

This document was reformatted for 8 ½ by 11 paper but is otherwise unchanged

## **Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of FATCA**

Whereas, the United States of America (“United States”) and Switzerland (each, a “Party”) seek to build on their existing relationship with respect to mutual assistance in tax matters and desire to conclude an agreement to improve their cooperation in combating international tax evasion;

Whereas, Article 26 of the Convention between the United States and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996 (the “Convention”), which provides for the exchange of information as is necessary for carrying out the provisions of the Convention or for the prevention of tax fraud or the like in relation to the taxes which are the subject of the Convention;

Whereas the Protocol Amending the Convention was signed at Washington on September 23, 2009 (the “Protocol”) and includes a provision for the exchange of information for tax purposes;

Whereas, the United States 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, in the expectation of contributing to a solid basis for an enhanced cooperation in tax matters with the United States, Switzerland is supportive of the implementation of FATCA;

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

Whereas, intergovernmental cooperation to facilitate FATCA implementation would address these issues and reduce burdens for Swiss financial institutions;

Whereas, the Parties desire to conclude an agreement to provide for cooperation to facilitate the implementation of FATCA based on direct reporting by Swiss financial institutions to the U.S. Internal Revenue Service, supplemented by the exchange of information upon request pursuant to the Convention, as amended by the Protocol;

Now, therefore, the Parties agree as follows:

### **Part A – Objectives and Definitions**

#### **Article 1 Objectives**

The objectives of this Agreement are to:

- a) implement FATCA with respect to all Swiss financial institutions,
- b) ensure that all required information about identified U.S. Accounts will be reported to the IRS,
- c) remove legal impediments to compliance,
- d) increase legal certainty by clarifying which Swiss financial institutions are subject to FATCA implementation,
- e) reduce implementation costs including by suspending, under certain circumstances, certain withholding and account closing obligations, and
- f) simplify the necessary due diligence procedures.

## **Article 2 Definitions**

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:

- (1) The term **“United States”** means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a **“State”** of the United States includes the District of Columbia.
- (2) 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.
- (3) The term **“IRS”** means the U.S. Internal Revenue Service.
- (4) The term **“Switzerland”** means the Swiss Confederation.
- (5) 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.
- (6) The term **“Competent Authority”** means:
  - a) in the case of the United States, the Secretary of the Treasury or his delegate; and
  - b) in the case of Switzerland, the Federal Department of Finance or an authority designated by it.
- (7) The term **“Financial Institution”** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

- (8) The term “**Foreign Reportable Amount**” means, in accordance with relevant Treasury Regulations, a payment of fixed or determinable annual or periodical income that would be a withholdable payment if it were from sources within the United States.
- (9) 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 the 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.
- (10) The term “**Depository Institution**” means any entity that accepts deposits in the ordinary course of a banking or similar business.
- (11) 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:
- a) 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;
  - b) individual and collective portfolio management; or
  - c) otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(11) 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.

- (12) 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 Annuity Contract.
- (13) The term “**Swiss Financial Institution**” means (i) any Financial Institution organized under the laws of Switzerland, but excluding any branch or head office of such Financial Institution that is located outside Switzerland, and (ii) any branch or head office of a Financial Institution not organized under the laws of Switzerland, if such branch or head office is located in Switzerland.
- (14) The term “**Partner Jurisdiction Financial Institution**” means (i) any Financial Institution organized under the laws of a Partner Jurisdiction, but excluding any branch or head office of such Financial Institution that is located outside the

Partner Jurisdiction, and (ii) any branch or head office of a Financial Institution not organized under the laws of the Partner Jurisdiction, if such branch or head office is located in the Partner Jurisdiction.

- (15) The term “**Reporting Swiss Financial Institution**” means any Swiss Financial Institution that is not a Non-Reporting Swiss Financial Institution.
- (16) The term “**Non-Reporting Swiss Financial Institution**” means any Swiss Financial Institution, or other entity resident in Switzerland, that is identified in Annex II as a Non-Reporting Swiss 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.
- (17) 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 Swiss 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 11.
- (18) The term “**Preexisting Account**” means a Financial Account maintained by a Reporting Swiss Financial Institution as of December 31, 2013.
- (19) The term “**New Account**” means a Financial Account opened by a Reporting Swiss Financial Institution on or after January 1, 2014.
- (20) The term “**U.S. Account**” means a Financial Account maintained by a Reporting Swiss 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. Account if such account is not identified as a U.S. Account after application of the due diligence procedures in Annex I.
- (21) The term “**Non-Consenting U.S. Account**” means a Preexisting Account with respect to which (i) a Reporting Swiss Financial Institution has determined that it is a U.S. Account in accordance with the due diligence procedures in Annex I, (ii) the laws of Switzerland prohibit the reporting required under an FFI Agreement absent consent of the Account Holder, (iii) the Reporting Swiss Financial Institution has sought, but was unable to obtain, the required consent to report or the Account Holder’s U.S. TIN; and (iv) the Reporting Swiss Financial Institution has reported, or was required to report, aggregate account information to the IRS as prescribed under sections 1471 to 1474 of the U.S. Internal Revenue Code and the relevant U.S. Treasury Regulations.
- (22) The term “**Financial Account**” has the meaning set forth in relevant U.S. Treasury Regulations but does not include any account, product or arrangement identified as excluded from the definition of Financial Account in Annex II.
- (23) The term “**FFI Agreement**” means an agreement that sets forth the requirements, consistent with this Agreement, for the Reporting Swiss Financial Institution to be

treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code.

- (24) 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. For purposes of the immediately preceding sentence, the term “Financial Institution” does not include a Financial Institution organized or incorporated in a U.S. Territory. 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.
- (25) The terms “**Cash Value Insurance Contract**” and “**Annuity Contract**” have the meaning set forth in relevant U.S. Treasury Regulations.
- (26) 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 shall be interpreted in accordance with the U.S. Internal Revenue Code.
- (27) 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) of the U.S. Internal Revenue Code 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 and 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 of the United States; or (xii) a broker as defined in section 6045(c) of the U.S. Internal Revenue Code.

- (28) The term “**Entity**” means a legal person or a legal arrangement such as a trust.
- (29) The term “**Non-U.S. Entity**” means an Entity that is not a U.S. Person.
- (30) 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, Switzerland 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.
- (31) The term “**U.S. TIN**” means a U.S. federal taxpayer identifying number.
- (32) 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 Financial Action Task Force Recommendations.

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.

## **Part B – Obligations of Switzerland**

### **Article 3**

#### **Directive to Swiss Financial Institutions**

1. Switzerland shall direct all Reporting Swiss Financial Institutions to:

- a) register with the IRS by January 1, 2014, and agree to comply with the requirements of an FFI Agreement, including with respect to due diligence, reporting, and withholding;
  - b) with respect to Preexisting Accounts identified as U.S. Accounts,
    - (i) request from each Account Holder the Account Holder's U.S. TIN and a consent, covering irrevocably the current calendar year and automatically renewed for each successive calendar year unless revoked before the end of January of such year, to report and simultaneously inform the Account Holder through a letter of the Swiss Federal Tax Administration (FTA) that, if the U.S. TIN and such consent are not given, (1) aggregate information about the account shall be reported to the IRS, (2) information about the account may give rise to a group request by the IRS for specific information about the account, (3) in such case, the account information shall be transmitted to the FTA, and (4) the FTA may exchange this information with the IRS in accordance with Article 5 of this Agreement;
    - (ii) report annually to the IRS, in the time and manner required by an FFI Agreement and relevant U.S. Treasury Regulations, the aggregate information required with respect to Non-Consenting U.S. Accounts; and
    - (iii) notwithstanding subparagraph (ii), report to the IRS the aggregate number and aggregate value of all Non-Consenting U.S. Accounts no later than January 31 of the year following the year to which the information relates;
- and
- c) with respect to New Accounts identified as U.S. Accounts, obtain from each Account Holder a consent to report consistent with the requirements of an FFI Agreement as a condition of account opening.

2. For purposes of reporting with respect to calendar years 2015 and 2016, Switzerland shall also direct all Reporting Swiss Financial Institutions to:

- a) with respect to accounts of, or obligations to, Nonparticipating Financial Institutions that exist as of December 31, 2013, and in connection with which the Reporting Swiss Financial Institution expects to pay a Foreign Reportable Amount,
  - (i) request from each such Nonparticipating Financial Institution a consent, covering irrevocably the current calendar year and automatically renewed for each successive calendar year unless revoked before the end of January of such year, to report and simultaneously inform the Nonparticipating Financial Institution through a letter of the FTA that, if such consent is not given, (1) aggregate information about Foreign Reportable Amounts paid to the Nonparticipating Financial Institution shall be reported to the IRS, (2) such information may give rise to a group request by the IRS for specific information about the account or obligation, (3) in such case, the information about the account or obligation shall be transmitted to the FTA, and (4) the FTA may exchange this information with the IRS in accordance with Article 5 of this Agreement;

- (ii) report to the IRS the number of non-consenting Nonparticipating Financial Institutions to which Foreign Reportable Amounts were paid during the year and the aggregate value of all such payments no later than January 31 of the year following the year to which the information relates; and
- b) with respect to new accounts opened by, or obligations entered into with, a Nonparticipating Financial Institution on or after January 1, 2014, and in connection with which the Reporting Swiss Financial Institution expects to pay a Foreign Reportable Amount, obtain from each such Nonparticipating Financial Institution a consent to report consistent with the requirements of an FFI Agreement as a condition of opening the account or entering into the obligation.

#### **Article 4 Enabling Clause**

Swiss Financial Institutions that, pursuant to applicable U.S. Treasury Regulations, enter into an FFI Agreement with the IRS or register with the IRS as deemed-compliant FFIs, are authorized and therefore not liable to any penalty according to Article 271 of the Swiss Criminal Code.

#### **Article 5 Exchange of Information**

1. In the context of FATCA implementation, the U.S. Competent Authority may make group requests to the Swiss Competent Authority, based on the aggregate information reported to the IRS pursuant to the directives described in subparagraphs 1(b)(iii) and 2(a)(ii) of Article 3 of this Agreement, for all the information about Non-Consenting U.S. Accounts and Foreign Reportable Amounts paid to non-consenting Nonparticipating Financial Institutions that the Reporting Swiss Financial Institution would have had to report under an FFI Agreement had it obtained the consent. Such requests shall be made pursuant to Article 26 of the Convention, as amended by the Protocol. Accordingly, such requests shall not be made prior to the entry into force of the Protocol and shall apply to information for the time period beginning on or after the entry into force of this Agreement.

2. The information requested pursuant to paragraph 1 shall be considered information that may be relevant for carrying out the administration or enforcement of the domestic laws of the United States concerning taxes covered by the Convention, as amended by the Protocol and under which taxation is not contrary to the Convention, as amended by the Protocol, without regard to whether the Reporting Swiss Financial Institution or another party has contributed to non-compliance of the taxpayers in the group.

3. When the Swiss Competent Authority receives such a group request with respect to Non-Consenting U.S. Accounts or Foreign Reportable Amounts paid to non-consenting Nonparticipating Financial Institutions:

- a) The FTA shall request the Financial Institution holding the information to identify the Account Holders or Nonparticipating Financial Institutions concerned and to provide to the FTA within 10 days the information described in paragraph 1 of this Article.

- b) The FTA shall issue a final decision and notify the persons concerned about the decision on an anonymous basis by a publication in the Federal Gazette and on its internet site. The final decision may be appealed within 30 days after the publication in the Federal Gazette. The appeal must be lodged with the Swiss Federal Administrative Court. A copy of such appeal must be lodged with the FTA. If the FTA considers the appeal to be unjustified, it shall, immediately and independently from delays set by the Court, submit its position to the Federal Administrative Court for decision. The Federal Administrative Court's decision is final. If the FTA considers the appeal to be justified, it shall reconsider its final decision and notify the Federal Administrative Court immediately and independently from delays set by the Court.
- c) The FTA shall, within 8 months of the receipt of a group request from the U.S. Competent Authority for the information described in paragraph 1 of this Article, exchange all such requested information with the U.S. Competent Authority in the same format in which the information would have been reported if it had been reported directly to the IRS by the Reporting Swiss Financial Institution. The Swiss Competent Authority shall notify the U.S. Competent Authority and the relevant Reporting Swiss Financial Institution if there will be any delay in the exchange of the requested information. In such case, the provisions of paragraph 2 of Article 7 shall apply with respect to the Reporting Swiss Financial Institution and the Swiss Competent Authority must exchange the requested information with the U.S. Competent Authority as soon as possible.
- d) Notwithstanding paragraph 3(c) of this Article 5, the Swiss Competent Authority is not required to obtain and exchange the U.S. TIN of the Account Holder of a Non-Consenting U.S. Account if such U.S. TIN is not in the records of the Reporting Swiss Financial Institution. In such a case, the Swiss Competent Authority shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Swiss Financial Institution has such date of birth in its records.

## **Part C – Obligations of the United States**

### **Article 6**

#### **Treatment of Swiss Financial Institutions**

Subject to the provisions of paragraph 2 of Article 11 of this Agreement, each Reporting Swiss Financial Institution that registers with the IRS and complies with the terms of an FFI Agreement shall be treated as complying with the requirements of, and as not subject to withholding under, section 1471 of the U.S. Internal Revenue Code.

### **Article 7**

#### **Suspension of Rules Relating to Non-Consenting U.S. Accounts**

1. Subject to paragraph 2 of this Article, the United States shall not require a Reporting Swiss 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 of the U.S. Internal Revenue Code), or to close such account, if:

- a) the Reporting Swiss Financial Institution complies with the directives in Article 3 with respect to the account; and
- b) the Swiss Competent Authority exchanges with the IRS the requested information described in paragraph 1 of Article 5 within 8 months from the date of the receipt of such request.

2. If the condition of subparagraph b) of paragraph 1 of this Article is not fulfilled, the Reporting Swiss Financial Institution shall be required to treat the account as held by a recalcitrant account holder as defined in relevant U.S. Treasury Regulations, including by withholding tax where required by those U.S. Treasury Regulations, beginning on the date that is 8 months after the date of the receipt of the request described in paragraph 1 of Article 5 and ending on the date on which the Swiss Competent Authority exchanges the requested information with the IRS. For purposes of Swiss law, the amount of tax withheld on payments to a Financial Account, including a Cash Value Insurance Contract and an Annuity Contract, shall be borne by the Account Holder.

### **Article 8**

#### **Treatment of Certain 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.

### **Article 9**

#### **Treatment of Swiss Retirement Plans and Identification of Other Deemed Compliant FFIs, Exempt Beneficial Owners and Excepted FFIs**

1. The United States will treat as exempt beneficial owners, deemed-compliant FFIs, or exempt products for purposes of Section 1471 of the U.S. Internal Revenue Code retirement plans established in and regulated by or located in Switzerland and identified in Annex II. For this purpose, a retirement plan includes an entity established or located in and regulated by Switzerland, 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 Switzerland and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

2. The United States shall treat each other Non-Reporting Swiss Financial Institution as a deemed-compliant FFI, as an exempt beneficial owner or as an excepted FFI, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code.

**Article 10**  
**Special Rules Regarding Related Entities and Branches**

If a Swiss Financial Institution that otherwise meets the requirements described in Article 6 or 9 of this Agreement 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 Swiss Financial Institution shall continue to be treated as a participating FFI, deemed-compliant FFI, or exempt beneficial owner, as appropriate for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- a) The Swiss Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution and each such branch or Related Entity identifies itself to withholding agents as a Nonparticipating Financial Institution;
- b) Each such Related Entity or branch identifies its U.S. accounts and reports to the IRS 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 branch or Related Entity 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 Swiss 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.

**Part D – General Provisions**

**Article 11**  
**Verification and Enforcement**

1. **Minor and administrative errors.** Consistent with the terms of an FFI Agreement, the U.S. Competent Authority can make a query directly to a Reporting Swiss Financial Institution where it has reason to believe that administrative errors or other errors may have led to incorrect or incomplete information reporting inconsistent with the requirements of an FFI Agreement.

2. **Significant non-compliance.** The U.S. Competent Authority shall notify the Swiss Competent Authority when the U.S. Competent Authority has determined that there is significant non-compliance with the requirements of an FFI Agreement or this Agreement with respect to a Reporting Swiss Financial Institution. If the non-compliance is not resolved within a period of 12 months after notification of significant non-compliance is first provided by the U.S. Competent Authority, the United States shall treat the Reporting Swiss Financial Institution as a Nonparticipating Financial Institution pursuant to this paragraph. The IRS shall make available a list of all Partner Jurisdiction Financial Institutions that are treated as Nonparticipating Financial Institutions
3. **Competent Authority Consultation.** The Competent Authorities of Switzerland and the United States may consult on notified cases of significant non-compliance pursuant to paragraph 2.
4. **Reliance on Third Party Service Providers.** In accordance with the provisions of an FFI Agreement and applicable U.S. Treasury Regulations, Reporting Swiss Financial Institutions may use third party service providers to fulfill the requirements of an FFI Agreement, but these requirements shall remain the responsibility of the Reporting Swiss Financial Institutions.

## **Article 12**

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

1. Switzerland shall be granted the benefit of any more favorable terms under Part C and Annex 1 of this Agreement relating to the application of FATCA to Swiss 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 Switzerland described in Part B of this Agreement and subject to the same terms and conditions as described therein and in Articles 11, 12, 14, and 15 of this Agreement.
2. The United States shall notify Switzerland 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, unless Switzerland declines the application thereof.

## **Article 13**

### **Reciprocal Information Exchange**

Consistent with its obligations under the Convention, as may be amended, the United States shall continue to cooperate with Switzerland to respond to requests pursuant to the Convention, as may be amended, to collect and exchange information on accounts held in U.S. financial institutions by residents of Switzerland. In addition, when and to the extent Switzerland seeks to collaborate with the United States to implement FATCA based on direct reporting by Swiss Financial

Institutions to the Swiss Government followed by the transmission of such information to the United States, the United States is willing to negotiate such an agreement on a reciprocal basis on the same terms and conditions as similar agreements concluded with other Partner Jurisdictions, subject to both Parties having determined that the standards of confidentiality and other prerequisites for such cooperation are fulfilled.

## **Part E – Final Provisions**

### **Article 14 Consultations and Amendments**

1. In case any difficulties in the implementation or interpretation 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 16 of this Agreement.

### **Article 15 Annexes**

The Annexes form an integral part of this Agreement.

### **Article 16 Term of Agreement**

1. Each Party shall notify the other Party in writing through diplomatic channels upon completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the later of such 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 twelve months after the date of the notice of termination.

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

Done at Bern, this 14<sup>th</sup> day of February, 2013 in duplicate in the English language. A German language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes between the Parties confirming its conformity with the English language text.

FOR THE UNITED STATES OF  
AMERICA:

FOR SWITZERLAND:

Donald S. Beyer, Jr.

Michael Ambühl

Annexes

Annex I Due Diligence

Annex II Non Reporting Swiss Financial Institutions / Exempt Products

## ANNEX I

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

#### I. **General**

A. Reporting Swiss Financial Institutions must identify U.S. Accounts and accounts held by Nonparticipating Financial Institutions in accordance with the procedures in this Annex I.

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.
3. Subject to paragraph II.E (1), an account shall be treated as a U.S. Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.
4. Unless otherwise provided, information with respect to a U.S. Account should 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, Reporting Swiss Financial Institutions may rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Account or an account held by a Nonparticipating Financial Institution, except that if an account is treated as held by a recalcitrant account holder under procedures described in relevant U.S. Treasury Regulations, such account shall be treated as a U.S. Account for purposes of this Agreement. Once a Reporting Swiss Financial Institution has chosen to rely on the procedures in relevant U.S. Treasury Regulations, such Reporting Swiss Financial Institution must continue to apply such procedures consistently in all subsequent years, unless there has been a material modification to the relevant U.S. Treasury Regulations.

II. **Preexisting Individual Accounts.** The following rules and procedures apply for identifying U.S. Accounts among Preexisting Accounts held by individuals (“Preexisting Individual Accounts”).

A. **Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Swiss Financial Institution elects otherwise, the following accounts are not required to be reviewed, identified, or reported as U.S. Accounts:

1. Subject to subparagraph E (2) of this section, Preexisting Individual Ac-

counts 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 Switzerland 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 Switzerland requires reporting or withholding with respect to insurance products held by residents of Switzerland.

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 Swiss Financial Institution must review electronically searchable data maintained by the Reporting Swiss 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 Swiss 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, the Reporting Swiss Financial Institution must treat the account as a U.S. 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 Swiss Financial Institution is not required to treat an account as a U.S. Account if:

a) Where Account Holder information unambiguously indicates a U.S. place of birth, the Reporting Swiss 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 Swiss 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 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 Swiss 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 Swiss 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 Swiss Financial Institution must treat the account as a U.S. 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. Account under this section shall be treated as a U.S. 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 Swiss Financial Institution must review electronically searchable data maintained by the Reporting Swiss Financial Institution for any of the U.S. indicia identified in subparagraph B (1) of this section.

2. **Paper Record Search.** If the Reporting Swiss 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 Swiss 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 Swiss 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 Swiss 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 Swiss Financial Institution is not required to perform the paper record search described in subparagraph D (2) of this section if the Reporting Swiss 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 Swiss Financial Institution;
- c) the Account Holder’s telephone number(s) currently on file, if any, with the Reporting Swiss 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 Swiss 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, Reporting Swiss Financial Institution must treat as U.S. 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 Reporting Swiss Financial Institution must treat the account as a U.S. 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. Account under this section shall be treated as a U.S. 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 Swiss 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. Account, the Reporting Swiss 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 Swiss 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. Account, the Reporting Swiss Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Account and subsequent years on an annual basis.

3. Once a Reporting Swiss Financial Institution applies the enhanced review procedures set forth above to a High Value Account, the Reporting Swiss 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 Swiss Financial Institution must treat the account as a U.S. Account unless subparagraph B (4) of this section applies.

5. A Reporting Swiss 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 Swiss 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. 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 Swiss Financial Institution elects otherwise:

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

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. Account unless the Cash Value exceeds \$50,000 at the end of any calendar year.

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 Swiss Financial Institution must obtain a self-certification which may be part of the account opening documentation, that allows the Reporting Swiss 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 Swiss 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 Swiss Financial Institution must treat the account as a U.S. 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 Swiss Financial Institution to know or have reason to know that the original self-certification is incorrect or unreliable, the Reporting Swiss 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 Swiss Financial Institution is unable to obtain a valid self-certification, the Reporting Swiss Financial Institution must treat the account as a Non-Consenting U.S. Account.

IV. **Preexisting Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. 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 Swiss Financial Institution elects otherwise, 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. 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. Accounts. In addition, accounts held by Nonparticipating Financial Institutions shall be treated as accounts for which aggregate payments are required to be reported under an FFI Agreement.

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 Swiss 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 Swiss Financial Institution must treat the account as a U.S. 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 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. Account.

3. **Determine Whether a Financial Institution Is a Nonparticipating Financial Institution Payments to Which Are Subject to Aggregate Reporting Consistent with the Requirements of an FFI Agreement.**

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

b) A Swiss Financial Institution or other Partner Jurisdiction Financial Institution shall be treated as a Nonparticipating Financial Institution if it is identified as such as described in paragraph 2 of Article 11 of the Agreement.

c) If the Account Holder is not a Swiss Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Swiss Financial Institution must treat the entity as a Nonparticipating Financial Institution payments to which are reportable consistent with the requirements of an FFI Agreement, unless the Reporting Swiss 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. 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 Swiss 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 Swiss Financial Institution should follow the guidance in sub-paragraphs (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 Swiss 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 Swiss 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 Swiss 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. 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 Swiss 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 Swiss Financial Institution must redetermine 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 Swiss Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Swiss 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 Swiss Financial Institution may determine that an Account Holder is an Active NFFE, a Swiss Financial Institution, or another Partner Jurisdiction Financial Institution if the Reporting Swiss 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 Swiss Financial Institution.

C. In all other cases, a Reporting Swiss 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 Swiss Financial Institution must treat the account as a U.S. Account.
2. If the entity Account Holder is *a Passive NFFE*, the Reporting Swiss 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. 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 Swiss Financial Institution or another 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. Account and no reporting is required with respect to the account.
4. If the entity Account Holder is a Nonparticipating Financial Institution (including a Swiss Financial Institution or other Partner Jurisdiction Financial Institution that is identified by the IRS as a Nonparticipating Financial Institution as described in paragraph 2 of Article 11 of the Agreement), then the account is not a U.S. Account, but payments to the Account Holder must be reported consistent with the requirements of an FFI 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 Swiss Financial Institution may not rely on a self-certification or documentary evidence if the Reporting Swiss 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 Swiss Financial Institution pursuant to the anti-money laundering or similar requirements of Switzerland to which such Reporting Swiss Financial Institution is subject.
2. **NFFE.** An “NFFE” means any Non-U.S. Entity that is not a FFI as defined in relevant U.S. Treasury Regulations, and also includes any Non-U.S. Entity that is organized under the laws of Switzerland or another Partner Jurisdiction and that is not a Financial Institution.
3. **Passive NFFE.** A “Passive NFFE” means any NFFE that is neither an

Active NFFE, nor 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 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;
- g) 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;
- h) 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; *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 Swiss Financial Institution shall be required to aggregate all accounts maintained by the Reporting Swiss Financial Institution, or Related Entities, but only to the extent that the Reporting Swiss 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 Swiss Financial Institution shall be required to take into account all accounts held by Entities that are maintained by the Reporting Swiss Financial Institution, or Related Entities, to the extent that the Reporting Swiss 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 per-

son to determine whether an account is a High Value Account, a Reporting Swiss 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 Swiss 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 Swiss 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 authorized government body (for example, a government or agency thereof, or a municipality) 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 SWISS FINANCIAL INSTITUTIONS AND EXEMPT PRODUCTS

#### **General**

This Annex II may be updated by a mutual agreement entered into between the Competent Authorities of Switzerland 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.

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

#### **A. Swiss Governmental Entities**

The Swiss Federal Government, cantons, and communes and wholly owned instrumentalities and agencies of any of the foregoing, including in particular any institution, body, or fund of the social security system on the federal, cantonal, or communal levels.

#### **B. Central Bank**

The Swiss National Bank and any of its wholly owned subsidiaries.

#### **C. International Organizations**

1. Any partner organization of the Swiss Confederation to an international headquarters agreement;
2. Any diplomatic mission, permanent mission or other representation to intergovernmental organizations, consular post or special mission which status, privileges and immunities are governed by the Vienna Convention on diplomatic relations of 1961, the Vienna Convention on consular relations of 1963 or the Convention on special missions of 1969.

#### **D. Retirement Funds**

1. Any pension institution or other retirement arrangement established in Switzerland

according to Articles 48 – 49 Federal Law on the Occupational Old-age, Survivors' and Disability Benefit Plan/BVG, Article 89<sup>bis</sup> paragraph 6 Swiss Civil Code/ZGB or Article 331 paragraph 1 Swiss Code of Obligations/OR;

2. Vested benefits institutions (Article 4 Vested Benefits Act/FZG and Article 10 Vested Benefits Ordinance/FZV);
3. The substitute occupational pension fund (Auffangeinrichtung, Article 60 BVG);
4. The guarantee fund (Articles 56-59 BVG),
5. Institutions for recognized forms of pension provision under Article 82 BVG (pillar 3a),
6. Employer-funded welfare funds in the area of old age, survivors' and disability insurance (Article 89<sup>bis</sup> paragraph 6 Swiss Civil Code/ZGB);
7. Investment foundations (Anlagestiftungen; Articles 53g-53k BVG), if all of the participants in the investment foundation are pension or other retirement arrangements described in this paragraph (D).

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

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

1. Financial Institutions with Local Client Base. A Swiss Financial Institution that meets all of the following requirements:
  - a) The Financial Institution must be licensed and regulated under the laws of Switzerland;
  - b) The Financial Institution must have no fixed place of business outside Switzerland;
  - c) The Financial Institution must not solicit account holders outside Switzerland. For this purpose, a Financial Institution shall not be considered to have solicited account holders outside of Switzerland 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 Switzerland to perform either information reporting or withholding of tax with respect to

accounts held by residents of Switzerland;

- 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 Switzerland or a Member State of the European Union;
- f) Subject to subparagraph (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 Switzerland (including a U.S. Person that was a resident of Switzerland when the account was opened but subsequently ceases to be a resident of Switzerland), (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 (f), and if such an account is discovered, the Financial Institution must report such account as though the Financial Institution were a Reporting Swiss Financial Institution or close such account;
- h) With respect to each account that is held by an individual who is not a resident of Switzerland or by an entity, and that is opened prior to the date that the Swiss Financial Institution implements the policies and procedures described in subparagraph (g), the Financial Institution must review those accounts in accordance with the procedures described in Annex I to this Agreement applicable to Preexisting Accounts to identify any U.S. 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 Swiss Financial Institution;
- i) Each Related Entity of the Financial Institution must be incorporated or organized in Switzerland 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 Switzerland.

## 2. Swiss Investment Advisers

In accordance with applicable U.S. Treasury Regulations, an entity the sole activity of which is to render investment advice to and act on behalf of a customer (other than a collective investment vehicle, unless such collective investment vehicle is treated as a qualified collective investment vehicle under relevant U.S. Treasury Regulations and no interests in the qualified collective investment vehicle are held through such entity) based on a power of attorney or a similar instrument (e.g. an investment authority) issued by the holder of a Financial Account or based on investment powers in a directorship capacity for the purposes of investing, managing or administering funds deposited in the name of the person or entity

granting the power (or issuing the similar instrument) with a Financial Institution other than a Nonparticipating Financial Institution.

**B. Certified Deemed-Compliant Financial Institutions.** The following categories of institutions are Non-Reporting Swiss Financial Institutions that are treated as certified deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code:

1. Any non-profit organization established and maintained in Switzerland for religious, charitable, educational, scientific, cultural or other public purposes that, by reason of its nature as such, is generally exempt from income taxation in Switzerland.
2. A Swiss condominium owners' association established pursuant to Art. 712l(2) of the Swiss Civil Code.

**C. Certain Collective Investment Vehicles**

In accordance with applicable U.S. Treasury Regulations:

1. In the case of an Investment Entity that is a collective investment vehicle subject to the collective investment legislation of Switzerland, 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 registered deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code.
2. With respect to interests in:
  - (a) a collective investment vehicle described in paragraph 1,
  - (b) an Investment Entity that is regulated as a collective investment vehicle under the laws of a Partner Jurisdiction, all of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more Financial Institutions that are not Nonparticipating Financial Institutions, or
  - (c) an Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations,

the reporting obligations of any Investment Entity that is a Swiss Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held), including a Swiss investment adviser that is an Investment Entity and Swiss Financial Institution, will be deemed fulfilled.

3. In the case of an Investment Entity that is a collective investment vehicle, consistent with paragraph 4 of Article 11 of the Agreement, if the information required to be reported by the collective investment vehicle consistent with the requirements of an FFI 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 any other Investment Entity that is a Swiss Financial Institution (including a Swiss investment adviser that is an Investment Entity and a Swiss Fi-

nancial Institution) required to report with respect to the interests in the collective investment vehicle will be deemed fulfilled with respect to such interests.

4. In accordance with applicable U.S. Treasury Regulations, a collective investment vehicle regulated under the laws of Switzerland will not fail to qualify under paragraph (1) or (2) above, or otherwise as a deemed-compliant FFI, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:
  - a. The collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after December 31, 2012, or, if the collective investment vehicle has issued any such shares after December 31, 2012, the collective investment vehicle has redeemed all such shares prior to the entry into force of this Agreement;
  - b. The collective investment vehicle (or a Reporting Swiss Financial Institution) performs due diligence outlined in Annex I and reports any information required to be reported with respect to any such shares when they are presented for redemption or other payment; and
  - c. The collective investment vehicle has in place policies and procedures to force redemption of such shares as soon as possible, and in any event prior to January 1, 2017.

**III. Exempt Products.** The following categories of accounts and products established in Switzerland and maintained by financial institutions incorporated in Switzerland or a branch in Switzerland of a financial institution incorporated outside Switzerland shall not be treated as Financial Accounts, and therefore shall not be U.S. Reportable Accounts, under the Agreement:

**A. Certain Retirement Accounts or Products**

1. Retirement accounts or products held by one or more exempt beneficial owners.
2. Vested benefits insurances according to Article 10 paragraph 2 of the Federal Vested Benefits Ordinance (FZV)
3. Restricted pension plan insurances (pillar 3a) according to Article 1 paragraph 1 of the Federal Ordinance on the Tax Deductibility of Contributions to Restricted Pension Plans (BVV 3)

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

Accounts or products held by one or more exempt beneficial owners.