

No. 19] *Inter-Governmental Agreement (Saint Lucia and the United States of America) Act* [ 2016.

**SAINT LUCIA**

**No. 19 of 2016**

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I ASSENT

[L.S.]

MAC DONALD DIXON,  
*Deputy to the Governor-General.*

*August 25, 2016.*

## SAINT LUCIA

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### No. 19 of 2016

**AN ACT** to make provision for authorising the enforcement of the obligations of Saint Lucia under an agreement for cooperation to facilitate the implementation of the Foreign Account Tax Compliance Act Inter-Governmental Agreement.

[ 29th August, 2016 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the Authority of the same, as follows:

## PRELIMINARY

### Short title

1. This Act may be cited as the Inter-Governmental Agreement (Saint Lucia and the United States of America) Act, 2016.

### Interpretation

2.—(1) In this Act —

“Agreement” means the Inter-Governmental Agreement made between the Government of Saint Lucia and Government of The United States of America for cooperation to facilitate the implementation of the Foreign Account Tax Compliance Act the text of which is set out in Schedule 1;

“appeal commissioners” means the Appeal commissioners appointed under section 108 of the Income Tax Act, Cap. 15.02;

“Arrangement” means the Competent Authority Arrangement the text of which is set out in Schedule 2;

“Contracting Parties” means the parties to the Agreement;

“Court” means the High Court;

“Minister” means Minister responsible for Finance;

“return” means a return under section 11.

(2) In this Act any expression which is defined in the Agreement but not in this Act has the same meaning in this Act as in the Agreement.

### Agreement to have the force of law

3. The Agreement shall have the force of law in Saint Lucia.

## PART I COMPETENT AUTHORITY

### Functions of the Competent Authority

4. For the purposes of Article 3(6) of the Agreement, the Competent Authority shall exchange information in accordance with the Competent Authority Arrangement set out in Schedule 2.

**Powers of the Competent Authority**

**5.**—(1) The Competent Authority may at all reasonable times, enter any premises or place of business of a Reporting Saint Lucia Financial Institution for the purposes of —

- (a) determining whether information —
  - (i) included in a return by the Reporting Saint Lucia Financial Institution is correct and complete, or
  - (ii) not included in a return was correctly not included;  
or
- (b) examining the procedures put in place by the Reporting Saint Lucia Financial Institution for the purposes of ensuring compliance with the obligations of the Reporting Saint Lucia Financial Institution under this Act.

(2) The Competent Authority may in writing delegate a public officer to discharge such functions as he or she thinks fit and on such terms and conditions as he or she may specify.

(3) A public officer in discharging the functions delegated to him or her under subsection (2) is under every duty and has all the powers given to the Competent Authority under this Act.

**Confidentiality protections**

**6.**—(1) For the purposes of Paragraph 5 of the Arrangement, the Competent Authority and any person employed in carrying out the provisions of or having any official duty under the Agreement shall have regard to the confidentiality protections under Article 4(6), (7) and (8) of the Agreement between the Government of the United States and the Government of Saint Lucia for the Exchange of Information with respect to taxes, the text of which is set out in Schedule 3, with respect to the documents and information, which may come into the possession or knowledge of the Competent Authority or person for the exchange of information under the Agreement.

(2) The confidentiality protections under subsection (1) continues to apply to a person despite him or her having ceased to be employed

in carrying out the provisions of or having any official duty under the Agreement.

(3) A person who fails to comply with the confidentiality protections under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or a term of imprisonment not exceeding two years.

### **Immunity from suit**

7.—(1) The Competent Authority or any person employed in carrying out the provisions of or having any official duty under the Agreement who exchanges information in accordance with the Agreement does not commit an offence under any other law in force in Saint Lucia by reason only of the exchange.

(2) An exchange of information referred to in subsection (1) is not a breach of a confidential relationship between the person who exchanges the information and any other person, and no civil claim or action lies against the person making the disclosure by reason of the exchange.

## **PART II**

### **OBLIGATIONS OF REPORTING SAINT LUCIA FINANCIAL INSTITUTIONS**

#### **Due diligence requirements**

8.—(1) A Reporting Saint Lucia Financial Institution shall apply the due diligence procedures set out in Annex I of the Agreement to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

(2) Without prejudice to the generality of subsection (1), a Reporting Saint Lucia Financial Institution shall establish and maintain —

- (a) arrangements that are designed to identify reportable accounts;
- (b) arrangements that are designed to establish the territory in which any account holder is resident for income tax or

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corporation tax purposes or for the purposes of any tax imposed by the laws of Saint Lucia that is of a similar character to income tax or corporation tax; and

- (c) arrangements to obtain the US TIN for pre-existing accounts as of 1<sup>st</sup> January, 2017 and subsequent years.

(3) Notwithstanding subsection (1), the due diligence requirements do not apply to a Financial Account if the Reporting Saint Lucia Financial Institution maintains the account as a result of a merger with, or acquisition of, a qualifying financial institution which had established the U.S. status of the account holder and any controlling person.

(4) For the purposes of subsection (3), “qualifying financial institution”, in relation to a Reporting Saint Lucia Financial Institution, means another Reporting Saint Lucia Financial Institution —

- (a) which has not previously been a related entity of the Reporting Saint Lucia Financial Institution;
- (b) which immediately before the merger or acquisition was a partner jurisdiction financial institution but was not a registered deemed-compliant financial institution or a nonparticipating financial institution.

(5) For the purpose of applying paragraph VI.C of Annex I of the Agreement, an account balance that has a negative value is treated as having a nil value.

#### **Payment to Nonparticipating Financial Institution**

**9.—**(1) A Reporting Saint Lucia Financial Institution shall establish and maintain arrangements that are designed to identify payments —

- (a) which are made by the Reporting Saint Lucia Financial Institution to a Nonparticipating Financial Institution; and
- (b) which are made in the calendar year 2015 or 2016, whether the payment is made to a Nonparticipating Financial Institution as an account holder or otherwise.

(2) A Reporting Saint Lucia Financial Institution may regard a payment made by it to a Reporting Saint Lucia Financial Institution as made to someone who is not a Nonparticipating Financial Institution only if it has, in respect of the payment, taken the steps referred to at paragraph IV.D (3) of Annex I of the Agreement.

(3) In respect of any case in the calendar years 2015 and 2016 when a Reporting Saint Lucia Financial Institution is within the terms of sub-paragraph 1(e) of Article 4 of the Agreement, the Reporting Saint Lucia Financial Institution shall make a disclosure of information in accordance with the requirements of that sub-paragraph.

### **Registration**

**10.** Immediately after registering on the United States of America Foreign Account Tax Compliance Act registration website, a Reporting Saint Lucia Financial Institution shall register with the Competent Authority on the Competent Authority's registration website using the unique Global Intermediary Identification Number issued by the IRS.

### **Return**

**11.—**(1) A Reporting Saint Lucia Financial Institution shall, in respect of the first reporting year as specified in the Agreement and every following calendar year, make a return setting out the information required to be reported under Article 2(2) of the Agreement in relation to a reportable account that is maintained by the Reporting Saint Lucia Financial Institution.

(2) A return under subsection (1) must be made on the Competent Authority's registration website referred to in section 10 on or before 30<sup>th</sup> June of the year following the calendar year to which the return relates.

(3) Notwithstanding subsection (2), in the case of calendar years 2014 and 2015, a Reporting Saint Lucia Financial Institution shall provide the required information to the Competent Authority within two weeks of commencement of this Act.

(4) Where a Reporting Saint Lucia Financial Institution does not have a U.S. Reportable Account in a calendar year, the Reporting Saint Lucia Financial Institution shall prepare and submit to the Competent Authority a nil return for that calendar year that includes —



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- (a) the name of the Reporting Saint Lucia Financial Institution;
- (b) the address of the registered office of the Reporting Saint Lucia Financial Institution;
- (c) the G.I.I.N.;
- (d) any other prescribed information.

#### **Communication of confidential information**

**12.** Notwithstanding the Banking Act, Cap. 12.01, Financial Services Regulatory Authority Act, Cap. 12.23, Registered Agent and Trustee Licensing Act, Cap. 12.12 or any other law that restricts the disclosure of confidential information, a Reporting Saint Lucia Financial Institution shall communicate or allow to be communicated any confidential information in the return required to be reported by the Competent Authority under the Agreement.

#### **Amendment and correction to return**

**13.** A Reporting Saint Lucia Financial Institution shall make any amendment and correction to information submitted in a return, upon request by the Competent Authority within the time frame specified by the Competent Authority.

#### **Records**

**14.—(1)** A Reporting Saint Lucia Financial Institution shall keep records that the Reporting Saint Lucia Financial Institution obtains or creates for the purpose of complying with this Act, including self-certifications and records of documentary evidence.

(2) A Reporting Saint Lucia Financial Institution required by this Act to keep records that does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection (4).

(3) A Reporting Saint Lucia Financial Institution that obtains or creates records, as required under this Act, in a language other than English shall, upon request, provide an English translation to the Competent Authority.

(4) A Reporting Saint Lucia Financial Institution that is required to keep, obtain or create records under this Act shall retain those records for a period of at least six years following —

- (a) in the case of a self-certification, the last day on which a related financial account is open; and
- (b) in any other case, the end of the last calendar year in respect of which the record is relevant.

### **Service providers**

**15.—**(1) A Reporting Saint Lucia Financial Institution may appoint a third party as its agent to carry out the duties and obligations imposed on it by this Act.

(2) Where a third party is appointed by a Reporting Saint Lucia Financial Institution under subsection (1) —

- (a) the Reporting Saint Lucia Financial Institution shall, at all times, have access to and be able to produce, where so requested by the Competent Authority, the records and documentary evidence used to identify and report on reportable accounts;
- (b) the Reporting Saint Lucia Financial Institution is responsible for any failure of that third party to carry out the obligations of the reporting financial institution; and
- (c) this Act applies to the Reporting Saint Lucia Financial Institution notwithstanding that —
  - (i) the actions were the action of the third party, or
  - (ii) the failure to act was the failure by the third party to act.

**PART III**  
**PENALTIES**  
*Civil Penalty*

**Penalty**

**16.**—(1) A Reporting Saint Lucia Financial Institution who fails to make a return as and when required under this Act is liable to pay a penalty of five thousand dollars for such failure and a penalty of two thousand dollars for each month or part of the month that the failure continues.

(2) A Reporting Saint Lucia Financial Institution who makes a false statement or omission in respect of any information required to be included on a return, under this Act is liable to a penalty of fifty thousand dollars for each such failure, unless in the case of information required in respect of another person, a reasonable effort was made by the person to obtain the information from the other person.

(3) A Reporting Saint Lucia Financial Institution who does not comply with the requirement of the Competent Authority in the exercise or performance of the Competent Authority's functions powers or under this Act is liable to a penalty of fifty thousand dollars for each such failure.

**Liability to penalty**

**17.**—(1) Subject to subsection (4), liability to a penalty does not arise if the Reporting Saint Lucia Financial Institution satisfies the Competent Authority or appeal commissioners that there is a reasonable excuse for the failure.

(2) For the purposes of this Act the following is not a reasonable excuse —

- (a) that there is an insufficiency of funds to do something; or
- (b) that a Reporting Saint Lucia Financial Institution relies upon another person to do something.

(3) If a Reporting Saint Lucia Financial Institution had a reasonable excuse for a failure but the excuse has ceased, the person is to be

treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

(4) This section does not apply to section 16(1).

#### **Assessment of penalty**

**18.**—(1) If a Reporting Saint Lucia Financial Institution becomes liable to a penalty, the Competent Authority shall —

- (a) assess the penalty; and
- (b) notify the person of the assessment.

(2) An assessment of a penalty shall be made within the period of twelve months beginning with the date on which —

- (a) the Reporting Saint Lucia Financial Institution became liable to the penalty; or
- (b) the inaccuracy first came to the attention of the Competent Authority.

#### **Enforcement of penalty**

**19** —(1) A Reporting Saint Lucia Financial Institution shall pay —

- (a) any penalty imposed for failure to submit a return or for failure to submit a correct return; or
- (b) any other penalty.

(2) A penalty under this Act must be paid to the Competent Authority within thirty days after the date on which notification under section 18 (1)(b) is provided in respect of the penalty.

(3) If any amount in respect of a penalty is not paid by the due date described in subsection (1), a Reporting Saint Lucia Financial Institution shall pay a penalty of five hundred dollars for each month or part of the month the Reporting Saint Lucia Financial Institution fails to pay the penalty.

(4) The obligation to pay a penalty is not suspended as a result of an objection under section 20 or an appeal under section 22.

(5) If an objection is determined in favour of the Reporting Saint Lucia Financial Institution or the appeal commissioners allow an appeal, the amount paid as a penalty shall be refunded to the Reporting Saint Lucia Financial Institution.

**Right to object to penalty**

**20.**—(1) Subject to subsection (2), a Reporting Saint Lucia Financial Institution may object to the Competent Authority against a penalty assessment on the grounds that liability to a penalty under section 17 does not arise.

(2) This section does not apply to section 16(1).

**Procedure on objection to penalty**

**21.** —(1) Notice of an objection under section 20 shall —

- (a) be provided to the Competent Authority, in writing, before the end of a period of thirty days beginning with the date on which notification under section 18 (1)(b) was provided; and
- (b) set out the grounds for objection.

(2) The Competent Authority shall consider any valid objection made and may confirm or disallow the penalty by notice in writing, within thirty days of receipt of an objection.

**Notice of appeal**

**22.**—(1) A Reporting Saint Lucia Financial Institution aggrieved by a decision of the Competent Authority under section 20 may, by notice of appeal, appeal to the appeal commissioners.

(2) Without prejudice to the Income Tax Act, Cap. 15.02, the appeal commissioners may confirm or cancel an assessment under this Act.

(3) The Income Tax Act, Cap. 15.02 relating to appeals apply in relation to appeals under this section as they apply in relation to an appeal against a tax assessment.

*Criminal penalty***Refusal or failure to provide information**

**23.** A Reporting Saint Lucia Financial Institution which refuses to or fails, without lawful excuse, to provide any information commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars.

**PART IV****MISCELLANEOUS****Anti-avoidance**

**24.** If a person enters into any arrangements or engages in a practice, the main purpose or one of the main purposes, of which can reasonably be considered to be to avoid an obligation imposed under this Act or Regulations made under this Act, the person is subject to the obligation as if the person had not entered into the arrangement or engaged in the practice.

**Amendment of Schedule**

**25.** The Minister may, by Order published in the *Gazette*, amend Schedule 1, Schedule 2 or Schedule 3.

**Regulations**

**26.** The Minister may make Regulations to give effect to the provisions of the Agreement and this Act.

**SCHEDULE 1**

(Section 2)

**Agreement between the Government of Saint Lucia and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA**

Whereas, the Government of Saint Lucia and the Government of the United States of America (each, a “Party,” and together, the “Parties”) desire to conclude an agreement to improve international tax compliance through mutual assistance in tax matters based on an effective infrastructure for the automatic exchange of information;

Whereas, Article 4 of the Agreement between the Government of Saint Lucia and the Government of the United States of America for the Exchange of Information with Respect to Taxes, done at Washington on January 30, 1987 (the “TIEA”) authorizes the exchange of information for tax purposes, including on an automatic basis;

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

Whereas, the Government of Saint Lucia is supportive of the underlying policy goal of FATCA to improve tax compliance;

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

Whereas, the Government of the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by residents of Saint Lucia and is committed to exchanging such information with the Government of Saint Lucia and pursuing equivalent levels of exchange, provided that the appropriate safeguards and infrastructure for an effective exchange relationship are in place;

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

Whereas, the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the TIEA, and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the TIEA;

Now, therefore, the Parties have agreed as follows:

## Article 1

### Definitions

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

- (a) The term **“United States”** means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a “State” of the United States includes the District of Columbia.
- (b) The term **“U.S. Territory”** means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Island.
- (c) The term **“IRS”** means the U.S. International Revenue Service.
- (d) The term **“Saint Lucia”** means Saint Lucia.
- (e) The term **“Partner Jurisdiction”** means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.
- (f) The term **“Competent Authority”** means:
  - (1) In the case of the United States, the Secretary of the Treasury or his delegate; and
  - (2) In the case of Saint Lucia, the Minister for Finance or the Minister’s authorized representative.
- (g) The term **“Financial Institution”** means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.
- (h) The term **“Custodial Institution”** means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20



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percent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

- (i) The term **“Depository Institution”** means any Entity that accepts deposits in the ordinary course of a banking or similar business.
- (j) The term **“Investment Entity”** means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of customer:
  - (1) trading in money market instruments (cheques, bills, certificates of deposit, derivatives etc.); foreign exchange; exchanging, interest rate and index instruments; transferable securities; or commodity futures trading;
  - (2) individual and collective portfolio management; or
  - (3) otherwise investing, administering, or managing funds or money on behalf of other persons.

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

- (k) The term **“Specified Insurance Company”** means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligate to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
- (l) The term **“Saint Lucia Financial Institution”** means (i) any Financial Institution organized under the laws of Saint Lucia, but excluding any branch of such Financial Institution that is located outside Saint Lucia, and (ii) any branch of a Financial Institution not organized under the laws of Saint Lucia, if such branch is located in Saint Lucia.
- (m) The term **“Partner Jurisdiction Financial Institution”** means (i) any Financial Institution established in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a

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Financial Institution not established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.

- (n) The term **“Reporting Financial Institution”** means a Reporting Saint Lucia Financial Institution or a Reporting U.S. Financial Institution, as the context requires.
- (o) The term **“Reporting Saint Lucia Financial Institution”** means any Saint Lucia Financial Institution that is not a Non-Reporting Saint Lucia Financial Institution.
- (p) The term **“Reporting U.S. Financial Institution”** means (i) any Financial Institution that is resident in the United States, but excluding any branch of such Financial Institution that is located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.
- (q) The term **“Non-Reporting Saint Lucia Financial Institution”** means any Saint Lucia Financial Institution, or other Entity resident in Saint Lucia, that is described in Annex II as a Non-Reporting Saint Lucia Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations.
- (r) The term **“Nonparticipating Financial Institution”** means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.
- (s) The term **“Financial Account”** means an account maintained by a Financial Institution, and includes:
  - (1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (Other than interests that are

regularly traded on an established securities market) in the Financial Institution;

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

Notwithstanding the foregoing, the term “Financial Account” does not include any account that is excluded from the definition of Financial Account in Annex II. For purposes of this Agreement, interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. For purposes of this subparagraph 1(s), an interest in a Financial Institution is not “regularly traded” and shall be treated as a Financial Account if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of such Financial Institution. The preceding sentence will not apply to interests first registered on the books of such Financial Institution prior to July 1, 2014, and with respect to interests first registered on the books of such Financial Institution on or after July 1, 2014, a Financial Institution is not required to apply the preceding sentence prior to January 1, 2016.

- (t) The term “**Depository Account**” includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other

similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

- (u) The term “**Custodial Account**” means an account (other than an Insurance Contract or Annuity Contract) for the benefit of another person that holds any financial instrument or contract held for investment (including, but not limited to, a share or stock in a corporation, a note, bond, debenture, or other evidence of indebtedness, a currency or commodity transaction, a credit default swap, a swap based upon a nonfinancial index, a notional principal contract, an Insurance Contract or Annuity Contract, and any option or other derivative instrument).
- (v) The term “**Equity Interest**” means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Specified U.S. Person shall be treated as being a beneficiary of a foreign trust if such Specified U.S. Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution for the trust.
- (w) The term “**Insurance Contract**” means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
- (x) The term “**Annuity Contract**” means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the jurisdiction in which the contract was issued, and under the issuer agrees to make payments for a term of years.

- (y) The term **“Cash Value Insurance Contract”** means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value greater than \$50,000.00.
- (z) The term **“Cash Value”** means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term **“Cash Value”** does not include an amount payable under an Insurance Contract as:
  - (1) a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
  - (2) a refund to the policyholder of a previously paid premium under an Insurance Contract (other than under a life insurance contract) due to policy cancellation or termination, decrease in risk exposure during the effective period of the Insurance Contract, or arising from a redetermination of the premium due to correction of posting or other similar error; or
  - (3) a policyholder dividend based upon the underwriting experience of the contract or group involved.
- (aa) The term **“Reportable Account”** means a U.S. Reportable Account or a Saint Lucia Reportable Account, as the context requires.
- (bb) The term **“Saint Lucia Reportable Account”** means a Financial Account maintained by a Reporting U.S. Financial Institution if: (i) in the case of a Depository Account, the account is held by an individual resident in Saint Lucia and more than \$10 of interest is paid to such account in any given calendar year; or (ii) in the case of a Financial Account other than a Depository Account, the Account Holder is a resident of Saint Lucia, including an Entity that certifies that it is resident in Saint Lucia for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 of

subtitle A or chapter 61 of subtitle F of the U.S. International Revenue Code is paid or credited.

- (cc) The term “**U.S. Reportable Account**” means a Financial Account maintained by a Reporting Saint Lucia Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.
- (dd) The term “**Account Holder**” means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account. For purposes of the immediately preceding sentence, the term “Financial Institution” does not include a Financial Institution organized or incorporated in a U.S. Territory. In the case of a Cash Value Insurance Contract or an Annuity contract, the Account Holder is any person entitled to access the Cash Value or Change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to received a payment under the contract is treated as an Account Holder.
- (ee) The term “**U.S. Person**” means a U.S. citizen or resident individual, a partnership or corporation organized in the United states or under the laws of the United States would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust, or an estate of a decedent that is a citizen or resident of the United States. This subparagraph 1 (ee) shall be interpreted in accordance with the U.S. International Revenue Code.

- (ff) The term “**Specified U.S. Person**” means a U.S. Person, other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a member of the same expanded affiliated group, as defined in section 1471(e)(2) of the U.S. Internal Revenue Code, as a corporation described in clause (i);(iii) the United States of any wholly owned agency or instrumentality thereof; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (iv) any State of the United States, any U.S. Territory, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; (v) any organization exempt from taxation under section 501 (a) of the U.S. International Revenue Code or an Individual retirement plan as defined in section 7701 (a) (37) of the U.S. International Revenue Code; (vi) any bank as defined in section 581 of the U.S. International Revenue Code; (vii) any real estate investment trust as defined in section 856 of the U.S. International Revenue Code; (viii) any regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C.80a-64); (ix) any common trust fund as defined in section 584(a) of the U.S. International Revenue Code; (x) any trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. International Revenue Code; (xi) a dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State; (xii) a broker as defined in section 6045 (c) of the U.S. Internal Revenue Code; or (xiii) any tax-exempt trust under a plan that is described in section 403(b) or section 457 (g) of the U.S. Internal Revenue Code.
- (gg) The term “**Entity**” means a legal person or a legal arrangement such as a trust.
- (hh) The term “**Non-U.S. Entity**” means an Entity that is not a U.S. Person.

- (ii) The term “**U.S. Source Withholdable Payment**” means any payment of interest (Including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States. Notwithstanding the foregoing, a U.S. Source Withholdable Payment does not include any payment that is not treated as a withholdable payment in relevant U.S. Treasury Regulations.
- (jj) An Entity is a “**Related Entity**” of another Entity if either controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote or value in an Entity. Notwithstanding the foregoing, Saint Lucia may treat an Entity as not a Related Entity of another Entity if the two Entities are not members of the same expanded affiliated group as defined in section 1471 (e) (2) of the U.S. International Revenue Code.
- (kk) The term “**U.S. TIN**” means a U.S. federal taxpayer identifying number.
- (ll) The term “**Saint Lucia TIN**” means a Saint Lucia taxpayer identifying number.
- (mm) The term “**Controlling Persons**” means the natural persons who exercise control over an Entity. In the case of a trust, such terms means the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, and in case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions.

The term “**Controlling Persons**” shall be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

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



term under other laws of the Party.

## **Article 2**

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

1. Subject to the provisions of Article 3 of this Agreement, each Party shall obtain the information specified in paragraph 2 of this Article with respect to all Reportable Accounts and shall annually exchange this information with the other Party on an automatic basis pursuant to the provisions of Article 4 of the TIEA.

2. The information to be obtained and exchanged is:

- (a) In the case of Saint Lucia with respect to each U.S. Reportable Account of each Reporting Saint Lucia Financial Institution:
  - (1) the name, address, and U.S. TIN of each Specified U.S. Person that is an Account Holder of such account and, in the case of a Non-U.S. Entity that, after application of the due diligence procedures set forth in Annex I, is identified as having one or more Controlling Persons that is a Specified U.S. Person, the name, address, and U.S. TIN (if any) of such entity and each such Specified U.S. Person;
  - (2) the account number (or functional equivalent in the absence of an account number);
  - (3) the name and identifying number of the Reporting Saint Lucia Financial Institution;
  - (4) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year, immediately before closure;
  - (5) in the case of any Custodial Account:
    - (a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with

respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

- (b) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Saint Lucia Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- (6) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- (7) in the case of any account not described in subparagraph 2(a)(5) or 2(a)(6) of this Article, the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Saint Lucia Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.
- (b) In the case of the United States, with respect to each Saint Lucia Reportable Account of each Reporting U.S. Financial Institution:
  - (1) the name, address, and Saint Lucia TIN of an person that is a resident of Saint Lucia and is an Account Holder of the account;
  - (2) the account number (or the functional equivalent in the absence of an account number);
  - (3) the name and identifying number of the Reporting U.S. Financial Institution;

- (4) the gross amount interest paid on a Depository Account;
- (5) the gross amount of U.S. source dividends paid or credited to the account; and
- (6) the gross amount of other U.S. source income paid or credited to the account, to the extent subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code.

### **Article 3**

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

1. For purposes of the exchange obligation in Article 2 of this Agreement, the amount and characterization of payments made with respect to a U.S. Reportable Account may be determined in accordance with the principles of the tax laws of Saint Lucia, and the amount and characterization of payment made with respect to a Saint Lucia Reportable Account may be determined in accordance with principles of U.S. federal income tax law.

2. For purposes of the exchange obligation in Article 2 of this Agreement, the information exchanged shall identify the currency in which each relevant amount is denominated.

3. With respect to paragraph 2 of Article 2 of this Agreement, information is to be obtained and exchanged with respect to 2014 and all subsequent years, except that:

- (a) In the case of Saint Lucia:
  - (1) the information to be obtained and exchanged with respect to 2014 is only the information described in subparagraphs 2(a)(1) through 2(a) (4) of Article 2 of this Agreement;
  - (2) the information to be obtained and exchanged with respect to 2015 is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement, except for gross proceeds described in subparagraph 2(a) (5)B of Article 2 of this Agreement; and

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(3) the information to be obtained and exchanged with respect to 2016 and subsequent years is the information described in subparagraphs 2(a)(1) through 2(a)(7) of Article 2 of this Agreement;

(b) In the case of the United States, the information to be obtained and exchanged with respect to 2014 and subsequent years is all of the information identified in subparagraph 2(b) of Article 2 of this Agreement.

4. Notwithstanding paragraph 3 of this Article, with respect to each Reportable Account that is maintained by a Reporting Financial Institution as of June 30, 2014 and subject to paragraph 3 of Article 6 of this Agreement, the Parties are not required to obtain and include in the exchanged information the Saint Lucia TIN or the U.S. TIN, as applicable, of any relevant person if such taxpayer identifying number is not in the records of the Reporting Financial Institution. In such a case, the Parties shall obtain and include in the exchanged information the date of birth of the relevant person, if the Reporting Financial Institution has such date of birth in its records.

5. Subject to paragraph 3 and 4 of this Article, the information described in Article 2 of this Agreement shall be exchanged within nine months after the end of the calendar year to which the information relates.

6. The Competent Authorities of Saint Lucia and the United States shall enter into an agreement or arrangement under the mutual agreement procedure provide for in Article 5 of the TIEA, which shall:

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

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

8. Following entry into force of this Agreement, each Competent Authority shall provide written notification to the other Competent Authority

when it is satisfied that the jurisdiction of the other Competent Authority has in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement shall remain confidential and be used solely for tax purposes, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and demonstrated capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 5 of this Agreement). The Competent Authorities shall endeavor in good faith to meet, prior to September 2015, to establish that each jurisdiction has such safeguards and infrastructure in place.

9. The obligations of the Parties to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the later of the written notifications described in paragraph 8 of this Article. Notwithstanding the foregoing, if the Saint Lucia competent Authority is satisfied that the United States has the safeguards and infrastructure described in paragraph 8 of this Article in place, but additional time is necessary for the U.S. Competent Authority to establish that Saint Lucia has such safeguards and infrastructure in place, the obligation of Saint Lucia to obtain and exchange information under Article 2 of this Agreement shall take effect on the date of the written notification provided by the Saint Lucia Competent Authority to the U.S. Competent Authority pursuant to paragraph 8 of this Article.

10. This Agreement shall terminate 12 months following entry into force if Article 2 of this Agreement is not in effect for either Party pursuant to paragraph 9 of this Article by that date.

#### **Article 4**

##### **Application of FATCA to Saint Lucia Financial Institutions**

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

- (a) identifies U.S. Reportable Accounts and reports annually to the Saint Lucia Competent Authority the information required to be reported in subparagraph 2(a) of Article 2 of this Agreement in the time and manner described in Article 3 of this Agreement;

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- (b) for each of 2015 and 2016, reports annually to the Saint Lucia Competent Authority the name of each Nonparticipating Financial Institution to which it has made payments and the aggregate amount of such payments;
- (c) complies with the applicable registration requirements on the IRS FATCA registration website;
- (d) to the extent that a Reporting Saint Lucia Financial Institution is (i) acting as a qualified intermediary (for purposes of section 1441 of the U.S. Internal Revenue Code) that has elected to assume primary withholding responsibility under chapter 3 of subtitle A of the U.S. Internal Revenue Code, (ii) a foreign partnership that has elected to act as a withholding foreign partnership (for purposes of both sections 1441 and 1471 of the U.S. Internal Revenue Code), or (iii) a foreign trust that has elected to act as a withholding foreign trust ( for purposes of both sections 11141 and 1471 of the U. S. Internal Revenue Code), withholds 30 per cent of any U.S. Source Withholdable Payment to any Nonparticipating Financial Institution; and
- (e) in the case of a Reporting Saint Lucia Financial Institution that is not described in subparagraph 1(d) of this Article and that makes a payment of, or acts as an intermediary with respect to, a U.S. Source Withholdable Payment to any Nonparticipating Financial Institution, the Reporting Saint Lucia Financial Institution provides to any immediate payor of such U.S. Source Withholdable Payment the information required for withholding and reporting to occur with respect to such payment.

Notwithstanding the foregoing, a Reporting Saint Lucia Financial Institution with respect to which the conditions of this paragraph 1 are not satisfied shall not be subject to withholding under section 1471 of the U.S. International Revenue Code unless such Reporting Saint Lucia Financial Institution is treated by the IRS as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement.

2. **Suspension of Rules Relating to Recalcitrant Accounts.** The United States shall not require a Reporting Saint Lucia Financial Institution to withhold tax under section 1471 or 1472 of the U.S. Internal Revenue Code with respect to an account held by a recalcitrant account holder (as defined

in section 1471(d)(6) of the U.S. Internal Revenue Code), or to close such account, if the U.S. Competent Authority receives the information set forth in subparagraph 2(a) of Article 2 of this Agreement, Subject to the provisions of Article 3 of this Agreement, with respect to such account.

3. **Specific Treatment of Saint Lucia Retirement Plans.** The United States shall treat as deemed-compliant FFIs or exempt beneficial owners, as appropriate, for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, Saint Lucia retirement plans described in Annex II. For this purpose, a Saint Lucia retirement plan includes an Entity established or located in, and regulated by, Saint Lucia, or a predetermined contractual or legal arrangement, operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of Saint Lucia and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

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

5. **Special Rules Regarding Related Entities and Branches That Are Nonparticipating Financial Institutions.** If a Saint Lucia Financial Institution, that otherwise meets the requirements described in paragraph 1 of this Article or is described in paragraph 3 or 4 of this Article, has a Related Entity or branch that operates in a jurisdiction that prevent such Related Entity or branch from fulfilling the requirements of a participating FFI or deemed-compliant FFI for purposes of section 1471 of the U.S. Internal Revenue Code or has a Related Entity or branch that is treated as a Nonparticipating Financial Institution solely due to the expiration of the transitional rule for limited FFIs and limited branches under relevant U.S. Treasury Regulations, such Saint Lucia Financial Institution shall continue to be in compliance with the terms of this Agreement and shall continue to be treated as a deemed-compliance FFI or exempt beneficial owner, as appropriate, for purposes of section 1471 of the U.S. Internal Revenue Code, provided that:

- (a) the Saint Lucia Financial Institution treats each such Related Entity or branch as a separate Nonparticipating Financial Institution for purposes of all the reporting and withholding requirements of this Agreement and each such

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Related Entity or branch identifies itself to withholding agents as a Nonparticipating Financial Institution;

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

6. **Coordination of Timing.** Notwithstanding paragraph 3 and 5 of Article 3 of this Agreement:

- (a) Saint Lucia shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the calendar year with respect to which similar information is required to be reported to the IRS by participating FFIs pursuant to relevant U.S. Treasury Regulations;
- (b) Saint Lucia shall not be obligated to begin exchanging information prior to the date by which participating FFIs are required to report similar information to the IRS under relevant U.S. Treasury Regulations;
- (c) the United States shall not be obligated to obtain and exchange information with respect to a calendar year that is prior to the first calendar year with respect to which Saint Lucia is required to obtain and exchange information; and
- (d) the United States shall not be obligated to begin exchanging information prior to the date by which Saint Lucia to begin Exchanging information.

7. **Coordination of Definitions with U.S. Treasury Regulations.**



Notwithstanding Article 1 of this Agreement and the definitions provided in the Annexes to this Agreement, in implementing this Agreement, Saint Lucia may use, and may permit Saint Lucia Financial Institution to use, a definition in relevant U. S. Treasury Regulations in lieu of a corresponding definition in this Agreement, provided that such application would not frustrate the purposes of this Agreement.

### **Article 5** **Collaboration on Compliance and Enforcement**

1. **Minor and Administrative Errors.** A competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has reason to believe that administrative errors or other minor errors may led to incorrect or incomplete information reporting or resulted in other infringements of this Agreement. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement.

2. **Significant Non-Compliance.**

- (a) A Competent Authority shall notify the Competent Authority of the other Party when the first-mentioned Competent Authority has determined that there is significant non-compliance with the obligations under this Agreement with respect to a Reporting Financial Institution in the other jurisdiction. The Competent Authority of such other Party shall apply its domestic law (including applicable penalties) to address the significant non-compliance described in the notice.
- (b) If, the case of a Reporting Saint Lucia Financial Institution, such enforcement actions do not resolve the non-compliance within a period of 18 months after notification of significant non-compliance is first provided, the United States shall treat the Reporting Saint Lucia Institution as a Nonparticipating Financial Institution pursuant to this subparagraph (2)(b).

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

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

### Article 6

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

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

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

3. **Documentation of Accounts Maintained as of June 30, 2014.** With respect to Reportable Accounts maintained by a Reporting Financial Institutions of June 30, 2014:

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

### **Article 7**

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

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

2. The United States shall notify Saint Lucia of any such more favorable terms, and such more favorable terms shall apply automatically under this Agreement as if such terms were specified in this Agreement and effective as of the date of signing of the agreement incorporating the more favorable terms, unless Saint Lucia declines in writing the application thereof.

### **Article 8**

#### **Consultations and Amendments**

1. In case any difficulties in the implementation of this Agreement arise, either, Party may request consultations to develop appropriate measures to ensure the fulfillment of this Agreement.

2. This Agreement may be amended by written mutual agreement of the Parties. Unless otherwise agreed upon, such an amendment shall enter into force through the same procedures as set forth in paragraph 1 of Article 10 of this Agreement.

### **Article 9**

#### **Annexes**

The Annexes form an integral part of this Agreement.

### **Article 10**

#### **Term of Agreement**

1. This Agreement shall enter into force on the date of Saint Lucia's written notification to the United States that Saint Lucia has completed its necessary internal procedures for entry into force of this Agreement.

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2. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination.

3. The Parties shall, prior to December 31, 2016, consult in good faith to amend this Agreement as necessary to reflect progress on the commitments set forth in Article 6 of this Agreement.

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

Done at Bridgetown, Barbados, in duplicate, in the English language, this 19th day of November, 2015.

FOR THE GOVERNMENT OF  
SAINT LUCIA:

FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA:

## ANNEX I

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

#### **I. General.**

- A. Saint Lucia shall require that Reporting Saint Lucia Financial Institutions apply the due diligence procedures contained in this Annex I to identify U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.
- B. For purposes of the Agreement,
  1. All dollar amounts are in U.S. dollars and shall be read to include the equivalent in other currencies.
  2. Except as otherwise provided herein, the balance or value of an account shall be determined as of the last day of the calendar year or other appropriate reporting period.
  3. Where a balance or value threshold is to be determined as of June 30, 2014 under this Annex I, the relevant balance or value shall be determined as of that day or the last

day of the reporting period ending immediately before June 30, 2014, and where a balance or value threshold is to be determined as of the last day of a calendar year under this Annex I, the relevant balance or value shall be determined as of the last day of the calendar year or other appropriate reporting period.

4. Subject to subparagraph E(1) of section II of this Annex I, an account shall be treated as a U.S. Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in this Annex I.
5. Unless otherwise provided, information with respect to a U.S. Reportable Account shall be reported annually in the calendar year following the year to which the information relates.

- C. As an alternative to the procedures described in each section of this Annex I, Saint Lucia may permit Reporting Saint Lucia Financial Institutions to rely on the procedures described in relevant U.S. Treasury Regulations to establish whether an account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution. Saint Lucia may permit Reporting Saint Lucia Financial Institutions to make such election separately for each section of this Annex I either with respect to all relevant Financial Accounts or, separately, with respect to any clearly identified group of such accounts (such as by line of business or the location or where the account is maintained).

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

- A. Accounts **Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Saint Lucia Financial Institution elects otherwise, either with respect to all Preexisting Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Saint Lucia provide for such an election, the following Preexisting Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts:

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1. Subject to subparagraph E(2) of this section, a Preexisting Individual Account with a balance or value that does not exceed \$50,000 as of June 30, 2014.
2. Subject to subparagraph E(2) of this section, a Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract with a balance or value of \$250,000 or less as of June 30, 2014.
3. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract, provided the law or regulations of Saint Lucia or the United States effectively prevent the sale of such a Cash Value Insurance Contract or an Annuity Contract to U.S. residents (e.g., if the relevant Financial Institution does not have the required registration under U.S. law, and the law of Saint Lucia requires reporting or withholding with respect to insurance products held by residents of Saint Lucia).
4. A Depository Account with a balance of \$50,000 or less.

**B. Review Procedures for Preexisting Individual Accounts With a Balance or Value as of June 30, 2014, that Exceeds \$50,000 (\$250,000 for a Cash Value Insurance Contract or Annuity Contract), But Does Not Exceed \$1,000,000 (“Lower Value Accounts”).**

1. **Electronic Record Search.** The Reporting Saint Lucia Financial Institution must review electronically searchable data maintained by the Reporting Saint Lucia Financial Institution for any of the following U.S. indicia:

- a) Identification of the Account Holder as a U.S. citizen or resident;
- b) Unambiguous indication of a U.S. place of birth;
- c) Current U.S. mailing or residence address (including a U.S. post office box);
- d) Current U.S. telephone number;
- e) Standing instructions to transfer funds to an account maintained in the United States;

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- f) Currently effective power of attorney or signatory authority granted to a person with a U.S. address; or
- g) An “in-care-of” or “hold mail” address that is the sole address the Reporting Saint Lucia Financial Institution has on file for the Account Holder. In the case of a Preexisting Individual Account that is a Lower Value Account, an “in-care-of” address outside the United States or “hold mail” address shall not be treated as U.S. indicia.

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

3. If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the electronic search, or if there is a change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Saint Lucia Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.

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

- a) Where the Account Holder information unambiguously indicates a *U.S. place of birth*, the Reporting Saint Lucia Financial Institution obtains, or has previously reviewed and maintains a record of:
  - (1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form);
  - (2) A non-U.S. passport or other government-issued identification evidencing the Account Holder’s citizenship or nationality in a country other than the United States; *and*
  - (3) A copy of the Account Holder’s Certificate of Loss of Nationality of the United States or a reasonable explanation of:

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- a) The reason the Account Holder does not have such a certificate despite relinquishing U.S. citizenship; **or**
  - (b) The reason the Account Holder did not obtain U.S. citizenship at birth.
- b) Where the Account Holder information contains a *current U.S. mailing or residence address, or one or more U.S. telephone numbers that are the only telephone numbers associated with the account*, the Reporting Saint Lucia Financial Institution obtains, or has previously reviewed and maintains a record of:
- (1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); **and**
  - (2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.
- c) Where the Account Holder information contains *standing instructions to transfer funds to an account maintained in the United States*, the Reporting Saint Lucia Financial Institution obtains, or has previously reviewed and maintains a record of:
- (1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); **and**
  - (2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder's non-U.S. status.
- d) Where the Account Holder information contains *a currently effective power of attorney or signatory authority granted to a person with a U.S. address, has an "in-care-of" address or*



*“hold mail” address that is the sole address identified for the Account Holder, or has one or more U.S. telephone numbers (if a non-U.S. telephone number is also associated with the account),* the Reporting Saint Lucia Financial Institution obtains, or has previously reviewed and maintains a record of:

- (1) A self-certification that the Account Holder is neither a U.S. citizen nor a U.S. resident for tax purposes (which may be on an IRS Form W-8 or other similar agreed form); *or*
- (2) Documentary evidence, as defined in paragraph D of section VI of this Annex I, establishing the Account Holder’s non-U.S. status.

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

1. Review of Preexisting Individual Accounts that are Lower Value Accounts for U.S. indicia must be completed by June 30, 2016.

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

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

**D. Enhanced Review Procedures for Preexisting Individual Accounts With a Balance or Value That Exceeds \$1,000,000 as of June 30, 2014, or December 31 of 2015 or Any Subsequent Year (“High Value Accounts”).**

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

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

- a) The most recent documentary evidence collected with respect to the account;
- b) The most recent account opening contract or documentation;
- c) The most recent documentation obtained by the Reporting Saint Lucia Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
- d) Any power of attorney or signature authority forms currently in effect; and
- e) Any standing instructions to transfer funds currently in effect.

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

- a) The Account Holder's nationality or residence status;
- b) The Account Holder's residence address and mailing address currently on file with the Reporting Saint Lucia Financial Institution;
- c) The Account Holder's telephone number(s) currently on file, if any, with the Reporting Saint Lucia Financial Institution;

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- d) Whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Saint Lucia Financial Institution or another Financial Institution);
- e) Where there is a current “in-care-of” address or “hold mail” address for the Account Holder; and
- f) Where there is any power of attorney or signatory authority for the account.

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

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

- a) If none of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, and the account is not identified as held by a Specified U.S. Person in subparagraph D(4) of this section, then no further action is required until there is a change in circumstances that results in one or more U.S. indicia being associated with the account.
- b) If any of the U.S. indicia listed in subparagraph B(1) of this section are discovered in the enhanced review of High Value Accounts described above, or if there is a subsequent change in circumstances that results in one or more U.S. indicia being associated with the account, then the Reporting Saint Lucia Financial Institution must treat the account as a U.S. Reportable Account unless it elects to apply subparagraph B(4) of this section and one of the exceptions in such subparagraph applies with respect to that account.
- c) Except for Depository Accounts described in subparagraph A(4) of this section, any Preexisting Individual Account that has been identified as a U.S. Reportable Account under this section shall be treated as a U.S. Reportable Account in all

subsequent years, unless the Account Holder ceases to be a Specified U.S. Person.

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

1. If a Preexisting Individual Account is a High Value Account as of June 30, 2014, the Reporting Saint Lucia Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account by June 30, 2015. If based on this review such account is identified as a U.S. Reportable Account on or before December 31, 2014, the Reporting Saint Lucia Financial Institution must report the required information about such account with respect to 2014 in the first report on the account and on an annual basis thereafter. In the case of an account identified as a U.S. Reportable Account after December 31, 2014 and on or before June 30, 2015, the Reporting Saint Lucia Financial Institution is not required to report information about such account with respect to 2014, but must report information about the account on an annual basis thereafter.

2. If a Preexisting Individual Account is not a High Value Account as of June 30, 2014, but becomes a High Value Account as of the last day of 2015 or any subsequent calendar year, the Reporting Saint Lucia Financial Institution must complete the enhanced review procedures described in paragraph D of this section with respect to such account within six months after the last day of the calendar year in which the account becomes a High Value Account. If based on this review such account is identified as a U.S. Reportable Account, the Reporting Saint Lucia Financial Institution must report the required information about such account with respect to the year in which it is identified as a U.S. Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Specified U.S. Person.

3. Once a Reporting Saint Lucia Financial Institution applies the enhanced review procedures described in paragraph D of this section to a High Value Account, the Reporting Saint Lucia Financial Institution is not required to re-apply such procedures, other than the relationship manager inquiry described in subparagraph D(4) of this section, to the same High Value Account in any subsequent year.

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

5. A Reporting Saint Lucia Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in the United States, the Reporting Saint Lucia Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply subparagraph B(4) of this section, is required to obtain the appropriate documentation from the Account Holder.

**F. Preexisting Individual Accounts That Have Been Documented for Certain Other Purposes.** A Reporting Saint Lucia Financial Institution that has previously obtained documentation from an Account Holder to establish the Account Holder's status as neither a U.S. citizen nor a U.S. resident in order to meet its obligations under a qualified intermediary, withholding foreign partnership, or withholding foreign trust agreement with the IRS, or to fulfil its obligations under chapter 61 of Title 26 of the United States Code, is not required to perform the procedures described in subparagraph B(1) of this section with respect to Lower Value Accounts or subparagraphs D(1) through D(3) of this section with respect to High Value Accounts.

**III. New Individual Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts among Financial Accounts held by individuals and opened on or after July 1, 2014 ("New Individual Accounts").

**A. Accounts Not Required to Be Reviewed, Identified, or Reported.** Unless the Reporting Saint Lucia Financial Institution elects otherwise, either with respect to all New Individual Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Saint Lucia provide for such an election, the following New Individual Accounts are not required to be reviewed, identified, or reported as U.S. Reportable Accounts.

1. A Depository Account unless the account balance exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

2. A Cash Value Insurance Contract unless the Cash Value exceeds \$50,000 at the end of any calendar year or other appropriate reporting period.

**B. Other New Individual Accounts.** With respect to New Individual Accounts not described in paragraph A of this

section, upon account opening (or within 90 days after the end of the calendar year in which the account ceases to be described in paragraph A of this section), the Reporting Saint Lucia Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Saint Lucia Financial Institution to determine whether the Account Holder is resident in the United States for tax purposes (for this purpose, a U.S. citizen is considered to be resident in the United States for tax purposes, even if the Account Holder is also a tax resident of another jurisdiction) and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Saint Lucia Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

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

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

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

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Saint Lucia Financial Institution elects otherwise, either with respect to all

Preexisting Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Saint Lucia provide for such an election a Preexisting Entity Account with an account balance or value that does not exceed \$250,000 as of June 30, 2014, is not required to be reviewed, identified, or reported as a U.S. Reportable Account until the account balance or value exceeds \$1,000,000.

**B. Entity Accounts Subject to Review.** A Preexisting Entity Account that has an account balance or value that exceeds \$250,000 as of June 30, 2014, and a Preexisting Entity Account that does not exceed \$250,000 as of June 30, 2014 but the account balance or value of which exceeds \$1,000,000 as of the last day of 2015 or any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D or this section.

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

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

1. **Determine Whether the Entity Is a Specified U.S. Person.**
  - a) Review information maintained for regulatory or customer

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relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is a U.S. Person. For this purpose, information indicating that the Account Holder is a U.S. Person includes a U.S. place of incorporation or organization, or a U.S. address.

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

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

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

b) If the information indicates that the Account Holder is a Financial Institution, or the Reporting Saint Lucia Financial Institution verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list, then the account is not a U.S. Reportable Account.

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

- a) Subject to subparagraph D(3)(b) of this section, a Reporting Saint Lucia Financial Institution may determine that the Account Holder is a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution if the Reporting Saint Lucia Financial



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Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Identification Number on the published IRS FFI list or other information that is publicly available or in the possession of the Reporting Saint Lucia Financial Institution, as applicable. In such case, no further review, identification, or reporting is required with respect to the account.

b) If the Account Holder is a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement

c) If the Account Holder is not a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution, then the Reporting Saint Lucia Financial Institution must treat the Account Holder as a Nonparticipating Financial Institution payments to which are reportable under subparagraph 1(b) of Article 4 of the Agreement, unless the Reporting Saint Lucia Financial Institution:

(1) Obtains a self-certification (which may be on an IRS Form W-8 or similar agreed form) from the Account Holder that it is a certified deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or

(2) In the case of a participating FFI or registered deemed-compliant FFI, verifies the Account Holder's Global Intermediary Identification Number on the published IRS FFI list.

**4. Determine Whether an Account Held by an NFFE Is a U.S. Reportable Account.** With respect to an Account Holder of a Preexisting Entity Account that is not identified as either a U.S. Person or a Financial Institution, the Reporting Saint Lucia Financial Institution must identify (i) whether the Account Holder has Controlling Persons, (ii) whether the Account Holder is a Passive NFF E, and (iii) whether any of the Controlling Persons of the Account Holder is a U.S. citizen or resident. In making these determinations the Reporting Saint Lucia Financial Institution must follow the guidance

in subparagraphs D(4)(a) through D(4)(d) of this section in the order most appropriate under the circumstances.

a) For purposes of determining the Controlling Persons of an Account Holder, a Reporting Saint Lucia Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

b) For purposes of determining whether the Account Holder is a Passive NFFE, the Reporting Saint Lucia Financial Institution must obtain a self-certification (which may be on an IRS Form W-8 or W-9, or on a similar agreed form) from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFFE.

c) For purposes of determining whether a Controlling Person of a Passive NFFE is a U.S. citizen or resident for tax purposes, a Reporting Saint Lucia Financial Institution may rely on:

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

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

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

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

1. Review of Preexisting Entity Accounts with an account

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balance or value that exceeds \$250,000 as of June 30, 2014 must be completed by June 30, 2016.

2. Review of Preexisting Entity Accounts with an account balance or value that does not exceed \$250,000 as of June 30, 2014, but exceeds \$1,000,000 as of December 31 of 2015 or any subsequent year, must be completed within six months after the last day of the calendar year in which the account balance or value exceeds \$1,000,000.

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

V. **New Entity Accounts.** The following rules and procedures apply for purposes of identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions among Financial Accounts held by Entities and opened on or after July 1, 2014 (“New Entity Accounts”).

A. **Entity Accounts Not Required to Be Reviewed, Identified or Reported.** Unless the Reporting Saint Lucia Financial Institution elects otherwise, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, where the implementing rules in Saint Lucia provide for such election, a credit card account or a revolving credit facility treated as a New Entity Account is not required to be reviewed, identified, or reported, provided that the Reporting Saint Lucia Financial Institution maintaining such account implements policies and procedures to prevent an account balance owed to the Account Holder that exceeds \$50,000.

B. **Other New Entity Accounts.** With respect to New Entity Accounts not described in paragraph A of this section, the Reporting Saint Lucia Financial Institution must determine whether the Account Holder is: (i) a Specified U.S. Person; (ii) a Saint Lucia Financial Institution of other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations; or (iv) an Active NFFE or Passive NFFE.

1. Subject to subparagraph B(2) of this section, a Reporting Saint Lucia Financial Institution may determine that the Account Holder is an Active NFFE, a Saint Lucia Financial Institution, or other Partner Jurisdiction Financial Institution if the Reporting Saint Lucia Financial Institution reasonably determines that the Account Holder has such status on the basis of the Account Holder's Global Intermediary Number or other information that is publicly available or in the possession of the Reporting Saint Lucia Financial Institution, as applicable.
2. If the Account Holder is a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution, then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.
3. In all other cases, a Reporting Saint Lucia Financial Institution must obtain a self-certification from the Account Holder to establish the Account Holder's status. Based on the self-certification, the following rules apply:
  - a) If the Account Holder is *a Specified U.S. Person*, the Reporting Saint Lucia Financial Institution must treat the account as a U.S. Reportable Account.
  - b) If the Account Holder is *a Passive NFFE*, the Reporting Saint Lucia Financial Institution must identify the Controlling Persons as determined under AML/KYC Procedures, and must determine whether any such person is a U.S. citizen or resident on the basis of a self-certification from the Account Holder or such person. If any such person is a U.S. citizen or resident, the Reporting Saint Lucia Financial Institution must treat the account as a U.S. Reportable Account.
  - c) If the Account Holder is: (i) a U.S. Person that is not a Specified U.S. Person; (ii) subject to subparagraph B(3)(d) of this section, a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution; (iii) a participating FFI, a deemed-compliant FFI, or an exempt beneficial owner, as those terms are defined in relevant U.S. Treasury Regulations;

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(iv) an Active NFFE; or (v) a Passive NFFE none of the Controlling Persons of which is a U.S. citizen or resident, then the account is not a U.S. Reportable Account, and no reporting is required with respect to the account.

- d) If the Account Holder is a Nonparticipating Financial Institution (including a Saint Lucia Financial Institution or other Partner Jurisdiction Financial Institution treated by the IRS as a Nonparticipating Financial Institution), then the account is not a U.S. Reportable Account, but payments to the Account Holder must be reported as contemplated in subparagraph 1(b) of Article 4 of the Agreement.

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

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

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

1. **AML/KYC Procedures.** “AML/KYC Procedures” means the customer due diligence procedures of a Reporting Saint Lucia Financial Institution pursuant to the anti-money laundering or similar requirements of Saint Lucia to which such Reporting Saint Lucia Financial Institution is subject.

2. **NFFE.** An “NFFE” means any Non-U.S. Entity that is not an FFI as defined in relevant U.S. Treasury Regulations or is an Entity described in subparagraph B(4)(j) of this section, and also includes any Non-U.S. Entity that is established in Saint Lucia or another Partner Jurisdiction and that is not a Financial Institution.

3. **Passive NFFE.** A “Passive NFFE” means any NFFE that is not (i) an Active NFFE, or (ii) a withholding foreign

partnership or withholding foreign trust pursuant to relevant U.S. Treasury Regulations.

4. Active NFFE. An “NFFE” means any NFFE that meets any of the following criteria:

- a) Less than 50 percent of the NFFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 percent of the assets held by the NFFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- b) The Stock of the NFFE is regularly traded on an established securities market of the NFFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- c) The NFFE is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
- d) The NFFE is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an Entity wholly owned by one or more of the foregoing;
- e) Substantially all of the activities of the NFFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an entity shall not qualify for NFFE status if the entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

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f) The NFFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFFE shall not qualify for his exception after the date that is 24 months after the date of the initial organization of the NFFE;

g) The NFFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;

h) The NFFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution;

i) The NFFE is an “expected NFFE” as described in relevant U.S. Treasury Regulations; **or**

j) The NFFE meets all of the following requirements:

i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

ii. It is exempt from income tax in its jurisdiction of residence;

iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

iv. The applicable laws of the NFFE’s jurisdiction of residence or the NFFE’s formation documents

do not permit any income or assets of the NFFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value or property which the NFFE has purchased; *and*

v. The applicable laws of the NFFE's jurisdiction of residence or the NFFE's formation documents require that, upon the NFFE's liquidation or dissolution, all of its assets be distributed to a government entity or other non-profit organization, or escheat to the government of the NFFE's jurisdiction of residence or any political subdivision thereof.

5. **Preexisting Account.** A "Preexisting Account" means a Financial Account maintained by a Reporting Financial Institution as of June 30, 2014.

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

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

2. **Aggregation of Entity Accounts.** For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Saint Lucia Financial Institution is required to take into account all Financial Accounts that are maintained by the



Reporting Saint Lucia Financial Institution, or by a Related Entity, but only to the extent that the Reporting Saint Lucia Financial Institution's computerized systems link the Financial Accounts by reference to a data element such as client number or taxpayer identification number, and allow account balances or values to be aggregated.

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

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

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

1. A certificate of resident issued by an authorized government body (for example, a government or agency thereof, or a municipality) of the jurisdiction in which the payee claims to be a resident.
2. With respect to an individual, any valid identification issued by an authorized government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes.
3. With respect to an Entity, any official documentation issued by an authorized government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in

the jurisdiction (or U.S. Territory) in which it claims to be a resident or the jurisdiction (or U.S. Territory) in which the Entity was incorporated or organized.

4. With respect to a Financial Account maintained in a jurisdiction with anti-money laundering rules that have been approved by the IRS in connection with a QI agreement (as described in relevant U.S. Treasury Regulations), any of the documents, other than a Form W-\* or W-9, referenced in the jurisdiction's attachment to the QI agreement for identifying individuals or Entities.
5. Any financial statement, third-party credit report, bankruptcy filing, or U.S. Securities and Exchange Commission report.

**E. Alternative Procedures for Financial Accounts Held by Individual beneficiaries of a Cash Value Insurance Contract.** A Reporting Saint Lucia Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract receiving a death benefit is not a Specified U.S. Person and may treat such Financial Account as other than a U.S. Reportable Account unless the Reporting Saint Lucia Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Specified U.S. Person. A Reporting Saint Lucia Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract is a Specified U.S. Person in the information collected by the Reporting Saint Lucia Financial Institution and associated with the beneficiary contains U.S. indicia as described in subparagraph (B)(1) of section II of this Annex I. If reporting Saint Lucia Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Special U.S. Person, the Reporting Saint Lucia Financial Institution must follow the procedures in subparagraph B(3) of section II of this Annex I.

**F. Reliance on Third Parties.** Regardless of whether an election is made under paragraph C of section 1 of this Annex I, Saint Lucia may permit Reporting Saint Lucia Financial Institutions to rely on the due diligence procedures performed by third parties, to the extent provided in relevant U.S. Treasury Regulations.

**G. Alternative Procedures for New Accounts Opened Prior to Entry Into Force of this Agreement.**

1. **Applicability.** If Saint Lucia has provided a written notice to the United States prior to entry into force of this Agreement that, as of July 1, 2014, Saint Lucia lacked the legal authority to require reporting Saint Lucia Financial Institutions either: (i) to require Account Holders of New Individual Accounts to provide the self-certification in section III of this Annex I, or (ii) to perform all the due diligence procedures related to New Entity Accounts specified in section V of this Annex I, then Reporting Saint Lucia Financial Institutions may apply the alternative procedures described in subparagraph G(2) of this section, as applicable, to such New Accounts, in lieu of the procedures otherwise required under this Annex I. The alternative procedures described in subparagraph G(2) of this section shall be available only for those New Individual Accounts or New Entity Accounts, as applicable, opened prior to the earlier of: (i) the date Saint Lucia has the ability to compel Reporting Saint Lucia Financial Institution to comply with the due diligence procedures described in section III or section V of this Annex I, as applicable, which date Saint Lucia shall inform the United States of in writing by the date of entry into force of this Agreement, or (ii) the date of entry into force of this Agreement. If the alternative procedures for New Entity Accounts opened on or after July 1, 2014, and before January 1, 2015, described in paragraph H of this section are applied with respect to all New Entity Accounts or a clearly identified group of such accounts, the alternative procedures described in this paragraph G may not be applied with respect to such New Entity Accounts. For all other New Accounts, Reporting Saint Lucia Financial Institution must apply the due diligence procedures described in section III or section V of this Annex I, as applicable, to determine if the account is a U.S. Reportable Account or an account held by a Nonparticipating Financial Institution.

2. **Alternative Procedures.**

- a) Within one year after the date of entry into force of this Agreement, Reporting Saint Lucia Financial Institution must:
- (i) with respect to a New Individual Account described in subparagraph G(I) of this section, request the self-certification specified in section III of this Annex I and confirm the reasonableness of such self-certification consistent with the procedures described in section III of this Annex I, and
  - (ii) with respect to a New Entity Account described in subparagraph

G(I) of this section, perform the due diligence procedures specified in section V of this Annex I and request information as necessary to document the account, including any self-certification, required by section V of this Annex I.

b) Saint Lucia must report on any New Account that is identified pursuant to subparagraph G(2)(a) of this section as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported with respect to such a New Account is any information that would have been reportable under this Agreement if the New Account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

c) By the date that is one year after the date of entry into force of this Agreement, Reporting Saint Lucia Financial Institutions must close any New Account described in subparagraph G(I) of this section for which it is unable to collect the required self-certification or other documentation pursuant to the procedures described in subparagraph G(2)(a) of this section. In addition, by the date that is one year after the date of entry into force of this Agreement, Reporting Saint Lucia Financial Institutions must: (i) with respect to such closed accounts that prior to such closure were New Individual Accounts (without regard to whether such accounts were High Value Accounts), perform the due diligence procedures specified in paragraph D of section II of this Annex I, or (ii) with respect to such closed accounts that prior to such closure were New Entity Accounts, perform the due diligence procedures specified in section IV of this Annex I.

d) Saint Lucia must report on any closed account that is identified pursuant to subparagraph G(2)(c) of this section as

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a U.S. Reportable Account or as an account held by a Nonparticipating, Financial Institution, as applicable, by the date that is the later of: (i) September 30 next following the date that the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, or (ii) 90 days after the account is identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable. The information required to be reported for such a closed account is any information that would have been reportable under this Agreement if the account had been identified as a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution, as applicable, as of the date the account was opened.

**H. Alternative Procedures for New Entity Accounts Opened on or after July 1, 2014, and before January 1, 2015.** For New Entity Accounts opened on or after July 1, 2014, and before January 1, 2015, either with respect to all New Entity Accounts or, separately, with respect to any clearly identified group of such accounts, Saint Lucia may permit Reporting Saint Lucia Institutions to treat such accounts as Preexisting Entity Accounts and apply the due diligence procedures related to Preexisting Entity Accounts specified in section IV of this Annex I in lieu of the due diligence procedures specified in section V of this Annex I. In this case, the due diligence procedures of section IV of this Annex I must be applied without regard to the account balance or value threshold specified in paragraph A of section IV of this Annex I.

## **ANNEX II**

The following Entities shall be treated as exempt beneficial owners or deemed-compliant FFIs as the case may be, and the following accounts are excluded from the definition of Financial Accounts.

This Annex II may be modified by a mutual written decision entered into between the Competent Authorities of Saint Lucia and the United States: (1) to include additional Entities and accounts that present a low risk of being used by U.S. Persons to evade U.S. tax and that have similar characteristics to the Entities and accounts described in this Annex II as of the date of signature of the Agreement; or (2) to remove Entities and accounts that, due to changes in circumstances, no longer present a low risk of being used by U.S. Persons to evade

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U.S. tax. Any such addition or removal shall be effective on the date of signature of the mutual decision, unless otherwise provided therein. Procedures for reaching such a mutual decision may be included in the mutual agreement or arrangement described in paragraph 6 of Article 3 of the Agreement.

1. **Exempt Beneficial Owners other than Funds.** The following Entities shall be treated as Non-Reporting Saint Lucia Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. Internal Revenue Code, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution.
  - A. **Governmental Entity.** The government of Saint Lucia, any political subdivision of Saint Lucia (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of Saint Lucia or any one or more of the foregoing (each, a “Saint Lucia Government Entity”).

This category is comprised of the integral parts, controlled entities, and political subdivisions of Saint Lucia.

1. An integral part of Saint Lucia means any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Saint Lucia. The net earnings of the governing authority must be credited to its own account or to other accounts of Saint Lucia, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
2. A controlled entity means an Entity that is separate in form from Saint Lucia or that otherwise constitutes a separate judicial entity, provided that:
  - a) The Entity is wholly owned and controlled by one or more Saint Lucia Governmental Entities directly or through one or more controlled entities;

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- b) The Entity's net earnings are credited to its own account or to the accounts of one or more Saint Lucia Government Entities, with no portion of its income insuring to the benefit of any private person; and
      - c) The Entity's assets vest in one or more Saint Lucia Governmental Entities upon dissolution.
    - 3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental program, and the program activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.
  - B. **International Organization.** Any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization (including a supranational organization) (1) that is comprised primarily on non-U.S. governments; (2) that has in effect a headquarters agreement with Saint Lucia; and (3) the income of which does not inure to the benefit of private persons.
  - C. **Central Bank.** An institution that is by law or government sanction the principal authority, other than the government of Saint Lucia itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of Saint Lucia, whether or not owned in whole or in part by Saint Lucia.
- II. **Funds that Qualify as Exempt Beneficial Owners.** The following Entities shall be treated as Non-Reporting Saint Lucia Financial Institutions and as exempt beneficial owners for purposes of sections 1471 and 1472 of the U.S. International Revenue Code.

- A. **Broad Participation Retirement Fund.** A fund established in Saint Lucia to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:
1. Does not have a single beneficiary with a right to more than five percent of the fund's assets;
  2. Is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Saint Lucia; and
  3. Satisfies at least one of the following requirements:
    - a) The fund is generally exempt from tax in saint Lucia on investment income under the laws of Saint Lucia due to its status as a retirement or pension plan;
    - b) The fund receives at least 50 percent of its total contributions (other than transfers of assets from other plans described in paragraphs A through C of this section or from retirement and pension accounts described in subparagraphs A(1) of section V of this Annex II) from the sponsoring employers;
    - c) Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (Except rollover distributions or other retirement funds described in paragraphs A through C of this section or retirement and pension accounts described in subparagraphs A(1) of section V of this Annex II). Or penalties apply to distributions or withdrawals made before such specified events; or
    - d) Contributions (other than certain permitted make-up contributions) by employees to



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the fund are limited by reference to earned income of the employee or may not exceed \$50,000 annually, applying the rules set forth in Annex I for account aggregation and currency translation.

- B. **Narrow Participation Retirement Fund.** A fund established in Saint Lucia to provide retirement, disability, or death benefits of beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:
1. The fund has fewer than 50 participants;
  2. The fund is sponsored by one or more employers that are not Investment Entities or Passive NFFEs;
  3. The employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in subparagraph A(1) of section V of this Annex II) are limited by reference to earned income and compensation of the employee, respectively;
  4. Participants that are not residents of Saint Lucia are not entitled to more than 20 percent of the fund's assets; and
  5. The fund is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in Saint Lucia.
- C. **Pension Fund of an Exempt Beneficial Owner.** A fund established in Saint Lucia by an exempt beneficial owner to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the exempt beneficial owner.
- D. **Investment Entity Wholly Owned by Exempt Beneficial Owners.** An Entity that is a Saint Lucia Financial Institution solely because it is an Investment Entity, provided that each direct holder of an Equity Interest in the Entity is an exempt

beneficial owner, and each direct holder of a debt interest in such Entity is either a Depository Institution (with respect to a loan made to such Entity) or an exemption beneficial owner.

**III. Small or Limited Scope Financial Institutions that Qualify as Deemed-Compliant FFIs.**

The following Financial Institutions are Non-Reporting Saint Lucia Financial Institutions that shall be treated as deemed-compliant FFIs for purposes of section 1471 of the U.S. Internal Revenue Code.

**A. Financial Institution with a Local Client Base.** A Financial Institution satisfying the following requirements:

1. The Financial Institution must be licensed and regulated as a financial institution under the laws of Saint Lucia;
2. The Financial Institution must have no fixed place of business outside of Saint Lucia. For this purpose, a fixed place of business does not include a location that is not advertised to the public and from which the Financial Institution performs solely administrative support functions;
3. The Financial Institution must not solicit customers or Account Holders outside Saint Lucia. For this purpose, a Financial Institution shall not be considered to have solicited customers or Account Holders outside Saint Lucia merely because the Financial Institution (a) operates a website, provided that the website does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders, or (b) advertises in print media or on a radio or television station that it distributed or aired in other countries, provided that the advertisement does not specifically indicate that the Financial Institution provides Financial Accounts or services to nonresidents, and does not otherwise target or solicit U.S. customers or Account Holders;
4. The Financial Institution must be required under the laws of Saint Lucia to identify resident Account Holders for

purposes of either information reporting or withholding of tax with respect to Financial Accounts held by residents or for the purposes of satisfying Saint Lucia's AML due diligence requirements;

5. At least 98 percent of the Financial Accounts by value maintained by the Financial Institution must be held by residents (including residents that are Entities) of Saint Lucia;
6. Beginning on or before July 1, 2014, the Financial Institution must have policies and procedures, consistent with those set forth in Annex I, to prevent the Financial Institution from providing a Financial Account to any Nonparticipating Financial Institution and to monitor whether the Financial Institution opens or maintains a Financial Account for any Specified U.S. Person who is not a resident of Saint Lucia (including a U.S. Person that was a resident of Saint Lucia when the Financial Account was opened but subsequently ceases to be a resident of Saint Lucia) or any Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Saint Lucia;
7. Such policies and procedures must provide that if any Financial Account held by a Specified U.S. Person who is not a resident of Saint Lucia or by a Passive NFFE with Controlling Persons who are U.S. residents or U.S. citizens who are not residents of Saint Lucia is identified, the Financial Institution must report such Financial Account as would be required if the Financial Institution were Reporting Saint Lucia Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;
8. With respect to a Preexisting Account held by an individual who is not a resident of Saint Lucia or by an Entity, the Financial Institution must review those Preexisting Accounts in accordance with the procedures set forth in Annex I applicable to Preexisting Accounts to identify any U.S. Reportable Account or Financial Account held by a Nonparticipating Financial Institution,

and must report such Financial Account as would be required if the Financial Institution were a Reporting Saint Lucia Financial Institution (including by following the applicable registration requirements on the IRS FATCA registration website) or close such Financial Account;

9. Each Related Entity of the Financial Institution that is a Financial Institution must be incorporated or organized in Saint Lucia and, with the exception of any Related Entity that is a retirement fund described in paragraphs A through C section II of this Annex II, satisfy the requirements set forth in this paragraph A; and
10. The Financial Institution must not have policies or practices that discriminate against opening or maintaining Financial Accounts for individuals who are Specified U.S. Persons and residents of Saint Lucia.

B. **Local Bank.** A Financial Institution satisfying the following requirements;

1. The Financial Institution operates solely as (and is licensed and regulated under the laws of Saint Lucia as) (a) a bank or (b) a credit Union or similar cooperative credit organization that is operated without profit;
2. The Financial Institution's business consists primarily of receiving deposits from and making loans to, with respect to a bank, unrelated retail customers and, with respect to a credit union or similar cooperative credit organization, members, provides that no member has a greater than five percent interest in such credit union or cooperative credit organization;
3. The Financial Institution satisfies the requirements set forth in subparagraphs A(2) and A(3) of this section, provided that, in addition to the limitations on the website described in subparagraph A(3) of this section, the website does not permit the opening of a Financial Account;
4. The Financial Institution does not have more than \$175 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together,

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do not have more than \$500 million in total assets to their consolidated or combined balance sheets; and

5. Any Related Entity must be incorporated or organized in Saint Lucia, and any Related Entity that is a Financial Institution, with the exception of any Related Entity that is a retirement fund described in paragraphs A through C of section II of this Annex II or a Financial Institution with only low-value accounts described in paragraph C of this section, must satisfy the requirements set forth in this paragraph B.

C. **Financial Institution with Only low-Value Accounts.** A Saint Lucia Financial Institution satisfying the following requirements:

1. The Financial Institution is not an Investment Entity;
2. No Financial Account maintained by the Financial Institution or any Related Entity has a balance or value in excess of \$50,000, applying the rules set forth in Annex I for account aggregation and currency translation; and
3. The Financial Institution does not have more than \$50 million in assets on its balance sheet, and the Financial Institution and any Related Entities, taken together, do not have more than \$50 million in total assets on their consolidated or combined balance sheets.

D. **Qualified Credit Card Issuer.** A Saint Lucia Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
2. Beginning on or before July 1, 2014, the Financial Institution implements policies and procedures to either prevent a customer deposit in excess of \$50,000, or to ensure that any customer deposit in excess of \$50,000, in each case applying the rules set forth in Annex I for account aggregation and currency translation, is refunded

to the customer within 60 days. For this purpose, a customer deposit does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

**IV. Investment Entities that Qualify as Deemed-Compliant FFIs and Other Special Rules.**

The Financial Institutions described in paragraphs A through E of this section are Non-Reporting Saint Lucia Financial Institutions that shall be treated as deemed-complaint FFIs for purposes of section 1471 of the U.S. Internal Revenue Code. In addition, paragraph F of this section provides special rules applicable to an Investment Entity.

- A. **Trustee-Documented Trust.** A trust established under the laws of Saint Lucia to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model I FFI, or Participating FFI and reports all information required to be reported pursuant to the Agreement with respect to all U.S. Reportable Accounts of the trust.
- B. **Sponsored Investment Entity and Controlled Foreign Corporation.** A Financial Institution described in subparagraph B(1) or B(2) of this section having a sponsoring entity that complies with the requirements of subparagraph B(3) of this section.
1. A financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in Saint Lucia that is not qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U. S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.
  2. A Financial Institution is a sponsored controlled foreign corporation if (a) Financial Institution is a controlled foreign corporation<sup>1</sup> organized under the laws of Saint Lucia that is not a qualified intermediary, withholding foreign partnership,

or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; (b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and (c) the Financial Institution shares a common electronic system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.<sup>1</sup>

3. The sponsoring entity complies with the following requirements:
  - a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill applicable registration requirements on the FATCA registration website;
  - b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
  - c) If the sponsoring entity identifies any U.S. Reportable Accounts with respect to the Financial Institution, the sponsoring entity registers the Financial Institution pursuant to applicable registration requirements on the IRS FATCA registration website on or before the later of December 31, 2015 and the date that is 90 days after such a U.S. Reportable Account is first identified;

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<sup>1</sup> A “controlled Foreign corporation” means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by “United States shareholders” on any day during the taxable year of such foreign corporation. The term a “United States shareholder” means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

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- d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Saint Lucia Financial Institution;
- e) The sponsoring entity identifies the Financial Institution and includes the identifying number of the Financial Institution (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the Financial Institution's behalf; and
- f) The sponsoring entity has not had its status as a sponsor revoked.

C. **Sponsored, closely Held Investment Vehicle.** A Saint Lucia Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Saint Lucia Financial Institution;
3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;
4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-complaint FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph C); and



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5. The sponsoring entity complies with the following requirements:
  - a) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website.
  - b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Saint Lucia Financial institution and retains documentation collected with respect to the Financial Institution for a period of six years;
  - c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and
  - d) The sponsoring entity has not had its status as a sponsor revoked
  
- D. **Investment Advisors and Investment Managers.** An Investment Entity established in Saint Lucia that is a Financial Institution solely because it (1) renders investment advice to, and acts on behalf of, or (2) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a Financial Institution other than a Nonparticipating Financial Institution.
  
- E. **Collective Investment Vehicle.** An Investment Entity established in Saint Lucia that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not identified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions.
  
- F. **Special Rules.** The following rules apply to an Investment Entity:
  1. With respect to interests in an Investment Entity that is a collective investment vehicle described in paragraph E of

this section, the reporting obligations of any Investment Entity (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.

2. With respect to interests in:
  - a) An Investment Entity established in a Partner Jurisdiction that is regulated as a collective investment vehicle, all of the interests in which (including debt interests in excess of \$50,000) are held by or through one or more exempt beneficial owners, Active NFFEs described in subparagraph B(4) of section VI of Annex I, U.S. Persons that are not Specified U.S. Persons, or Financial Institutions that are not Nonparticipating Financial Institutions; or
  - b) An Investment Entity that is a qualified collective investment vehicle under relevant U.S. Treasury Regulations; The reporting obligations of any Investment Entity that is a Saint Lucia Financial Institution (other than a Financial Institution through which interests in the collective investment vehicle are held) shall be deemed fulfilled.
3. With respect to interests in an Investment Entity established in Saint Lucia that is not described in paragraph E or subparagraph F(2) of this section, consistent with paragraph 3 and Article 5 of the Agreement, the reporting obligations of all other Investment Entities with respect to such interests shall be deemed fulfilled if the information required to be reported by the first-mentioned Investment Entity pursuant of the Agreement with respect to such interests is reported by such Investment Entity or another person.

V. Accounts Excluded from Financial Accounts.

The following accounts are excluded from the definition of Financial Accounts and therefore shall not be treated as U.S. Reportable Accounts.

**A. Certain Savings Accounts.**

1. Retirement and Pension Account. A retirement or pension account maintained in Saint Lucia that satisfies the following requirements under the laws of Saint Lucia.
  - a) The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);
  - b) The account is tax-favored (i.e., contributions to the account that would otherwise be subject to tax under the laws of Saint Lucia are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
  - c) Annual information reporting is required to the tax authorities in Saint Lucia with respect to the account;
  - d) Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
  - e) Either (i) annual contributions are limited to \$50,000 or less, or (ii) there is a maximum lifetime contribution limit to the account of \$1,000,000 or less, in each case applying the rules set forth in Annex I for account aggregation and currency translation.
2. Non-Retirement Savings Accounts. An account maintained in Saint Lucia (other than an insurance or Annuity Contract) that satisfies the following requirements under the laws of Saint Lucia.
  - a) The account is subject to regulation as

a savings vehicle for purposes other than for retirement;

- b) The account is tax-favored (i.e., contributions to the account that would otherwise be subject to tax under the laws of Saint Lucia are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);
- c) Withdrawals are conditioned on meeting specific criteria related to the purpose of the savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and
- d) Annual contributions are limited to \$50,000 or less, applying the rules set forth in Annex I for account aggregation and currency translation.

B. **Certain Term Life Insurance Contracts.** A life insurance contract maintained in Saint Lucia with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

1. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;
2. The contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;
3. The amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

4. The contract is not held by a transferee for value.

C. **Account Held By an Estate.** An account maintained in Saint Lucia is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.

D. **Escrow Accounts.** An account maintained in Saint Lucia established in connection with any of the following:

1. A court order or judgment.
2. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
  - a) The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;
  - b) The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - c) The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;
  - d) The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - e) The account is not associated with a credit card account.
3. An obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
4. An obligation of Financial Institution solely to facilitate the payment of taxes at a later time.

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E. Partner Jurisdiction Accounts. An Account maintained in Saint Lucia and excluded from the definition of Financial Account under an agreement between the United States and another Partner Jurisdiction to facilitate the implementation of FATCA, provided that such account is subject to the same requirements and oversight under the laws of such other Partner Jurisdiction as if such account were established in that partner Jurisdiction and maintained by a Partner Jurisdiction Financial Institution in that partner Jurisdiction.

VI. Definitions. The following additional definitions shall apply to the descriptions above:

- A. Reporting Model 1 FFI. The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States and the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.
- B. Participating FFI. The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with

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the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.

## SCHEDULE 2

(Section 4)

### COMPETENT AUTHORITY ARRANGEMENT BETWEEN THE COMPETENT AUTHORITIES OF THE UNITED STATES OF AMERICA AND SAINT LUCIA

On November 19, 2015, the Government of the United States of America and the Government of Saint Lucia signed an intergovernmental agreement (“IGA”) entitled, “Agreement between the Government of the United States of America and the Government of Saint Lucia to Improve International Tax Compliance and to Implement FATCA.” The IGA requires, in particular, the exchange of certain information with respect to U.S. and Saint Lucia Reportable Accounts on an automatic basis, pursuant to the provisions of Article 4 of the Agreement between the Government of the United States of America and Government of Saint Lucia for the Exchange of Information with Respect to Taxes, done at Washington on January 30, 1987 (the “TIEA”).

Article 3(6) of the IGA provides that the Competent Authorities of the United States and Saint Lucia (the “Competent Authorities”) “shall enter into an agreement or arrangement under the mutual agreement procedure provided for in Article 5 of the TIEA”, in order to establish and prescribe the rules and procedures necessary to implement certain provision in the IGA. Article 5 of the TIEA permits the Competent Authorities to also address other matters regarding implementation of the TIEA. These matters may also be addressed herein as the IGA is entered into pursuant to the TIEA. Consistent with the IGA and after consultations between the Competent Authorities, the Competent Authorities have reached the following arrangement (this “Arrangement”).

Terms used both in this Arrangement and in the IGA have the same meaning as in the IGA, unless otherwise specified in this Arrangement. References to Paragraphs pertain to Paragraphs of this Arrangement, unless otherwise specified. Except as other provided in the IGA, any references to U.S. Treasury Regulations are the relevant regulations in effect at the time of application. References to Internal Revenue Service (“IRS”) Publications include updated versions. All references to days comprising time periods for completion of actions refer to calendar days and not business days. However,

if such period ends on a Saturday, Sunday or national statutory holiday, it would be treated as ending on the next calendar day that is not a Saturday, Sunday or national statutory holiday.

### **Paragraph 1**

#### **OBJECT AND SCOPE**

1.1 As provided in Article 3(6) of the IGA, this Arrangement establishes the procedures for the automatic exchange obligations described in Article 2 of the IGA and for the exchange of information reported under Article 4(1)(b) of the IGA. Information to be exchanged pursuant to Articles 2 and 4(1)(b) of the IGA includes information provided:

1.1.1 by a Reporting Saint Lucia Financial Institution,

1.1.2 by or on behalf of each of the following Non-Reporting Saint Lucia Financial Institutions that would be treated as a deemed-compliant FFI under Annex II of the IGA for purposes of section 1471 of the U.S. Internal Revenue Code (a "Paragraph 1.1.2 Financial Institution"):

- a Financial Institution with a Local Client Base, as described in Section III(A) of Annex II of the IGA;
  - a Trustee-Documented Trust, as described in Section IV(A) of Annex II of the IGA;
  - a Sponsored Investment Entity, as described in Section IV(B) of Annex II of the IGA;
  - a Sponsored Controlled Foreign Corporation, as described in Section IV(B)(2) of Annex II of the IGA;
  - a Sponsored, Closely Held Investment Vehicle, as described in Section IV(C) of Annex II of the IGA;
- or

1.1.3 by a Reporting U.S. Financial Institution.



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- 1.2 A Saint Lucia Financial Institution that would otherwise qualify as a Paragraph 1.1.2 Financial Institution, and thus as a Non-Reporting Saint Lucia Financial Institution under Article 1(1)(q) of the IGA, but does not satisfy one or more applicable

requirements in Annex II or the relevant U.S. Treasury Regulations is a Reporting Saint Lucia Financial Institution under Article 1(1)(o) of the IGA.

- 1.3 As provided in Article 3(6) of the IGA, this Arrangement prescribes rules and procedures as may be necessary to implement Article 5 of the IGA.
- 1.4 As permitted by Article 5 of the TIEA, this Arrangement addresses other matters concerning implementation of the IGA, including: registration, confidentiality and data safeguards, costs, consultation and modification, and publication of this Arrangement.

## **Paragraph 2**

### **REGISTRATION OF SAINT LUCIA FINANCIAL INSTITUTIONS**

- 2.1 In General: The Competent Authorities note that, under Article 4(1)(c) and Annex II of the IGA, a Reporting Saint Lucia Financial Institution or Paragraph 1.1.2 Financial Institution would be treated as compliant with, and not subject to withholding under, section 1471 of the U.S. Internal Revenue Code if the Reporting Saint Lucia Financial Institution or Paragraph 1.1.2 Financial Institution (or, as applicable, its sponsor or trustee), among other requirements, complies with the applicable registration requirements on the FATCA registration website. The Competent Authorities also note the IRS intends to issue a unique Global Intermediary Identification Number (“GIIN”) to each Reporting Saint Lucia Financial Institution and Paragraph 1.1.2 Financial Institution that successfully completes the FATCA registration requirements.
- 2.2 Inclusion of Saint Lucia Financial Institutions on IRS FFI List: The IRS intends to include on the “IRS FFI list” (as defined in section 1.1471-1(b)(73) of the U.S. Treasury Regulations) the name and GIIN of each Saint Lucia Financial Institution issued a GIIN by the FATCA Registration System. Pursuant to Article 5(2)(b) of

the IGA and Paragraph 4.3.2.2, however, a registered Saint Lucia Financial Institution would be removed from the IRS FFI list if an issue of significant non-compliance is not resolved within a period of eighteen (18) months.

- 2.3 Exchange of Registration Information: The U.S. Competent Authority intends to provide the Saint Lucia Competent Authority annually with the information necessary to identify each registered Saint Lucia Financial Institution included on the IRS FFI list.

### **Paragraph 3**

#### **TIME AND MANNER OF EXCHANGE OF INFORMATION**

- 3.1 Automatic Exchange within Nine (9) Months: Consistent with Article 3(5) and 3(6) of the IGA, the Competent Authorities intend to exchange automatically the information described in Articles 2 and 4(1)(b) of the IGA within nine (9) months after the end of the calendar year to which the information relates.
- 3.2 Format:
- 3.2.1 Information Described in Articles 2(2) and 4(1)(b) of the IGA: The FATCA XML Schema, as reflected in the FATCA XML Schema User Guide (IRS Publication 5124), and the FATCA Metadata XML Schema, as reflected in the FATCA Metadata XML Schema User Guide (IRS Publication 5188), posted on IRS.gov are intended to be used as the format for the exchange of information described in Articles 2(2) and 4(1)(b) of the IGA. The FATCA XML Schema User Guide (IRS Publication 5124) and the FATCA Metadata XML Schema User Guide (IRS Publication 5188) describe the structure of the schemata and include data dictionaries with summaries of the relevant data elements.
- 3.2.2 Notices: The U.S. Competent Authority intends to use the s chemata described in the FATCA XML Schema User Guide (IRS Publication 5142), FATCA Metadata XML Schema User Guide (IRS Publication 5188), and FATCA Reports ICMM Notification XML

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Schema User Guide (IRS Publication 5216) posted on IRS.gov as the format for providing notices pursuant to this Arrangement.

- 3.2.3 Schema Changes: The IRS intends to post any changes to the schemata applicable to a particular calendar year on <http://www.irs.gov/FATCA> as soon as possible. When feasible, IRS intends to provide notice of such changes prior to posting. The Competent Authorities anticipate a collaborative process concerning schemata changes.

3.3 Information Transmission:

- 3.3.1 Method: The Competent Authorities intend to use the International Data Exchange Service (“IDES”), as reflected in the FATCA IDES User Guide (IRS Publication 5190) and the FATCA Metadata XML Schema Under Guide (IRS Publication 5188) posted on IRS.gov, for all exchange of information, including notices described in Paragraph 4.3, pursuant to the IGA.

- 3.3.1.1 Use of Regional Router for Transmission: The Saint Lucia Competent Authority may elect to use a regional router (e.g. the European Union’s “Speed 2”) to transmit information to, and download information from, IDES where the U.S. Competent Authority has approved that regional router in writing for compliance with specified standards, including encryption and internet transmission protocols. This election should be made in writing and delivered to the U.S. Competent Authority prior to transmitting information via the regional router to IDES or downloading information IDES via the regional router.

- 3.3.1.2 Use of IDES as a Data Collection Tool: The Saint Lucia Competent Authority may elect to use IDES as a Model 1 Option 2 (“M1O2”) data

collection tool for its information exchange pursuant to the IGA. The procedures and methodology for using IDES in this manner are described in greater detail in the FATCA IDES User Guide (IRS Publication 5190). The M102 election should be made

in writing and delivered to the U.S. Competent Authority prior to the uploading or downloading of information to or from IDES by a Reporting Saint Lucia Financial Institution or by or on behalf of a Paragraph 1.1.2 Financial Institution.

3.3.1.3 Consistency: The Competent Authorities intend that an election described in Paragraph 3.3.1.1 or 3.3.1.2 would be applied consistently to all information uploaded or downloaded from the time of election, unless such election is properly revoked consistent with Paragraph 3.3.1.4.

3.3.1.4 Revocation of Election: The Saint Lucia Competent Authority may revoke an election described in Paragraph 3.3.1.1 or 3.3.1.2 following consultation with, and written notice to, the U.S. Competent Authority.

3.3.2 When Information is Exchanged: Information described in Articles 2(2) and 4(1)(b) of the IGA would be considered exchanged at the time of receipt specified in Paragraph 3.3.4. See Paragraph 5.2 concerning each Competent Authority's responsibility for maintaining confidentiality and other protections with respect to exchanged information.

3.3.3 Feedback and Consultation: The Competent Authorities understand that feedback with regard to data quality and usability is an important element of the exchange

process and they may consult with each other as provided in Paragraph 7.2 about data error or transmission problems inadequately addressed through standard notification processes over IDES.

3.3.4 Time of Receipt: Except as described below, information transmitted via IDES by the Saint Lucia Competent Authority would be considered provided to, and received by, the U.S. Competent Authority on the date the information is successfully uploaded onto IDES. Except as described below, information transmitted by the U.S. Competent Authority via IDES would be considered provided to, and received by, the Saint Lucia Competent Authority on the date the information is available for downloading from IDES.

3.3.4.1 Regional Router: If the Saint Lucia Competent Authority elects the use of a regional router for information transmission via IDES, information the regional router transmits would be considered provided to, and received by, the U.S. Competent Authority on the date it is successfully uploaded from the router to IDES, and information transmitted by the U.S. Competent Authority would be considered provided to, and received by, the Saint Lucia Competent Authority on the date it is available for downloading to the router from IDES.

3.3.4.2 M1O2 Data Collection Tool: If Saint Lucia Competent Authority elects to use IDES as an M1O2 data collection tool, information would be considered provided to, and received by, the U.S. Competent Authority on the date the Saint Lucia Competent Authority approves and therefore releases the information on IDES to the U.S. Competent Authority, and information transmitted by the U.S. Competent Authority would be considered provided to, and received by, the Saint Lucia

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Competent Authority on the date it is available for downloading from IDES. See FATCA IDES User Guide (IRS Publication 5190).

### 3.4 Notification of File Processing Success or Failure:

3.4.1 Notification of File Processing Success: Within fifteen (15) days of successfully receiving a file containing the information described in Articles 2(2) and 4(1)(b) of the IGA in the time and manner described in Article 3(5) of the IGA and in Paragraph 3, the Competent Authority receiving the file (the “receiving Competent Authority”) should provide notice of such successful receipt to the Competent Authority providing the file (the “providing Competent Authority”). The U.S. Competent Authority expects to generate such notification automatically through the International Compliance Management Model (“ICMM”) and transmit it via IDES. The notice need not express the receiving Competent Authority’s view about the adequacy of the information received or whether the receiving Competent Authority believes that the providing Competent Authority should take measures pursuant to Article 5 of the IGA to obtain corrected or complete information.

3.4.2 Notification of File Processing Failure: Within fifteen (15) days of receiving a file containing information that cannot be processed, the receiving Competent Authority should provide notice of such processing failure to the providing Competent Authority. The U.S. Competent Authority expects to generate such notification automatically through the ICMM and transmit it via IDES.

3.4.3 ICMM: A description of, and additional information regarding, ICMM, including the (i) FATCA Reports ICMM Notifications User Guide (IRS Publication 5189), and (ii) FATCA Reports ICMM Notification XML Schema User Guide (IRS Publication 5216), can be found on IRS.gov.

- 3.5 **Transliteration:** Any information the Saint Lucia Competent Authority exchanges that is reported in a non-Latin domestic alphabet or iteration is expected be transliterated pursuant to the Saint Lucia domestic procedures or rules aligned with international standards for transliteration (for example as specified in ISO 8859) into the Latin alphabet. The Saint Lucia Competent Authority may send designatory data (e.g., name or address) both in its domestic alphabet or iteration and separately in the Latin alphabet within each account record if it so chooses. The Saint Lucia Competent Authority should also be prepared to transliterate the information it receives from the U.S. Competent Authority from the Latin alphabet to any non-Latin domestic alphabet or iteration it uses or accepts.

#### **Paragraph 4**

#### **REMEDICATION AND ENFORCEMENT**

- 4.1 **In General:** The U.S. Competent Authority and the Saint Lucia Competent Authority should each seek to ensure that all of the information specified in Articles 2(2) and 4(1)(b) of the IGA has been identified and reported to the U.S. Competent Authority and the Saint Lucia Competent Authority, as applicable, so that such information is available to be exchanged in the time and manner described in Article 3(5) of the IGA and in Paragraph 3.
- 4.2 **Categories of Non-Compliance:** Non-compliance with the IGA may be administrative or minor in nature, or may constitute significant non-compliance.
- 4.2.1 **Significant Non-Compliance:** Under Article 5(2) of the IGA, the receiving Competent Authority has the discretion to determine whether there is significant non-compliance with the obligations to obtain and exchange information described in Articles 2(2) and 4(1)(b) of the IGA with respect to a Reporting Financial Institution in the other jurisdiction. The U.S. Competent Authority also has the discretion to determine significant non-compliance based on failure to satisfy due diligence, reporting, withholding and other obligations with respect to a Reporting Saint Lucia Financial Institution. The receiving Competent Authority may determine that certain failures constitute significant non-compliance with respect to a Reporting Financial Institution regardless of whether the

failure is attributable to the providing Competent Authority or the Reporting Financial Institution. Examples of significant non-compliance are set forth in Paragraphs 4.2.1.1 through 4.2.1.3.

4.2.1.1 Reporting Failures: The U.S. Competent Authority may find significant non-compliance based on a failure by a Reporting Saint Lucia Financial Institution to report information on U.S. Reportable Accounts, as specified in Article 4(1)(a) of the IGA, or on 2015 and 2016 payments to Nonparticipating Financial Institutions, as specified in Article 4(1)(b) of the IGA.

4.2.1.2 Failure to Timely Correct: Failure by a Reporting Financial Institution to correct administrative or other minor errors may, in the discretion of the receiving Competent Authority, lead to a determination of significant non-compliance. The Competent Authorities expect, however, that in the ordinary course a determination of such significant non-compliance would not occur until at least 120 days after the notice specified in Paragraph 4.3.1 is provided to, and received by, the providing Competent Authority (per Paragraph 3.3.4).

4.2.1.3 Other Non-compliance Under the IGA: The U.S. Competent Authority may make a determination of significant non-compliance with respect to a Reporting Saint Lucia Financial Institution to the extent it does not meet the conditions set forth in Article 4 of the IGA, including by failing to (i) withhold on any U.S. Source Withholdable Payment made to any Nonparticipating Financial Institution to the extent required under Article 4(1)(d) of the IGA; (ii) provide to any immediate payor of a U.S. Source Withholdable Payment the information



required for withholding and reporting on any such payment to a Nonparticipating Financial Institution to the extent required under Article 4(5) of the IGA with respect to Related Entities and branches that are Nonparticipating Financial Institutions. Lack of compliance with other conditions set forth in Article 4, such as compliance with applicable registration requirements, may also lead to a determination of significant non-compliance with regard to a Reporting Saint Lucia Financial Institution.

4.2.1.4 Consultation: In the ordinary course, the Competent Authorities anticipate consultation prior to a determination of significant non-compliance.

4.2.2 Administrative or Other Minor Errors: Under Article 5(1) of the IGA, administrative and other minor errors include incorrect or incomplete reporting of information described under Articles 2(2) and 4(1)(b) of the IGA or other errors that result in infringements of the IGA.

4.2.2.1 Self-initiated Reporting Changes: In the event a providing Competent Authority receives a notice from a Reporting Financial Institution or by or on behalf of a Paragraph 1.1.2 Financial Institution regarding an omission or other error in an exchanged report, the report should be amended. The providing Competent Authority should forward any amended reports to the receiving Competent Authority as soon as practicable.

4.3 Notification Procedures: To address non-compliance, the receiving Competent Authority would notify the providing Competent Authority pursuant to Article 5 of the IGA. The notification procedures would differ depending upon whether the receiving Competent Authority seeks to address administrative or other minor errors or significant non-compliance.

4.3.1 **Procedures for Administrative or Other Minor Errors:** As provided in Article 5(1) of the IGA, the receiving Competent Authority would notify the providing Competent Authority when the receiving Competent Authority has reason to believe that administrative errors or other minor errors may have led to incorrect or incomplete information reporting or result in other infringements of the IGA. The providing Competent Authority would then apply its domestic law (including applicable penalties) to obtain complete and correct information or to resolve other minor or administrative infringements of the IGA and exchange such information with the receiving Competent Authority.

4.3.2 **Procedures for Significant Non-Compliance:**

4.3.2.1 **In General:** Under Article 5(2) of the IGA, the receiving Competent Authority would notify the providing Competent Authority when the receiving Competent Authority has determined there is significant non-compliance with the obligations under the IGA with respect to a Reporting Financial Institution. After such notification of significant non-compliance from the receiving Competent Authority, the providing Competent Authority would apply its domestic laws (including applicable penalties) to address the significant non-compliance described in the notice. The Competent Authorities may consult on the steps needed to address such non-compliance. If the U.S. Competent Authority were to notify the Saint Lucia Competent Authority of a determination of significant non-compliance, the date on which notification was provided to, and received by, the Saint Lucia Competent Authority (per Paragraph 3.3.4) would constitute the beginning of the eighteen (18) month period set forth in Article 5(2)(b) of the IGA.

4.3.2.2 **Notice to Reporting Saint Lucia Financial Institution:** The Saint Lucia Competent Authority should notify the relevant Reporting Saint Lucia Financial Institution of the significant non-compliance determination, including the date the U.S. Competent Authority provided notice of such non-compliance to the Saint Lucia Competent

Authority (per Paragraph 3.3.4). The notice should also indicate that if the significant non-compliance is not cured within eighteen (18) months after the date the U.S. Competent Authority provided notice to the Saint Lucia Competent Authority, the relevant Reporting Saint Lucia Financial Institution may be treated as a Nonparticipating Financial Institution, its name may be removed from the IRS FFI list, and it may therefore be subject to 30-percent withholding under section 1471(a) of the U.S. Internal Revenue Code.

4.4 Transition Period for Remediation and Enforcement:

4.4.1 The Competent Authorities intend calendar years 2014 and 2015 to be a transition period for purposes of the enforcement and administration of any data collection, due diligence, information reporting, automatic information exchange, and withholding requirements described in the IGA. The Competent Authorities intend to take into account the good faith efforts of each other, Reporting Financial Institution, and Paragraph 1.1.2 Financial Institutions toward compliance with any such requirements during this transition period when pursuing enforcement.

4.4.2 The transition period described in Paragraph 4.4.1 may be extended by mutual written decision of the Competent Authorities.

**Paragraph 5**

**CONFIDENTIALITY AND DATA SAFEGUARDS**

5.1 Confidentiality and Use: In accordance with Article 3(7) of the IGA, all information exchanged pursuant to the IGA is subject to the confidentiality and other protections provided for in the TIEA (hereinafter “Confidentiality Protections”), including the provisions limiting the use of the information exchanged. The Competent Authorities intend to maintain appropriate safeguards and infrastructure as described in Article 3(8) of the IGA (“Data Safeguards”).

5.2 Transmission Risk and Responsibility: The Saint Lucia Competent Authority intends to maintain Confidentiality Protections regarding

information transmitted by the U.S. Competent Authority via IDES from the time it successfully downloads such information from IDES. The U.S. Competent Authority intends to maintain Confidentiality Protections regarding information transmitted via IDES from the time information is successfully uploaded to IDES. Where the Saint Lucia Competent Authority elects to use IDES as an M102 data collection tool, the Saint Lucia Competent Authority intends to maintain Confidentiality Protections from the time information is successfully uploaded by a Reporting Saint Lucia Financial Institution or by or on behalf of a Paragraph 1.1.2 Financial Institution to IDES. See FATCA IDES User Guide (IRS Publication 5190).

- 5.3 Notification of Actual or Potential Breach of the Confidentiality and Safeguard Protections: A Competent Authority should notify the other Competent Authority promptly regarding any actual or potential breach of the Confidentiality Protections, or in the event that the Competent Authority no longer intends to maintain the Data Safeguards.

### **Paragraph 6**

#### **COSTS**

- 6.1 Unless the Competent Authorities specify otherwise in writing, each Competent Authority intends to bear its own ordinary costs incurred in administering its domestic laws and providing assistance under this Arrangement. The Competent Authorities may consult with each other in advance of the incidence of extraordinary costs to consider whether, and if so how, to allocate such costs between the Competent Authorities.

### **Paragraph 7**

#### **EFFECT, CONSULTATION AND MODIFICATION**

- 7.1 Operative Date: This Arrangement becomes operative on the later of (i) the date the IGA enters into force, or (ii) the date the Arrangement is signed by the U.S. and Saint Lucia Competent Authorities. Once the Arrangement is operative, its provisions apply to all information that is exchanged pursuant to the IGA, including information for calendar years that precede the operative date.

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- 7.2 **Consultation:** Each Competent Authority may at any time request consultations on the implementation, interpretation, application, or modification of this Arrangement. Such consultation (through discussion or correspondence) should take place within a period of thirty (30) days from the date of receipt of such request, unless otherwise mutually decided. If the Competent Authority of a Contracting State believes the other Contracting State has failed to fulfil its obligations under the IGA, it may request immediate consultation to ensure fulfilment of the IGA.
- 7.3 **Modification:** This Arrangement may be modified at any time by mutual consent of the Competent Authorities, in writing.
- 7.4 **Discontinuation:** This Arrangement is intended to be discontinued automatically upon termination of the IGA. In the event of discontinuation, all information previously received under this Arrangement would remain subject to the Confidentiality Protections.

### **Paragraph 8**

#### **PUBLICATION**

- 8.1 The Competent Authorities intend to make this Arrangement publicly available through official publication by each Contracting State within thirty (30) days from the last date of signature of this Arrangement. The Competent Authorities expect to set the precise date and time through consultation.

For the United States Competent Authority:

For the Saint Lucia Competent Authority:

Douglas W. O'Donnell  
For Commissioner, Large Business  
& International Internal Revenue  
Service

Sophia M. Henry  
Comptroller  
Inland Revenue Department

23 March, 2016

February 29, 2016

**SCHEDULE 3**

(Section 6)

## Article 4

**Agreement between the Government of Saint Lucia and the Government of the United States of America for the Exchange of Information with Respect to Taxes, done at Washington on January 30, 1987**

6. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that State or of the Contracting State;
- b) to supply particular items of information which are not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process;
- d) to supply information, the disclosure of which would be contrary to public policy (ordre public);
- e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to tax on worldwide income. The provisions of this subparagraph shall not be construed to prevent the exchange of information with respect to the taxes imposed by either the United States or Saint Lucia on branch profits or on the premium income of non-resident insurers or foreign insurance companies.

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7. Except as provided in paragraph 6 of this Article, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all reasonable legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 6, it has no obligation to transmit.

8. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial discretion. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

Passed in the House of Assembly this 16th day of August, 2016.

LEONNE THEODORE-JOHN,  
*Speaker of the House of Assembly.*

Passed in the Senate this 18th day of August, 2016.

ANDY G. DANIEL,  
*President of the Senate.*