

**FINANCIAL AGENCY AGREEMENT**  
**for**  
**CUSTODIAN SERVICES**  
**for**  
**FOR A PORTFOLIO OF ASSETS**

This Financial Agency Agreement (FAA) is entered into as of December 1, 2017 (Effective Date), by and between the U.S. Department of the Treasury (Treasury), and The Bank of New York Mellon (Financial Agent).

**Recitals**

The Treasury is authorized to use financial agents for the Troubled Asset Relief Programs (TARP) under Section 101(c)(3) of the Emergency Economic Stabilization Act of 2008 (EESA), for the Small Business Lending Fund (SBLF) program under Section 4104(3) of the Small Business Jobs Act of 2010 (SBJA), and for the New Issue Bond Program (NIBP) under the National Bank Acts of 1863 and 1864 (together Treasury Programs).

In furtherance of its statutory role in managing public funds and executing other financial authorities, the Treasury designates qualified Financial Institutions as depositaries and financial agents of the United States to provide specified services in a fiduciary capacity.

The Treasury has determined that it is in the interests of the United States to designate the Financial Agent to perform the custodian services described herein.

The Financial Agent desires to serve as a financial agent of the United States under the terms and conditions contained herein.

Accordingly, in consideration of the representations, warranties, and mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Treasury and the Financial Agent agree as follows.

**1. Designation and authorization**

Pursuant to the authority of the Secretary of the Treasury under the statutes identified above, the Treasury hereby designates and authorizes the Financial Agent to act as a financial agent of the United States under the terms and conditions of this FAA to perform certain services as more fully described in Exhibit A. The Financial Agent understands and acknowledges that the scope and provision of agent services for this designation are distinct from, and in no way overlap with, the scope and provision of agent services for other financial agency designations, and that compliance with and compensation under this FAA must be administered separately from other financial agency agreements between the Financial Agent and the Treasury.

## **2. Term**

A. The initial term of this FAA is for 5 years from the Effective Date and shall expire on December 1, 2022, unless terminated earlier by the Treasury pursuant to the provisions hereof.

B. The Treasury shall have the right and option to extend the term of this FAA beyond the initial expiration date for a total of 5 consecutive one-year extensions. The Treasury may exercise any such extension option by giving written notice to the Financial Agent at least 60 calendar days prior to the end of the then current term. In the event any such extension option is exercised by the Treasury, this FAA shall continue in full force and effect for the term of the extension.

C. The Financial Agent acknowledges that the services provided under this FAA are vital to the United States and must continue without interruption during any transition period if the Treasury decides to use a different entity to perform such services in the future, if the Treasury decides to perform such services itself, or if termination requires an orderly shutdown of services. To provide for such a transition, the Treasury shall have the right to extend the term of this FAA beyond any expiration date for a period not to exceed 1 year. The Treasury may exercise such option by giving written notice of such extension to the Financial Agent prior to the end of the then current term. The Treasury will use reasonable efforts to provide such written notice at least 30 calendar days prior to the end of the then current term. The Treasury may reduce the number or extent of services to be provided by the Financial Agent during any such transition period. The Treasury agrees that it will work diligently to transfer or shutdown the services performed hereunder as soon as reasonably possible.

D. The Financial Agent agrees to cooperate with the Treasury and/or any successor custodians and infrastructure providers and to provide such services as are necessary to ensure an effective and orderly transfer or shutdown of services, functions, records, and data during the transition period. If the Treasury appoints any successor custodians and infrastructure providers, the Financial Agent shall deliver to such successors, duly endorsed and in the form for transfer, all securities, loan or other documents, funds, and other assets then held by it pursuant to this FAA. If no successor is appointed, the Financial Agent shall, in like manner, upon receipt of instructions from the Treasury, deliver to the Treasury such securities, loan documents, funds and other assets.

## **3. Services to be provided by Financial Agent**

A. The Financial Agent shall perform the services required under this FAA, as more fully described in Exhibits A and C, in accordance with the practices, professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Financial Agent exercises for itself. The Financial Agent shall use qualified individuals with suitable training, education, experience and skills to perform the services.

B. The Financial Agent shall ensure that all employees of the Financial Agent and its contractors providing services under this FAA are United States citizens-performing their work in the United States and the operation and maintenance of all systems and databases used in providing services

under this FAA are in the United States, unless specifically authorized by the Treasury in writing. On a quarterly basis, the Financial Agent shall self-certify to the Treasury that the Financial Agent remains in compliance with the Treasury-approved employment eligibility requirements, in the form set forth in Exhibit G.

C. The Treasury may, in its sole discretion, modify, add to, or reduce the specific services required under the general scope of this FAA by providing written notice to the Financial Agent. If any such modification, addition or reduction causes an increase or decrease in the cost of, or the time required for, performance of any service required by this FAA, the Treasury and the Financial Agent will negotiate an equitable adjustment in the price of the service or other terms of performance.

D. The Treasury may periodically issue instructions through bulletins, letters, or other communications, consistent with this FAA, which will further describe or clarify the scope of the duties and services of the Financial Agent under this FAA. To the extent that any such instructions are inconsistent with the terms of this FAA or would constitute a material change in the terms or scope of services under this FAA, the terms of this FAA shall govern unless otherwise specified by the Treasury.

E. The Financial Agent shall keep the Treasury informed of changes in technology and business methods that might allow the Financial Agent to perform its services under this FAA in a more efficient or cost effective manner.

#### **4. Compensation**

A. The Treasury shall compensate the Financial Agent for services in accordance with Exhibit B, as amended from time to time.

B. The Treasury does not guarantee any set quantity of transactions, minimum volume of assets or business, or level of compensation to the Financial Agent and shall not adjust compensation on the basis that volumes or quantities did not meet the Financial Agent's expectations.

C. The Financial Agent shall maintain complete and accurate records of and supporting documentation for the amounts billable to the Treasury, and payments made by the Treasury. Such records and documentation shall be produced and maintained separately from any similar records related to other financial agency agreements between the Financial Agent and the Treasury. The Financial Agent shall follow generally accepted accounting principles (GAAP) when recording or reporting any such administrative accounting of the services provided under this FAA. The Financial Agent agrees to provide the Treasury with documentation and other information with respect to any amounts billed to the Treasury as may be reasonably requested by the Treasury.

D. The Treasury may deduct from any amount to be paid to the Financial Agent any amount that the Financial Agent is obligated to reimburse or pay to the Treasury.

E. Except as set forth in Exhibit B, the Financial Agent shall perform all of the services and obligations required to be performed, pursuant to this FAA, at its sole expense.

## **5. Financial Agent's fiduciary duty**

The Financial Agent acknowledges and agrees that it owes a fiduciary duty of loyalty and fair dealing to the United States when acting as a financial agent of the United States. The Financial Agent agrees to act at all times in the best interests of the United States when carrying out its responsibilities under this FAA and in all matters connected with this agency relationship. The Financial Agent acknowledges and agrees that its fiduciary duties under this FAA include, but are not limited to, the following:

- to perform its obligations with care, competence, and diligence;
- to construe the terms of this FAA and any related instructions from the Treasury in a reasonable manner to serve the purposes and interests of the United States;
- to use any Sensitive Information (as defined in Section 6 B) or assets of the United States received or developed in connection with this FAA solely for the purposes of fulfilling its duties to the Treasury and not for its own commercial purposes or for those of a third party; and
- to comply with 31 CFR Part 31, as may be amended from time to time, and with all conflict of interest, non-disclosure, and information barrier obligations and restrictions, and all conflict of interest mitigation measures, fully and in good faith, as set forth in this FAA; and
- to act only within the scope of its actual authority and to comply with all lawful instructions or directions received from the Treasury.

## **6. Non-public Information**

A. The Financial Agent shall take appropriate measures to ensure the confidentiality of the nonpublic information and to prevent its inappropriate use, and shall document these measures in sufficient detail to demonstrate compliance. Nonpublic Information is defined as any information that the Treasury provides to the Financial Agent pursuant to this FAA, or that the Financial Agent obtains or develops pursuant to this FAA, until the Treasury determines the information is otherwise and informs the Financial Agent of such determination in writing, or until the information becomes part of the body of public information from a source other than the Financial Agent. Nonpublic Information includes, but is not limited to, information about the Treasury's business, economic, and policy plans, financial and asset information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII), and Sensitive Information. This definition includes trade secret or other information protected by the Trade Secrets Act and may include other information designated by the Treasury or as defined by other Federal Government sources not mentioned above.

B. Sensitive Information is defined as any information received in connection with the FAA for which the loss, misuse, or modification of, or unauthorized access to, such information could adversely affect the national interest or the conduct of Federal programs, or the privacy of individuals that they are entitled to under the Privacy Act.

C. PII means any information received in connection with the FAA about an individual, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual. This definition includes information for which the loss, misuse, or modification of, or unauthorized access to, such information could adversely affect the privacy that individuals are entitled to under the Privacy Act.

D. The Financial Agent shall use Nonpublic Information, as defined herein, solely for the purposes of fulfilling its duties under this FAA and not for its own commercial purposes or for those of a third party. The Financial Agent may disclose such Nonpublic Information only to those employees of the Treasury or the Financial Agent or its affiliates or contractors, who have a legitimate need to know the information to assist in the proper performance of services required by this FAA, consistent with 31 CFR Part 31 and with the conflict of interest mitigation and information barrier measures identified in Exhibit F. The Financial Agent shall require any affiliate or contractor that provides services under this FAA to agree in writing to confidentiality obligations substantially the same as those in this FAA.

E. The measures required by this Section to protect Nonpublic Information shall include, but are not limited to, (i) security measures to prevent unauthorized access to facilities and storage containers where Nonpublic Information is stored, (ii) security measures to detect and prevent unauthorized access to computer equipment and data storage devices that store or transmit Nonpublic Information, in accordance with Section 9, (iii) training to ensure that persons receiving Nonpublic Information know their obligations to maintain its confidentiality and to use it solely for purposes contemplated by this FAA, and (iv) programs designed to ensure compliance with Federal securities laws, including laws relating to insider trading.

F. The Treasury may periodically issue other policy statements or guidance to clarify the Financial Agent's obligations regarding Nonpublic Information. If the Financial Agent has any questions on the designation or proper handling of Nonpublic Information, it shall immediately seek clarification from the Treasury whose decision shall be binding upon the Financial Agent.

G. The Financial Agent's agreement with respect to Nonpublic Information is a continuing one that shall survive the termination or expiration of this FAA. However, the Financial Agent shall not be required to protect Nonpublic Information that is lawfully disclosed independent of the Financial Agent and is in the public domain.

H. The Financial Agent shall strictly enforce the terms of confidentiality agreements it has with its employees, affiliates, and contractors that provide services under this FAA. In addition, the Financial Agent shall ensure that each employee of the Financial Agent and all affiliate and

contractor personnel to whom Nonpublic Information is or may be disclosed review and sign a Non-Disclosure Agreement containing substantially the provisions and obligations in Exhibit E.

I. Notwithstanding the requirements of this Section, the Financial Agent may disclose Nonpublic Information if required pursuant to a lawful court order or valid subpoena, or if required by a federal regulatory or supervisory authority, or if required by a body duly charged with oversight of the Treasury Programs, including the Government Accountability Office, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) created under EESA, and the Treasury Office of the Inspector General, after giving prior notice to the Treasury to the extent legally permissible and, if not then legally permissible, as soon as it becomes legally permissible to do so.

## **7. Breaches of Nonpublic Information**

A. The Financial Agent shall immediately notify the Treasury of any discovered or suspected breaches of Nonpublic Information that may occur while handling Treasury data, whether paper or electronic, including unauthorized access, use, disclosure, or loss of Nonpublic Information. Such immediate notification should occur whether before or after regular business hours or on a weekend or holiday and should not be delayed as the Financial Agent researches or confirms the particular details on an incident or suspected incident.

B. In response to a reported breach of Nonpublic Information, the Treasury may request the Financial Agent to conduct an investigation and report detailed findings as to the cause and impact of the breach as well as the remediation taken. As determined by the Treasury after reviewing any investigation conducted by the Financial Agent, the Financial Agent may be liable and may be required to reimburse the Federal Government or any affected individual for any costs, expenses, or damages which result from the fraud, theft, willful misuse or negligence of the Financial Agent or its employees, affiliates, or contractors with respect to the handling and maintenance of Nonpublic Information.

C. The Financial Agent must ensure that all of its employees and affiliate and contractor personnel impacted by this Section receive the proper education and guidance.

## **8. Privacy Act**

The Treasury may determine that, in connection with the services provided under this FAA, the Financial Agent has obtained or developed a system of records as defined under the Privacy Act of 1974, 5 U.S.C. § 552a. For purposes of the Privacy Act, when a Government agency delegates the development, operation or maintenance of a system of records on individuals to accomplish an agency function, the person that operates the system is bound by the Privacy Act as if such person were an employee of the agency. Violations of the Privacy Act may involve the imposition of criminal penalties. If the Treasury makes such a determination, it shall so notify the Financial Agent. After receiving such notice, the Financial Agent shall promptly provide training to all of its officers, employees, affiliates, and contractors with access to such system of records on the duties and responsibilities imposed on them by the Privacy Act and by applicable regulations and guidance, including the potential penalties for wrongful disclosure.

## **9. Information technology security**

A. The Financial Agent shall develop, maintain, enforce, and at least annually review for effectiveness, information technology security measures designed to ensure the (i) availability, (ii) access controls, and (iii) integrity of any systems, databases, or data stores containing or processing Nonpublic Information.

B. The availability measures shall be designed to ensure such systems, databases, or data stores are available for operation and use to support the services required under this FAA. The access control measures shall be designed to ensure such systems, databases, or data stores are protected against unauthorized access and use. The integrity measures shall be designed to ensure that systems processes and storage and retrieval of Nonpublic Information in databases or data stores are complete, accurate, and protected against unauthorized modification.

C. Within ninety days of the Effective Date of this FAA, and on June 1 of each year thereafter that this FAA is in effect, the Financial Agent shall submit to the Treasury for review and approval the specific information technology security measures set out in the Information Technology Security Certification, attached hereto as (Exhibit H).

## **10. Personnel security**

A. The Treasury will rely on the Financial Agent's personnel security screening standards. The Financial Agent shall ensure that all employees and affiliate or contractor personnel who have access to Nonpublic Information in connection with this FAA have appropriate personnel security background checks.

B. The Financial Agent shall provide the Treasury with a listing of all such background investigative requirements (e.g., FBI fingerprint check, police check, credit check, verification of lawful permanent resident status, etc.). The Treasury may request additional personnel security checks.

C. Consistent with Section 3B, all Financial Agent employees and contractor personnel who have access to Nonpublic Information must be United States citizens performing their work in the United States, unless specifically authorized by the Treasury in writing.

## **11. Conflict of interest mitigation and information barriers**

A. Consistent with Exhibit F, the Financial Agent and its affiliates and contractors that provide services under this FAA shall adequately segregate personnel or employ suitably robust internal controls designed to ensure that the Financial Agent's personnel and those of its affiliates and contractors performing services under this FAA do not divulge Nonpublic Information regarding the Treasury's portfolio to other personnel involved with the Financial Agent's or its affiliate's or contractor's activities, including but not limited to trading, brokerage, sales, or asset management activities, that may conflict with its duties owed to the Treasury. No Nonpublic Information related to the management of the Treasury's portfolio shall be revealed to such other

personnel, except as required by law, or as required for internal senior management or legal purposes consistent with the Financial Agent's duties owed to the Treasury.

B. As part of its obligation to comply with the conflicts of interest requirements of this FAA, the Financial Agent shall implement the conflicts of interest mitigation and information barrier measures set forth in Exhibit F throughout the term of this FAA.

## **12. Employee codes of conduct and ethics**

The Financial Agent must establish policies and procedures reasonably designed to assist all individuals performing services under this FAA to comply with applicable laws and regulations, and to comply with requirements for the disclosure and the avoidance, mitigation, or neutralization of any actual or potential personal conflicts of interest, consistent with the provisions of Exhibit F. The Financial Agent must have in place policies and procedures establishing a Code of Conduct and a Code of Ethics.

## **13. Representations and warranties**

The Financial Agent represents and warrants to the Treasury the following, the truth and accuracy of which are a continuing obligation of the Financial Agent:

- A. The Financial Agent is an institution established and regulated under the laws of the United States or any state, territory, or possession of the United States and having significant operations in the United States.
- B. The Financial Agent has full corporate power and authority to enter into, execute, and deliver this FAA and to perform its obligations hereunder.
- C. The Financial Agent has obtained or made all governmental approvals or registrations required under law to authorize the performance of its obligations under this FAA. The Financial Agent is not aware of any legal or financial impediments to performing its obligations under this FAA that it has not disclosed in writing to the Treasury.
- D. The Financial Agent is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others.
- E. The Financial Agent is not on any Federal excluded parties, debarment, or suspension lists.
- F. The Financial Agent is not subject to any pending or current legal, regulatory or enforcement actions that could impair the Financial Agent's ability to provide any services under this FAA, or that could in any way pose a reputational risk to the Treasury or the Financial Agent.
- G. The Financial Agent has or shall promptly obtain all required licenses, bonding, facilities, equipment, and trained personnel to perform its obligations under this FAA.



- H. The Financial Agent owns or is licensed to use software programs and data processing hardware that are necessary for it to perform its obligations under this FAA, and to the best of its knowledge such software programs and data processing hardware do not infringe upon or constitute an infringement on or misappropriation of any valid United States patent, copyright, trademark, trade secret, or other proprietary rights of any third party.
- I. The Financial Agent agrees to comply with regulations on conflicts of interest and other matters at 31 CFR Part 31, as may be amended from time to time, as well as more stringent provisions that may be imposed by this FAA. In addition, the Financial Agent covenants to disclose all actual or potential organizational conflicts of interest, including conflicts with the interests of any corporate parents, affiliates, and subsidiaries, and of any contractors providing services under this FAA, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury or the Financial Agent, consistent with the conflicts mitigation measures set forth in Exhibit F.
- J. If doing other business with the Treasury or another Federal agency, the Financial Agent is not in any kind of probationary status, and is addressing and resolving any identified deficiencies in performance.
- K. The Financial Agent covenants to disclose to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) created under EESA and the Treasury Office of the Inspector General, any credible evidence in connection with the designation, services, or closeout of this FAA, that a management official, employee, affiliate, or contractor of the Financial Agent has committed (a) a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or (b) a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).
- L. The Financial Agent covenants to disclose any other facts or information that the Treasury should reasonably expect to know about the Financial Agent and its affiliates and contractors to help protect the reputational interests of the Treasury and the Financial Agent providing services for the Treasury under this FAA.

The Financial Agent shall sign an annual certification and deliver it to the Treasury on June 1 of each year this FAA is in effect, in the form set forth in Exhibit D. Furthermore, the Financial Agent shall immediately notify the Treasury if any representation or warranty made by the Financial Agent herein is or becomes materially false, incorrect, or incomplete, as set forth in Section 19 (Notice to the Treasury).

#### **14. Use of affiliates and contractors**

A. The Treasury authorizes the Financial Agent to use its corporate affiliates, including but not limited to The Bank of New York Mellon Trust Company, N.A., BNY Mellon, N.A., BNY Mellon Trust of Delaware, Colson Services Corp., BNY Trust Company of Canada, Mellon Analytical Solutions, LLC, iNautix Technologies India Private Limited, Eagle Investment Systems LLC, and BNY Mellon International Operations (India) Private Ltd, and Pershing, LLC to perform services under this FAA provided that the Financial Agent shall be fully accountable for any acts or omissions of an affiliate, as if such acts or omissions were its own, provided that such use is in accordance with Section 3B. The Financial Agent shall use only its own employees and employees of corporate affiliates to perform services under this FAA, unless the Financial Agent obtains the prior written consent of the Treasury to use contractors to perform such services. The Treasury may approve or reject any contractor in its sole discretion. The Treasury shall have the right to impose requirements for any such contractor including, without limitation, requirements relating to the location of the contractor's offices, the citizenship of the contractor's employees, and the contractor's physical and data security systems.

B. The Financial Agent must execute any agreement with a contractor in its own name and not on behalf of the United States or the Treasury, and any such contractor does not become a subcontractor, agent, or subagent of the Treasury. The Treasury shall not be deemed a party to any arrangement or agreement the Financial Agent may enter into with another entity to perform any services under this FAA. The Treasury will not be liable for any payment to any entity other than the Financial Agent.

C. The Financial Agent is responsible for the supervision and management of any affiliate or contractor that assists in the performance of services under this FAA. The Financial Agent shall remove and replace any affiliate or contractor that fails to perform. The Financial Agent shall ensure that all of its affiliates and contractors comply with the terms and provisions of this FAA. The Financial Agent shall be responsible for the acts or omissions of its affiliates and contractors as if the acts or omissions were by the Financial Agent.

#### **15. Reviews and audits**

A. The Treasury, the Treasury Office of the Inspector General, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), the Government Accountability Office, and other entities as authorized by the Treasury shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical, personnel and information technology testing, security reviews, and audits of the Financial Agent, and to examine all books and records related to the services provided and compensation received under this FAA. The Financial Agent shall be responsible for implementing corrective actions associated with such testing, reviews, or audits as directed by the Treasury.

#### **16. Internal control program**

A. The Financial Agent shall develop, enforce, and at least annually review for effectiveness, an internal control program designed to ensure effective delivery of the services under this FAA as

set forth in Exhibit A. The internal control program must include documentation of the control objectives for major activities, the associated control techniques, and mechanisms for testing and validating the controls.

B. In conjunction with the internal control program, the Financial Agent shall provide the Treasury with an annual service auditor's report based on standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) or, at the sole discretion of the Treasury, the results of alternative auditing procedures covering the services provided by the Financial Agent to the Treasury.

## **17. Intellectual property rights**

A. For purposes of this Section, the following definitions apply:

“Business Methods” means any ideas, concepts, designs, practices, and business methods created by the Financial Agent or its affiliates or contractors, jointly or independently, after December 1, 2017, expressly for the purpose of providing the services under this FAA.

“Data” means any recorded information, regardless of form or the media on which it may be recorded, regarding any of the services described in this FAA.

“Federal Government” means any Federal Government department, agency, bureau, corporation or instrumentality, or any Federal Reserve Bank.

“Unlimited Rights” means perpetual rights to, without limitation, use, copy, maintain, modify, enhance, disclose, reproduce, prepare derivative works, and distribute, in any manner and for any purpose and to permit others to do so.

B. For use within the Federal Government, the Treasury shall have exclusive Unlimited Rights to Business Methods and may use them for any purpose within the Federal Government's authority. For use outside the Federal government, the Treasury shall have non-exclusive Unlimited Rights to the Business Methods and may use them for any purpose within the Treasury's authority.

C. Except as otherwise provided herein or prohibited by law, the Treasury shall have non-exclusive Unlimited Rights to all data produced or developed, or obtained without third party restriction, by the Financial Agent or its affiliates or contractors for the purpose of providing services under this FAA. If requested, such data shall be made available to the Treasury in industry standard useable format.

D. In accordance with 28 U.S.C. § 1498, the Treasury hereby authorizes and consents to all use, manufacture, and production of any invention, product or work described in and covered by a United States patent or copyright by the Financial Agent or any affiliate or contractor of the Financial Agent in the performance of this FAA.

## **18. Liability of Financial Agent**

A. If any act or omission by the Financial Agent or an affiliate or contractor of the Financial Agent results in a delay in processing or transferring funds to the Treasury, or in delivering transaction information that prevents the Treasury from making use of funds, the Financial Agent is liable and shall reimburse the Treasury for the time value amount of such loss. The Treasury may reconsider any liability claim against the Financial Agent if the Treasury, in its sole discretion, determines that any delay arose out of causes beyond the control and without the fault or negligence of the Financial Agent.

B. Except as otherwise provided in this Section, the Financial Agent will not be liable to the Treasury for (i) any action taken or omitted in what the Financial Agent believes in good faith to be the proper performance of its duties; (ii) any decisions or failures by an Asset Manager, provided that this provision shall not constitute a waiver of any rights the Treasury may have under Federal securities or other laws; (iii) acts or omissions of a broker, a clearing agency which acts as securities depository, or an entity providing a book-entry system for the central handling of securities; (iv) errors by the Treasury or an Asset Manager in data or instructions provided to the Financial Agent; (v) any action taken or omitted by its reliance on the receipt of electronic transmissions with the proper security codes or passwords that the Financial Agent reasonably believes to be from the Treasury or an Asset Manager; (vi) any property received by the Treasury and not delivered to the Financial Agent; (vii) any untimely exercise of any tender, exchange or other right or power in connection with securities or other Treasury property held by it, unless (a) it is in actual or effective possession of such securities or property and (b) it receives proper instructions with regard to the exercise of any such right or power, and both (a) and (b) occur at least three business days prior to Financial Agent's deadline date to exercise such right or power; (viii) the title, validity or genuineness, including good deliverable form, of any property or evidence of title thereto received by it or delivered by it pursuant to this FAA; (ix) events beyond the control of the Financial Agent and which cannot be avoided or mitigated by the exercise of expected diligence, care, and contingency planning; and (x) asset or securities valuations provided by pricing services or contractors, or through software products, with the Treasury hereby acknowledging that such valuations are not verified by the Financial Agent and may be based on calculated amounts rather than actual market transactions and the variance between such calculated amounts and actual market values may or may not be material.

C. The Financial Agent is liable and shall reimburse the Treasury for any monetary loss or costs which result from the fraud, theft, embezzlement, willful misconduct, bad faith, or negligence of the Financial Agent or its affiliates or contractors, or from the Financial Agent's or its affiliate's or contractor's breach of a fiduciary duty.

D. The Financial Agent may be liable for costs, expenses, or damages associated with a breach of Nonpublic Information as set forth in Section 7.

E. If the Treasury reasonably believes that the Financial Agent is in breach of this FAA, an investigation of the Financial Agent's actions by the Treasury or another entity may be required. If ultimately found to be in breach, the Financial Agent shall be liable for the reasonable costs

and expenses of any such investigation to the extent that such costs and expenses are reasonably documented.

## **19. Notice to the Treasury**

The Financial Agent shall promptly notify the Treasury if (i) the Financial Agent becomes aware of any loss, damage, investigation, action, proceeding, or claim related to its performance under this FAA that may have a material adverse effect on the Treasury or the United States or that may damage the public's trust in the operations of the Treasury, (ii) the Financial Agent breaches any material obligation or condition of this FAA, or (iii) any representation or warranty made by the Financial Agent herein ceases to be true.

## **20. Defaults**

The following, as solely determined by the Treasury, constitute events of default by the Financial Agent under this FAA:

- A. The Financial Agent fails to perform or comply with any of its material obligations under this FAA.
- B. The Financial Agent or any of its employees, affiliates, or contractors commits a negligent, willful, or reckless act in connection with services or activities under this FAA.
- C. The Financial Agent breaches a fiduciary duty to the United States with respect to its responsibilities under this FAA.
- D. Any representation or warranty made herein by the Financial Agent is or becomes materially false, incorrect, or incomplete.
- E. The Financial Agent is or becomes delinquent on any Federal tax obligation or any other debt owed to the United States Government or collected by the United States for the benefit of others.
- F. The Financial Agent becomes insolvent or a receiver, liquidator, trustee, conservator, or other custodian is appointed for the Financial Agent.
- G. The Financial Agent is in default under any other agreement between the Financial Agent and the Treasury or any bureau of the Treasury.

## **21. Remedies for default**

The Treasury may take any, all, or none of the following actions in the event of a default by the Financial Agent under this FAA:

- A. The Treasury may terminate this FAA and cease its performance hereunder. If this FAA is terminated, the designation and authorization of the Financial Agent for purposes of providing the services under this FAA are automatically revoked.
- B. The Treasury may reduce the scope of services under this FAA and cease a portion of its performance hereunder. If the scope of this FAA is reduced, the authorization of the Financial Agent for purposes of providing the discontinued services under this FAA is automatically revoked.
- C. The Treasury may revoke the Financial Agent's designation as a financial agent for the United States, encompassing this FAA and any other financial agency agreements with the Treasury, which shall be deemed terminated as of the effective date of such revocation.
- D. The Treasury may declare any other agreement between the Financial Agent and the Treasury to be in default.
- E. The Treasury in its sole discretion may put a Financial Agent on probation for failing to perform satisfactorily a service (or services) delineated in this FAA. Probation means that the Treasury will withhold some or all of the Financial Agent's compensation until in the Treasury's determination the Financial Agent has cured the non-performance issues. The Treasury reserves the right to consider other measures in addition to withholding the compensation if the Financial Agent is put on probation, including but not limited to, preclusion from additional work under the existing agreement and ineligibility to be designated for other work under a new agreement. The payment of compensation may also be adjusted consistent with Section 18 (Liability of Financial Agent).
- F. The Treasury may consider information or history regarding any default hereunder when making any decisions regarding future use of the Financial Agent for performance of financial agent services.
- G. The Treasury may take any other action available at law or in equity.

## **22. Actions in the interest of the United States**

Notwithstanding any other provision of this FAA, when the Treasury in its sole discretion determines that such actions are necessary to protect the interests of the United States Government, the Treasury may reduce the authorized scope of work under this FAA, terminate this FAA, or revoke the Financial Agent's status as a financial agent of the United States even in the absence of an event of default by the Financial Agent under this FAA.

## **23. Disputes**

The Treasury and the Financial Agent agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises under this FAA, the parties will make all reasonable efforts to resolve the dispute by mutual agreement. If a dispute cannot be resolved informally by mutual agreement at the lowest possible level, the dispute shall be referred up the respective chain of

command of each party in an attempt to resolve the matter. This will be done in an expeditious manner. The Financial Agent shall continue diligent performance of the services required by this FAA pending resolution of any dispute. The Treasury and the Financial Agent reserve the right to pursue other legal or equitable rights they may have concerning any dispute. However, the parties agree to take all reasonable steps to resolve disputes internally before commencing legal proceedings.

#### **24. Data and records retention**

In addition to its fiduciary duties and any other obligation to retain financial and accounting records that may be imposed by Federal or state law, the Financial Agent shall retain all data, books, reports, documents, audit logs and records, including electronic records, related to the performance of services required by this FAA. In addition, the Financial Agent shall maintain a copy of all computer systems and application software necessary to review and analyze these electronic records. Unless otherwise directed by the Treasury, the Financial Agent shall retain these records for at least 7 years from the date the data or record was created. The Treasury may also notify the Financial Agent from time to time of any additional records retention requirements resulting from litigation in which the Treasury may have an interest, and the Financial Agent agrees to comply with these litigation requirements.

#### **25. Transfer or assignment**

A. The Financial Agent may not transfer or assign its rights under this FAA without the prior written consent of the Treasury, which may be granted or withheld in the sole discretion of the Treasury. Any purported transfer or assignment without the prior written consent of the Treasury shall be void.

B. The Financial Agent shall notify the Treasury as soon as legally possible of any proposed merger, acquisition, or other action involving the Financial Agent, its corporate affiliates, or its contractors that will affect the Financial Agent's ability to carry out its responsibilities under this FAA.

C. In the event that the Financial Agent is involved in a merger or acquisition, the Treasury may, in its sole discretion, elect to continue this FAA and to treat the Financial Agent's successor in interest to be a successor financial agent. If the Treasury elects not to continue this FAA, the Treasury shall notify the Financial Agent of the termination date of the FAA.

#### **26. Notices**

All notices required to be given herein shall be in writing and shall be given to the following contacts unless expressly stated otherwise herein:

To the Treasury:

Kristine S. Conrath  
Deputy Assistant Secretary for Fiscal Operations and Policy  
U.S. Department of the Treasury  
1500 Pennsylvania Ave, NW  
Room 2112  
Washington, DC 20220

To the Financial Agent:

Robert L. Griffin  
Managing Director  
Corporate Trust  
The Bank of New York Mellon  
101 Barclay Street  
Mail Stop: 101-2150  
New York, NY 10286

The party giving the notice should send an e-mail to the party receiving the notice and the Treasury general mailbox: [OFA\\_Agents@treasury.gov](mailto:OFA_Agents@treasury.gov), advising them that the notice by mail has been given.

## **27. Publicity and Disclosure**

A. The Financial Agent shall not make use of any Treasury name, symbol, emblem, program name, or product name, in any advertising, signage, promotional material, press release, Web page, publication, or media interview, without the prior written consent of the Treasury.

B. The Financial Agent, its affiliates or contractors, and their respective employees shall not make statements to the media or issue press releases regarding their services under this FAA without the prior written consent of the Treasury.

C. The Financial Agent acknowledges that this FAA is confidential and, consistent with applicable law, shall not disclose any portion of this FAA to third parties unless the Treasury has released such portion into the public body of information.

## **28. Modifications**

Modifications to this FAA shall be in writing and signed by the parties. Notwithstanding the foregoing, the Treasury reserves the right to unilaterally modify the terms and provisions of this FAA, through written notice to the Financial Agent, to comply with changes in legislation or regulations, court orders, or audit findings.



## **29. Miscellaneous**

A. This FAA will be interpreted under Federal law, and if there is no applicable Federal law, under the laws of New York.

B. This FAA is not a Federal procurement contract and is therefore not subject to the provisions of the Federal Property and Administrative Services Act (41 U.S.C. §§ 251-260), the Federal Acquisition Regulations (48 CFR Chapter 1), or any other Federal procurement law.

C. Any provision of this FAA that is determined to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this FAA, and no such prohibition or unenforceability in any jurisdiction shall invalidate such provision in any other jurisdiction.

D. Failure on the part of the Treasury to insist upon strict compliance with any of the terms hereof shall not be deemed a waiver, nor will any waiver hereunder at any time be deemed a waiver at any other time. No waiver will be valid unless in writing and signed by an authorized officer of the Treasury. No failure by the Treasury to exercise any right, remedy, or power hereunder will operate as a waiver thereof. The rights, remedies, and powers provided herein are cumulative and not exhaustive of any rights, remedies, and powers provided by law.

E. This FAA shall inure to the benefit of and be binding upon the parties to this FAA. No other person or entity will have any right or obligation hereunder, except for successor financial agents accepted by the Treasury.

F. This FAA may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

G. This FAA and the attached Exhibits constitute the entire agreement between the parties.

## **30. Incorporation by reference**

Exhibits A-H attached to this FAA are incorporated herein by reference and given the same force and effect as though fully set forth herein.

**In witness whereof**, the Treasury and the Financial Agent by their duly authorized officials hereby execute and deliver this Financial Agent Agreement as of the Effective Date.

**Department of the Treasury**

David Lebryk

11/22/2017

\_\_\_\_\_  
David Lebryk  
Fiscal Assistant Secretary

Date

**Financial Agent**

Robert Griffin

11/17/2017

\_\_\_\_\_  
Robert Griffin  
Managing Director

Date

## **EXHIBITS**

- Exhibit A Services and Other Terms
- Exhibit B Compensation
- Exhibit C Performance Measures
- Exhibit D Annual Certification Format
- Exhibit E Non-Disclosure Agreement
- Exhibit F Conflicts of Interest Mitigation
- Exhibit G Financial Agent Public Trust Personnel Positions Self-Certification Form
- Exhibit H Technology Security Certification

## **EXHIBIT A**

### **SERVICES AND OTHER TERMS**

#### **1. Authorization of custodian**

The Treasury authorizes the Financial Agent to be custodian of securities and other financial instruments, including, but not limited to, common shares, senior preferred shares, subordinated debt, warrants, equity equivalents (EQ2), and mortgage backed securities (MBS) (together, Assets) in an account established at the Financial Agent (the "Account"). All Assets delivered to the Financial Agent will be held and administered in accordance with the FAA.

#### **2. Duties as custodian**

A. The Financial Agent shall custody all Assets which are held for the Account by the Financial Agent in the appropriate securities depository, as applicable.

B. The Financial Agent shall release and deliver Assets in the Account only upon receipt of Proper Instructions (as defined in Section 7 below), which may be standing instructions when deemed appropriate by the Treasury in the following cases:

(a) Upon sale of such Assets for the Account, unless otherwise directed by Proper Instructions, in accordance with the established procedures for the market or clearing agency where the transactions occur, including delivery to the purchaser or to a dealer (or an agent of the purchaser or dealer) against payment;

(b) To a depository agent in connection with tender or other similar transactions for Assets of the Account;

(c) To an issuer or its agent when such Assets are called, redeemed, retired or otherwise become payable, provided that, unless otherwise directed by Proper Instructions, the cash or other consideration is to be delivered to the Financial Agent;

(d) To an issuer or its agent, for transfer or exchange into the name of the Financial Agent for a different number of bonds, certificates, or other evidence representing the same aggregate face amount or number of units;

(e) To brokers, clearing banks, or other clearing agents for examination in accordance with "street delivery" custom;

(f) For exchange or conversion pursuant to any plan of merger, consolidation, recapitalization, reorganization, or readjustment of the securities of an issuer of the securities, or pursuant to provisions for conversion contained in the securities, provided that, unless otherwise directed by Proper Instructions, the new securities and cash, if any, are to be delivered to the Financial Agent;

(g) In the case of warrants, rights or similar securities, the surrender thereof in the exercise of such warrants, rights or similar securities or the surrender of interim receipts or temporary securities for definitive securities, provided that, unless otherwise directed by Proper Instructions, the new securities and cash, if any, are to be delivered to the Financial Agent;

(h) For any other purpose upon receipt of Proper Instructions specifying the assets to be delivered and naming the person or persons to whom delivery of such assets shall be made.

C. The Financial Agent shall transmit promptly to the Treasury and an Asset Manager written information, including but not limited to pendency of calls and maturities of securities and any related expirations of rights, and tender or exchange offers, received by the Financial Agent from issuers of securities held for the Account.

### **3. Appointment of Asset Manager**

The Treasury will designate an Asset Manager to manage the investment of all or any portion of the Account. The Treasury will notify the Financial Agent in writing of the appointment of the Asset Manager, and of the portion of the assets over which the Asset Manager may exercise authority. The Treasury will notify the Financial Agent in writing of the termination of the appointment of any Asset Manager.

### **4. Bank accounts**

As part of the Account, the Financial Agent shall provide a bank account(s) subject only to draft or order by the Financial Agent acting pursuant to the terms of the FAA, to receive and hold cash received by, from, or for the Treasury. Such funds shall be deposited by the Financial Agent in its capacity as financial agent pursuant to the FAA and shall be withdrawable by the Financial Agent only in that capacity. This account shall be collateralized as necessary in accordance with 31 CFR 202.

### **5. Settlement, credits, and debits**

A. The Financial Agent will credit to the Account all income, sales proceeds, and receipts generated by assets held in custody immediately as they are received. The Financial Agent shall immediately notify the Treasury and the Asset Manager if the Financial Agent has actual or constructive knowledge that any credit to the Account will not settle in accordance with its terms or in the time period ordinarily applicable to a transaction in the applicable market.

B. The Financial Agent will debit the Account for any purchase or outlay transaction as of the time and date that funds would ordinarily be required to settle such transaction. The Financial Agent shall immediately re-credit the amount and notify the Treasury if the Financial Agent has actual or constructive knowledge that any debit to the Account will not settle in accordance with its terms or in the time period ordinarily applicable to a transaction. The Financial Agent shall immediately re-credit the amount if the Treasury notifies the Financial Agent by Proper

Instruction that a transaction has been canceled prior to settlement.

## **6. Payment of Account funds**

Upon receipt of Proper Instructions, to include written security procedures for payment orders, which may be standing instructions, or as may be otherwise authorized within the FAA, the Financial Agent shall pay out funds of the Account in the following cases:

- (a) Upon the purchase of assets for the Account, unless otherwise directed by Proper Instructions, in accordance with the established procedures for the market or clearing agency where the transactions occur, including delivering money to the seller or to a dealer (or an agent for the seller or dealer) against delivery of the assets;
- (b) In connection with the conversion, exchange or surrender of securities of the Account as set forth in Section 4 above;
- (c) For other purposes as provided in Proper Instructions specifying the amount of such payment and naming the person or persons to whom such payment is to be made.

## **7. Proper Instructions**

A. The term "Proper Instructions" means instructions received by the Financial Agent from the Treasury. Such instructions may be in writing signed by an authorized person or may be in a tested and validated electronic communication between computer systems, or by other means, including oral instructions, as may be authorized in writing by the Treasury.

B. The Treasury will provide the Financial Agent with the names and specimen signatures of Treasury personnel duly authorized to give Proper Instructions or otherwise act on behalf of the Treasury with respect to the Account. The Treasury will provide prompt updates as authorized personnel change.

## **8. Actions permitted without express authority**

The Financial Agent may, at its discretion, without express authority from the Treasury (i) endorse for collection checks, drafts and other negotiable instruments, and (ii) in general attend to all nondiscretionary details in connection with the sale, exchange, substitution, purchase, transfer and other dealings with the assets and property of the Account.

## **9. Reliance**

A. The Financial Agent may rely upon the identity and authority of each person whom the Treasury has certified in writing as authorized to give Proper Instructions until it receives written notice from the Treasury to the contrary.

B. The Financial Agent may rely upon transmissions of information secured by security codes or passwords it has issued to the Treasury.

C. The Financial Agent may rely and act upon any administrative request or consent that it reasonably believes to be genuine and to have been properly executed or otherwise given by or on behalf of the Treasury or an Asset Manager.

## **10. Legal actions**

Participation in legal actions (such as class action suits and bankruptcies) pertaining to assets in the Account is the responsibility of the Treasury. The Financial Agent will take no action with respect to such legal actions other than directing them to the Treasury.

## **11. Unencumbered Assets**

All assets in the Account should be free from any security interests, liens or encumbrances exercisable by any third party against such assets, and the Treasury will not grant a security interest, lien or encumbrance on any such assets for the benefit of any third party unless it notifies the Financial Agent. The Treasury and the Financial Agent will notify one another if they learn that any security interest, lien, or encumbrance is created against any assets in the Account.

## **12. Requirements**

The Financial Agent shall provide the following services as custodian for the Treasury portfolio:

### *A. Custodian*

- (a) Provide all necessary custody accounts, cash accounts, and sub-accounts for the portfolio and for all asset managers appointed by the Treasury.
- (b) Receive, hold, safe keep, and track all assets and cash in the portfolio, including but not limited to, common shares, senior preferred shares, subordinated debt, warrants, equity equivalents (EQ2), and mortgage backed securities (MBS).
- (c) Collect principal, interest, and fee distributions for assets in the portfolio.
- (d) Release assets and disburse cash, in accordance with the Treasury's instructions.
- (e) Manage credits and debits to the various cash and custody accounts for all income, receipts, purchases, and outlays of the portfolio.
- (f) Confirm acquisitions, settlements, trades, transfers, and other transactions with the Treasury, and other counterparties as necessary.

## *B. Reporting and Analytics*

- (a) Provide Treasury personnel with secure access to the Financial Agent's reporting platform to allow for ad hoc queries and the direct generation of reports.
- (b) Respond to the Treasury requests for program data according to agreed-upon service levels.
- (c) Support public transparency reporting by providing information on all transactions and assets. Such information will be provided as described in (a) above.
- (g) Reconcile activities daily, if necessary, with the Treasury.
- (h) Support the preparation of reports to oversight bodies, as required by the Treasury and by law.

## *C. Cash Management*

- (a) Sweep all end of day cash balances in accordance with the Treasury's instructions.

## *D. General Operations*

- (a) Confirm transactions, trades, and settlements with the Treasury.
- (b) Maintain records of (i) trades executed, including all pertinent financial and settlement information, (ii) principal and interest (P&I) payments, and (iii) cash flow projections of new trades and P&I payments.
- (c) Track, maintain records of, and promptly resolve notification and settlement fails.
- (d) Maintain settlement tolerance thresholds consistent with best practices.
- (e) Receive and custody securities, or other obligations, in accordance with the custodian and accounting requirements herein, from the Financial Institutions.
- (f) Reconcile securities, or other obligations to previously received documents.
- (g) Manage dividends or interest received in accordance with the custodian and accounting requirements herein.
- (h) Take reasonable and customary remedial actions if dividend or interest payments are not properly received as scheduled, in accordance with the Treasury's instructions.



- (i) Provide data feeds to the Treasury's management and accounting systems based upon Treasury's requirements.
- (j) Enforce internal controls.
- (k) Provide for all necessary operational and analytical hardware and software to support all required services.
- (l) Modify the dividend rate for assets as instructed by the Treasury.
- (m) Communicate adjusted dividend rate to asset issuer as instructed by the Treasury.
- (n) Reconfirm the expected amount due to the Treasury with each issuer within agreed upon timeline with the Treasury prior to payment date.
- (o) Notify the Treasury of corporate actions and notices received over time, as well as tracking certain counterparty events and actions specified by the Treasury, in connection with common shares preferred shares, equity warrants, or other obligations.

#### *E. Treasury Services*

- (a) Provide Deposit and Funds Transfer services as outlined in the Home Affordable Modification Program Paying Agent Services Agreement.

#### *F. Document and Security Custody*

- (a) Maintain, in a secure document facility, the Treasury's original copies of all agreements entered into between the Treasury and program participants, including the initial set of closing documents executed between the Treasury and the program participants at the time of the original funding and subsequent agreements entered into between the Treasury and the program participants.
- (b) Receive and store physical securities, in accordance with industry best practices for safety and security.
- (c) Review and certify document sets to ensure that all necessary documents and data are accurate and complete, in accordance with the Treasury's instructions.
- (d) Provide exception reports detailing documents and data missing from document requirements, and notify submitting program participants of document deficiencies and requirements to re-submit documents.
- (e) Image documents and provide the Treasury with on-line access to the images.

### *G. Specific services for NIBP*

During the transition period, the Financial Agent will work closely with the Treasury and the current custodian service provider to transition the following services:

- (a) Track the principal balances and reconcile cash flows of all NIBP and BCE bonds, and provide the Treasury with monthly reports showing these balances, cash flows, and reconciliations.
- (b) All interest accruals and payments, guarantee as well as principal and participation fee payments, made with respect to each bond, will be calculated based on legal documents and reconciled against cash received to ensure that records and calculations of the GSEs' administrator and the Treasury match.
- (c) The monthly reports should include the following: Bond & cash waterfall calculation of all bond-level activities, GSE fees, inter-bond payables, and receivables. GSE securities cash waterfall aggregation of all bond-level information by pool, fee calculations, and pool-level information split by GSE. The Treasury custodian vs. GSE's administrator reconciliation summary assessment of all program activities, comparing data elements to administrator. Portfolio summary – monthly begin/ending balances and activity by security type.
- (d) Establish and maintain a database of mandatory sinking fund schedules for all NIBP and BCE bonds, and update the database when revised sinking fund schedules are received.
- (e) Review the GSEs' administrator's monthly reports and promptly provide the Treasury with advance notice by email of the total amount of cash that the Treasury will receive with respect to NIBP bonds each month.
- (f) Preserve a system of records on the HFA initiative, including but not limited to the official statement for each NIBP and BCE bond, and make such records available to the Treasury upon request.
- (g) Establish and maintain an HFA initiative mailbox, and make the contents of it available to the Treasury upon request. The emails sent to the mailbox will include notices of full or partial redemption of NIBP bonds, audited financial statements for each HFA's fiscal year, updates to mandatory sinking funds schedules, and event notices as specified in legal documents. With respect to event notices, the financial agent will be required to forward to the Treasury a notice of any event other than routine principal redemption notices.

**EXHIBIT B**  
**COMPENSATION**

**1. General compensation and pricing provisions**

A. The Financial Agent shall receive compensation to provide services in support of all programs and activities established by the Treasury Programs in accordance with the following:

**i) Monthly Custodian Services Fee.** The Financial Agent shall receive a monthly fixed fee of \$145,833.33 for custodial and infrastructure services provided in accordance with this FAA.

**ii) Contractor Fee.** Pursuant to Section 14 of the FAA, the Treasury must provide advance written approval for third party contractors. Any compensation related to additional services not covered by the Monthly Custodian Services Fee, provided by third-party contractors shall be provided pursuant to a compensation schedule that shall be included in the Treasury's written approval.

B. Compensation will be paid monthly after each month for services rendered.

C. The Financial Agent must submit an invoice prior to receiving compensation.

D. At least annually, the Treasury and the Financial Agent shall jointly re-evaluate the Financial Agent's costs and resources necessary to provide required services under the FAA, and agree to work in good faith to amend the compensation amounts in this Exhibit to reflect increases or decreases in such costs and resources. The Financial Agent agrees that it has been fully compensated for all services performed before the effective date of this amendment.

**2. Compensation during transition periods**

The Financial Agent will be compensated for services rendered during any transition period under Section 2C of this FAA at the same rate in effect on the last day before the transition period begins.

**3. Methods of compensation**

The Treasury retains the right to compensate the Financial Agent for services provided under this FAA in such a method or methods as the Treasury in its sole discretion deems appropriate including, but not limited to, direct payments. The Treasury and the Financial Agent may also mutually agree on other methods.

**4. Probationary Status**

The Treasury may withhold all or a portion of the compensation if the Financial Agent is placed on probation.

**EXHIBIT C**

**PERFORMANCE MEASURES**

**TO BE ISSUED BY TREASURY**

## EXHIBIT D

### ANNUAL CERTIFICATION FORMAT

I, [Name of Authorized Official], a duly authorized official of [Financial Institution name], certify that:

1. [Financial Institution name] is taking all reasonable steps to ensure that Nonpublic Information and PII obtained from or on behalf of the Treasury is properly safeguarded;
2. All charges and expenses charged to the Treasury are accurate and attributable to services provided to the Treasury;
3. [Financial Institution name] is not on any Federal Excluded Parties, Debarments, or Suspension Lists;
4. [Financial Institution name] is not delinquent on any federal tax obligation or on any other debt owed to the United States and that [Financial Institution name] agrees to execute IRS Form 8821, and any other necessary Federal forms, to allow the Treasury to verify such information;
5. [Financial Institution name] is not aware of any legal or financial impediments to performing its obligations under the Financial Agency Agreement that it has not disclosed in writing to the Treasury;
6. [Financial Institution name] is not subject to any pending or current enforcement actions that could impair its ability to provide services under the Financial Agency Agreement;
7. All employees and affiliate and contractor personnel who have access to Nonpublic Information in connection with the FAA perform their work in the United States and are U.S. citizens, unless specifically authorized by the Treasury in writing;
8. [Financial Institution name] covenants to disclose all potential conflicts of interest not otherwise previously disclosed, including conflicts with the interests of any corporate parents, affiliates, and subsidiaries, and to avoid, mitigate, or neutralize to the extent feasible and to the Treasury's satisfaction any personal or organizational conflicts of interest that may be identified by the Treasury or the Financial Institution, in accordance with the FAA, as may be amended from time to time;
9. In accordance with the FAA, as may be amended from time to time, [Financial Institution name] covenants to disclose to the Treasury Inspector General any credible evidence, in connection with the designation, services, or closeout of this FAA, that a management official, employee, affiliate, or contractor of [Financial Institution name] has committed (a) a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or (b) a violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733);
10. [Financial Institution name] covenants to disclose any other facts or information not otherwise previously disclosed that the Treasury should reasonably expect to know about the Financial Agent to help protect the reputational interests of Treasury in connection with the Financial Agent providing services for the Treasury under this FAA.
11. Any other provisions or statements contained in the Financial Agent Agreement, and any amendments thereto, remain true and correct.

In the event that any of the representations made herein cease to be true and correct, [Financial Institution name] agrees to notify the Treasury immediately.

\_\_\_\_\_  
[Name of Authorized Official]  
[Title of Authorized Official]

\_\_\_\_\_  
Date

## EXHIBIT E

### NON-DISCLOSURE AGREEMENT

#### Conditional Access to Nonpublic Information

I, \_\_\_\_\_, employee of \_\_\_\_\_ (Organization) hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain United States Government confidential information.

I understand and agree to the following terms and conditions:

1. By being granted conditional access to confidential information, the \_\_\_\_\_ (Organization) and the U.S. Department of the Treasury (Treasury) have placed special confidence and trust in me, and I am obligated to protect this information from unauthorized disclosure, according to the terms of this Agreement.
2. Nonpublic Information refers to any information, provided to me by the Treasury or \_\_\_\_\_ (Organization) in connection with my authorized services to the Treasury, or that I obtain or develop in providing authorized services to the Treasury, other than information designated as publicly available by the Treasury in writing or that becomes publicly available from a source other than the Financial Agent. Nonpublic Information includes but is not limited to information about the Treasury's nonpublic business, economic, and policy plans, nonpublic or proprietary financial information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII), and Sensitive Information.
3. PII includes, but is not limited to, information pertaining to an individual's education, bank accounts, financial transactions, medical history, and other information which can be used to distinguish or trace an individual's identity, including but not limited to social security numbers.
4. Sensitive Information is any information received in connection with my providing authorized services to the Treasury where the loss, misuse, or unauthorized access to, or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy of individuals that they are entitled to under the Privacy Act and other Federal statutes.
5. I am being granted conditional access to Nonpublic Information, contingent upon my execution of this Agreement, to provide authorized services to the Treasury.
6. Except as set forth in paragraph 14 below, I shall never divulge any Nonpublic Information provided to me pursuant to this Agreement to anyone, unless I have been advised in writing by the \_\_\_\_\_ (Organization) and/or the Treasury that an individual is authorized to receive it.

7. I will submit to the Treasury for security review, prior to any submission for publication, any book, article, column or other written work for general publication that is based upon any knowledge I obtain during the course of my work in connection with the Treasury. I hereby assign to the Federal Government all rights, royalties, remunerations, and emoluments that have resulted or will result or may result from any disclosure, publication, or revelation of confidential information not consistent with the terms of this Agreement.
8. If I violate the terms and conditions of this Agreement, I understand that the unauthorized disclosure of Nonpublic Information could compromise the security of individuals, the \_\_\_\_\_ (Organization) and the Treasury.
9. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to Nonpublic Information. Further, violation of the terms and conditions of this Agreement may result in the \_\_\_\_\_ (Organization) and/or the United States taking administrative, civil or any other appropriate relief.
10. I understand that the willful disclosure of information to which I have agreed herein not to divulge may also constitute a criminal offense.
11. Unless I am provided a written release by the Treasury from this Agreement, or any portions of it, all conditions and obligations contained in this Agreement apply both during my period of conditional access, and at which time my affiliation and/or employment with the \_\_\_\_\_(Organization) ends.
12. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions shall remain in full force and effect.
13. I understand that the Treasury may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.
14. I understand that if I am under U.S. Congressional or judicial subpoena, I may be required by law to release information, and I shall provide prior notice to Treasury of any such disclosure or release, to the extent legally permissible and, if not then legally permissible, as soon as it becomes legally permissible to do so.

I make this Agreement in good faith, without mental reservation or purpose of evasion.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## **EXHIBIT F**

### **CONFLICTS OF INTEREST MITIGATION**

The following explains and memorializes certain of the minimum conflicts of interest mitigation controls the Bank of New York Mellon (“BNYM” or the “Financial Agent”), its affiliates named in Section 13 of this FAA (“Named Affiliates”), and its contractors shall maintain, implement and monitor throughout the term of the FAA. The Financial Agent shall act as custodian for the portfolio of securities and obligations (“Assets”) issued to the Treasury under the Treasury Programs. In that role, the Financial Agent will be responsible for providing custodial and infrastructure services to the Treasury as set forth in Exhibit A of the FAA.

#### **Conflicts of Interest and Associated Mitigation Controls**

The following have been identified as actual or potential conflicts of interest associated with the Financial Agent providing services under the FAA. As Financial Agent to the Treasury, BNYM owes a fiduciary duty of loyalty and fair dealing to the Treasury as more fully set forth in Section 5 of the FAA. To that end, the Financial Agent agrees to continue to maintain, implement and enforce corporate-wide policies and procedures addressing conflicts of interests in the areas specified below. For purposes of this Exhibit, the specific policies and procedures maintained, developed and implemented to address conflicts of interest regarding work under this FAA are collectively referred to as and are set forth below under the heading “Conflicts of Interest Mitigation Controls.” The Conflicts of Interest Mitigation Controls shall apply to the Financial Agent, any Named Affiliates and their collective employees. In addition, the Conflicts of Interest Mitigation Controls shall apply to all contractors and their employees providing services under the FAA unless a separate conflicts of interest mitigation plan has been submitted by the Financial Agent and agreed to by the Treasury.

#### **1. Organizational Conflicts of Interest**

The Financial Agent, through one or more of its affiliates and subsidiaries, may provide advice or asset management services to institutional clients that own troubled assets or the securities or obligations issued by financial institutions that received funds from the Treasury Programs. In addition, the Financial Agent, through one or more of its affiliates and subsidiaries, may maintain direct or indirect proprietary interests in troubled assets or the securities or obligations issued by financial institutions within the Treasury Programs. Because the Financial Agent and its Named Affiliates providing services under the FAA may have knowledge of material non-public information regarding the Treasury’s planning, long-term strategy, trading objectives and portfolio holdings for certain Treasury Programs, there exists a potential conflict of interest between the Financial Agent’s duty to the Treasury and its duty to its other clients and to its shareholders.

#### **Mitigation Controls**

To address the concern that the Financial Agent could improperly use material non-public information to unduly favor itself, its affiliated entities or its clients at the expense of the Treasury, the Financial Agent agrees, in addition to complying with all other applicable laws and

regulations, to maintain procedures that ensure that the Financial Agent does not improperly use any knowledge of material non-public information obtained or developed pursuant to the FAA for the advantage of itself or of other clients. Specifically, the Financial Agent agrees to maintain information barriers sufficient to prevent the misuse or unauthorized dissemination of material non-public information. The components of such information barriers shall include:

Restrictions Regarding Material Non-Public Information. While providing services to the Treasury, some individuals within the Financial Agent, its Named Affiliates and its contractors providing services under the FAA may have access to material non-public information related to the Treasury programs, such as specific trades or trading strategies (effected or proposed to be effected) of the Treasury. Information is “material” if there is a substantial likelihood that a reasonable person would consider the information important in making an investment decision (e.g., if the disclosure of the information would positively or negatively affect the market price of a security or obligation). Individuals in possession of material non-public information obtained or developed pursuant to the FAA shall not act, or cause others to act, on such information, except in performance of the FAA.

Use of Restricted Securities List. When the Financial Agent, in the course of performing services under the FAA, obtains or develops material non-public information related to the Treasury in the securities of the Treasury-Funded Entities (entities that have issued or the Financial Agent has knowledge will issue equity securities, debt obligations or warrants under the Treasury programs, where such securities, obligations or warrants are still outstanding), the securities shall be placed on the Financial Agent’s Treasury Restricted List. When such securities are on the Treasury Restricted List, the Financial Agent’s Legal and Compliance Departments shall pre-clear proposed proprietary transactions, unless such transactions are non-discretionary customer-driven transactions. The Financial Agent’s Legal and Compliance Departments shall consider the likelihood of any potential or suspected breaches of the Financial Agent’s information barriers with respect to any material non-public information in deciding whether to allow the proposed trade to be executed.

Information Barrier Policies. The Treasury-related non-public information shall be shared only on a need-to-know basis. The Financial Agent shall maintain information barrier policies that are designed to restrict the dissemination, availability and sharing of non-public information, including but not limited to material non-public information.

Controls over IT and Paper Files Related to Non-Public Information. The Financial Agent’s management, performance, and accounting systems shall restrict non-public information access only to those individuals who have a need to know such information. Paper files that include non-public information shall also be appropriately segregated so as to avoid inappropriate access by unauthorized individuals. Any information technology systems or other record systems (e.g., microfiche or data sticks) utilized by the Financial Agent in the performance of services under this FAA that may contain non-public information shall have appropriate administrative, technological and/or physical security controls to help ensure that access to such information is limited to those individuals who have a need to know such information.

Separation of Custodial and Infrastructure Services from Asset Management Functions. The Financial Agent shall enforce an ethical wall between its infrastructure services units and its

asset management units. The ethical wall shall consist of the following physical, policy and procedural controls:

- Separate systems – infrastructure services units shall maintain access controls to information technology systems used by the Financial Agent’s asset management division in order to safeguard material non-public information of the Treasury.
- Code of Conduct – Financial Agent employees shall sign an annual certification which mandates the non-disclosure of customer information.
- Physical separation – Infrastructure services units servicing the Treasury shall be appropriately segregated from the Financial Agent’s Non-Treasury resources, including no sharing of filing space. Access to non-public information shall be limited to individuals who are performing services under this FAA and shall adhere to the Financial Agent’s Clear Desk Standard, as required.

## **2. Personal conflicts of interest**

Individuals employed by or associated with the Financial Agent may own, on behalf of their personal accounts, troubled assets or securities or obligations issued by financial institutions that received funds from the Treasury Programs. Because these individuals could have knowledge of material non-public information regarding the Treasury’s portfolio of holdings, there exist potential conflicts of interest should an employee use such information for his or her own benefit.

### **Mitigation Controls**

To address the concern regarding the objectivity of individuals performing services for the Treasury under the FAA who may own, on behalf of personal accounts, securities or obligations issued by the Treasury-Funded Entities, the Financial Agent agrees that all individuals responsible for providing services under the FAA are subject to the Financial Agent's Code of Conduct and Personal Securities Trading Policy. In addition, all key individuals (as defined in 31 C.F.R. Part 31.201) personally and substantially involved in performing services under the FAA shall disclose on an annual basis information equivalent to that required of certain new employees by the United States Office of Government Ethics Form 450 (“OGE Form 450”) to the Financial Agent’s Compliance Department for review. Further, unless an investment is exempt from prior notification, investments by such individuals must be pre-cleared by the Financial Agent’s Compliance Department and be subject to appropriate trading restrictions, including being prohibited if a security is on the Financial Agent’s Treasury Restricted List, as discussed below.

Personal Trading Restrictions. When a security is on the Financial Agent’s Treasury Restricted List, trading or investment activities in the security by key individuals or their Related Persons shall be prohibited except where the key individual is not in possession of material non-public information. For purposes of this Exhibit F, Related Persons are family members who live with key individuals who are employees of the Financial Agent or its Named Affiliates and include children who are dependents for purposes of Federal income tax. The Financial Agent’s

Compliance Department shall ensure that all reasonable steps to prohibit such investment activities are taken, including by enforcement of the Financial Agent's Personal Securities Trading Policy, which shall include requirements for pre-clearance of personal securities transactions as required by the Financial Agent's Personal Securities Trading Policy, annual reporting of security holdings, and receipt of duplicate trade confirmations from brokers or custodians. The Financial Agent's Compliance Department shall employ testing to determine compliance with the Financial Agent's Personal Securities Trading Policy at a frequency consistent with the Financial Agent's standard risk based compliance monitoring practices. Without limitation, the Compliance Department shall identify non-compliant transactions, report such to the Treasury, and take appropriate corrective action.

### **Conflicts of Interest Mitigation Controls**

As a requirement of the FAA, the Financial Agent shall maintain and enforce corporate-wide policies and procedures that address the following general conflicts of interest mitigation controls.

- **Code of Conduct.** The Financial Agent shall maintain a Code of Conduct and Personal Securities Trading Policy ("Code") that sets out basic principles designed to guide employees in the course of their business activities. The Code should require all employees to hold as strictly confidential all client information, including all material non-public information obtained or developed pursuant to the FAA, and to know and comply with all Financial Agent policies and procedures, and all laws and regulations that are applicable to their job duties. The Code should place restrictions on those employees that perform services under the FAA and their Related Persons from trading on behalf of personal accounts where conflicts may arise. In particular, unless under the Code an investment is exempt from prior notification, investments by those employees must be pre-cleared and be subject to certain blackout and short-term trading restrictions. All employees performing services under this FAA shall be required to annually acknowledge that they are familiar with and abide by the Code.
- **Training.** All key individuals associated with the Financial Agent shall be required to participate in compliance training prior to, and annually thereafter, providing services to the Treasury. The training program shall inform and advise each individual of their obligations and requirements under this FAA (including its Exhibits).
- **Monitoring / Compliance.** The Financial Agent shall test and monitor the Financial Agent's compliance procedures and their effectiveness. The Financial Agent shall document such internal oversight and provide the Treasury with access to review periodic reports sufficient to evaluate the effectiveness of the Financial Agent's mitigation controls in ensuring compliance with the requirements of this FAA.
- **Appointment of a Treasury-assigned Compliance Officer.** The Financial Agent shall appoint a Treasury-assigned Compliance Officer to oversee compliance with this Exhibit F by all entities and individuals performing work under this FAA, and to periodically monitor for, identify, and mitigate, conflicts of interest that may arise during the term of the FAA. The

Financial Agent's Treasury-assigned Compliance Officer shall be independent from the investment and operations personnel.

- Incident Reporting. Any person performing services under the FAA shall be required to promptly report any known breach or violation of the Conflicts of Interest Mitigation Controls or other requirements of the FAA to the Financial Agent's Treasury-assigned Compliance Officer or his designee. A description of the incident shall be documented in an incident report and promptly provided to the Office of Financial Stability Compliance Officer or designated representative.
- Acceptance and Solicitation of Gifts in violation of the Financial Agent's Gifts and Entertainment Policy. The Financial Agent shall ensure that no employee of the Financial Agent that performs work under this FAA violates the Financial Agent's Gifts and Entertainment Policy. The Financial Agent shall notify and obtain the Treasury's consent prior to amending such policy.
- Limitations on Communications with Employees of the Treasury. During the course of the FAA, the Financial Agent shall not directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any Treasury employee with personal or direct responsibility for the selection or allocation of work to the Financial Agent or the continuing relationship between the Financial Agent and the Treasury under this FAA. The Financial Agent shall not solicit or obtain from any Treasury employee, directly or indirectly, any information that is not public and was prepared for use by the Treasury for the purpose of evaluating a bid, proposal, or offer to enter into an agreement.
- Certifications
  - Organizational Conflicts of Interest Certification. In accordance with 31 C.F.R. Part 31.211, the Financial Agent, on behalf of itself, its Named Affiliates and its contractors performing work under the FAA, shall certify quarterly in writing to the Treasury that it has no known organizational conflicts of interest not otherwise previously disclosed, or explain the extent to which it cannot so certify, and (to the extent not already described in this Exhibit F or disclosed to the Treasury) describe the actions it has taken and plans to take to mitigate these conflicts.
  - Personal Conflicts of Interest Certification. In accordance with 31 C.F.R. Part 31.212, the Financial Agent, on behalf of itself, its Named Affiliates and its contractors performing work under the FAA, shall certify to the best of its knowledge quarterly in writing to the Treasury that all key individuals performing services under the FAA have no personal conflicts of interest, or are subject to a mitigation or waiver plan approved by the Treasury. The Financial Agent shall be entitled to reasonably rely on the certifications of such individuals when so certifying.
  - Communications with Treasury Employees Certification. In accordance with 31 C.F.R. Part 31.216, for the process of selecting a financial agent for the FAA and

- prior to entering into a new agreement with the Treasury, or accepting modifications to an existing agreement, the Financial Agent shall certify, on behalf of itself, its Named Affiliates and its contractors performing work under the FAA, that it is aware of the prohibitions on communications with Treasury employees, as described above, and that, to the best of its knowledge after making reasonable inquiry, the Financial Agent is not aware of information concerning a violation or possible violation of those prohibitions. In addition, each officer and employee of the Financial Agent who participated personally and substantially in preparing and submitting a bid, offer, proposal or request for modification of the agreement shall certify that he or she is familiar with and will comply with the prohibitions on communications with Treasury employees and has no information of any violations or possible violations of those prohibitions, and will report immediately to the Financial Agent any subsequently gained information concerning a violation or possible violation of those prohibitions.
- Confidentiality Certification. All key individuals providing services under this FAA mandate shall certify quarterly to the Financial Agent Treasury-assigned Compliance Officer that he or she will comply with the requirements of this FAA and 31 C.F.R. Part 31.217 to not share non-public information (as that term is defined in Section 6 of the FAA) with any unauthorized person or entity. The Financial Agent shall obtain this certification, in the form of a Non-Disclosure Agreement (containing substantially the provisions and obligations set forth in Exhibit E of the FAA) before a key individual performs work under the agreement.
  - Subsequent Notification. The Financial Agent has a continuing obligation to search for and to report any known potential organizational or personal conflicts of interest. The Financial Agent shall notify the Treasury in writing as soon as practicable upon becoming aware of, and not later than five (5) business days after learning of, any new actual or potential conflict of interest that arises during the term of the FAA. The disclosure shall describe the steps the Financial Agent has taken or proposes to take to mitigate the conflict if not otherwise described herein or request a waiver from the Treasury.
  - Reviews. The Treasury, on its own behalf or through an entity contracted by the Treasury, may conduct an annual or ad hoc review of the compliance of the Financial Agent, its Named Affiliates and contractors performing work under the FAA with all conflicts of interest and confidentiality obligations and responsibilities set forth in the FAA. Additional reviews may be conducted by oversight bodies with explicit authority over the Treasury Programs including the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), the Treasury Office of the Inspector General, and the U.S. Government Accountability Office (GAO). The Financial Agent shall cooperate fully with the Treasury or its designated representative and make available on the Financial Agent's premises any and all such information requested by it in order to perform such a review.
  - Point of Contact. The OFS Compliance Office shall be the contact official at the Treasury responsible for monitoring compliance with this Exhibit F.
  - Changes to Conflicts of Interest Mitigation Controls. The Financial Agent and the Treasury agree that the Treasury's investment objectives, trade operations and policies, as well as the

Financial Agent's business, are likely to evolve over the term of the Treasury Programs. The Treasury will provide the Financial Agent with advance notice of any Treasury program changes that would impact the requirements of the Financial Agent, including those hereunder, in order to provide the Financial Agent with sufficient time to adequately address such impacts. The Financial Agent shall inform the Treasury and negotiate in good faith all proposed material changes to the Conflicts of Interest Mitigation Controls prior to their adoption and the Treasury retains the option of disapproving any proposed material change, in which case the Financial Agent agrees not to change such control. The Financial Agent and the Treasury agree to negotiate and resolve any such proposed changes in good faith and as quickly as reasonably possible. In addition, the Financial Agent shall promptly notify the Treasury of any changes to the Code of Conduct.

**EXHIBIT G**

**FA PUBLIC TRUST PERSONNEL POSITIONS SELF-CERTIFICATION FORM  
FOR FINANCIAL AGENTS  
IN FULL COMPLIANCE WITH SECTION 3 OF FAA**

This certificate is delivered as required under Section 3 of the Financial Agency Agreement (FAA), effective [DATE], between the U.S. Department of the Treasury (Treasury) and [name of financial institution].

I, [name of authorized official], a duly authorized official of [name of financial institution], certify that:

1. The [name of financial institution] ensures that
  - a. All employees (other than non-essential personnel) of the Financial Agent, and its contractors and sub-contractors and auditors providing services under this FAA are United States citizens performing their work in the United States, and
  - b. The operation and maintenance of all systems and databases used in providing services under this FAA are located in the United States unless specifically authorized by the Treasury.
  
2. As of the end of the quarter, beginning the [fourth] fiscal quarter of 20XX and thereafter, [name of financial institution] reviewed and self-certifies to the Treasury that the Financial Agent remains in compliance with the Treasury's employment eligibility requirements, as set forth in 1(a) and (b) above.

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Signature and Title of Individual

Date



**EXHIBIT H**

**TECHNOLOGY SECURITY CERTIFICATION**

**TO BE ISSUED BY TREASURY**