

*Rev. Proc. 2000-12; 2000-1 C.B. 387;  
2000 IRB LEXIS 13, \*; 2000-4 I.R.B. 387*

Revenue Procedure 2000-12

**Rev. Proc. 2000-12;** 2000-1 C.B. 387; 2000 IRB LEXIS 13; 2000-4 I.R.B. 387

January 24, 2000

**[\*1]**

**SUBJECT MATTER:** Application Procedures for Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement

**TEXT:**

\* See Ann. 2000-12 p. 998

\* See Ann. 2000-48 p. 1243

SECTION 1. PURPOSE AND SCOPE

.01 *Purpose.* This revenue procedure provides guidance for entering into a qualified intermediary (QI) withholding agreement with the Internal Revenue Service (IRS) under §1.1441-1 (e) (5) of the income tax regulations.<sup>n1</sup> Section 3 of this revenue procedure provides the application procedures for becoming a QI and Section 4 provides the final qualified intermediary withholding agreement ("QI withholding agreement"). The objective of the QI withholding agreement is to simplify withholding and reporting obligations for payments of income (including interest, dividends, royalties, and gross proceeds) made to an account holder through one or more foreign intermediaries.

.02 *Scope.* This revenue procedure applies to persons described in §1.1441-1 (e) (5) (ii) (A) and (B)-foreign financial institutions, foreign clearing organizations, and foreign branches of U.S. financial institutions and U.S. clearing organizations. The principles of this agreement may, however, be used to conclude QI withholding **[\*2]** agreements with foreign corporations described in § 1.1441-1 (e) (5) (ii) (C) seeking to become a QI to present claims of benefits under an income tax treaty on behalf of shareholders and to other persons that the IRS may accept to be qualified intermediaries as authorized under §1.1441-1 (e) (5) (ii) (D). This revenue procedure does not apply to a foreign partnership seeking to qualify as a withholding foreign partnership. See §1.1441-5 (c) (2) (ii). The IRS and Treasury will, however, consider applying the principles of the QI withholding agreement provided in this revenue procedure to a foreign partnership acting on behalf of its partners in appropriate circumstances. A person that is not within the scope of this revenue procedure may seek QI status by contacting the Office of the Assistant Commissioner (International) at the address or telephone number in Section 3.01 of this revenue procedure.

SECTION 2. BACKGROUND

.01 *Withholding and reporting on payments to foreign persons.* Under sections 1441 and 1442 of the Internal Revenue Code (Code), a person that makes a payment of U.S. source interest, dividends, royalties, and certain other types of income to a foreign person must generally **[\*3]** deduct and withhold 30 percent from the payment. A lower rate of withholding may apply under the Code (e.g., section 1443), the regulations, or an income tax treaty. Generally, a payor of these types of income must also report the payments on Forms 1042-S. See §1.1461-1 (c).

Under sections 6041, 6042, 6045, 6049, and 6050N of the Code (the Form 1099 reporting

provisions), payors of interest, dividends, royalties, gross proceeds from the sales of securities, and other fixed or determinable income must report payments on Form 1099 unless an exception applies. If a payment is reportable on Form 1099, a payor must generally obtain a Form W-9 from the payee. If the payor does not receive the Form W-9, it must generally backup withhold at a 31 percent rate under section 3406 of the Code and report the payment on Form 1099. An exception to the Form 1099 reporting provisions applies if the payee is a foreign person. A payor can treat a person as foreign if the payor can reliably associate the payment with documentation that establishes that the person is the beneficial owner of the income or a foreign payee. See §§1.6041-4 (a), 1.6042-3 (b) (1) (iii); 1.6045-1 (g) (1) (i); 1.6049-5 (b) (12); and [\*4] 1.6050N-1 (c) (1) (i). Moreover, a payor does not have to backup withhold on payments to foreign beneficial owners or foreign payees because backup withholding applies only to amounts that the payor must report on Form 1099.

*.02 Responsibilities of intermediaries that enter into the QI withholding agreement.* When the IRS enters into a QI withholding agreement with a foreign person, that foreign person becomes a QI. A QI is a withholding agent under chapter 3 of the Code and a payor under chapter 61 and section 3406 of the Code for amounts that it pays to its account holders. Except as otherwise provided in the Agreement, a QI's obligations with respect to amounts it pays to account holders are governed by chapter 3, chapter 61, and section 3406 of the Code and the regulations thereunder. A QI shall act in its capacity as a QI pursuant to the Agreement only for those accounts the QI has with a withholding agent that the QI has designated as accounts for which it acts as a QI. A QI is not required to act as a QI for all accounts that it has with a withholding agent. However, if QI designates an account as one for which it will act as a QI, it must act as a QI for all payments made to that [\*5] account.

### SECTION 3. APPLICATION FOR QI STATUS

*.01 Where to Apply.* To apply for QI status, an eligible person must submit the information required by this Section 3 to: Assistant Commissioner (International)

Foreign Payments Division

OP: IN: I: FP

950 L'Enfant Plaza South, SW

Washington, DC 20024

Telephone: (202) 874-1800

Fax: (202) 874-1797

*.02 Contents of the Application.* A prospective QI must submit an application to become a QI. The application must establish to the satisfaction of the IRS that the applicant has adequate resources and procedures to comply with the terms of the QI withholding agreement. An application must include the information specified in this section 3.02, and any additional information and documentation requested by the IRS:

- (1) A statement that the applicant is an eligible person and that it requests to enter into a QI withholding agreement with the IRS.
- (2) The applicant's name, address, and employer identification number (EIN), if any.
- (3) The country in which the applicant was created or organized and a description of the applicant's business.
- (4) A list of the position titles of those persons who will be the responsible parties for

performance under the Agreement and the names, **[\*6]** addresses, and telephone numbers of those persons as of the date the application is submitted.

- (5) An explanation and sample of the account opening agreements and other documents used to open and maintain the accounts at each location covered by the Agreement.
- (6) A list describing the type of account holders (e.g., U.S., foreign, treaty benefit claimant, or intermediary), the approximate number of account holders within each type, and the estimated value of U.S. investments that the QI agreement will cover.
- (7) A general description of U.S. assets by type (e.g., U.S. securities, U.S. real estate), including assets held by U.S. custodians, and their approximate aggregate value by type. The applicant should provide separate information for assets beneficially owned by the applicant and for assets it holds for others.
- (8) A completed Form SS-4 (Application for Employer Identification Number) to apply for a QI Employer Identification Number (QI-EIN) to be used solely for QI reporting and filing purposes. An applicant must apply for a QI-EIN even if it already has another EIN. Each legal entity governed by the QI withholding agreement must complete a Form SS-4.
- (9) Completed appendices and attachments **[\*7]** that appear at the end of the QI agreement set forth in section 4.

The IRS will not enter into a QI withholding agreement that provides for the use of documentary evidence obtained under a country's know-your-customer rules if it has not received the "know-your-customer" practices and procedures for opening accounts and responses to the 18 specific items presented below. If the information has already been provided to the IRS, it is not necessary for a particular prospective QI to submit the information. The IRS may publish lists of countries for which it has received know-your-customer information and for which the know-your-customer rules are acceptable. A prospective QI applicant may also contact the IRS at the address or telephone number provided in section 3.01 to obtain information. The 18 items are as follows:

1. An English translation of the laws and regulations ("know-your-customer" rules) governing the requirements of a QI to obtain documentation confirming the identity of QI's account holders. The translation must include the name of the law, and the appropriate citations to the law and regulations.
2. The name of the organization (whether a governmental entity or private association) **[\*8]** responsible for enforcing the know-your-customer rules. Specify how those rules are enforced (e.g., through audit) and the frequency of compliance checks.
3. The penalties that apply for failure to obtain, or evaluate, documentation under the know-your-customer rules. 4. The definition of customer or account holder that is used under the know-your-customer rules. Specify whether the definition encompasses direct and indirect beneficiaries of an account if the activity in the account involves the receipt or disbursement of funds. Specify whether the definition of customer or account holder includes a trust beneficiary, a company whose assets are managed by an asset manager, a controlling

shareholder of a closely held corporation or the grantor of a trust.

5. A statement regarding whether the documentation required under the know-your-customer rules requires a financial institution to determine if its account holder is acting as an intermediary for another person.
6. A statement regarding whether the documentation required under the know-your-customer rules requires a financial institution to identify the account holder as a beneficial owner of income credited to an account.
7. A list of the specific **[\*9]** documentation required to be used under the know-your-customer rules, or if those rules do not require use of specific documentation, the documentation that is generally accepted by the authorities responsible for enforcing those rules.
8. A statement regarding whether the know-your-customer rules require that an account holder provide a permanent residence address.
9. A summary of the rules that apply if an account is not opened in person (e.g., correspondence, telephone, Internet).
10. Whether an account holder's identity may be established, in whole or in part, by introductions or referrals.
11. The circumstances under which new documentation must be obtained, or existing documentation verified, under the know-your-customer rules.
12. A list of all the exceptions, if any, to the documentation requirements under the know-your-customer rules.
13. A statement regarding whether the know-your-customer rules do not require documentation from an account holder if a payment to or from that account holder is cleared by another financial institution.<sup>n2</sup>
14. A statement regarding how long the documentation remains valid under the know-your-customer rules.
15. A statement regarding how long the documentation **[\*10]** obtained under the know-your-customer rules must be retained and the manner for maintaining that documentation.
16. Specify whether the rules require the maintenance of wire transfer records, the form of the wire transfer records and how long those records must be maintained. State whether the wire transfer records require information as to both the original source of the funds and the final destination of the funds.

17. A list of any payments or types of accounts that are not subject to the know-your-customer rules.

18. Specify whether there are special rules that apply for purposes of private banking activities.

#### SECTION 4. QUALIFIED INTERMEDIARY WITHHOLDING AGREEMENT

The text of the QI agreement is set forth below. Upon receipt and review of an application to become a qualified intermediary, the IRS will complete the QI agreement (e.g., insertion of the QI's name, etc.). A prospective QI should ensure that it has provided to the IRS all of the information that is required to complete the agreement. It may be necessary for the IRS to contact the potential qualified intermediary, or its authorized representative, to obtain additional information. Once the IRS has obtained all the information [\*11] required to complete the agreement, the IRS will send two unsigned copies of the QI withholding agreement to the prospective QI for signature. Both copies of the agreement should be signed by a person with the authority to sign the agreement and returned to the IRS at the address specified in section 3.01. The IRS will sign the QI agreement and return one of the originals to the qualified intermediary.

The IRS will consider changes to the text of the QI agreement as set forth below only in rare and unusual circumstances. The IRS will not accept, however, any changes that it determines would provide a potential QI with a competitive advantage over other similarly situated QIs.

#### COUNTRY-BY-COUNTRY REPORTING

The IRS and Treasury have decided that a QI that has executed a QI withholding agreement prior to January 1, 2001, will not be required to provide a country-by-country break down of reporting pools on Form 1042-S. See section 8.03 of the QI withholding agreement for a definition of reporting pool. It was decided that requiring such information at this time would impede implementation of the QI system since it is recognized that financial institutions will be required to commit substantial [\*12] information technology resources to address technology issues that have been delayed by the year 2000 problem. The IRS and Treasury, however, are continuing to study whether to require country code information for reporting pools in the future. Therefore, the IRS and Treasury may require a potential QI that enters into an agreement after December 31, 2000, or a QI that enters into an agreement after the expiration of an agreement's initial term, to provide a country-by-country break down of reporting pools.

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THIS AGREEMENT is made in duplicate under and in pursuance of section 1441 of the Internal Revenue Code of 1986, as amended, (the "Code") and Treasury Regulation §1.1441-1 (e) (5) by and between \_\_\_\_\_, any affiliated entities of \_\_\_\_\_ designated in

Appendix A of this Agreement that are signatories to this Agreement (individually and collectively

referred to as "QI"), and the INTERNAL REVENUE SERVICE (the "IRS"):

**WHEREAS**, QI has submitted an application in accordance with Revenue Procedure 2000-12 to be a qualified intermediary for purposes of Treas. Reg. §1.1441-1 (e) (5);

**WHEREAS**, QI and the IRS desire to enter into an agreement to establish QI's rights and obligations regarding documentation, [\*17] withholding, information reporting, tax return filing, deposits, and refund procedures under sections 1441, 1442, 1443, 1461, 3406, 6041, 6042, 6045, 6049, 6050N, 6302, 6402, and 6414

of the Code with respect to certain types of payments;

**NOW, THEREFORE**, in consideration of the following terms, representations, and conditions, the parties agree as follows:

## SECTION 1. PURPOSE AND SCOPE

**Sec. 1.01. General Obligations.** QI is a withholding agent under chapter 3 of the Code and a payor under chapter 61 and section 3406 of the Code for amounts that it pays to its account holders. Except as otherwise provided in this Agreement, QI's obligations with respect to amounts it pays to account holders are governed by chapter 3, chapter 61, and section 3406 of the Code and the regulations there under. QI shall act in its capacity as a qualified intermediary pursuant to this Agreement only for those accounts QI has with a withholding agent that QI has designated as accounts for which it acts as a qualified intermediary. QI is not required to act as a qualified intermediary for all accounts that it has with a withholding agent. However, if QI designates an account as one for which it will act as a qualified [\*18] intermediary, it must act as a qualified intermediary for all payments made to that account.

**Sec. 1.02. Parties to the Agreement.** This Agreement applies to:

(A) All offices of QI located in the countries described in Appendix A of this Agreement; and

(B) The Internal Revenue Service. Notwithstanding section 1.02 (A) of this Agreement, an office of QI shall be subject to the provisions of this Agreement only to the extent it receives a payment from a withholding agent with respect to an account that QI has designated as an account for which it is acting as a qualified intermediary. See section 6.02 of this Agreement for the procedure to designate an account. QI may add any countries not initially included in Appendix A without prior IRS approval if the country is one for which the IRS will enter a model qualified intermediary agreement and QI provides the IRS an amended Appendix A at the address described in section 12.06 of this Agreement. Offices in the additional countries may begin to operate under this Agreement immediately after QI satisfies the notification requirement of this section 1.02. Appendix A, as amended, shall become part of this Agreement.

## SECTION 2. DEFINITIONS

For purposes [\*19] of this Agreement, the terms listed below are defined as follows:

**Sec. 2.01. Account Holder.** An "account holder" means any person that is a direct account holder or an indirect account holder and for which QI acts as a qualified intermediary. A direct account holder is any person who has an account directly with QI (including an intermediary or flow-through entity). An indirect account holder is any person who receives amounts from a QI but who does not have a direct account relationship with QI. For example, a person that has an account with a foreign intermediary or an interest in a flow-through entity which, in turn, is a direct account holder of QI is an indirect account holder. In addition, the person that is the sole owner of an entity that is disregarded under Treas. Reg. §301.7701-2 (c) (2) as an entity separate from its owner is an indirect account holder. A person is an indirect account holder even if there are multiple tiers of intermediaries or flow-through entities between the person and the QI.

**Sec. 2.02. Agreement.** "Agreement" means this Agreement, all appendices and attachments to this Agreement, and QI's application to become a qualified intermediary. All such appendices, [\*20] attachments, and QI's application are incorporated into this Agreement by reference.

**Sec. 2.03. Amounts Subject to NRA Withholding.** An "amount subject to NRA withholding" is an amount described in Treas. Reg. §1.1441-2 (a). An amount subject to NRA withholding shall not include interest paid as part of the purchase price of an obligation sold between interest payment dates or original issue discount paid as part of the purchase price of an obligation sold in a transaction other than the redemption of such obligation, unless the sale is part of a plan the principal purpose of which is to avoid tax and QI has actual knowledge or reason to know of such plan.

**Sec. 2.04. Assumption of Withholding Responsibility.** A QI that assumes primary NRA withholding responsibility, or assumes primary Form 1099 reporting and backup withholding responsibility, assumes the primary responsibility for deducting, withholding, and depositing the appropriate amount from a payment. Generally, a qualified intermediary's assumption of primary NRA withholding responsibility or the assumption of primary backup withholding responsibility relieves the person who makes a payment to the qualified intermediary from the [\*21] responsibility to withhold. Under section 3.05 of this Agreement, QI generally has primary Form 1099 reporting and backup withholding responsibility with respect to certain payments even though it does not assume such responsibility for payments not described in that section.

**Sec. 2.05. Backup Withholding.** "Backup withholding" means the withholding required under section 3406 of the Code.

**Sec. 2.06. Beneficial Owner.** A "beneficial owner" has the meaning given to that term in Treas. Reg. §1.1441-1 (c) (6).

**Sec. 2.07. Broker Proceeds.** "Broker proceeds" means the gross proceeds from a sale of an asset to the extent that the gross proceeds would be subject to Form 1099 reporting if paid to a U.S. non-exempt recipient. For purposes of this Agreement, broker proceeds also include any proceeds paid by QI from the sale of assets pursuant to the provisions of section 6.04 of this Agreement that are owned by a U.S. non-exempt recipient and that produce, or could produce, reportable payments regardless of whether the sale is effected at an office inside or outside the United States and regardless of whether or not the sale is effected by QI or another person on instructions from QI. Thus, the exception [\*22] in Treas. Reg. §1.6045-1 (a), which excludes from Form 1099 reporting certain sales effected at an office outside the United States, shall not apply in the case of U.S. non-exempt recipients whose identity is prohibited by law from disclosure. In addition, the exception from backup withholding on certain payments contained in Treas. Reg. §31.3406 (g)-1 (e) shall not apply to such broker proceeds.

**Sec. 2.08. Chapter 3 of the Code.** Any reference to "chapter 3 of the Code" means sections 1441, 1442, 1443, 1461, 1463, and 1464 of the Code.

**Sec. 2.09. Chapter 61 of the Code.** Any reference to "chapter 61 of the Code" means sections 6041, 6042, 6045, 6049, and 6050 N of the Code.

**Sec. 2.10. Deposit Interest.** "Deposit interest" means interest described in section 871 (i) (2) (A) of the Code.

**Sec. 2.11. Designated Broker Proceeds.** "Designated broker proceeds" means-

(A) Any broker proceeds from the sale of assets that produce, or could produce, reportable amounts if the sale is effected at an office inside the United States, as defined in Treas. Reg. §1.6045-1 (g) (3), (unless an exception to reporting applies under chapter 61 of the Code); and

(B) Any broker proceeds from the sale of an asset that produces, [\*23] or could produce, reportable amounts that are beneficially owned by a U.S. non-exempt recipient whose identity and account information is prohibited from disclosure as described in section 6.04 of this Agreement. For this purpose, it is irrelevant whether the sale is effected by QI or another person upon instructions from QI. It is also irrelevant whether the sale is effected at an office inside or outside the United States. Thus, the exception in Treas. Reg. §1.6045-1 (a) (which excepts sales effected at an office outside the United States by a non-U.S. payor) and the exception in Treas. Reg. 31.3406 (g)-1 (e) (which excepts certain payments made outside the United States from backup withholding) do not apply in the case of an account holder whose identity is prohibited by law from disclosure.

**Sec. 2.12. Documentary Evidence.** "Documentary evidence" means any documentation obtained under the appropriate know-your-customer rules (as described in the Attachments to this Agreement), any documentary evidence described in Treas. Reg. §1.1441-6 sufficient to establish entitlement to a reduced rate of withholding under an income tax treaty, or any documentary evidence described in Treas. Reg. §1.6049-5 (c) [\*24] sufficient to establish an account holder's status as a foreign person for purposes of chapter 61 of the Code. Documentary evidence does not include a Form W-8 or Form W-9 (or an acceptable substitute Form W-8 or Form W-9).

**Sec. 2.13. Documentation.** "Documentation" means any valid Form W-8, Form W-9 (or acceptable substitute Form W-8 or Form W-9) or documentary evidence as defined in section 2.12 of this Agreement, including all statements or other information required to be associated with the form or documentary evidence.

**Sec. 2.14. Documented Account Holder.** A "documented account holder" is an account holder for whom QI holds valid documentation.

**Sec. 2.15. Exempt Recipient.** For purposes of Form 1099 reporting and backup withholding, an "exempt recipient" means a person described in Treas. Reg. §1.6049-4 (c) (1) (ii) (for interest, dividends, and royalties), a person described in Treas. Reg. §5f.6045-1 (c) (3) (i) (B) and §1.6045-2 (b) (2) (i) (for broker proceeds), and a person described in Treas. Reg. §1.6041-3 (q) (for rents, amounts paid on notional principal contracts, and other fixed or determinable income). Exempt recipients are not exempt from NRA withholding.

**Sec. 2.16. External [\*25] Auditor.** An "external auditor" is any approved auditor listed in Appendix B of this Agreement that QI (or any private arrangement intermediary of QI) engages to perform the audits required by section 10 of this Agreement.

**Sec. 2.17. Flow -Through Entity.** A flow-through entity is a foreign partnership described in Treas. Reg. §301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust that is described in section 651 (a) of the Code, or a foreign trust all or a portion of which is treated as owned by the grantor or other person under sections 671 through 679 of the Code. For an item of income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations hereunder.

**Sec. 2.18. Foreign Person.** A "foreign person" is any person that is not a "United States person" and includes a "nonresident alien individual," a "foreign corporation," a "foreign partnership," a "foreign trust," and a "foreign estate," as those terms are defined in section 7701 of the Code. For purposes of chapter 3 of the Code, the term foreign person also means, with respect to a payment by a withholding [\*26] agent (including a qualified intermediary), a foreign branch of a U.S. person that provides a valid Form W-8IMY on which it represents that it is a qualified intermediary. A foreign branch of a U.S. person that is a qualified intermediary is, however, a U.S. payor for purposes of chapter 61 and section 3406 of the Code.

**Sec. 2.19. Form W-8.** "Form W-8" means IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding; IRS Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Governments and Other Foreign Organizations for United States Tax Withholding; and IRS Form W-8IMY, Certificate of Foreign Intermediary, Foreign Partnership, and Certain U.S. Branches for United States Tax Withholding, as appropriate. It also includes any acceptable substitute form.

**Sec. 2.20. Form W-9.** "Form W-9" means IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute.

**Sec. 2.21. Form 945.** "Form 945" means IRS Form 945, Annual Return of Withheld Federal Income [\*27] Tax.

**Sec. 2.22. Form 1042.** "Form 1042" means an IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

**Sec. 2.23. Form 1042-S.** "Form 1042-S" means an IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

**Sec. 2.24. Form 1096.** "Form 1096" means IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

**Sec. 2.25. Form 1099.** "Form 1099" means IRS Form 1099-B, Proceeds From Broker and Barter Exchange Transactions; IRS Form 1099-DIV, Dividends and Distributions; IRS Form 1099-INT, Interest Income; IRS Form 1099-MISC, Miscellaneous Income; IRS Form 1099-OID, Original Issue Discount, and any other form in the IRS Form 1099 series appropriate to the type of payment required to be reported.

**Sec. 2.26. Form 1099 Reporting.** "Form 1099 reporting" means the reporting required on Form 1099.

**Sec. 2.27. Intermediary.** An "intermediary" means any person that acts on behalf of another person such as a custodian, broker, nominee, or other agent.

**Sec. 2.28. Know-Your-Customer Rules.** The phrase "know-your customer rules" refers to the applicable laws, regulations, rules, and administrative practices and procedures, identified in the Attachments [\*28] to this Agreement, governing the requirements of QI to obtain documentation confirming the identity of QI's account holders.

**Sec. 2.29. Marketable Securities.** For purposes of this Agreement, the term "marketable securities" means those securities described in Treas. Reg. §1.1441-6 for which a TIN is not required to obtain treaty benefits.

**Sec. 2.30. Non-Exempt Recipient.** A "non-exempt recipient" means a person that is not an exempt recipient under the definition in section 2.15 of this Agreement.

**Sec. 2.31. Nonqualified Intermediary.** A "nonqualified intermediary" is any intermediary that is not a qualified intermediary. A nonqualified intermediary includes any custodian, nominee, or other agent as well as any financial institution intermediary unless such person enters an agreement to be a qualified intermediary and acts in such capacity.

**Sec. 2.32. NRA Withholding.** "Nonresident alien (NRA) withholding" is any withholding required under chapter 3 of the Code, whether the payment subject to withholding is made to an individual or to an entity.

**Sec. 2.33. Over withholding.** The term "over withholding" means the excess of the amount actually withheld under chapter 3 or section 3406 of the Code [\*29] over the amount required to be withheld.

**Sec. 2.34. Paid Outside the United States.** An amount is "paid outside the United States" if it is paid outside the United States within the meaning of Treas. Reg. §1.6049-5 (e).

**Sec. 2.35. Payment.** A "payment" is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. See Treas. Reg. §1.1441-2 (e). For example, a payment includes crediting an amount to an account.

**Sec. 2.36. Payor.** A "payor" is defined in Treas. Reg. §31.3406 (a)-2 and §1.6049-4 (a) (2) and generally means any person required to make an information return under chapter 61 of the Code. The term includes any person that makes a payment, directly or indirectly, to QI and to whom QI provides information, pursuant to this Agreement, so that such person can report a payment on Form 1099 and, if appropriate, backup withhold. See sections 3.05 and 6 of this Agreement. Also see section 2.50 of this Agreement for the definition of U.S. payor and non-U.S. payor.

**Sec. 2.37. Presume/Presumption.** The terms "presume" or "presumption" refer to the presumption rules set forth in section 5.13 (C) [\*30] of this Agreement.

**Sec. 2.38. Private Arrangement Intermediary.** A "private arrangement intermediary" or "PAI" is an intermediary described in section 4 of this Agreement.

**Sec. 2.39. Qualified Intermediary.** A "qualified intermediary" is a person, described in Treas. Reg. §1.1441-1 (e) (5) (ii), that enters into a withholding agreement with the IRS to be treated as a qualified intermediary and acts in its capacity as a qualified intermediary.

**Sec. 2.40. Qualified Intermediary (or QI) EIN.** A "qualified intermediary EIN" or "QI-EIN" means the employer identification number assigned by the IRS to a qualified intermediary. QI's QI-EIN is only to be used when QI is acting as a qualified intermediary. For example, QI must give a withholding agent its non-QI EIN, if any,



rather than its QI-EIN if it is receiving income as a beneficial owner and a taxpayer identification number is required. QI must also use its non-QI EIN, if any, when acting as a nonqualified intermediary. Each signatory to this agreement must have its own QI-EIN.

**Sec. 2.41. Reduced Rate of Withholding.** A "reduced rate of withholding" means a rate of withholding under chapter 3 of the Code that is less than 30 percent, including **[\*31]** an exemption from withholding, or not withholding 31 percent under section 3406 of the Code.

**Sec. 2.42. Reliably Associating a Payment With Documentation.** See section 5.13 (B) of this Agreement to determine whether QI can reliably associate a payment with documentation.

**Sec. 2.43. Reportable Amount.** A "reportable amount" means an amount subject to NRA withholding (as defined in section 2.03 of this Agreement); U.S. source deposit interest (as defined in section 2.10 of this Agreement); and U.S. source interest or original issue discount paid on the redemption of short-term obligations (as defined in section 2.46 of this Agreement). The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in Treas. Reg. §1.6049-5 (b) (7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

**Sec. 2.44. Reportable Payment.** For purposes of this Agreement, a reportable payment means amounts **[\*32]** described in section 2.44 (A) of this Agreement, in the case of a U.S. payor, and amounts described in section 2.44 (B) of this Agreement, in the case of a non-U.S. payor.

**(A) U.S. Payor.** If QI is a U.S. payor, a reportable payment means any reportable payment as defined in section 3406 (b) of the Code, including any broker proceeds from the sale of assets beneficially owned by a U.S. non-exempt recipient account holder that produce, or could produce, reportable payments if the identity and account information of that account holder is prohibited by law, including by contract, from disclosure as described in section 6.04 of this Agreement. For this purpose, it is irrelevant whether the sale is effected by QI or QI instructs another person to effect the sale. It is also irrelevant whether the sale is effected at an office inside or outside the United States. Thus, the exception in Treas. Reg. § 1.6045-1 (a) (which excepts sales effected at an office outside the United States by a non-U.S. payor) and the exception in Treas. Reg. 31.3406 (g)-1 (e) (which excepts certain payments made outside the United States from backup withholding) do not apply in the case of an account holder whose identity **[\*33]** is prohibited by law from disclosure.

**(B) Non-U.S. Payor.** If QI is a non-U.S. payor a reportable payment means-

- (1) Any reportable amount (unless an exception to reporting applies under chapter 61 of the Code);
- (2) Any broker proceeds from the sale of assets that produce, or could produce, reportable amounts if the sale is effected at an office inside the United States, as defined in Treas. Reg. § 1.6045-1 (g) (3), (unless an exception to reporting applies under chapter 61 of the Code);

- (3) Any broker proceeds from the sale of an asset that produces, or could produce, reportable amounts that are beneficially owned by a U.S. non-exempt recipient whose identity and account information is prohibited by law, including by contract, from disclosure as described in section 6.04 of this Agreement. For this purpose, it is irrelevant whether the sale is effected by QI or another person upon instructions from QI. It is also irrelevant whether the sale is effected at an office inside or outside the United States. Thus, the exception in Treas. Reg. §1.6045-1 (a) (which excepts sales effected at an office outside the United States by a non-U.S. payor) and the exception in Treas. Reg. 31.3406 (g)-1 (e) (which [\*34] excepts certain payments made outside the United States from backup withholding) do not apply in the case of an account holder whose identity is prohibited by law from disclosure; and
- (4) Any foreign source interest, dividends, rents, royalties, or other fixed and determinable income if such income is paid in the United States or to an account maintained in the United States or any other amount presumed paid to a U.S. non-exempt recipient under section 5.13 (C) (4) of this Agreement-(unless an exception to reporting applies under chapter 61 of the Code).

**Sec. 2.45. Reporting Pool.** A reporting pool is defined in section 8.03 of this Agreement.

**Sec. 2.46. Short-Term Obligation.** A "short-term obligation" is any obligation described in section 871 (g) (1) (B) (i) of the Code.

**Sec. 2.47. TIN.** A "TIN" is a U.S. taxpayer identification number.

**Sec. 2.48. Under withholding.** "Under-withholding" means the excess of the amount required to be withheld under chapter 3 or section 3406 of the Code over the amount actually withheld.

**Sec. 2.49. Undocumented Account Holder.** An "undocumented account holder" is an account holder for whom QI does not hold valid documentation.

**Sec. 2.50. [\*35] U.S. Payor/Non-U.S. Payor.** The terms "U.S. payor" and "non-U.S. payor" have the same meaning as in Treas. Reg. §1.6049-5 (c).

**Sec. 2.51. U.S. Person.** A "United States (or U.S.) person" is a person described in section 7701 (a) (30) of the Code, the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

**Sec. 2.52. Withholding Agent.** A "with holding agent" has the same meaning as set forth in Treas. Reg. §1.1441-7 (a) and includes a payor (as defined in section 2.36 of this Agreement). As used in this Agreement, the term generally refers to the person making a payment to a qualified intermediary.

**Sec. 2.53. Withholding Rate Pool.** The term "withholding rate pool" is defined in section 6.03 of this Agreement. **Sec. 2.54. Withholding Statement** The term "withholding statement" is defined in section 6.02 of this Agreement. **Sec. 2.55. Other Terms.** Any term not defined in this section has the same meaning that it has under the Code, the income tax regulations under the Code, or any applicable income tax treaty.

### SECTION 3. WITHHOLDING RESPONSIBILITY

**Sec. 3.01. NRA Withholding Responsibility.** QI [\*36] is subject to the withholding and reporting provisions applicable to withholding agents under chapter 3 of the Code. Under chapter 3,

a withholding agent must withhold 30 percent of any payment of an amount subject to NRA withholding made to an account holder that is a foreign person unless the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 5 of this Agreement regarding documentation requirements.

**Sec. 3.02. Primary NRA Withholding Responsibility Not Assumed.** Notwithstanding sections 1.01 and 3.01 of this Agreement, QI shall not be required to withhold under chapter 3 of the Code if it does not accept primary NRA withholding responsibility under section 3.03 of this Agreement and it has provided a valid withholding certificate and correct withholding statements to a withholding agent from which it receives an amount subject to NRA withholding in accordance with section 6 of this Agreement. Notwithstanding its election not to assume primary NRA withholding responsibility, **[\*37]** QI shall, however, withhold the difference between the amount of NRA withholding required under chapter 3 of the Code and the amount actually withheld by another withholding agent if QI-

- (A) Actually knows that the appropriate amount has not been withheld by another withholding agent; or
- (B) Made an error which results in the withholding agent's failure to withhold the correct amount due (e.g., QI fails to provide an accurate withholding statement with respect to the payment) and QI has not corrected the under withholding under the reimbursement and setoff procedures of section 9.05 of this Agreement. QI is not required to withhold under chapter 3 of the Code on an amount subject to NRA withholding that it pays to another qualified intermediary that has assumed primary NRA withholding responsibility with respect to the payment or to a withholding foreign partnership. See section 8 of this Agreement regarding QI's responsibility to report amounts subject to withholding on Form 1042-S.

**Sec. 3.03. Assumption of Primary NRA Withholding Responsibility.** QI, upon notification to a withholding agent, may assume primary NRA withholding responsibility for an amount subject to NRA withholding by providing **[\*38]** a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of an amount subject to NRA withholding and by designating on the withholding statement associated with such certificate the account for which QI assumes primary NRA withholding responsibility. QI may assume primary NRA withholding responsibility without informing the IRS. QI is not required to assume primary NRA withholding responsibility for all accounts it has with the withholding agent. However, if QI assumes primary NRA withholding responsibility for any account, it must assume that responsibility for all payments of amounts subject to NRA withholding made by the withholding agent to that account. To the extent that QI assumes primary NRA withholding responsibility, QI shall withhold from amounts subject to NRA withholding the amount required to be withheld under chapter 3 of the Code. QI is not required, however, to withhold on amounts it pays to another qualified intermediary that has certified to QI on Form W-8IMY that it has assumed primary withholding responsibility with respect to the payment or to a withholding foreign partnership. See section 8 of this Agreement **[\*39]** regarding QI's responsibility to report amounts subject to withholding on Form 1042-S.

**Sec. 3.04. Backup Withholding Responsibility.** QI is a payor under section 3406 of the Code with respect to reportable payments. Under section 3406, a payor is required to deduct and withhold 31 percent from the payment of a reportable payment to a U.S. non-exempt recipient if the U.S. non-exempt recipient has not provided its TIN in the manner required under that section; the IRS notifies the payor that the TIN furnished by the payee is incorrect; there has been a notified payee under-reporting described in section 3406 (c); or there has been a payee certification failure described in section 3406 (d). QI represents that there are no legal restrictions that prohibit it from

complying with the Form 1099 reporting requirements of this Agreement or imposing backup withholding and depositing the amounts withheld in accordance with section 3.08 of this Agreement.

**Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility For Reportable Payments Other Than Reportable Amounts.** Under section 6.01 of this Agreement, QI is only required to provide a withholding agent with information regarding [\*40] reportable amounts. Therefore, QI is primarily responsible for reporting on Form 1099 and, if required, backup withholding on the payments described in section 3.05 (A) and (B) of this Agreement whether or not QI assumes primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts under section 3.07 of this Agreement. No provision of this Agreement which requires QI to provide another withholding agent with information regarding reportable amounts shall be construed as relieving QI of its Form 1099 reporting and backup withholding obligations with respect to reportable payments that are not reportable amounts.

**(A) U.S. Payor.** Except as provided in section 3.05 (C) of this Agreement, if QI is a U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for reportable payments as defined in section 3406 (b) of the Code other than reportable amounts. For example, if QI is a U.S. payor, it has primary Form 1099 reporting and backup withholding responsibility for payments of foreign source income as well as all broker proceeds paid to account holders that are, or are presumed to be, U.S. non-exempt recipients, unless an exception [\*41] to reporting or backup withholding applies. QI also has primary Form 1099 reporting and backup withholding responsibility for broker proceeds from the sale of assets beneficially owned by a U.S. non-exempt recipient account holder that produce or could produce, reportable payments if the identity and account information of that account holder is prohibited by law from disclosure as described in section 6.04 of this Agreement. See section 2.44 (A) of this Agreement for the instances in which certain reporting and withholding exceptions do not apply.

**(B) Non-U.S. Payor.** Except as provided in section 3.05 (C) of this Agreement, if QI is a non-U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for broker proceeds described in section 2.44 (B) (2) and (3) of this Agreement and foreign source income paid in the United States or to an account maintained in the United States as described in section 2.44 (B) (4) of this Agreement, if such payments are made, or presumed made under section 5.13 (C) (4) of this Agreement, to U.S. non-exempt recipients.

**(C) Designated Broker Proceeds Procedure.** Whether QI is a U.S. payor or non-U.S. payor, QI may request another [\*42] payor to report on Form 1099 and, if required, backup withhold on designated broker proceeds (as defined in section 2.11 of this Agreement), provided the other payor actually receives the broker proceeds. QI will not be primarily responsible for Form 1099 reporting and for backup withholding if the other payor agrees to do the reporting and backup withholding and QI provides all of the information necessary for the other payor to properly report, and backup withhold on the designated broker proceeds. QI, however, remains primarily responsible for Form 1099 reporting and backup withholding if the other payor does not agree to report and backup withhold, or QI knows that the other payor failed to do so.

**Sec. 3.06. Primary Form 1099 Reporting and Backup Withholding Responsibility For Reportable Amounts Not Assumed.** Notwithstanding sections 1.01 and 3.04 of this Agreement, QI shall not be required to backup withhold on a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides a payor from which it receives a reportable amount the Forms W-9 of its U.S. non-exempt recipient account holders (or, if a U.S. non-exempt recipient [\*43] fails to provide a Form W-9, information regarding the account holder's name, address, and TIN, if a TIN is available) together with the withholding rate pools (as defined in section 6.03 of this Agreement) attributable to U.S. non-exempt recipient account holders. Notwithstanding its election not to assume primary Form 1099 reporting and backup withholding responsibility, QI shall backup withhold and report a reportable amount if-

(A) QI actually knows a reportable amount is subject to backup withholding and another payor failed to apply backup or NRA withholding;

- (B) Another payor has not applied backup or NRA withholding to a reportable amount because of an error made by QI (e.g., QI failed to provide the other payor with information regarding the name, address, TIN, if available, and withholding rate pool for a U.S. non-exempt recipient account holder subject to backup withholding);
- (C) QI pays a reportable amount to a U.S. non-exempt recipient whose identity and other account information are prohibited by law from disclosure (see section 6.04 of this Agreement) and another payor of the reportable amount has not backup withheld.

QI is not required to backup withhold, however, on a reportable [\*44] amount it makes to a withholding foreign partnership or to another qualified intermediary if the other qualified intermediary has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the payment. See section 3.05 of this Agreement for backup withholding responsibility for reportable payments other than reportable amounts. See section 8.04 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

*[NOTE: A qualified intermediary that is not a U.S. payor must obtain IRS approval to assume primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts. The IRS will evidence its approval of a non-U.S. payor's assumption of primary Form 1099 reporting and backup withholding responsibility by the signature of the Commissioner, or his delegate, in the margin of section 3.07 of this Agreement.]*

### **Sec. 3.07. Assumption of Primary Form 1099 Reporting and Backup Withholding**

**Responsibility.** QI may assume primary Form 1099 reporting responsibility under chapter 61 of the Code and primary backup withholding responsibility under section 3406 of the Code with respect to reportable amounts. See sections 3.05 [\*45] and 8.04 of this Agreement for QI's obligations regarding reportable payments other than reportable amounts. A qualified intermediary that assumes such responsibility is subject to all of the obligations imposed by chapter 61 and section 3406 of the Code and shall be subject to any applicable penalties for failure to meet those obligations. The exception from backup withholding under Treas. Reg. §31.3406 (g)-1 (e) shall not apply, however, to payments of deposit interest, or interest or original issue discount on redemptions of short-term obligations, to the extent QI must presume that an account holder is a U.S. non-exempt recipient under section 5.13 (C) (2) of this Agreement. QI shall inform a withholding agent from which it receives a reportable amount that it has assumed primary Form 1099 reporting and backup withholding responsibility by providing the withholding agent with a valid withholding certificate described in section 6 of this Agreement and by designating on the withholding statement associated with such certificate the account for which QI assumes primary Form 1099 reporting and backup withholding responsibility. QI may assume primary Form 1099 reporting and backup withholding [\*46] responsibility without informing the IRS, unless QI is a non-U.S. payor. QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it has with a withholding agent. However, if QI assumes primary Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable amounts made by a payor to that account. QI shall not be required to backup withhold on a reportable amount it makes to another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the reportable amount. See section 8 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

**Sec. 3.08. Deposit Requirements.** If QI is a U.S. payor or a non-U.S. payor that assumes primary NRA withholding responsibility or primary Form 1099 and backup withholding responsibility, it must deposit amounts withheld under chapter 3 or section 3406 of the Code with a Federal Reserve bank or authorized financial institution at the time and in the manner provided under section 6302 of the Code (see Treas. Reg. §1.6302-2 (a) or §31.6302-1 (h)). [\*47] If QI is a non-U.S. payor that

does not assume primary NRA withholding responsibility or primary Form 1099 and backup withholding responsibility, QI must deposit amounts withheld by the 15th day following the month in which the NRA or backup withholding occurred.

#### SECTION 4. PRIVATE ARRANGEMENT INTERMEDIARIES

**Sec. 4.01. In General.** QI may enter into a private arrangement with another intermediary under which the other intermediary agrees to perform all of the obligations of QI under this Agreement, except as provided in section 4.02 of this Agreement. Such agreement shall be between the QI and all the offices of the other intermediary located in a specified country. The specified country must be one for which this Agreement is available. Such an intermediary is referred to in this Agreement as a private arrangement intermediary ("PAI"). By entering into a PAI agreement, QI is not assigning its liability for the performance of any of its obligations under this Agreement. Therefore, QI shall remain liable for any tax, penalties, interest, and any other sanction that may result from the failure of the PAI to meet any of the obligations imposed by its agreement with QI. QI agrees not to assert **[\*48]** any defenses against the IRS for the failures of the PAI or any defenses that the PAI may assert against QI. For poses of this Agreement, the PAI's actual knowledge or reason to know of facts relevant to withholding or reporting shall be imputed to QI. QI's liability for the failures of the PAI shall apply even though the PAI is itself a withholding agent under chapter 3 of the Code and a payor under chapter 61 and section 3406 and is itself separately liable for its failure to meet its obligations under the Internal Revenue Code. Notwithstanding the foregoing, QI shall not be liable for tax, interest, or penalties for failure to withhold and report under chapters 3, 61, and section 3406 of the Code unless the under withholding or the failure to report amounts correctly on Forms 945, 1042, 1042-S or 1099 are due to QI's or its PAI's failure to properly perform its obligations under this Agreement. The PAI is not required to enter into an agreement with the IRS. The IRS may, however, in its sole discretion, refuse to permit an intermediary to operate as a PAI by providing notice to QI at the address provided in section 12.06 of this Agreement. QI may, however, appeal the IRS's determination **[\*49]** by following the notice and cure provisions in section 11.05 of this Agreement. For purposes of this Agreement, an intermediary shall be considered a PAI only if the following conditions are met:

- (A) The PAI is, pursuant to a written agreement between QI and the PAI, subject to all the obligations of QI under this Agreement, except to the extent modified by section 4.02 of this Agreement;
- (B) QI files a notice with the Commissioner, or his delegate, at the address set forth in section 12.06 of this Agreement, before the first payment for which the intermediary acts as a PAI giving the name, address, taxpayer identification number of the intermediary, if any, and the name of the country or countries in which the offices of the intermediary that are subject to the PAI agreement are located;
- (C) The PAI is subject to the identical external audit procedures that apply to QI under this Agreement and the PAI uses an external auditor designated in Appendix B of this Agreement, or another auditor approved by the IRS for that PAI; and
- (D) The PAI furnishes QI with a Form W-8IMY described in section 6 of this Agreement as modified by this section 4.01 (D). The PAI is required to provide QI with the **[\*50]** Forms W-9 (or, in absence of the form, the name, address and TIN, if available) of the PAI's U.S. non-exempt recipient account holders and the withholding rate pool information for those account holders as required by section 6.03 of this Agreement. In addition, the PAI is required to disclose to QI the account holders of a nonqualified intermediary, or interest holders in a flow-through entity, which has an account with the PAI and all of the

information relating to those account holders that is required for the QI, or another withholding agent, to report the payments made to those account holders as required by sections 8.02 (B) and 8.04 of this Agreement. The PAI is not required to disclose to QI, or another withholding agent, its direct account holders that are foreign persons.

**Sec. 4.02. Modification of Obligations for PAI Agreements.** The agreement between QI and a PAI must provide that QI shall include all reportable payments made by the PAI in QI's Forms 945 and 1099 and all payments of amounts subject to NRA withholding made by the PAI in QI's Forms 1042 and 1042-S as if QI had made the payments directly to the PAI's account holders. Therefore, QI shall report payments made **[\*51]** to a PAI's direct foreign account holders (other than intermediaries, custodians, nominees, agents or flow-through entities) using the reporting pools as described in section 8.03 of this Agreement and shall report payments made to indirect foreign account holders of the PAI by reporting the payments as made to specific recipients under the rules of section 8.02 of this Agreement. QI shall also file Forms 1099 and, if required, backup withhold on reportable payments made to U.S. non-exempt recipient direct or indirect account holders of a PAI in accordance with the terms of this Agreement. QI shall require a PAI to provide QI with all the information necessary for QI to meet its obligations under this Agreement. No provisions shall be contained in the agreement between QI and a PAI that preclude, and no provisions of this Agreement shall be construed to preclude, the PAI's joint and several liability for tax, penalties, and interest under chapters 3, 61, and section 3406 of the Code to the extent that underwithholding, penalties, and interest have not been collected from QI and the underwithholding or failure to report amounts correctly on Forms 945, 1042, 1042-S or 1099 are due to **[\*52]** a PAI's failure to properly perform its obligations under its agreement with QI. QI's agreement with a PAI must require the PAI to disclose information regarding U.S. non-exempt recipients to the same extent that QI is required to disclose such information to the IRS or another payor under this Agreement. Nothing in the agreement between QI and a PAI shall permit the PAI to assume primary NRA withholding responsibility or primary Form 1099 reporting and backup withholding responsibility.

**Sec. 4.03. Termination of Arrangement.** QI shall cease to treat an intermediary as a PAI within 90 days from the day QI knows that the PAI is in default of its agreement with QI unless the PAI has cured the event of default prior to the expiration of such 90 day period. QI must provide the IRS with notice of any PAI agreement that has been terminated within 30 days of the termination.

## SECTION 5. DOCUMENTATION REQUIREMENTS

**Sec. 5.01. Documentation Requirements.** QI shall apply the presumption rules to any account holder that receives a reportable amount or reportable payment unless QI can reliably associate the payment with valid documentation from the account holder. QI agrees to use its best efforts to **[\*53]** obtain documentation from account holders. If QI is obtaining documentary evidence, QI also agrees to adhere to the know-your-customer rules that apply to QI with respect to the account holder from whom the documentary evidence is obtained. As set forth in section 11.04 (F) of this Agreement, failure to obtain documentation from a significant number of direct account holders constitutes an event of default. QI agrees to review and maintain documentation in accordance with this section 5 and, in the case of documentary evidence obtained from direct account holders, in accordance with the know-your-customer rules set forth in the Attachments to this Agreement. QI also agrees to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by QI's external auditor. QI represents that none of the laws to which it is subject prohibits disclosure of the identity of any account holder (including account holders subject to the provisions of section 6.04 of this Agreement) or account information to QI's external auditor. QI may rely on the documentation it obtains under this section 5 as the basis for the information **[\*54]** it provides another withholding agent under section 6 of this Agreement, as well as to determine its own withholding and reporting obligations.

**Sec. 5.02. Documentation For Foreign Account Holders.** Except as otherwise provided in section 5 of this Agreement, QI may treat an account holder (including an account holder that is a

collective investment vehicle) as a foreign beneficial owner of an amount if the account holder provides a valid Form W-8 (other than Form W-8IMY) or valid documentary evidence, as described in section 2.12 of this Agreement, that supports the account holder's status as a foreign person. QI may treat a documented foreign beneficial owner account holder as entitled to a reduced rate of NRA withholding if all the requirements to a reduced rate are met and the documentation provided by the account holder supports entitlement to a reduced rate. QI may not, however, reduce the rate of NRA withholding or backup withholding required under the presumption rules of section 5.13 (C) of this Agreement if QI knows that the account holder (including a collective investment vehicle) is not the beneficial owner of a reportable amount or reportable payment. In addition, QI may [\*55] not treat an account holder that provides documentation indicating that it is a bank, broker, intermediary, or agent (such as an attorney) as a beneficial owner unless QI receives a statement, in writing and signed by a person with authority to sign such a statement, stating that such account holder is the beneficial owner of the income. Further, QI may not reduce the rate of withholding that applies under the presumption rules of section 5.13 (C) of this Agreement on the basis of a collective or global certification that is made by any person (such as an intermediary or flow-through entity) on behalf of others unless the certification is a valid Form W-8IMY, and then, only to the extent that QI can reliably associate the payment with valid documentation that establishes the account holder's entitlement to a reduced rate of withholding. See section 5.13 (B) of this Agreement for rules regarding reliable association with documentation.

**Sec. 5.03. In General.** QI may not reduce the rate of withholding based on a beneficial owner's claim of treaty benefits unless QI obtains the documentation required by section 5.03 (A) of this Agreement. In addition, QI agrees to establish procedures to [\*56] inform account holders of the terms of limitation on benefits provisions of a treaty (whether or not those provisions are contained in a separate article entitled Limitation on Benefits) under which the account holder is claiming benefits.

**(A) Treaty Documentation.** The documentation required by this section 5.03 (A) is as follows:

- (1) The account holder has provided a properly completed Form W-8BEN with part II of the form completed, including the appropriate limitation on benefits and section 894 certifications. A TIN shall not be required, however, if the beneficial owner is a direct account holder. An indirect account holder is required to have a TIN to claim treaty benefits unless it is claiming treaty benefits on income from a marketable security;
- (2) The account holder has provided documentary evidence that has been obtained pursuant to the know-your-customer rules that apply to the account holder and the account holder has made the treaty statement required by section 5.03 (B) of this Agreement, if applicable; or
- (3) The account holder provides the type of documentary evidence required under Treas. Reg. §1.1441-6 to establish entitlement to a reduced rate of withholding under a treaty [\*57] and the account holder has made the treaty statement required by section 5.03 (B) of this Agreement, if applicable.

**(B) Treaty Statement.** The treaty statement required by this section 5.03 (B) is as follows:

[Name of account holder] meets all provisions of the treaty that are necessary to claim a reduced rate of withholding, including any limitation on benefits provisions, and derives the income within the meaning of section 894 of the Code, and the regulations thereunder, as the beneficial owner. QI shall not be required to obtain a treaty



statement required by this section 5.03 (B) from an individual who is a resident of an applicable treaty country or from the government, or its political subdivisions, of a treaty country.

**(C) Transition Rule for Treaty Certification.** QI may reduce the rate of withholding on a payment made to a beneficial owner account holder that is otherwise entitled to a reduced rate of withholding under an income tax treaty without obtaining the treaty statement required in sections 5.03 (B) of this Agreement provided that the account to which the payment is made was established before January 1, 2001, and the payment to which a reduced rate of withholding under [\*58] the income tax treaty is applied is received on or before December 31, 2002.

**Sec. 5.04. Documentation for International Organizations.** QI may not treat an account holder as an international organization entitled to an exemption from withholding under section 892 of the Code unless the name provided on the documentation (including a Form W-8EXP) is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288 (f) and the documentation is valid under section 5.10 of this Agreement. If an international organization is not claiming benefits under section 892 of the Code but under another Code exception, the provisions of sections 5.02 of this Agreement apply rather than the provisions of this section 5.04. **Sec. 5.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.**

**(A) Documentation From a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption From Withholding Under Section 892 or Section 895.** QI may not treat an account holder as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 of the Code unless-

- (1) QI receives from the [\*59] account holder a Form W-8EXP or documentary evidence establishing that the account holder is a foreign government or foreign central bank of issue;
- (2) The income paid to the account holder is the type of income that qualifies for an exemption from withholding under section 892 or 895; and
- (3) QI does not know, or have reason to know, that the account holder is a controlled commercial entity, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

**(B) Treaty Exemption.** QI may treat an account holder as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty if it has valid documentation that, under section 5.03 of this Agreement, is sufficient to obtain a reduced rate of withholding under a treaty.

**(C) Other Code Exception.** If a foreign government or foreign central bank of issue is not claiming benefits under section 892 of the Code but under another Code exception (e.g., the portfolio interest exception under sections 871 (h) or 881 (c) of the Code), [\*60] the provisions of sections 5.02 of this Agreement apply rather than the provisions of this section 5.05.

**Sec. 5.06. Documentation for Foreign Tax-Exempt Organizations.**

**(A) Reduced Rate of Withholding Under Section 501.** QI may not treat an account holder as a foreign organization described under section 501 (c) of the Code, and therefore exempt from withholding (or, if the account holder is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443 (b) of the Code) unless QI obtains a valid Form W-8EXP on which Part III of the form is completed.

**(B) Reduced Rate of Withholding Under Treaty.** QI may not treat an account holder as a foreign organization that is tax-exempt on an item of income pursuant to a treaty unless QI obtains valid documentation as described under section 5.03 of this Agreement that is sufficient for obtaining a reduced rate of withholding under a treaty and the documentation establishes that the account holder is an organization exempt from tax under the treaty on that item of income.

**(C) Other Exceptions.** If a tax-exempt entity is not claiming a reduced rate of withholding because it is an organization described under section 501 (c) of the Code **[\*61]** or under a treaty article that applies to exempt certain organizations from tax, but is claiming a reduced rate of withholding under another Code or treaty exception, the provisions of section 5.02 of this Agreement shall apply rather than the provisions of this section 5.06.

**Sec. 5.07. Documentation From Intermediaries or Flow-Through Entities.** QI shall apply the presumption rules of section 5.13 of this Agreement to a reportable amount or reportable payment made to a nonqualified intermediary or flow-through entity except to the extent QI follows the documentation procedures set forth below.

**(A) Nonqualified Intermediaries and Flow-Through Entities.** QI shall not apply the presumption rules on a payment made to a nonqualified intermediary or flow-through entity to the extent-

- (1) QI receives a valid Form W-8IMY provided by the nonqualified intermediary or the flow-through entity; and
- (2) QI can reliably associate the payment, within the meaning of section 5.13 (B) of this Agreement, with valid documentation described in this section 5 provided by account holders that are not themselves nonqualified intermediaries or flow through entities.

**(B) Qualified Intermediaries and Withholding Foreign **[\*62]** Partnerships.** QI shall not apply the presumption rules to a payment made to a qualified intermediary or withholding foreign partnership to the extent QI can reliably associate the payment with a valid Form W-8IMY provided by the qualified intermediary or withholding foreign partnership and, for those payments for which a qualified intermediary has not assumed primary NRA withholding responsibility or primary Form 1099 reporting and backup withholding responsibility, QI can reliably associate the payment with a withholding rate pool, as described in section 6.03 of this Agreement.

**(C) Private Arrangement Intermediaries.** QI shall not apply the presumption rules of section 5.13 of this Agreement if QI has an agreement with a PAI, QI obtains from the PAI a Form W-8IMY completed as if the PAI were a qualified intermediary (with the exception that the PAI must not provide a QI-EIN on the Form W-8IMY) and QI can reliably associate the payment with reporting pools as described under section 8 of this Agreement, or with withholding rate pool information relating to U.S. non-exempt recipients and indirect foreign account holders.

**Sec. 5.08. Documentation For U.S. Exempt Recipients.** QI shall not **[\*63]** treat an account holder as a U.S. exempt recipient unless QI obtains from the account holder-

- (A) A valid Form W-9 on which the account holder writes "Exempt" in Part II of the Form;
- (B) Documentary evidence that is sufficient to establish both the account holder's U.S. and exempt recipient status; or
- (C) Documentary evidence that is sufficient to establish the account holder's status as a U.S. person and QI can treat the person as an exempt recipient under the rules of Treas. Reg. §§1.6041-3 (q), 5f.6045-1 (c) (3) (i) (B), 1.6045-2 (b) (2) (i), or 1.6049-4 (c) (1) (ii), as appropriate, without obtaining documentation.

**Sec. 5.09. Documentation for U.S. Non-Exempt Recipients.** QI shall not treat an account holder as a U.S. non-exempt recipient unless QI obtains a valid Form W-9 from the account holder, QI knows an account holder is a U.S. non-exempt recipient, or QI must presume a person is a U.S. non-exempt recipient under sections 5.13 (C) (2) or (4) of this Agreement. See section 6.04 of this Agreement for rules that apply if the identity of a U.S. non-exempt recipient is prohibited by law from being disclosed.

#### **Sec. 5.10. Documentation Validity.**

**(A) In General.** QI may not rely on documentation **[\*64]** if QI has actual knowledge, or reason to know as described in section 5.10 (B) and (C) of this Agreement, that the information or statements contained in the documentation are unreliable or incorrect. Once QI knows, or has reason to know, that documentation provided by an account holder is unreliable or incorrect, it can no longer reliably associate a payment with valid documentation and, therefore, shall treat the account holder as an undocumented account holder and shall apply the presumption rules of section 5.13 of this Agreement until it obtains valid documentation. In addition, if QI discovers that information contained in documentation is unreliable or incorrect, QI agrees that it will promptly provide a withholding agent with corrected information (e.g., corrected withholding rate pools, corrected Forms W-9, or correct TINs), if necessary for the withholding agent to perform its obligations, within 30 days after QI discovers that the documentation upon which it has relied is unreliable or incorrect. If QI receives notification from the IRS that documentation provided by an account holder is unreliable or incorrect (e.g., that the TIN provided by an account holder is incorrect) **[\*65]** QI shall follow the procedures set forth in Treas. Reg. §31.3406 (d)-5.

**(B) Reason to Know-Direct Account Holders.** QI shall be considered to have reason to know that documentation provided by a direct account holder is unreliable or incorrect only if one or more of the circumstances described in this section 5.10 (B) apply. If an account holder has provided documentation that is not reliable under the rules of this section 5.10 (B), QI may require new documentation. Alternatively, QI may rely on the documentation originally provided if the rules of this section 5.10 (B) permit such reliance based on additional statements and documentation.

#### **(1) General Rules.**

(i) To the extent QI has primary Form 1099 and backup withholding responsibility, QI shall not rely on a Form W-9 if it is not permitted to do so under the rules of Treas. Reg. §31.3406 (h)-3 (e).

(ii) QI shall not treat documentary evidence provided by an account holder as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an account holder that is a natural person and the photograph **[\*66]** on the documentary evidence, if any, does not match the appearance of the person presenting the document.

(iii) QI may not rely on documentation to reduce the withholding rate that would otherwise apply

under the presumption rules if the account holder's documentation is incomplete, contains information that is inconsistent with the account holder's claim, QI has other account information that is inconsistent with the account holder's claim, or the documentation lacks information necessary to establish entitlement to a reduced rate of withholding. For example, if an account holder provides documentary evidence to claim treaty benefits and the documentary evidence establishes the account holder's status as a foreign person and a resident of a treaty country, but fails to provide the treaty statement in section 5.03 of this Agreement, if required, the documentary evidence does not establish the account holder's entitlement to a reduced rate of withholding. However, for purposes of establishing an account holder's status as a foreign person or residency under an income tax treaty, documentation shall be considered inconsistent only if it is not reliable under the rules of section 5.10 (B) (2) **[\*67]** and (3) of this Agreement.

## **(2) Rules Regarding Establishment of Foreign Status.**

(i) QI shall not treat documentary evidence provided by an account holder after December 31, 2000, as valid for purposes of establishing the account holder's foreign status if the only mailing or residence address that is available to QI is an address at a financial institution (unless the financial institution is a beneficial owner), an in-care-of address, or a P.O. Box. In this case, QI must obtain additional documentation that is sufficient to establish the account holder's identity as a foreign person. QI shall not treat documentary evidence provided by an account holder before January 1, 2001, as valid for purposes of establishing an account holder's status as a foreign person if it has actual knowledge that a person is a U.S. person or if it has a mailing or residence address for the account holder in the United States. If QI has an address for the account holder in the United States, QI may treat the account holder as a foreign person if it can so treat the account holder under the rules of section 5.10 (B) (2) (ii) of this Agreement.

(ii) QI shall not treat documentation as valid for purposes of establishing **[\*68]** an account holder's status as a foreign person if QI has a mailing or residence address (whether or not on the documentation) for the account holder in the United States or if the account holder notifies QI of a new address in the United States. If the account holder is a natural person, QI may nevertheless treat the account holder as a foreign person if QI-

- (a) Has in its possession or obtains additional documentary evidence (which does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder's foreign status;
- (b) Has in its possession or obtains a valid Form W-8, if the initial documentation provided was not a Form W-8, and the Form W-8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides a reasonable explanation in writing supporting the account holder's foreign status); or
- (c) Is required to report annually a payment to the account holder on a tax information statement in the country in which QI, or a branch of QI, is located; QI is required to file a copy of that statement **[\*69]** with the tax authority of that country; and that country has an income tax treaty in effect with the United States. If the documentation is provided by an entity (other than a flow-through entity), QI may nevertheless treat the account holder as a foreign person if QI-
- (d) Has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country;

- (e) Obtains a valid Form W-8, if the initial documentation provided was not a Form W-8, and the Form W-8 contains a permanent residence outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the account holder provides additional documentary evidence sufficient to establish the account holder's foreign status); or
- (f) Is required to report annually a payment to the account holder on a tax information statement in the country in which QI, or a branch of QI, is located; QI is required to file a copy of that statement with the tax authority of that country; and that country has an income tax treaty in effect with the United States.

(iii) QI shall not treat documentation as valid for purposes of establishing [\*70] an account holder's status as a foreign person if the account holder has standing instructions directing QI to pay amounts from its account to an address or an account maintained in the United States. QI may treat documentation as valid for establishing foreign status even though the account holder has such standing instructions if the account holder provides a reasonable explanation in writing that supports its foreign status.

### **(3) Rules for Establishing Residency Under An Income Tax Treaty.**

(i) QI shall not treat an account holder as a resident under an income tax treaty if the permanent residence address on a Form W-8 is not in the applicable treaty country. QI may, however, rely on the Form W-8 if the account holder provides a reasonable explanation for the permanent residence address outside the treaty (e.g., the address is the address of a branch located outside the treaty country in which the entity is a resident) or QI has in its possession, or obtains, documentary evidence that establishes residency in a treaty country.

(ii) QI shall not treat an account holder as a resident under an income tax treaty if the permanent residence address on a Form W-8 is in the applicable treaty [\*71] country but QI has a mailing or residence address for the account holder (whether or not contained on the Form W-8) outside the applicable treaty country. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude QI from treating the account holder as a resident of an applicable treaty country if such address is in the applicable treaty country. If QI has a mailing or residence address for the account holder outside the applicable treaty country, QI may nevertheless rely on the form if-

- (a) QI has in its possession, or obtains, additional documentation supporting the account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);
- (b) QI has in its possession, or obtains, documentation that establishes that the account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires);
- (c) QI knows that the address outside the applicable treaty country (other than a P.O. Box, or in-care-of address) is a branch [\*72] of a bank or insurance company; or
- (d) QI obtains a written statement from the account holder that reasonably establishes entitlement to treaty benefits.

(iii) QI shall not treat documentary evidence as valid for purposes of establishing residency in a treaty country if QI has a mailing or residence address for the account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the only address that QI has (whether in or outside of the applicable treaty country) is a P.O. Box, an in-care-of address, or the address of a financial institution (if the financial institution is not the beneficial owner). QI may nevertheless rely on the documentary evidence if-

- (a) QI has in its possession, or obtains, additional documentary evidence supporting the account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. Box, an in-care-of address, or the address of a financial institution);
- (b) QI has in its possession, or obtains, documentary evidence that establishes that the account holder is an entity organized in a treaty country (or an entity managed **[\*73]** and controlled in a treaty country, if the applicable treaty so requires); or
- (c) QI obtains a valid Form W-8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(iv) QI shall not treat documentation as valid for purposes of establishing an account holder's residence in an applicable treaty country if the account holder has standing instructions for QI to pay amounts from its account to an address or an account outside the treaty country unless the account holder provides a reasonable explanation, in writing, establishing the account holder's residence in the applicable treaty country.

**(C) Reason to know-Indirect Account Holders.** QI shall be considered to have reason to know that relevant information or statements contained in documentation provided by an indirect account holder are unreliable or incorrect if a reasonably prudent person in the position of a qualified intermediary would question the claims made. QI shall have reason to know that indirect account holder documentary evidence provided by a nonqualified intermediary or a flow-through entity is unreliable or incorrect if a nonqualified intermediary or flow-through entity does not **[\*74]** provide QI with the names of the indirect account holders, their addresses, allocation information allocating payments to each indirect account holder, and sufficient information for QI to report payments on Forms 1042-S and Forms 1099. In addition, QI shall have reason to believe that an indirect account holder is not entitled to a reduced rate of withholding under an income tax treaty if the nonqualified intermediary or flow-through entity has not provided sufficient information so that QI can verify that the indirect account holder has provided a TIN, if required, and made the necessary statements regarding limitations on benefits provisions and deriving the income under section 894 of the Code and the regulations thereunder.

#### **Sec. 5.11. Documentation Validity Period.**

**(A) Documentation Other than Form W-9.** QI may rely on valid documentary evidence obtained from account holders in accordance with applicable know-your-customer rules as long as the documentary evidence remains valid under those rules or until QI knows, or has reason to know, that the information contained in the documentary evidence is incorrect. QI may rely on the representations described in section 5.03 of this Agreement **[\*75]** obtained in connection with such documentation for the same period of time as the documentation. QI may rely on a Form W-8 until its validity expires under Treas. Reg. §1.1441-1 (e) (4) (ii) and may rely on documentary evidence (other than documentary evidence obtained pursuant to applicable know-your-customer

rules) until its validity expires under Treas. Reg. § 1.6049-5 (c) (2).

**(B) Form W-9.** QI may rely on a valid Form W-9 as long as it has not been informed by the IRS or another withholding agent that the form is unreliable. If QI has primary Form 1099 reporting and backup withholding responsibility, it may rely on a Form W-9 unless one of the conditions of Treas. Reg. §31.3406 (h)-3 (e) (2) (i) through (v) apply.

#### **Sec. 5.12. Maintenance and Retention of Documentation.**

**(A) Maintaining Documentation.** QI shall maintain documentation by retaining the original documentation, a certified copy, a photocopy, a microfiche, or by electronic storage or similar means of record retention. For accounts opened prior to January 1, 2001, if QI was not required under its know-your-customer rules to maintain originals or copies of documentation, QI may rely on its account information if it has complied **[\*76]** with all other aspects of its know-your-customer rules regarding establishment of an account holder's identity, it has a record that the documentation required under the know-your-customer rules was actually examined by an employee of QI in accordance with the know-your-customer rules, and it has no information in its possession that would require QI to treat the documentation as invalid under the rules of section 5.10 (B) of this Agreement.

**(B) Retention Period.** QI shall retain an account holder's documentation obtained under this section 5 for as long as documentation is required to be retained under know-your-customer rules identified in the relevant Attachment(s) to this Agreement, whether or not the documentation was obtained pursuant to those rules.

#### **Sec. 5.13. Application of Presumption Rules.**

**(A) In General.** QI shall apply the presumption rules of section 5.13 (C) of this Agreement if QI cannot reliably associate a payment with valid documentation from an account holder other than a nonqualified intermediary or a flow-through entity. The presumption rules cannot be used to grant a nonqualified rate of withholding. For example, the portfolio interest exception of sections 871 (h) and **[\*77]** 881 (c) of the Code shall not apply to a person that is presumed to be foreign. Further, QI must apply the presumption rules when required and may not rely on its actual knowledge regarding an account holder's status as a U.S. or foreign person. For example, if the account holder is presumed to be a U.S. non-exempt recipient, QI must treat the account holder as subject to 31% backup withholding on a reportable payment even though QI actually knows that the account holder is a foreign person. Notwithstanding the preceding sentence, QI must rely on its actual knowledge regarding an account holder rather than what is presumed under section 5.13 (C) of this Agreement if, based on such knowledge, it should withhold an amount greater than the withholding rate under the presumption rules or it should report on Form 1042-S or Form 1099 an amount that would otherwise not be reported. Thus, if an account holder is presumed to be a foreign person with respect to an amount subject to withholding, QI must treat the account holder as subject to 30 percent withholding and report the payment on Form 1042-S unless QI has actual knowledge that the account holder is a U.S. non-exempt recipient, in which **[\*78]** case it must withhold 31 percent from the gross amount of the payment and report the payment on Form 1099. Failure to follow the presumption rule's may result in liability for underwithholding, penalties, and interest.

**(B) Reliably Associating a Payment With Documentation.** A payment can be reliably associated with documentation if it is considered reliably associated with documentation under the rules of Treas. Reg. §1.1441-1 (b) (2) (vii). Generally, QI can reliably associate a payment with documentation if, for that payment, it holds valid documentation, as described in section 5 of the Agreement, from an account holder other than a nonqualified intermediary or flow-through entity; it can reliably determine how much of the payment relates to the valid documentation provided by such an account holder; and it has no actual knowledge or reason to know that any of the information or statements in the documentation are incorrect. Sections 5.13 (B) (1)-(5) of this Agreement describe whether a payment is reliably associated with documentation if the payment is made to an intermediary or flow-through entity.

#### **(1) Reliably Associating a Payment With Documentation Provided by a Nonqualified**

**Intermediary [\*79] or a Flow-Through Entity.** Generally, QI can reliably associate a payment with documentation provided by a nonqualified intermediary or a flow-through entity only to the extent it can reliably associate the payment with a valid Form W-8IMY; it can determine the portion of the payment that relates to valid documentation, associated with the Form W-8IMY, from an account holder other than a nonqualified intermediary or flow-through entity; and the nonqualified intermediary or flow-through entity provides sufficient information for QI to report the payments on Form 1042-S or Form 1099, if reporting is required. Notwithstanding the preceding sentence, to the extent a payment is not subject to reporting on Form 1042-S or Form 1099, QI can reliably associate the payment with valid documentation provided it can determine the portion of the payment allocable to a group of documented account holders (other than nonqualified intermediaries or flow-through entities) for whom withholding and reporting is not required. For example, a QI can treat a payment of deposit interest allocable to a group of documented foreign account holders and documented U.S. exempt recipients as reliably associated with [\*80] valid documentation. If the documentation attached to a nonqualified intermediary or flow-through entity's Form W-8IMY is documentation from another nonqualified intermediary or flow-through entity, then the qualified intermediary must apply the rules of this paragraph to that other nonqualified intermediary or flow-through entity.

**(2) Reliably Associating a Payment With a Withholding Certificate Provided By a Qualified Intermediary.** Generally, QI can reliably associate a payment with documentation provided by another qualified intermediary that does not assume either primary NRA withholding responsibility or primary Form 1099 reporting and backup withholding responsibility to the extent the other qualified intermediary provides a valid Form W-8IMY and a withholding statement that allocates the payment among withholding rate pools for foreign account holders and withholding rate pools attributable to each U.S. non-exempt recipient account holder for which the other qualified intermediary has provided a valid Form W-9. The presumption rules shall not apply, however, even if a payment cannot be allocated to each U.S. non-exempt recipient account holder to the extent the alternative procedures [\*81] of section 6.03 (B) of this Agreement apply.

**(3) Reliably Associating a Payment with Documentation Provided by a Qualified Intermediary That Assumes Primary NRA Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes primary NRA withholding responsibility, but not primary Form 1099 reporting and backup withholding responsibility, to the extent it can associate the payment with a valid Form W-8IMY and the withholding statement associated with the Form W-8IMY allocates the payment between a single withholding rate pool attributable to all foreign persons for which the qualified intermediary assumes primary NRA withholding responsibility and to withholding rate pools attributable to each U.S. non-exempt recipient account holder for which the other qualified intermediary has provided a valid Form W-9. The presumption rules shall not apply, however, even if a payment cannot be allocated to each U.S. non-exempt recipient account holder to the extent the alternative procedures of section 6.03 (B) of this Agreement apply.

**(4) Reliably Associating a Payment With Documentation Provided by a Qualified [\*82] Intermediary that Assumes Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility, but not primary NRA withholding responsibility, to the extent it can associate the payment with a valid Form W-8IMY and a withholding statement that allocates the payment among withholding rate pools for foreign account holders.

**(5) Reliably Associating a Payment With Documentation Provided by a Qualified Intermediary that Assumes Both Primary NRA Withholding Responsibility and Primary Form 1099 Reporting and Backup Withholding Responsibility.** Generally, QI can reliably associate a payment with valid documentation provided by another qualified intermediary that assumes both primary NRA withholding responsibility and primary Form 1099 reporting and backup withholding responsibility if QI can associate the payment with a valid Form W-8IMY and a withholding statement that designates the accounts for which the other qualified intermediary is acting as a qualified intermediary and is assuming primary NRA [\*83] withholding and primary Form 1099 reporting and backup withholding responsibility.



(C) **Presumption Rules.** The presumption rules are as follows:

- (1) **Payments Made Outside the United States to an Offshore Account of Amounts Subject to NRA Withholding.** An amount that is subject to NRA withholding that is paid outside the United States to an account that is maintained outside the United States is presumed made to an undocumented foreign account holder. Therefore, QI must treat the amount as subject to withholding at a rate of 30 percent on the gross amount paid and report the payment to an unknown account holder on Form 1042-S.
- (2) **Payments of Deposit Interest and OID on Short-Term Obligations.** An amount of U.S. source deposit interest (other than an amount that is part of the purchase price of a certificate of deposit sold in a transaction other than a redemption) or an amount of U.S. source interest or original issue discount on the redemption of a short-term obligation that is paid outside the United States to an offshore account is presumed made to an undocumented U.S. non-exempt recipient account holder. QI must backup withhold at 31 percent and report such amounts on Form 1099 unless **[\*84]** it has provided sufficient information for another payor from which it receives such amounts to backup withhold and report the payments and QI does not know that the other payor has failed to backup withhold or report.
- (3) **Foreign Source Income, Broker Proceeds, and Certain Other Amounts.** QI shall presume that the following payments are made to an exempt recipient provided that such amounts are paid outside the United States to an account maintained outside the United States:
  - (i) Foreign source income;
  - (ii) Broker proceeds;
  - (iii) Original issue discount paid in a sale other than a redemption;
  - (iv) Interest paid as part of the purchase price of an obligation when the instrument is sold between interest payment dates;
  - (v) Amounts held on deposit with banks or other financial institutions for two weeks or less;
  - (vi) Amounts of original issue discount arising from a sale and repurchase transaction that is completed within two weeks or less; or
  - (vii) Amounts described in Treas. Reg. §§1.6049-5 (b) (7), (10), and (11). Such amounts are not subject to withholding or reporting.
- (4) **Other Payments.** Any payment not covered in sections 5.13 (C) (1), (2) or (3) of this Agreement shall be presumed made to a U.S. non-exempt **[\*85]** recipient and therefore

shall be subject to Form 1099 reporting and to backup withholding. Backup withholding shall not be required, however, if the exception provided in Treas. Reg. §31.3406 (g)-1 (e) applies. For example, any reportable payment paid inside the United States or paid to a U.S. account is presumed made to a U.S. non-exempt recipient and shall be subject to backup withholding and reporting on Form 1099 as paid to an unknown owner.

## SECTION 6. QUALIFIED INTERMEDIARY WITHHOLDING CERTIFICATE AND DISCLOSURE OF ACCOUNT HOLDERS TO WITHHOLDING AGENT

**Sec. 6.01. Qualified Intermediary Withholding Certificate.** QI agrees to furnish a qualified intermediary withholding certificate to each withholding agent from which it receives a reportable amount as a qualified intermediary. The qualified intermediary withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that QI is acting as a qualified intermediary, contains QI's QI-EIN, and provides all other information required by the form. QI also agrees to furnish each withholding agent to whom it provides a Form W-8IMY the withholding statement described in section 6.02 of this Agreement. QI is not required **[\*86]** to disclose, as part of its Form W-8IMY or its withholding statement, any information regarding the identity of an account holder that is a foreign person or a U.S. exempt recipient. However, to the extent it does not assume primary Form 1099 reporting and backup withholding responsibility, QI must provide to a withholding agent the Forms W-9 obtained from each U.S. non-exempt recipient account holder on whose behalf QI receives a reportable amount. If a U.S. non-exempt recipient that must be disclosed has not provided a Form W-9, QI must, to the extent it has not assumed primary Form 1099 reporting and backup withholding, disclose the name, address, and TIN (if available) to the withholding agent. QI is not required, however, to disclose the identity of a U.S. non-exempt recipient if QI is prohibited by law from making the disclosure and QI follows the procedures of section 6.04 of this Agreement.

### **Sec. 6.02. Withholding Statement.**

**(A) In General.** QI agrees to provide to each withholding agent from which QI receives reportable amounts as a qualified intermediary a written statement (the "withholding statement") described in this section 6.02. The statement forms an integral part of the **[\*87]** Form W-8IMY. The withholding statement may be provided in any manner, and in any form, to which QI and the withholding agent mutually agree. For example, QI and the withholding agent may agree to establish a procedure to furnish withholding statement information electronically. The procedure must contain sufficient safeguards to ensure that the information received by the withholding agent is the information sent by

QI and must also document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the QI and the withholding agent must be capable of providing a hard copy of all withholding statements provided by the QI. The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under this Agreement.

**(B) Content of Withholding Statement.** The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments from the accounts identified on the statement and to properly report such payments on Forms 1042-S and Forms 1099, as applicable. The withholding statement must-

(1) Designate **[\*88]** those accounts for which QI acts as a qualified intermediary;

(2) Designate those accounts for which QI assumes primary NRA withholding responsibility

and/or primary Form 1099 reporting and backup withholding responsibility; and

- (3) Provide information regarding withholding rate pools, as described in section 6.03 of this Agreement, if necessary.

### **Sec. 6.03. Withholding Rate Pools.**

**(A) In General.** QI shall provide as part of its withholding statement withholding rate pool information in a manner sufficient for the withholding agent to meet its NRA and backup withholding responsibilities and its Form 1042-S and Form 1099 reporting responsibilities. Withholding rate pool information is not required to the extent QI has assumed both primary NRA withholding responsibility and primary Form 1099 reporting and backup withholding responsibility and all the information required for the withholding agent to report payments on Form 1042-S (e.g., the type of income) are within the knowledge of the withholding agent. A withholding rate pool is a payment of a single type of income (e.g., interest, dividends) determined in accordance with the categories of income reported on Form 1042-S or Form 1099, as **[\*89]** applicable, that is subject to a single rate of withholding (e.g., 0%, 10%, 15%, or 30%). To the extent QI does not assume primary Form 1099 and backup withholding responsibility, QI's withholding statement must establish a separate withholding rate pool for each U.S. nonexempt recipient account holder that QI has disclosed to the withholding agent unless QI uses the alternative procedures in section 6.03 (B) of this Agreement. QI shall determine withholding rate pools based on valid documentation obtained under section 5 of this Agreement, or if a payment cannot be reliably associated with valid documentation, on the presumption rules of section 5.13 (C) of this Agreement. If QI has an account holder that is another intermediary (whether a qualified intermediary, a non-qualified intermediary, or a private arrangement intermediary) or a flow-through entity, QI may combine the account holder information provided by the intermediary or flow-through entity with QI's direct account holder information to determine QI's withholding rate pools.

**(B) Alternative Procedure for U.S. Non-Exempt Recipients.** QI may, by mutual agreement with the withholding agent, establish a single withholding rate **[\*90]** pool (not subject to backup withholding) for all U.S. non-exempt recipient account holders for whom QI has provided Forms W-9 prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds. Alternatively, QI may include such U.S. non-exempt recipients in a zero rate withholding pool that includes U.S. exempt recipients and foreign persons exempt from NRA withholding provided that all the conditions of this paragraph 6.03 (B) are met. QI may establish a separate withholding rate pool (subject to 31% withholding) for all U.S. non-exempt recipient account holders for whom QI has not provided Forms W-9 prior to the withholding agent paying any reportable amounts or, if applicable, designated broker proceeds. If QI chooses the alternative procedure of this section 6.03 (B), QI must provide sufficient information to the withholding agent no later than January 15 of the year following the year in which the reportable amounts and designated broker proceeds, if applicable, are paid that allocates such payments to each U.S. non-exempt recipient account holder. Failure to provide such information will result in the application of penalties to the QI **[\*91]** under sections 6721 and 6722 of the Code and shall constitute an event of default under section 11.04 of this Agreement.

### **Sec. 6.04. Legal Prohibitions Against Disclosure of U.S. Non-Exempt Recipients.**

**(A) Accounts Established Prior to January 1, 2001.** If QI knows an account holder is a U.S. non-exempt recipient and the account holder's account was established with QI prior to January 1, 2001 (a pre-2001 account), QI agrees to the following procedures:

- (1) If QI is prohibited by law, including by contract, from disclosing to a withholding agent or to the IRS on Form 1099 the account holder's name, address, and TIN, for reportable

payments paid to the account holder, then QI must-

- (i) Request from the account holder the authority to make such a disclosure;
  - (ii) Request from the account holder the authority to sell any assets that generate, or could generate, reportable payments; or
  - (iii) Request that the account holder disclose himself by mandating QI to provide a Form W-9 completed by the account holder.
- (2) QI must make the requests described in section 6.04 (A) (1) at least two times during each calendar year and in a manner consistent with QI's normal communications with the account holder (e.g., **[\*92]** by mail, telephone, etc.). If QI is not authorized to initiate communications with the account holder (e.g., QI can only communicate with the account holder in person), QI must make the request at the time and in the manner that QI is authorized to communicate with the account holder.
- (3) Until QI receives a waiver of all prohibitions against disclosure or authorization to sell all assets that generate, or could generate, reportable payments, or a mandate from the account holder to provide a Form W-9, QI shall backup withhold on all reportable payments paid to the account holder and report those payments on Form 1099 or, in the case of reportable amounts and designated proceeds, provide another withholding agent with all the information required for that withholding agent to backup withhold and report the payments on Form 1099. If the account holder disposes of any assets that generate, or could generate, reportable payments prior to providing QI with a waiver of all prohibitions against disclosure or authorization to sell all such assets, QI shall apply backup withholding and Form 1099 reporting in accordance with sections 3 and 8 of this Agreement.
- (4) If QI has not assumed primary Form **[\*93]** 1099 reporting and backup withholding responsibility but is authorized, or is mandated, to disclose the account holder's name, address, TIN and reportable amounts (and, designated broker proceeds if section 3.05 (C) of this Agreement applies) to a withholding agent, QI must provide the account holder's Form W-9 (or, if a Form W-9 was not obtained, the account holder's name, address, and TIN, if available) to the withholding agent together with appropriate withholding rate pool information within 30 days of the date QI receives such authorization.
- (5) If QI is authorized to dispose of the account holder's assets that generate, or could generate, reportable payments, QI must sell or exchange all such assets within 60 days of receiving authorization. In addition, if QI later discovers that an account contains such assets, QI must sell such assets within 60 days of the discovery. See sections 3 and 8 of this Agreement for backup withholding and Form 1099 reporting responsibilities.
- (6) If QI is not authorized to disclose the account holder's identity or to sell or exchange all of the account holder's assets that generate or could generate reportable payments, but QI is not prohibited by law, **[\*94]** including by contract, from disposing of the account holder's assets even though it has not obtained specific authorization, QI must sell or exchange all such assets on or before December 31, 2002, and apply backup withholding and Form 1099 reporting in accordance with sections 3 and 8 of this Agreement.

**(B) Account Holder Discovered to be U.S. Non-Exempt Recipient.** If QI's records indicate that the account holder of a pre-2001 account is a foreign person and the QI discovers that the account holder is a U.S. non-exempt recipient, QI shall follow the procedures of section 6.04 (A) of this Agreement, except that if QI may legally sell or exchange the account holder's assets that generate, or could generate, reportable payments without authorization, QI must sell or exchange all such assets on or before the date that is 365 days after QI learns that the account holder is a U.S. non-exempt recipient, or, if later, December 31, 2002.

**(C) Accounts Opened on or After January 1, 2001.** QI agrees to the following procedures for accounts opened by U.S. non-exempt recipients on or after January 1, 2001 (post-2000 accounts):

- (1) If QI is prohibited by law, including by contract, from disclosing to **[\*95]** a withholding agent or to the IRS on Form 1099 the account holder's name, address, and TIN, for reportable payments paid to the account holder, then QI must-
  - (i) Request from the account holder the authority to make such a disclosure;
  - (ii) Request from the account holder, prior to opening the account, the authority to exclude from the account holder's account any assets that generate, or could generate, reportable payments; or (iii) Request that the account holder disclose himself by mandating QI to transfer a Form W-9 completed by the account holder.
- (2) If QI is authorized to disclose the account holder's name, address, TIN (if available) and reportable amounts (and designated broker proceeds, if section 3.05 (C) of this Agreement applies), QI must obtain a valid Form W-9 from the account holder and, to the extent QI does not have primary Form 1099 and backup withholding responsibility, provide the Form W-9 to the appropriate withholding agent promptly after obtaining the Form W-9. If a Form W-9 is not obtained, then QI must provide the account holder's name, address, and TIN, if any, to the withholding agents from whom QI receives reportable amounts (and, if applicable, designated broker **[\*96]** proceeds) on behalf of the account holder together with appropriate withholding rate pool information relating to the account holder. To the extent QI has assumed primary Form 1099 reporting and backup withholding, it must backup withhold on all reportable payments until it receives a valid Form W-9.
- (3) If QI is not authorized to disclose an account holder's name and other required information but is authorized to exclude from the account holder's account any assets that generate, or could generate, reportable payments, QI must follow procedures designed to ensure that it will not hold any assets that generate, or could generate, reportable payments in the account holder's account.
- (4) If QI is authorized to exclude from the account holder's account any assets that generate, or could generate, reportable payments and QI discovers that the account contains such assets, QI must sell such assets within 60 days of discovering such assets and apply backup withholding and Form 1099 reporting in accordance with sections 3 and 8 of this Agreement. (5) QI agrees that if any account holder in a post-2000 account is discovered, after the opening of the account, to be a U.S. non-exempt recipient **[\*97]** then QI will-(i) Immediately correct the withholding statement information provided to the withholding agent, if necessary, and (ii) Either obtain a Form W-9 within 60 days of discovering that the account holder is a U.S. non-exempt recipient, and, if QI has not assumed primary

Form 1099 reporting and backup withholding responsibility, provide the Form W-9 to the appropriate withholding agents together with appropriate withholding pool information promptly after obtaining the Form W-9 or, if QI is not authorized to disclose account holder information, sell all of the account holder's assets that generate or could generate reportable payments within 60 calendar days from the day that QI discovers the account holder is a U.S. non-exempt recipient. QI must backup withhold, or instruct a withholding agent to backup withhold on any reportable payments made after the time QI discovers the account holder's U.S. non-exempt recipient status and before obtaining a valid Form W-9 from the account holder.

## SECTION 7. TAX RETURN OBLIGATIONS

### Sec. 7.01. Form 1042 Filing Requirement.

**(A) In general.** QI shall file a return on Form 1042, whether or not QI withheld any amounts under chapter 3 of the Code, **[\*98]** on or before March 15 of the year following any calendar year in which QI acts as a qualified intermediary. A separate Form 1042 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Form 1042 shall be filed at the address indicated on the form or at any other address at which the IRS notifies QI under the provisions of section 12.06 of this Agreement. In addition to the information specifically requested on Form 1042 and the accompanying instructions, QI shall attach to the form the following information:

- (1) A statement setting forth the amounts of any overwithholding or underwithholding adjustments made under Treas. Reg. §1.1461-2 and sections 9.02 and 9.05 of this Agreement, and an explanation of the circumstances that resulted in the over- or under-withholding.
- (2) A statement that sets forth the aggregate amounts of reportable payments paid to U.S. non-exempt recipient account holders, and the number of such account holders, whose identity is prohibited by foreign law, including by contract, from disclosure. QI must separately report each type of reportable payment (determined by reference to the types of income reported on Forms 1099) and **[\*99]** the number of undisclosed account holders receiving such payments. See section 6.04 of this Agreement.

**(B) Extensions For Filing Returns.** QI may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns on or before the due date of the return. The application must be in writing, properly signed by a duly authorized agent of QI, and shall clearly set forth the following:

- (1) The calendar year for which the extension is requested; and
- (2) A full explanation of the reasons for requesting the extension to assist the IRS in determining the period of extension, if any, that will be granted.

**Sec. 7.02. Form 945 Filing Requirement.** QI shall file a return on Form 945 on or before January 31 following the calendar year in which QI backup withheld any amount under section 3406 of the Code. Separate Forms 945 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. The form must be filed at the address specified in the instructions for Form 945 or at any other address at which the IRS **[\*100]** notifies QI under the provisions of section 12.06 of this Agreement.

**Sec. 7.03. Retention of Returns.** QI shall retain Forms 945 and 1042 for the applicable statute of limitations on assessments and collection under section 6501 of the Code.

## SECTIONS 8. INFORMATION REPORTING OBLIGATIONS

**Sec. 8.01. Form 1042-S Reporting.** Except as otherwise provided in section 8.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, QI shall file a Form 1042-S reporting the pools of income ("reporting pools") as determined in section 8.03 of this Agreement. QI must file its Forms 1042-S in the manner required by the regulations under chapter 3 of the Code and the instructions to the form, including any requirement to file the forms magnetically or electronically. Separate Forms 1042-S must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Each qualified intermediary covered by this Agreement may, however, allow its individual branches to file Forms 1042-S provided that all Forms 1042-S contain the QI-EIN of the legal entity of which the branch forms **[\*101]** a part. Any Form 1042-S required by this section 8 shall be filed on or before March 15 following the calendar year in which the payment reported on the form was made. QI may request an extension of time to file Forms 1042-S by submitting Form 8809, Request for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by Form 8809.

**Sec. 8.02. Recipient Specific Reporting.** QI (whether or not it assumes primary NRA withholding responsibility) is required to file separate Forms 1042-S for amounts paid to each separate account holder as described in this section 8.02. QI must file separate Forms 1042-S by income code, exemption code, recipient code, and withholding rate.

(A) QI must file separate Forms 1042-S for each qualified intermediary or withholding foreign partnership account holder that receives an amount subject to NRA withholding from QI (or from a PAI of QI), whether such account holder is a direct or indirect account holder.

(B) QI must file separate Forms 1042-S for each foreign account holder of a nonqualified intermediary or foreign interest holder of a flow-through entity receiving an amount subject to NRA withholding (whether the **[\*102]** nonqualified intermediary or flow-through entity is a direct or indirect account holder) to the extent QI can reliably associate such amounts with valid documentation from an account holder that is not itself a nonqualified intermediary or flow-through entity. In addition, QI must file separate Forms 1042-S for each foreign account holder of a nonqualified intermediary or foreign interest holder of a flow-through entity that is an account holder of a PAI of QI (whether the nonqualified intermediary or flow-through entity is a direct or indirect account holder of the PAI) to the extent QI can reliably associate the amounts subject to NRA withholding with valid documentation from an account holder that is not itself a nonqualified intermediary or flow-through entity.

(C) QI must file separate Forms 1042-S made out to an unknown recipient for amounts subject to withholding paid to a nonqualified intermediary or flow-through entity (whether the nonqualified intermediary or flow-through entity is a direct or indirect account holder), to the extent that QI cannot reliably associate such amounts with valid documentation from the account holders of the nonqualified intermediary or the interest **[\*103]** holders of the flow-through entity. In addition, QI must file separate Forms 1042-S made out to unknown recipient for amounts subject to withholding paid to a nonqualified intermediary or flow-through entity that is a direct or indirect account holder of a PAI of QI to the extent that QI cannot reliably associate such amounts with valid documentation from the account holders of such nonqualified intermediary or the interest holders of the flow-through entity.

**Sec. 8.03. Reporting Pools for Form 1042-S Reporting.** Except for amounts required to be reported under section 8.02 of this Agreement, QI shall report all amounts subject to NRA withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI or to direct account holders of a PAI of QI that are (or are presumed to be) foreign persons. A separate Form 1042-S shall be filed for each type of reporting pool. A reporting pool consists of income that falls within a particular withholding rate and within a particular income code, exemption code, and recipient code as determined on Form 1042-S. QI may use a single recipient code for all reporting pools except for amounts paid to foreign tax-exempt **[\*104]** recipients, for which a separate recipient code must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to NRA withholding and is not liable to tax in its country of residence because it is a charitable organization, a pension fund, or a foreign government.

**Sec. 8.04. Form 1099 Reporting Responsibility.** QI shall file Forms 1099 and, unless filing magnetically, Form 1096, for reportable payments made to the persons specified in this section 8.04. Forms 1099 shall be filed on or before the date prescribed for the particular Form 1099 under chapter 61 of the Code and in the manner required by regulations under chapter 61 of the Code and the instructions to the forms, including any requirement to file the forms magnetically or electronically. Extensions of the time to file Forms 1099 may be requested by submitting Form 8809, Request for Extension of Time to File Information Returns, in the manner required by the form. If QI is required to file Forms 1099, it must file the appropriate form for the type of income paid (e.g., Form 1099-DIV for dividends, Form 1099-INT for interest, Form 1099-B for broker proceeds). QI must file Forms 1099 **[\*105]** in the situations listed in sections 8.04 (A) through (E) of this Agreement regardless of whether it assumes primary Form 1099 reporting and backup withholding responsibility unless otherwise provided in those sections.

(A) QI must file a Form 1099 made out to an unknown owner for the aggregate amount of a particular type of reportable amount paid to account holders that are U.S. nonexempt recipients (whether direct or indirect account holders) whose identity and account information are prohibited by law, including by contract, from being disclosed. However, QI is not required to file a Form 1099 for, or backup withhold on, a reportable amount to the extent QI has provided sufficient information to another payor for that payor to report the reportable amount as paid to an unknown owner and to backup withhold on the reportable amount and QI does not know that the other payor has failed to report or backup withhold.

(B) QI must file a Form 1099 made out to an unknown owner on the aggregate amount of a reportable payment that is not a reportable amount paid to a U.S. non-exempt recipient (whether a direct or indirect account holder) whose identity and account information are prohibited **[\*106]** by law, including by contract, from disclosure. Notwithstanding the previous sentence, QI is not required to report on Form 1099 and backup withhold on designated broker proceeds to the extent the designated broker proceeds provisions of section 3.05 of this Agreement apply and QI does not know that the other payor has failed to report or backup withhold.

(C) QI must file a Form 1099 for a reportable amount paid to each U.S. nonexempt recipient account holder (whether a direct or indirect account holder) whose identity and account information are not prohibited by foreign law, including by contract, from disclosure and for whom QI has not provided a Form W-9 to a withholding agent or has not provided the account holder's name, address, TIN (if available) and withholding rate pool information to a withholding agent.

(D) QI must file a Form 1099 for a reportable payment (other than a reportable amount) paid to each U.S. non-exempt recipient (whether a direct or indirect account holder), or to any account holder that is presumed to be a U.S. non-exempt recipient, whose identity and account information are not prohibited by foreign law, including by contract, from disclosure. Notwithstanding **[\*107]** the previous sentence, QI is not required to report on Form 1099 or backup withhold on designated broker proceeds paid to a U.S. non-exempt recipient if the procedures of section 3.05 of this Agreement apply and QI does not know that the other payor has failed to report or backup withhold.

(E) QI must file a Form 1099 for account holders (whether direct or indirect) that are, or are presumed to be, U.S. non-exempt recipients that receive reportable amounts for which QI has



assumed primary Form 1099 reporting and backup withholding responsibility.

(F) QI must file a Form 1099 for an account holder (whether direct or indirect) that is a U.S. person (whether exempt or non-exempt) if QI has made a reportable payment to which it applied backup withholding and QI has not reported the amount under section 8.04 (A)-(E) of this Agreement.

## SECTION 9. ADJUSTMENTS FOR OVER-AND UNDER-WITHHOLDING; REFUNDS

**Sec. 9.01. Adjustments for NRA Over-withholding by Withholding Agent.** QI may request a withholding agent to make an adjustment for amounts paid to QI on which the withholding agent has overwithheld under chapter 3 of the Code by applying either the reimbursement procedure described in section 9.01 (A) **[\*108]** of this Agreement or the set-off procedure described in section 9.01 (B) of this Agreement within the time period prescribed for those procedures. Nothing in this section shall be interpreted to require a withholding agent to apply the reimbursement or set off procedures under sections 9.01 (A) or (B) of this Agreement.

**(A) Reimbursement Procedure.** QI may request a withholding agent to repay QI for any amount overwithheld under chapter 3 of the Code and for the withholding agent to reimburse itself under the reimbursement procedures of Treas. Reg. §1.1461-2 (a) (2) (i) by making the request to the withholding agent prior to the due date for filing the Form 1042 and Form 1042-S (without regard to extensions) for the calendar year of overwithholding.

**(B) Set-off Procedure.** QI may request a withholding agent to repay QI by applying the amount overwithheld against any amount which otherwise would be required to be withheld under chapter 3 of the Code from income paid by the withholding agent to QI. QI must make the request before the earlier of the due date (without regard to extensions) for the withholding agent to file Form 1042-S for the calendar year of overwithholding or the date that **[\*109]** the Form 1042-S is actually filed with the IRS.

**Sec. 9.02. Adjustments for NRA Overwithholding by QI.** QI may make an adjustment for amounts paid to its account holders that it has overwithheld under chapter 3 of the Code by applying either the reimbursement or set-off procedures described in this section within the time period prescribed for those procedures.

**(A) Reimbursement Procedure.** QI may repay its account holders for an amount overwithheld and reimburse itself by reducing, by the amount of tax actually repaid to the account holders, the amount of any subsequent deposit of tax required to be made by QI under section 3.08 of this Agreement. For purposes of this section 9.02 (A), an amount that is overwithheld shall be applied in order of time to each of the QI's subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if:

- (1) QI states on a Form 1042-S (issued, if applicable, to the account holders of the **[\*110]** income or otherwise to a reporting pool), filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and
- (2) QI states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with Treas. Reg. §1.6414-1.

**(B) Set-Off Procedure.** QI may repay its account holders by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code to be withheld from a payment made by QI to the account holders before the earlier of March 15 of the calendar year following the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code.

**Sec. 9.03. Repayment of Backup Withholding.** If QI erroneously withholds, as defined under Treas. Reg. §31.6413 (a)-3, **[\*111]** an amount under section 3406 of the Code from an account holder, QI may refund the amount erroneously withheld as provided in Treas. Reg. §31.6413 (a)-3.

**Sec. 9.04. Collective Credit or Refund Procedures for NRA Overwithholding.** If there has been overwithholding under chapter 3 of the Code on amounts subject to NRA withholding paid to QI's account holders during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures under sections 9.01 or 9.02 of this Agreement, QI may request a credit or refund of the total amount overwithheld by following the procedures of this section 9.04. QI shall not include in its collective refund claim payments made to an indirect account holder or to a direct account holder that is a nonqualified intermediary or flow-through entity. QI shall follow the procedures set forth under sections 6402 and 6414 of the Code, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511 of the Code. QI may use the collective refund procedures under this section 9.04 only if the following conditions are **[\*112]** met:

- (A) QI must not have issued Forms 1042-S to the account holders that received the payment that was subject to overwithholding;
- (B) QI must submit together with its amended return on which it claims a credit or refund a statement of the reason for the overwithholding;
- (C) QI must submit together with its amended return on which it claims a credit or refund a statement that it has repaid the amount of overwithholding to the appropriate account holders prior to filing the claim for credit or refund; and
- (D) QI must retain a record showing that it repaid the account holders the amount of the overwithholding.

**Sec. 9.05. Adjustments for NRA Under-withholding.** If QI knows that an amount should have been withheld under chapter 3 of the Code from a previous payment to an account holder but was not withheld, QI may either withhold from future payments made to the same account holder or satisfy the tax from property that it holds in custody for the account holder or property over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of the Form 1042 (not including extensions) for the calendar year in which the underwithholding occurred. **[\*113]** QI's responsibilities will be met if it informs a withholding agent from which it received the payment of the underwithholding and the withholding agent satisfies the under-withholding.

**Sec. 9.06. NRA Underwithholding After Form 1042 Filed.** If, after a Form 1042 has been filed for a calendar year, QI, QI's external auditor, or the IRS determines that, due to QI's failure to carry out its obligations under this Agreement, QI has under-withheld tax for such year, QI shall file an

amended Form 1042 to report and pay the underwithheld tax. QI shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties, at the time of filing the amended Form 1042. If QI fails to file an amended return, the IRS shall make such return under section 6020 of the Code. See section 10.04 of this Agreement for procedures that apply if underwithholding is discovered as part of a statistical sampling of accounts.

**Sec. 9.07. Special Rule Regarding Failure to Deposit Penalties.** Solely for purposes of applying section 6656 of the Code (failure to make deposit of taxes), neither QI nor its withholding agent will be considered to have made an underpayment of a deposit of NRA [\*114] withholding taxes if the conditions of this paragraph are met. The conditions of this paragraph are that-

- (A) The withholding agent or QI makes its deposits within the time (deposit period) required by section 6302 of the Code, or if applicable, section 3.08 of this Agreement;
- (B) The deposit is not less than 90 percent of the aggregate amount of the tax required to be withheld under chapter 3 of the Code during the deposit period applicable to the withholding agent or QI; and
- (C) QI and the withholding agent determine the difference between the total amount required to be deposited and the amount actually deposited as of the end of the 3rd, 6th, 9th, and 12th months of the calendar year and the difference is deposited no later than the 15th day of the second following month (i.e., May 15, August 15, November 15 and February 15, respectively). In determining whether there has been an underpayment, reimbursements and set-offs shall be taken into account.

## SECTION 10. EXTERNAL AUDIT PROCEDURES

**Sec. 10.01. In General.** Unless QI requests an IRS audit in lieu of an external audit, the IRS agrees not to conduct an onsite audit of QI, or any PAI with which QI has an agreement, with respect to withholding [\*115] and reporting obligations covered by this Agreement provided that an external auditor designated in Appendix B of this Agreement conducts an audit of QI, and any PAI, in accordance with this section 10. QI shall permit the external auditor to have access to all relevant records of QI for purposes of performing the external audit, including information regarding specific account holders. QI shall permit the IRS to communicate directly with the external auditor and to review the audit procedures followed by the external auditor. QI represents that there are no legal prohibitions that prevent the external auditor from examining any information relevant to the external audit to be performed under this section 10 and that there are no legal prohibitions that prevent the IRS from communicating directly with the auditor. QI shall permit the IRS to examine the external auditor's work papers and reports. However, the external auditor is not required to divulge the identity of QI's account holders to the IRS.

**Sec. 10.02. Designation of External Auditor.** QI's external auditor must be one of the auditors listed in Appendix B of this Agreement, unless QI and the IRS agree, prior to the audit, to [\*116] substitute another auditor. QI shall not propose an external auditor unless it has a reasonable belief that the auditor is subject to laws, regulations, or rules that impose sanctions for failure to exercise its independence and to perform the audit competently. The IRS has the right to reject a proposed external auditor, or to revoke its acceptance of an external auditor, if the IRS, in its sole discretion, reasonably believes that the auditor is not independent or cannot perform an effective audit under this Agreement.

**Sec. 10.03. Timing and Scope of External Audits.** QI shall have the external auditor conduct an

audit of the second full calendar year and the fifth full calendar year that this Agreement is in effect, subject to section 10.06 of this Agreement. The external auditor shall verify whether QI is in compliance with this Agreement by conducting an audit that meets the requirements of this section 10.03. The external auditor shall verify whether QI is in compliance with its QI agreement by providing a report to the IRS. The report must be received by the IRS, at the address set forth in section 12.06 of this Agreement, no later than June 30 of the year following the year being **[\*117]** audited. The IRS may, however, upon request by the external auditor, extend the due date of the audit report upon good cause. The report must disclose that the external auditor has, at a minimum, performed the following checks listed in this paragraph 10.03, and set forth how each of those checks was performed and the results of the checks. QI's (or a PAI's) external auditor is encouraged to contact the IRS at the address set forth in section 12.06 of this Agreement and submit an audit plan (which includes, if relevant, the extent to which the external auditor proposes to rely on QI's internal audit procedures) prior to performing the audit so that the audit may be conducted in the most efficient and least costly manner possible.

**(A) Documentation.** The external auditor must-

- (1) Verify that QI has training materials, manuals, and directives that instruct the appropriate QI employees how to request, collect, review, and maintain documentation in accordance with this Agreement;
- (2) Review QI's account opening procedures and interview QI's employees, to determine if appropriate documentation is requested from account holders and, if obtained, that it is reviewed and maintained in accordance **[\*118]** with this Agreement;
- (3) Verify that QI follows procedures designed to inform account holders that claim a reduced rate of withholding under an income tax treaty about any applicable limitation on benefits procedures;
- (4) Review QI's accounts, using a valid sample of accounts for which treaty benefits are claimed, to ensure that QI is obtaining the treaty statements required by section 5.03 (B);
- (5) Review information, using a valid sample, contained in account holder files to determine if the documentation validity standards of section 5.10 of this Agreement are being met. For example, the external auditor must verify that changes in account holder information (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S.) are being conveyed to QI's withholding agent, or, if QI assumes primary NRA withholding responsibility or primary Form 1099 reporting and backup withholding responsibility, that QI is applying the appropriate withholding rate;
- (6) Review accounts, using a valid sample of U.S. non-exempt recipient account holders, to determine if QI is obtaining Forms W-9 from those customers whose identity is not prohibited by law from disclosure, and **[\*119]** that QI is transmitting those forms to a withholding agent to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts and, if applicable, designated broker proceeds;
- (7) Review accounts, using a valid sample of U.S. non-exempt recipient account holders whose identity and account information is prohibited by law, including by contract, from disclosure, to verify that-

- (i) Such accounts exist in only rare and unusual circumstances (and detailing in the audit report the nature of such circumstances); and
  - (ii) The procedures of section 6.04 have been, and are being, followed.
- (8) Review QI's agreements with its PAIs to ensure that the obligations imposed on the PAIs are identical to the obligations imposed on QI under this Agreement, except as otherwise provided in section 4.02.
- (9) State in its external audit report if the auditor is aware that QI is in material violation or is under investigation for violation of any of the know-your-customer rules, practices, or procedures applicable to the offices audited.
- (10) State in its external audit report if the auditor is aware that QI removes U.S. non-exempt recipients from accounts **[\* 120]** covered by this Agreement for the purpose of circumventing the Form 1099 reporting and backup withholding provisions of this Agreement.

**(B) Withholding Rate Pools.** The external auditor must-

- (1) Verify that QI has training materials, manuals, and directives that instruct the appropriate QI employees how to determine withholding rate pools based on documentation and the presumption rules;
- (2) Interview employees responsible for determining withholding rate pools to ascertain if they are adequately trained to determine those pools and that they follow adequate procedures for determining those pools;
- (3) Review QI's procedures for preparing the withholding statements associated with QI's Forms W-8IMY and verify that the withholding statements provided to withholding agents convey complete and correct information on a timely basis;
- (4) Perform test checks, using a valid sample of account holders assigned to each withholding rate pool, and cross check that assignment against the documentation provided by, or presumption rules that apply to, the account holder, the type of income earned, and the withholding rate applied;
- (5) Perform test checks, using a valid sample of accounts of U.S. non-exempt recipients, **[\* 121]** to verify that appropriate withholding rate pools are established for U.S. non-exempt recipients; and
- (6) Verify, if QI is using the alternative procedure for U.S. non-exempt recipients contained in section 6.03 (B) of this Agreement, that QI is providing sufficient and timely information to

withholding agents that allocates reportable payments to U.S. non-exempt recipients.

**(C) Withholding Responsibilities.** The external auditor must-

- (1) To the extent QI has assumed primary NRA withholding responsibility, perform test checks, using a valid sample of foreign account holders, to verify that QI is withholding the proper amounts;
- (2) To the extent QI has not assumed primary NRA withholding responsibility, verify that QI has fulfilled its responsibilities under section 3.02 of this Agreement;
- (3) To the extent QI has assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using a valid sample of U.S. non-exempt recipient account holders to verify that QI backup withheld when required;
- (4) To the extent QI has not assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using a valid sample of U.S. non-exempt account holders **[\* 122]** to verify that QI has fulfilled its backup withholding responsibilities under sections 3.04, 3.05 and 3.06 of this Agreement;
- (5) Review the accounts of U.S. non-exempt recipient account holders whose identity is prohibited by law, including by contract, from disclosure and verify that QI or another payor is backup withholding on reportable payments made to such account holders;
- (6) Review a valid sample of accounts of U.S. non-exempt recipient account holders and determine if assets that generate or could generate reportable payments are held in an account of any U.S. non-exempt recipient account holders whose identity is prohibited by law, including by contract, from disclosure, and ascertain the reason why such assets have not been disposed of or the account holder disclosed; and
- (7) Verify that amounts withheld were timely deposited in accordance with section 3.08 of this Agreement.

**(D) Return Filing and Information Reporting.** The external auditor must-

- (1) Obtain copies of original and amended Forms 1042 and Forms 945, and any schedules, statements, or attachments required to be filed with those forms, and determine whether the amounts of income, taxes, and other information reported on **[\* 123]** those forms are accurate by-
  - (i) Reviewing work papers;

- (ii) Reviewing Forms W-8IMY, together with the associated withholding statements, that QI has provided to withholding agents;
  - (iii) Reviewing copies of Forms 1042-S that withholding agents have provided QI;
  - (iv) Reviewing account statements from withholding agents;
  - (v) Reviewing correspondence between QI and withholding agents; and (vi) Interviewing personnel responsible for preparing the Forms 1042 and 945 and the work papers used to prepare those forms.
- (2) Obtain copies of original and corrected Forms 1042-S and Forms 1099 together with the work papers used to prepare those forms and determine whether the amounts reported on those forms are accurate by-
- (i) Reviewing the Forms 1042-S received from withholding agents;
  - (ii) Reviewing the Forms W-8IMY, and the associated withholding statements, that QI has provided withholding agents;
  - (iii) Reviewing a valid sample of account statements issued by QI to account holders; and
  - (iv) Interviewing QI's personnel responsible for preparing the Forms 1042-S and, if applicable, Forms 1099, and the work papers used to prepare those forms.
- (3) Thoroughly review the statements attached to amended Forms 1042 filed **[\*124]** to claim a refund, ascertain their veracity, and determine the causes of any overwithholding reported and ensure QI did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund.
- (4) Determine, in the case of collective credits or refunds, that QI repaid the appropriate account holders prior to requesting a collective refund or credit.

**(E) Change in Circumstances.** The external auditor must verify that in the course of the audit it has not discovered any significant change in circumstances, as described in section 11.03 (A), (D), or (E) of this Agreement.

**Sec. 10.04. Use of Statistical Sampling.** If the external auditor is required to make a determination based on a valid sample of accounts, it shall use a statistical sampling whenever an examination of all of accounts within a particular class of accounts would be prohibitive in terms of time and expense. If it is reasonable to examine all accounts in connection with a particular issue, statistical sampling techniques shall not be used. If statistical sampling techniques are required, the external auditor must determine a sample size that provides a 95 percent confidence level. If statistical sampling **[\*125]** has been used and the auditor determines that underwithholding has occurred with respect to the sampled accounts, the IRS will determine the total amount of

underwithheld tax by projecting the underwithholding over the entire population of similar accounts. For this purpose, QI agrees to provide the IRS with the information (e.g., number of accounts and amounts) required to project the underwithholding. QI shall either report and pay, in accordance with section 9.06 of this Agreement, the underwithheld tax determined under the IRS projection or propose another amount of underwithholding based on a more accurate population, a more accurate projection technique, or an examination of all similar accounts. If the IRS does not agree with the amount proposed by QI, the IRS shall assess a tax by making a return under section 6020 of the Code.

**Sec. 10.05. External Auditor's Report.** Upon completion of the audit of QI and any PAI, the external auditor shall issue a report, or reports, of audit findings directly to the IRS by sending the original report to the IRS at the address set forth in section 12.06 of this Agreement by June 30 following the calendar year being audited, or if that date falls **[\*126]** on a Saturday or Sunday, the next U.S. business day. The report must be in writing, in English, and currency amounts must be stated in U.S. dollars. The report must fully describe the scope of the audit, the methodologies (including sampling techniques) used to determine whether QI is in compliance with the provisions of this Agreement, and the result of each such determination. The report must also specifically address each of the items in section 10.03 of this Agreement.

**Sec. 10.06. Expanding Scope and Timing of External Audit.** Upon review of the external auditor's report, the IRS may request, and QI must permit, the external auditor to perform additional audit procedures, or to expand the external audit to cover some or all of the calendar years for which the period of limitations for assessment of taxes has not expired. In addition, the IRS may request, and QI agrees to permit, the external auditor to perform an audit for one or more calendar years not scheduled for audit under section 10.03 of this Agreement.

## SECTION 11. EXPIRATION, TERMINATION AND DEFAULT

**Sec. 11.01. Term of Agreement.** This Agreement shall be in effect on and shall expire on December 31 of the fifth full calendar **[\*127]** year after the year in which this Agreement first takes effect. This Agreement may be renewed as provided in section 11.06 of this Agreement.

**Sec. 11.02. Termination of Agreement.** This Agreement may be terminated by either the IRS or QI prior to the end of its term by delivery of a notice of termination to the other party in accordance with section 12.06 of this Agreement. The IRS, however, shall not terminate the Agreement unless there has been a significant change in circumstances, as defined in section 11.03 of this Agreement, or an event of default has occurred, as defined in section 11.04 of this Agreement, and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this Agreement. In addition, the IRS shall not terminate this Agreement in the event of default if QI can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify QI, in accordance with section 11.05 of this Agreement, that an event of default has occurred and that the IRS intends to terminate the Agreement unless QI cures **[\*128]** the default. A notice of termination sent by either party shall take effect on the date specified in the notice.

**Sec. 11.03. Significant Change in Circumstances.** For purposes of this Agreement, a significant change in circumstances includes, but is not limited to-

- (A) An acquisition of all, or substantially all, of QI's assets in any transaction in which QI is not the surviving legal entity;
- (B) A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects QI's ability to perform its obligations under this Agreement;



- (C) A ruling of any court that affects the validity of any provision of this Agreement;
- (D) A material change in the know-your-customer rules and procedures set forth in any Attachment to this Agreement; or
- (E) A significant change in QI's business practices that affects QI's ability to meet its obligations under this Agreement.

**Sec. 11.04. Events of Default.** For purposes of this Agreement, an event of default occurs if QI fails to perform any material duty or obligation required under this Agreement, and includes, but is not limited to **[\*129]** to, the occurrence of any of the following:

- (A) QI fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;
- (B) QI underwithholds an amount that QI is required to withhold under chapter 3 of the Code and fails to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;
- (C) QI underwithholds an amount that QI is required to backup withhold under section 3406 of the Code;
- (D) QI makes a misrepresentation on Forms W-8IMY or the associated withholding statement that results in underwithholding by a withholding agent;
- (E) QI makes excessive refund claims;
- (F) Documentation described in section 5 of this Agreement is lacking, incorrect, or unreliable for a significant number of direct account holders;
- (G) QI fails to timely file Forms 945, 1042, 1042-S, or 1099 or files forms that are materially incorrect or fraudulent or fails to provide information necessary for a withholding agent or payor to file Forms 1099 with respect to disclosed U.S. persons;
- (H) QI fails to have an external audit performed when required, QI's external auditor fails to provide its report directly to the IRS on a timely **[\*130]** basis, QI fails to cooperate with the external auditor, or QI or its external auditor fails to cooperate with the IRS;
- (I) QI fails to disclose to a withholding agent, or to the IRS, U.S. nonexempt recipient account holders to the extent the disclosure is not prohibited by foreign law, including by contract;

- (J) QI fails to inform the IRS of any change in the know-your-customer rules described in any Attachment to this Agreement within 90 days of the change becoming effective;
- (K) QI fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects QI's obligations under this Agreement;
- (L) QI fails to inform the IRS of any private arrangement, as described in section 4 of this Agreement;
- (M) QI fails to cure a default identified by the IRS or by an external auditor;
- (N) QI makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or QI's external auditor;
- (O) The IRS determines that QI's external auditor is not sufficiently independent to adequately perform its audit function or the external auditor fails to provide an audit report that complies with section 10 **[\*131]** of this Agreement;
- (P) An intermediary with which QI has a PAI agreement is in default with that agreement and QI fails to meet its obligation to terminate that agreement within the time period specified in section 4.03 of this Agreement;
- (Q) QI has not complied with the procedures of section 6.04 of this Agreement or has any undisclosed U.S. non-exempt recipients (except in rare and unusual circumstances) whose accounts contain assets that generate, or could generate, reportable payments;
- (R) QI is prohibited by any law from disclosing the identity of an account holder or account information to QI's external auditor;
- (S) QI, to the extent it has primary Form 1099 reporting and backup withholding responsibility, fails to comply with the requirements of chapter 61 and section 3406 of the Code;
- (T) QI, to the extent that it elects the alternative withholding rate pool procedures of section 6.03 (B) of this Agreement (regarding U.S. non-exempt recipient account holders) fails to provide allocation information by January 15th as required by that section;
- (U) QI fails to make deposits in the time and manner required by section 3.08 of this Agreement or fails to make adequate deposits, taking into account **[\*132]** the procedures of 9.07 of this Agreement; (V) QI fails to permit the external auditor to perform additional audit procedures, or to expand the external audit to cover some or all of the calendar years for which the period of limitations for assessment of taxes has not expired under the provisions of section 10.06 of this Agreement; or
- (W) QI removes U.S. non-exempt recipients from accounts covered by this Agreement for the purpose of circumventing the Form 1099 reporting and backup withholding provisions of this Agreement.

**Sec. 11.05. Notice and Cure.** Upon the occurrence of an event of default, the IRS may deliver to QI a notice of default specifying the event of default that has occurred. QI shall respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which the cure will be accomplished or shall state the reasons why QI does not agree that an event of default has occurred. If QI does not provide a 60-day response, the IRS may deliver a notice of termination as provided in section 11.02 of this Agreement. If QI provides a 60-day response, the **[\*133]** IRS shall either accept or reject QI's statement that no default has occurred or accept or reject QI's proposal to cure an event of default. If the IRS rejects QI's contention that no default has occurred or rejects QI's proposal to cure a default, the IRS will offer a counter-proposal to cure the event of default. Within 30 days of receiving the IRS's counter-proposal, QI shall notify the IRS (30-day response) whether it continues to maintain that no default has occurred or whether it rejects the IRS's counter-proposal to cure an event of default. If QI's 30-day response states that no default has occurred or it rejects the IRS's counter-proposal to cure, the parties shall seek to resolve their disagreement within 30 days of the IRS's receipt of QI's 30-day response. If a satisfactory resolution has not been achieved at the end of this latter 30-day period, or if QI fails to provide a 30-day response, the IRS may terminate this Agreement by providing a notice of termination in accordance with section 11.02 of this Agreement. If QI receives a notice of termination from the IRS, it may appeal the determination within 30 days of the date of the notice of termination by sending a written **[\*134]** notice to the address specified in section 12.06 of this Agreement. If QI appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of an external audit, the QI may cure the default, without following the procedures of this section 11.05, if the external auditor's report describes the default and the actions that QI took to cure the default and the IRS determines that the cure procedures followed by QI were sufficient. If the IRS determines that QI's actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this section 11.05 shall be followed.

**Sec. 11.06. Renewal.** If QI intends to renew this Agreement, it shall submit an application for renewal to the IRS no earlier than one year and no later than six months prior to the expiration of this Agreement. Any such application for renewal must contain an update of the information provided by QI to the IRS in connection with the application to enter into this Agreement, and any other information the IRS may request in connection with the renewal process. This Agreement shall be renewed **[\*135]** only upon the signatures of both QI and the IRS. Either the IRS or QI may seek to negotiate a new qualified intermediary agreement rather than renew this Agreement.

## SECTION 12. MISCELLANEOUS PROVISIONS

**Sec. 12.01.** QI's application to become a qualified intermediary and all the Appendices and Attachments to this Agreement are hereby incorporated into and made an integral part of this Agreement. This Agreement, QI's application, and the Appendices and Attachments to this Agreement constitute the complete agreement between the parties.

**Sec. 12.02.** This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. The agreement may also be modified by either QI or the IRS upon mutual agreement. Such amendments or modifications shall be in writing.

**Sec. 12.03.** Any waiver of a provision of this Agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

**Sec. 12.04.** This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement **[\*136]** shall be brought only in a United States court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, QI agrees to submit to the jurisdiction of such United States court.

**Sec. 12.05.** QI's rights and responsibilities under this Agreement cannot be assigned to another person.

**Sec. 12.06.** Notices provided under this Agreement shall be mailed registered, first class airmail. Notice shall be directed as follows: To the IRS  
Assistant Commissioner (International)  
Foreign Payments Division  
OP: IN: I: FP  
950 L'Enfant Plaza South, SW  
Washington , DC 20024

All notices sent to the IRS must include the QI's QI-EIN.

To QI:

**Sec. 12.07.** QI, acting in its capacity as a qualified intermediary or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

**IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in duplicate.**

**Signed this day of**

**(name and title of person signing for QI)**

**(name and title of person signing for IRS)**

**ATTACHMENTS:**

Appendix A

[Name of QI]

[Name of country] (see Attachment 1, for description of know-your customer rules).

[Name of country] (see Attachment **[\*137]** 2, for description of know-your customer rules).

[Name of entity affiliated with QI]

[Name of country] (see Attachment, for description of know-your customer rules).

[Name of country] (see Attachment, for description of know-your customer rules).

Appendix B

QI and the IRS agree that any of the following auditors may be used by QI, or any PAI with which QI has an agreement, to perform the external audits required by section 10 of this Agreement.

[Names, addresses, telephone, and fax numbers of external auditors]

#### ATTACHMENT

1. QI is subject to the following laws and regulations of [name of country] governing the requirements of QI to obtain documentation confirming the identity of QI's account holders.
2. QI represents that [name and citations to laws and regulations identified in item 1, above] are enforced by [name of enforcement body] and QI shall provide the IRS with an English translation of any reports or other documentation issued by [name of enforcement body] that relates to QI's failure to comply with [laws and regulations identified in 1, above].
3. QI represents that the following penalties apply for failure to obtain, maintain, and evaluate documentation obtained under [name and citations **[\*138]** to laws and regulations identified in item 1].
4. QI shall use the following specific documentary evidence to comply with section 5 of this Agreement:
  - a. For natural persons:
  - b. For legal persons:

5. QI shall follow the procedures set forth below to confirm the identity of account holders that do not open accounts in person.

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on January 24, 2000. The IRS may conclude agreements under this revenue procedure at any time after that date, but such agreements will not have effect before the date specified in the agreement.

#### SECTION-6. EFFECT ON OTHER REVENUE PROCEDURES

This revenue procedure supersedes Rev. Proc. 98-27, 1998-15 I.R.B. 30. In addition, Notice 99-8, 1999-5 I.R.B. 26 is obsolete.

#### SECTION 7. FURTHER INFORMATION

For further information regarding this revenue procedure, telephone the Office of Assistant Commissioner (International) at (202) 874-1800 (not a toll-free number).

#### FOOTNOTES:

**n1** n1 All citations to income tax regulations in this revenue procedure are to the regulations as amended by T.D. 8734 (62 FR 53387), T.D. 8804 (63 FR 72183), and T.D. 8856 (64 FR 73408). All citations to income tax regulations in this revenue procedure are to the regulations as amended by T.D. 8734 (62 FR 53387), T.D. 8804 (63 FR 72183), and T.D. 8856 (64 FR 73408).

**n2** n2 Generally, the IRS will not permit a QI to establish the identity of an account holder without obtaining documentation directly from the account holder.







Source: **Combined Source Set 1**  - IRS Cumulative Bulletin and Internal Revenue Bulletin

Terms: **rev proc 2000-12** ([Edit Search](#))

View: Full

Date/Time: Monday, September 27, 2010 - 2:51 PM EDT

\* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
-  - Citation information available

\* Click on any *Shepard's* signal to *Shepardize*® that case.



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