
- (4) the gross amount of interest paid on a Depository Account;
- (5) the gross amount of U.S. source dividends paid or credited to the account; and
- (6) the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 or 61 of subtitle A of the U.S. Internal Revenue Code.

### **Article 3**

#### **Time and Manner of Exchange of Information**

1. For purposes of the exchange obligation in Article 2, the amount and characterization of payments made with respect to a U.S. Reportable Account may be determined in accordance with the principles of Spain's tax laws, and the amount and characterization of payments made with respect to a Spanish Reportable Account may be determined in accordance with principles of U.S. federal income tax law.
2. For purposes of the exchange obligation in Article 2, the information exchanged shall identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Article 2, information is to be obtained and exchanged with respect to 2013 and all subsequent years, except that:
  - a) In the case of Spain:
    - (1) the information to be obtained and exchanged with respect to 2013 and 2014 is only the information described in subparagraphs (a)(1) to (a)(4);
    - (2) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs (a)(1) to

(a)(7), except for gross proceeds described in subparagraph (a)(5)(B); and

(3) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraph (a)(1) to (a)(7);

b) In the case of the United States, the information to be obtained and exchanged with respect to 2013 and subsequent years is all of the information identified in subparagraph (b).

4. Notwithstanding paragraph 3 of this Article, with respect to each Reportable Account that is a Preexisting Account, and subject to paragraph 4 of Article 6, the Parties are not required to obtain and include in the exchanged information the Spanish TIN or the U.S. TIN, as applicable, of any relevant person if such taxpayer identifying number is not in the records of the Reporting Financial Institution. In such case, the Parties shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Financial Institution has such date of birth in its records.

5. Subject to paragraphs 3 and 4 of this Article, the information described in Article 2 shall be exchanged within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing, the information that relates to calendar year 2013 shall be exchanged no later than September 30, 2015.

6. The Competent Authorities of Spain and the United States shall enter into an agreement under the mutual agreement procedure provided for in Article 26 of the Convention, which shall:

- a) establish the procedures for the automatic exchange obligations described in Article 2;
- b) prescribe rules and procedures as may be necessary to implement Article 5; and
- c) establish as necessary procedures for the exchange of the information reported under subparagraph 1(b) of Article 4.

7. All information exchanged shall be subject to the confidentiality and other protections provided for in the Convention, including the provisions limiting the use of the information exchanged.

**Article 4**  
**Application of FATCA to Spanish Financial Institutions**

1. **Treatment of Reporting Spanish Financial Institutions.** Each Reporting Spanish Financial Institution shall be treated as complying with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if Spain complies with its obligations under Articles 2 and 3 with respect to such Reporting Spanish Financial Institution, and the Reporting Spanish Financial Institution:

- a) identifies U.S. Reportable Accounts and reports annually to the Spanish Competent Authority the information required to be reported in subparagraph 2(a) of Article 2 in the time and manner described in Article 3;
- b) for each of 2015 and 2016, reports annually to the Spanish Competent Authority the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;
- c) complies with the registration requirements applicable to Financial Institutions in Partner Jurisdictions;
- d) to the extent that a Reporting Spanish Financial Institution is (i) acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code, (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or (iii) a foreign trust that has elected to act as a withholding foreign trust (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), withholds 30 percent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution; and
- e) in the case of a Reporting Spanish Financial Institution that is not described in subparagraph (d) of this paragraph and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting Spanish Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

Notwithstanding the foregoing, a Reporting Spanish Financial Institution with respect to which the conditions of this paragraph are not satisfied shall not be subject to withholding under section 1471 of the U.S. Internal Revenue Code unless such Reporting Spanish Financial Institution is identified by the IRS as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5.

2. **Suspension of Rules Relating to Recalcitrant Accounts.** The United States shall not require a Reporting Spanish Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if the U.S. Competent Authority receives the information set forth in subparagraph 2(a) of Article 2, subject to the provisions of Article 3, with respect to such account.

3. **Specific Treatment of Retirement Plans.** The United States shall treat as a deemed-compliant FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code Spanish retirement plans described and identified in Annex II. For this purpose, a Spanish retirement plan includes an entity established or located in and regulated in Spain, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of Spain and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

4. **Identification and Treatment of Other Deemed-Compliant FFIs and Exempt Beneficial Owners.** The United States shall treat each Non-Reporting Spanish Financial Institution as a deemed-compliant FFI or as an exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

5. **Special Rules Regarding Related Entities That Are Nonparticipating Financial Institutions.** If a Spanish Financial Institution, that otherwise meets the requirements of paragraph 1 of this Article or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevents such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code, such Spanish Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed-compliant FFI or exempt beneficial owner for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) the Spanish Financial Institution treats each such Related Entity or

branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;

- b) each such Related Entity or branch identifies its U.S. accounts and reports the information with respect to those accounts as required under section 1471 of the U.S. Internal Revenue Code to the extent permitted under the relevant laws pertaining to the Related Entity or branch; and
- c) such Related Entity or branch does not specifically solicit U.S. accounts held by persons that are not resident in the jurisdiction where such Related Entity or branch is located or accounts held by Nonparticipating Financial Institutions that are not established in the jurisdiction where such branch or Related Entity is located, and such branch or Related Entity is not used by the Spanish Financial Institution or any other Related Entity to circumvent the obligations under this Agreement or under section 1471 of the U.S. Internal Revenue Code, as appropriate.

## **Article 5**

### **Collaboration on Compliance and Enforcement**

1. **Minor and Administrative Errors.** Subject to any further terms set forth in a competent authority agreement executed pursuant to paragraph 6 of Article 3, a Competent Authority can make an inquiry directly to a Reporting Financial Institution in the other jurisdiction where it has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The competent authority agreement may provide that a Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority makes such an inquiry of a Reporting Financial Institution in the other jurisdiction regarding the Reporting Financial Institution's compliance with the conditions set forth in this Agreement.

2. **Significant Non-compliance.**

- a) A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Financial Institution in the other jurisdiction. The Competent



Authority of such other Party shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice.

- b) If, in the case of a Reporting Spanish Financial Institution, such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the United States shall treat the Reporting Spanish Financial Institution as a Nonparticipating Financial Institution. The IRS shall make available a list of all Reporting Spanish Financial Institutions and other Partner Jurisdiction Financial Institutions that are treated as Nonparticipating Financial Institutions pursuant to this paragraph.

3. **Reliance on Third Party Service Providers.** Each Party may allow Reporting Financial Institutions to use third party service providers to fulfill the obligations imposed on them by a Party, as contemplated in this Agreement, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

4. **Prevention of Avoidance.** The Parties shall implement as necessary requirements to prevent Financial Institutions from adopting practices intended to circumvent the reporting required under this Agreement.

## **Article 6**

### **Mutual Commitment to Continue to Enhance the Effectiveness of Information Exchange and Transparency**

1. **Reciprocity.** The United States acknowledges the need to achieve equivalent levels of reciprocal automatic information exchange with Spain. The United States is committed to further improve transparency and enhance the exchange relationship with Spain by pursuing the adoption of regulations and advocating and supporting relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.

2. **Treatment of Passthru Payments and Gross Proceeds.** The Parties are committed to work together, along with other partners, to develop a practical and effective alternative approach to achieve the policy objectives of foreign passthru payment and gross proceeds withholding that minimizes burden.

3. **Development of Common Reporting and Exchange Model.** The Parties are committed to working with other partners, the Organisation for Economic Co-operation and Development, and the European Union, on

adapting the terms of this Agreement to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions.

4. **Documentation of Accounts Maintained as of January 1, 2014.** With respect to Reportable Accounts that are Preexisting Accounts maintained by a Reporting Financial Institution:

- a) The United States commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting U.S. Financial Institutions to obtain and report the Spanish TIN of each Account Holder of a Spanish Reportable Account as required pursuant to subparagraph 2(b)(1) of Article 2; and
- b) Spain commits to establish, by January 1, 2017, for reporting with respect to 2017 and subsequent years, rules requiring Reporting Spanish Financial Institutions to obtain the U.S. TIN of each Specified U.S. Person as required pursuant to subparagraph 2(a)(1) of Article 2.

#### **Article 7**

#### **Consistency in the Application of FATCA to Partner Jurisdictions**

1. Spain shall be granted the benefit of any more favorable terms under Article 4 or Annex I of this Agreement relating to the application of FATCA to Spanish Financial Institutions afforded to another Partner Jurisdiction under a signed bilateral agreement pursuant to which the other Partner Jurisdiction commits to undertake the same obligations as Spain described in Articles 2 and 3 of this Agreement, and subject to the same terms and conditions as described therein and in Articles 5 through 9 of the Agreement.

2. The United States shall notify Spain of any such more favorable terms and shall apply such more favorable terms automatically under this Agreement as if they were specified in this Agreement and effective as of the date of the entry into force of the agreement incorporating the more favorable terms.

**Article 8**  
**Consultations and Amendments**

1. In case any difficulties in the implementation of this Agreement arise, either Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.
2. This Agreement may be amended by written mutual consent of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 10.

**Article 9**  
**Annexes**

The Annexes form an integral part of this Agreement.

**Article 10**  
**Term of Agreement**

1. The Parties shall notify each other in writing when their necessary internal procedures for entry into force have been completed. The Agreement shall enter into force on the date of the later of such written notifications, and shall continue in force until terminated.
2. Either Party may terminate the Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.
3. The Parties shall, prior to December 31, 2016, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6.

In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at \_\_\_\_\_, in duplicate, in the English and Spanish languages, both texts being equally authentic, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

FOR THE UNITED STATES OF  
AMERICA:

FOR THE KINGDOM OF SPAIN:

## ANNEX I

### **DUE DILIGENCE OBLIGATIONS FOR IDENTIFYING AND REPORTING ON U.S. REPORTABLE ACCOUNTS AND ON PAYMENTS TO CERTAIN NONPARTICIPATING FINANCIAL INSTITUTIONS**

#### **I. General**

A. Spain shall require that Reporting Spanish Financial Institutions apply the due diligence procedures contained in this Annex I to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

B. For purposes of the Agreement,

1. All dollar amounts shall be read to include the equivalent in other currencies.

2. The balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.

3. Where a balance or value threshold is to be determined as of the last day of a calendar year under this Annex I, the relevant balance or value shall be determined as of the last day of the reporting period that ends with or within that calendar year.

4. Subject to paragraph II.E (1), an account shall be treated as a U.S. Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.

5. Unless otherwise provided, information with respect to a U.S. Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

C. As an alternative to the procedures described in each section of this Annex I, Spain may allow its Reporting Spanish Financial Institutions to rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.

#### **II. Preexisting Individual Accounts. The following rules and procedures**

apply for identifying U.S. Reportable Accounts among Preexisting Accounts held by individuals (“Preexisting Individual Accounts”).

- A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Spanish Financial Institution elects otherwise, where the implementing rules in Spain provide for such an election, the following accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:
1. Subject to subparagraph E (2) of this section, Preexisting Individual Accounts with a balance or value that does not exceed \$50,000 as of December 31, 2013.
  2. Subject to subparagraph E (2) of this section, Preexisting Individual Accounts that are Cash Value Insurance Contracts and Annuity Contracts with a balance or value of \$250,000 or less as of December 31, 2013.
  3. Preexisting Individual Accounts that are Cash Value Insurance Contracts or Annuity Contracts, provided the law or regulations of Spain or the United States effectively prevents the sale of Cash Value Insurance Contracts or Annuity Contracts to U.S. residents, such as if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Spain requires reporting or withholding with respect to insurance products held by residents of Spain.
  4. Any Depository Account with a balance or value of \$50,000 or less.
- B. **Review Procedures for Preexisting Individual Accounts With a Balance or Value as of December 31, 2013, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 (“Lower Value Accounts”)**
1. **Electronic Record Search.** The Reporting Spanish Financial Institution must review electronically searchable data maintained by the Reporting Spanish Financial Institution for any of the following U.S. indicia:
    - a) Identification of the Account Holder as a U.S. citizen or resident;

- b) Unambiguous indication of a U.S. place of birth;
- c) Current U.S. mailing or residence address (including a U.S. post office box or U.S. “in-care-of” address);
- d) Current U.S. telephone number;
- e) Standing instructions to transfer funds to an account maintained in the United States;
- f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or
- g) An “in-care-of” or “hold mail” address that is the *sole* address the Reporting Spanish Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an “in-care-of” address outside the United States shall not be treated as U.S. indicia.

2. If none of the U.S. indicia listed in subparagraph B (1) of this section are discovered in the electronic search, then no further action is required until there is a change in circumstances described in subparagraph C (2) of this section with respect to the account that results in one or more U.S. indicia being associated with the account.

3. If any of the U.S. indicia in subparagraph B (1) of this section are discovered in the electronic search, then the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B (4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

4. Notwithstanding a finding of U.S. indicia under subparagraph B (1) of this section, a Reporting Spanish Financial Institution is not required to treat an account as a U.S. Reportable Account if:

- a) Where Account Holder information unambiguously indicates a *U.S. place of birth*, the Reporting Spanish Financial Institution obtains or has previously reviewed and

maintains a record of:

(1) a self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);

(2) a non-U.S. passport or other government-issued identification evidencing the Account Holder's citizenship or nationality in a country other than the United States; *and*

(3) a copy of the Account Holder's Certificate of Loss of Nationality of the United States or a reasonable explanation of:

(a) the reason the Account Holder does not have such a certificate despite renouncing U.S. citizenship; *or*

(b) the reason the Account Holder did not obtain U.S. citizenship at birth.

b) Where Account Holder information contains a *current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account*, the Reporting Spanish Financial Institution obtains or has previously reviewed and maintains a record of:

(1) a self-certification that the Account Holder is not a U.S. citizen or resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*

(2) a non-U.S. passport or other government-issued identification evidencing the Account Holder's citizenship or nationality in a country other than the United States.

c) Where Account Holder information contains *standing instructions to transfer funds to an account maintained in the United States*, the Reporting Spanish Financial



Institution obtains or has previously reviewed and maintains a record of:

(1) a self-certification that the Account Holder is not a U.S. citizen or resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *and*

(2) documentary evidence, as defined in paragraph VI.D of this Annex I, establishing the Account Holder's non-U.S. status.

d) Where Account Holder information contains *a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in care of" address or "hold mail" address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account)*, the Reporting Spanish Financial Institution obtains or has previously reviewed and maintains a record of:

(1) a self-certification that the Account Holder is not a U.S. citizen or resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *or*

(2) documentary evidence, as defined in paragraph VI.D of this Annex I, establishing the Account Holder's non-U.S. status.

C. **Additional Procedures Applicable to Preexisting Individual Accounts That Are Lower Value Accounts**

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed by December 31, 2015.

2. If there is a change of circumstances with respect to a Preexisting Individual Account that is a Lower Value Account that results in one or more U.S. indicia described in subparagraph B (1) of this section being associated with the account, then Reporting Spanish Financial Institution must treat the account as a U.S.

Reportable Account unless subparagraph B (4) of this section applies.

3. Except for Depository Accounts described in subparagraph A (4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

**D. Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of December 31, 2013, or December 31 of Any Subsequent Year (“High-Value Accounts”)**

1. **Electronic Record Search.** The Reporting Spanish Financial Institution must review electronically searchable data maintained by the Reporting Spanish Financial Institution for any of the U.S. indicia identified in subparagraph B (1) of this section.

2. **Paper Record Search.** If the Reporting Spanish Financial Institution’s electronically searchable databases include fields for and capture all of the information identified in subparagraph D (3) of this section, then no further paper record search is required. If the electronic databases do not capture all of this information, then with respect to High Value Accounts, the Reporting Spanish Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Spanish Financial Institution within the last five years for any of the U.S. indicia identified in subparagraph B (1) of this section:

- a) the most recent documentary evidence collected with respect to the account;
- b) the most recent account opening contract or documentation;
- c) the most recent documentation obtained by the Reporting Spanish Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

- d) any power of attorney or signature authority forms currently in effect; and
- e) any standing instructions to transfer funds currently in effect.

3. **Exception Where Databases Contain Sufficient Information.** A Reporting Spanish Financial Institution is not required to perform the paper record search described in subparagraph D (2) of this section if the Reporting Spanish Financial Institution's electronically searchable information includes the following:

- a) the Account Holder's nationality or residence status;
- b) the Account Holder's residence address and mailing address currently on file with the Reporting Spanish Financial Institution;
- c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Spanish Financial Institution;
- d) whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Spanish Financial Institution or another Financial Institution);
- e) whether there is a current "in care of" address or "hold mail" address for the Account Holder; *and*
- f) whether there is any power of attorney or signatory authority for the account.

4. **Relationship Manager Inquiry for Actual Knowledge.** In addition to the electronic and paper record searches described above, the Reporting Spanish Financial Institution must treat as U.S. Reportable Accounts any High Value Accounts assigned to a relationship manager (including any accounts aggregated with such account) if the relationship manager has actual knowledge that the Account Holder is a Specified U.S. Person.

5. **Effect of Finding U.S. Indicia**

a) If none of the U.S. indicia listed in subparagraph B (1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D (4) of this section, then no further action is required until there is a change in circumstances described in subparagraph E (4) of this section.

b) If any of the U.S. indicia listed in subparagraph B (1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B (4) of this section applies.

c) Except for Depository Accounts described in paragraph A (4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

**E. Additional Procedures Applicable to High Value Accounts**

1. If a Preexisting Individual Account is a High Value Account as of December 31, 2013, the Reporting Spanish Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account by December 31, 2014. If based on this review such account is identified as a U.S. Reportable Account, the Reporting Spanish Financial Institution must report the required information about such account with respect to 2013 and 2014 in the first report on the account. For all subsequent years, information about the account should be reported on an annual basis.

2. If a Preexisting Individual Account is not a High Value Account as of December 31, 2013, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Spanish Financial Institution must complete the enhanced review procedures described in paragraph D of this

section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Reportable Account, the Reporting Spanish Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account and subsequent years on an annual basis.

3. Once a Reporting Spanish Financial Institution applies the enhanced review procedures set forth above to a High Value Account, the Reporting Spanish Financial Institution shall not be required to re-apply such procedures, other than the relationship manager inquiry in subparagraph D (4) of this section, to the same High Value Account in any subsequent year.

4. If there is a change of circumstances with respect to a High Value Account that results in one or more U.S. indicia described in subparagraph B (1) of this section being associated with the account, then the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account unless subparagraph B (4) of this section applies.

5. A Reporting Spanish Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting Spanish Financial Institution shall be required to treat the new address as a change in circumstances and shall be required to obtain the appropriate documentation from the Account Holder.

III. **New Individual Accounts.** The following rules and procedures apply for identifying U.S. Reportable Accounts among accounts held by individuals and opened on or after January 1, 2014 (“New Individual Accounts”).

A. **Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Spanish Financial Institution elects otherwise where the implementing rules in Spain provide for such an election:

1. A New Individual Account that is a Depository Account is not required to be reviewed, identified, or reported as a U.S. Reportable Account unless the account balance exceeds \$50,000 at

the end of any calendar year or other appropriate reporting period.

2. A New Individual Account that is a Cash Value Insurance Contract is not required to be reviewed, identified, or reported as a U.S. Reportable Account unless the Cash Value exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

**B. Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this section, upon account opening, (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting Spanish Financial Institution must obtain a self-certification which may be part of the account opening documentation, that allows the Reporting Spanish Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another country) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Spanish Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

C. If the self-certification establishes that the Account Holder is resident in the United States for tax purposes, the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account and obtain a self-certification that includes the Account Holder's U.S. TIN (which may be an IRS Form W-9 or other similar agreed form).

D. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Spanish Financial Institution to know or have reason to know that the original self-certification is incorrect or unreliable, the Reporting Spanish Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes whether the Account Holder is a U.S. citizen or resident for U.S. tax purposes. If the Reporting Spanish Financial Institution is unable to obtain a valid self-certification, the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account.

**IV. Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by a Nonparticipating Financial Institutions among Preexisting Accounts held by entities ("Preexisting Entity Accounts").

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Spanish Financial Institution elects otherwise, where the implementing rules in Spain provide for such an election, Preexisting Entity Accounts with account balances that do not exceed \$250,000 as of December 31, 2013, are not required to be reviewed, identified, or reported as U.S. Reportable Accounts until the account balance exceeds \$1,000,000.

B. **Entity Accounts Subject to Review.** Preexisting Entity Accounts that have an account balance or value that exceeds \$250,000 as of December 31, 2013, and Preexisting Entity Accounts that initially do not exceed \$250,000 but the account balance of which later exceeds \$1,000,000 must be reviewed in accordance with the procedures set forth in paragraph D of this section.

C. **Entity Accounts With Respect to Which Reporting is Required.** With respect to Preexisting Entity Accounts described in paragraph B of this section, only accounts that are held by one or more entities that are Specified U.S. Persons, or by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents shall be treated as U.S. Reportable Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments as described in paragraph 1(b) of Article 4 of the Agreement are reported to the Spanish Competent Authority.

D. **Review Procedures for Identifying Entity Accounts With Respect to Which Reporting is Required.** For Preexisting Entity Accounts described in paragraph B of this section, the Reporting Spanish Financial Institution must apply the following review procedures to determine whether the account is held by one or more Specified U.S. Persons, by Passive NFFEs with one or more Controlling Persons who are U.S. citizens or residents, or by a Nonparticipating Financial Institution:

1. **Determine Whether the Entity is a Specified U.S. Person.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Entity Account Holder is a U.S. Person. For this purpose, information indicating that the entity is a U.S. Person includes a U.S.

place of incorporation or organization, or a U.S. address.

b) If the information indicates that the Entity Account Holder is a U.S. Person, the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account unless it obtains a self-certification from the Account Holder (which may be on an IRS Form W-8 or W-9, or a similar agreed form), or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Specified U.S. Person.

2. **Determine Whether a Non-U.S. Entity is a Financial Institution.**

a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Entity Account Holder is a Financial Institution.

b) If the information indicates that the Entity Account Holder is a Financial Institution, then the account is not a U.S. Reportable Account.

3. **Determine Whether a Financial Institution is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Under Paragraph 1(b) of Article 4 of the Agreement.**

a) Subject to subparagraph (b) of this paragraph, if the Account Holder is a Spanish Financial Institution or other Partner Jurisdiction Financial Institution, then no further review, identification, or reporting is required with respect to the account.

b) A Spanish Financial Institution or other Partner Jurisdiction Financial Institution shall be treated as a Nonparticipating Financial Institution if it is identified as such by the IRS pursuant to paragraph 2 of Article 5 of the Agreement.

c) If the Account Holder, is not a Spanish Financial Institution or other Partner Jurisdiction Financial Institution,



then the Reporting Spanish Financial Institution must treat the entity as a Nonparticipating Financial Institution payments to which are reportable under paragraph 1(b) of Article 4 of the Agreement, unless the Reporting Spanish Financial Institution:

- (1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the entity that it is a certified deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI, as those terms are defined in relevant U.S. Treasury Regulations; *or*
- (2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the entity's FATCA identifying number on a published IRS FFI list.

4. **Determine Whether an Account Held by an NFFE Is a U.S. Reportable Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Spanish Financial Institution must identify (i) whether the entity has Controlling Persons, (ii) whether the entity is a Passive NFFE, and (iii) whether any of the Controlling Persons of the entity is a citizen or resident of the United States. In making these determinations the Reporting Spanish Financial Institution should follow the guidance in subparagraphs (a) through (d) of this paragraph in the order most appropriate under the circumstances.

- a) For purposes of determining the Controlling Persons of an entity, a Reporting Spanish Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
- b) For purposes of determining whether the entity is a Passive NFFE, the Reporting Spanish Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the entity is an Active NFFE.
- c) For purposes of determining whether a Controlling

Person of a Passive NFFE is a citizen or resident of the United States for tax purposes, a Reporting Spanish Financial Institution may rely on:

(1) Information collected and maintained pursuant to AML/KYC Procedures in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance that does not exceed \$1,000,000; *or*

(2) A self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder or such Controlling Person in the case of a Preexisting Entity Account held by one or more NFFEs with an account balance that exceeds \$1,000,000.

d) If any Controlling Person of a Passive NFFE is a citizen or resident of the United States, the account shall be treated as a U.S. Reportable Account.

**E. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts**

1. Review of Preexisting Entity Accounts with an account balance or value that exceeds \$250,000 as of December 31, 2013, must be completed by December 31, 2015.

2. Review of Preexisting Entity Accounts with a balance or value that does not exceed \$250,000 as of December 31, 2013, but exceeds \$1,000,000 as of December 31 of a subsequent year, must be completed within six months after the end of the calendar year in which the account balance exceeds \$1,000,000.

3. If there is a change of circumstances with respect to a Preexisting Entity Account that causes the Reporting Spanish Financial Institution to know or have reason to know that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Spanish Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D of this section.

V. **New Entity Accounts.** The following rules and procedures apply to accounts held by entities and opened on or after January 1, 2014 (“New Entity

Accounts”).

A. The Reporting Spanish Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Spanish Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

B. A Reporting Spanish Financial Institution may determine that an Account Holder is an Active NFFE, a Spanish Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Spanish Financial Institution reasonably determines that the entity has such status on the basis of information that is publicly available or in the possession of the Reporting Spanish Financial Institution.

C. In all other cases, a Reporting Spanish Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder’s status.

1. If the Entity Account Holder is *a Specified U.S. Person*, the Reporting Spanish Financial Institution must treat the account as a U.S. Reportable Account.

2. If the Entity Account Holder is *a Passive NFFE*, the Reporting Spanish Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a citizen or resident of the United States on the basis of a self-certification from the Account Holder or such person. If any such person is a citizen or resident of the United States, the account shall be treated as a U.S. Reportable Account.

3. If the Entity Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph C (4) of this section, a Spanish Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, an exempt beneficial owner, or an excepted FFI, as those terms are defined in relevant U.S. Treasury Regulations; (iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Reportable Account and no reporting is required with respect to the account.

4. If the Entity Account Holder is a Nonparticipating Financial Institution (including a Spanish Financial Institution or other Partner Jurisdiction Financial Institution that is identified by the IRS as a Nonparticipating Financial Institution pursuant to paragraph 2 of Article 5 of the Agreement), then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in paragraph 1(b) of Article 4 of the Agreement.

VI. **Special Rules and Definitions.** The following additional rules and definitions apply in implementing the due diligence procedures described above:

A. **Reliance on Self-Certifications and Documentary Evidence.** A Reporting Spanish Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Spanish Financial Institution knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

B. **Definitions.** The following definitions apply for purposes of this Annex I.

1. **AML/KYC Procedures.** “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Spanish Financial Institution pursuant to the anti-money laundering or similar requirements of Spain to which such Reporting Spanish Financial Institution is subject.
2. **NFFE.** An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations, and also includes any Non-U.S. Entity that is resident in Spain or other Partner Jurisdiction and that is not a Financial Institution.
3. **Passive NFFE.** A “Passive NFFE” means any NFFE that is not (i) an Active NFFE or (ii) a withholding foreign partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.
4. **Active NFFE.** An “Active NFFE” means any NFFE that meets any of the following criteria:

- a) Less than 50 percent of the NFFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b) The stock of the NFFE is regularly traded on an established securities market or the NFFE is a Related Entity of an Entity the stock of which is traded on an established securities market;
- c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d) The NFFE is a non-U.S. government, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, and providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an NFFE shall not qualify for this status if the NFFE functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution; provided, that the NFFE shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the NFFE;
- g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is

reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

- h) The NFFE primarily engages in financing and hedging transactions with or for Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; *or*
- i) The NFFE meets all of the following requirements:
  - i. It is established and maintained in its country of residence exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes;
  - ii. It is exempt from income tax in its country of residence;
  - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv. The applicable laws of the Entity's country of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; *and*
  - v. The applicable laws of the Entity's country of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a governmental Entity or other non-profit organization, or escheat to the government of the Entity's country of residence or any political subdivision thereof.

C. **Account Balance Aggregation and Currency Translation Rules**

1. **Aggregation of Individual Accounts.** For purposes of determining the aggregate balance or value of accounts held by an individual, a Reporting Spanish Financial Institution shall be required to aggregate all accounts maintained by the Reporting Spanish Financial Institution, or Related Entities, but only to the extent that the Reporting Spanish Financial Institution's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances to be aggregated. Each holder of a jointly held account shall be attributed the entire balance or value of the jointly held account for purposes of applying the aggregation requirements described in this paragraph.

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of accounts held by an Entity, a Reporting Spanish Financial Institution shall be required to take into account all accounts held by Entities that are maintained by the Reporting Spanish Financial Institution, or Related Entities, to the extent that the Reporting Spanish Financial Institution's computerized systems link the accounts by reference to a data element such as client number or taxpayer identification number and allow account balances to be aggregated.

3. **Special Aggregation Rule Applicable to Relationship Managers.** For purposes of determining the aggregate balance or value of accounts held by a person to determine whether an account is a High Value Account, a Reporting Spanish Financial Institution shall also be required, in the case of any accounts that a relationship manager knows or has reason to know are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. **Currency Translation Rule.** For purposes of determining the balance or value of accounts denominated in a currency other than the U.S. dollar, a Reporting Spanish Financial Institution must convert the dollar threshold amounts described in this Annex I into such currency using a published spot rate determined as of the last day of the calendar year preceding the year in which the Reporting Spanish Financial Institution is determining the balance or value.

D. **Documentary Evidence.** For purposes of this Annex I, acceptable documentary evidence includes any of the following:

1. A certificate of residence issued by an appropriate tax official of the country in which the payee claims to be a resident.
2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the country (or U.S. Territory) in which it claims to be a resident or the country (or U.S. Territory) in which the Entity was incorporated or organized.
4. With respect to an account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents other than a Form W-8 or W-9 referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or entities.
5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.



## ANNEX II

### NON-REPORTING SPANISH FINANCIAL INSTITUTIONS AND PRODUCTS

This Annex II may be updated by a mutual agreement entered into between the Competent Authorities of Spain and the United States: (1) to include additional entities, accounts, and products that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the entities, accounts, and products identified in this Annex II as of the date of entry into force of the Agreement; or (2) to remove entities, accounts, and products that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade U.S. tax. Procedures for reaching such a mutual agreement may be included in the mutual agreement described in paragraph 6 of Article 3 of the Agreement.

I. **Exempt Beneficial Owners.** The following categories of institutions are Non-Reporting Spanish Financial Institutions that are treated as exempt beneficial owners for purposes of section 1471 of the U.S. Internal Revenue Code:

A. Governmental Entities

Instituto de Crédito Oficial

Consorcio de Compensación de Seguros

Comisión Nacional del Mercado de Valores

B. Central Bank

Banco de España

C. Retirement Funds

1. Any fund regulated under the Amended Text of the Law on pension funds and pension schemes (Texto refundido de la Ley sobre fondos y planes de pensiones), passed by Legislative Royal Decree 1/2002 of 29th November.

2. Any entity defined under Article 64 of the Amended Text of the Law on the regulation and monitoring of private insurances (Texto refundido de la Ley de ordenación y supervisión de los seguros

privados) passed by Legislative Royal Decree 6/2004 of 29th October, provided that in the case of mutual funds all participants are employees; promoters and sponsoring partners are the companies, institutions or individual entrepreneurs to which the employees are engaged; and benefits are exclusively derived from the social welfare agreement between both parties, as well as any other comparable entity to them regulated within the scope of the political subdivisions (Comunidades Autónomas).

## II. **Deemed-Compliant Financial Institutions.**

A. The following categories of institutions are Non-Reporting Spanish Financial Institutions that are treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code:

### 1. Small Financial Institutions with Local Client Base

A Spanish Financial Institution that meets all of the following requirements:

- a. The Financial Institution must be licensed and regulated under the laws of Spain;
- b. The Financial Institution must have no fixed place of business outside Spain;
- c. The Financial Institution must not solicit Account Holders outside Spain. For this purpose, a Financial Institution shall not be considered to have solicited Account Holders outside of Spain merely because it operates a website, provided that the website does not specifically indicate that the Financial Institution provides accounts or services to nonresidents or otherwise target or solicit U.S. customers;
- d. The Financial Institution must be required under the tax laws of Spain to perform either information reporting or withholding of tax with respect to accounts held by residents of Spain;

e. At least 98 percent of the accounts by value provided by the Financial Institution must be held by residents (including residents that are entities) of Spain or another Member State of the European Union;

f. Subject to subparagraph 1(g), below, beginning on January 1, 2014, the Financial Institution does not provide accounts to (i) any Specified U.S. Person who is not a resident of Spain (including a U.S. Person that was a resident of Spain when the account was opened but subsequently ceases to be a resident of Spain), (ii) a Nonparticipating Financial Institution, or (iii) any Passive NFFE with Controlling Persons who are U.S. citizens or residents;

g. On or before January 1, 2014, the Financial Institution must implement policies and procedures to monitor whether it provides any account held by a person described in subparagraph 1(f), and if such an account is discovered, the Financial Institution must report such account as though the Financial Institution were a Reporting Spanish Financial Institution or close such account;

h. With respect to each account that is held by an individual who is not a resident of Spain or by an entity, and that is opened prior to the date that the Financial Institution implements the policies and procedures described in subparagraph 1(g), above, the Financial Institution must review those accounts in accordance with the procedures described in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or account held by a Nonparticipating Financial Institution, and must close any such accounts that were identified, or report on such accounts as though the Financial Institution were a Reporting Spanish Financial Institution;

i. Each Related Entity of the Financial Institution must be incorporated or organized in Spain and must meet the requirements set forth in this paragraph; and

j. The Financial Institution must not have policies or practices that discriminate against opening or maintaining

accounts for individuals who are Specified U.S. Persons and who are residents of Spain.

**B. Certain Collective Investment Vehicles**

In the case of an Investment Entity that is a collective investment vehicle regulated under the laws of Spain:

a) if all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more Financial Institutions that are not Nonparticipating Financial Institutions, such collective investment vehicle will be treated as a deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code, and the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) will be deemed fulfilled with respect to interests in the collective investment vehicle; or

b) if the collective investment vehicle is not described in paragraph (a), consistent with paragraph 3 of Article 5 of the Agreement, if the information required to be reported by the collective investment vehicle under the Agreement with respect to interests in the collective investment vehicle is reported by the collective investment vehicle or another Investment Entity, the reporting obligations of all other Investment Entities required to report with respect to the interests in the collective investment vehicle will be deemed fulfilled with respect to such interests.

**III. Exempt Products.** The following categories of accounts and products established in Spain and maintained by a Spanish Financial Institution shall not be treated as Financial Accounts, and therefore shall not be U.S. Reportable Accounts or accounts held by a Nonparticipating Financial Institution, under the Agreement:

**A. Certain Retirement Accounts or Products**

1. Annuity contracts which substantiate commitments on pensions under First Additional Provision of the Amended Text of the Law on pension funds and pension schemes (Legislative Royal Decree 1/2002 of 29th November), provided that the benefit amount is established pursuant to a collective bargaining agreement between

employers and the representatives of a trade union or set out by Law.

2. Accounts held by pension plans described in section I.C.

3. Accounts held by mutualidades de previsión social

4. Planes de previsión asegurados

5. Planes de previsión social empresarial

6. Seguros de dependencia

**B. Certain Other Tax-Favored Accounts or Products**

1. Plan individual de ahorro sistemático