

**FINANCIAL AGENCY AGREEMENT**  
**for**  
**ASSET MANAGEMENT SERVICES**  
**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 FSI Group, LLC (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) and for the Small Business Lending Fund (SBLF) program under Section 4104(3) of the Small Business Jobs Act of 2010 (SBJA)(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 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 asset management 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 2 years from the Effective Date and shall expire on December 1, 2019, 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 3 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 financial agent 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.

E. If this FAA is terminated before the end of the initial or an extended term, the Financial Agent will only be compensated for services performed through the effective date of that termination.

## **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, high 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, as may be amended from time to time; 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. Nonpublic and Sensitive 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, and that of all financial institutions assigned to the Financial Agent under this FAA, business, economic, and policy plans, prospective transactions, 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, unauthorized access to, or modification 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 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. Upon request, 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 and during any Cooling Off Period (as defined in Exhibit F of this FAA) for provisions in Exhibit F expressly subject to the Cooling Off Period.

## **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 in managing the portfolio of securities and obligations.

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. In accordance with section 3B, the Treasury authorizes the Financial Agent to use its corporate affiliate FSI Group, LLC (the Named Affiliate) and may authorize other affiliates, 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**

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. The Financial Agent shall meet the internal control program requirement in accordance with the Treasury's timelines.

## **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 losses incurred by reason of any portfolio action taken or omitted in what the Financial Agent believes in good faith to be the proper performance of its duties; (ii) any exercise of, or failure to exercise, any discretionary authority duly granted to the Financial Agent under this FAA; (iii) any loss or liability incurred as a result of any action or failure to act by the custodian selected by the Treasury, a broker, a clearing agency, or a securities depository, provided that this provision shall not constitute a waiver of any rights the Treasury may have under Federal securities or other laws.

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 is or becomes materially false, incorrect, or incomplete, or (iv) the Financial Agent is in default under this FAA.

## **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 covenant or 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.
- H. The Financial Agent fails to provide the required notice to the Treasury under Section 19.

## **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 effective immediately or following a transition period as described in Section 2C. 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 the 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:

Steven N. Stein  
Chairman & Chief Executive Officer  
FSI Group, LLC  
441 Vine Street, Suite 1300  
Cincinnati, OH 45202

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 or any interpretation thereof.

## **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

11/14/2017

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

Date

**Financial Agent**

Steven N. Stein

11/13/2017

\_\_\_\_\_  
Steven N. Stein  
Chairman & Chief Executive Officer

Date

## **EXHIBITS**

- Exhibit A Services and Other Terms
- Exhibit B Compensation
- Exhibit C Asset Manager Guidelines and 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 and appointment

The Treasury authorizes the Financial Agent to provide asset management services for a portfolio of securities, including common shares, senior preferred shares, subordinated debt, equity equivalent (EQ2) securities, and warrants (together, Assets). These Assets were issued to Treasury either under the Small Business Lending Fund (SBLF) or the Troubled Asset Relief Program (TARP), by publicly and/or privately held institutions that participated in either of these programs (Participating Institutions). Participating Institutions include banks, bank holding companies, and a range of Treasury-certified community development financial institutions (CDFIs), including depository institutions, credit unions, and non-profit community development loan funds (CDLFs). The Assets will be held in an account established by the Treasury (Account) which will be maintained with a custodian selected by the Treasury (Custodian). The Financial Agent will act as an asset manager with respect to the Account.

As described more fully below, the asset manager will monitor the investments in the Treasury Programs through credit scoring, trend and repayment analysis, provide analysis of the on-going financial condition of the institution, provide summaries of news reports about institutions, identify corporate actions and their impact to Treasury, provide enhanced monitoring of certain institutions as directed by Treasury, and provide transaction restructuring services.

#### 2. Duties as Financial Agent

Consistent with the other provisions of the FAA, this Exhibit, and the Asset Manager Guidelines contained in Exhibit C, the Financial Agent shall provide the following services in support of the management and potential disposition of assets for the Account according to the frequency and timelines established by the Treasury. The Financial Agent shall:

##### *Portfolio Management*

- Act as the Treasury's asset manager in accordance with the policies that Treasury has and will establish.

##### *Monitoring*

- Develop, document, and execute portfolio monitoring and surveillance, to meet the Treasury's policy objectives, including the incorporation of assumptions to be provided by Treasury. This may include but is not limited to the development and regular updating of a credit scoring system, trend and repayment outlook, the review of available financial information, news, management updates, relevant industry trends, research and corporate actions; and communication with management. These activities shall occur as conditions dictate, but no less than quarterly, unless otherwise directed by the Treasury.
- Analyze the on-going financial condition, investment repayment outlook and capital structure of each Participating Institution in the Treasury Programs taking into account the institution's

current and historical financial conditions, trends and outlooks, both in the context of current market conditions and in alternative stress case scenarios, as directed by Treasury. Conduct equity and debt financial analysis of the investments, including at the portfolio level, on behalf of the Treasury. Monitoring is to include, but is not limited to, analysis of bank and holding company, trend and current period institutional regulatory filings (e.g. Y-9, FDIC call reports), available news and reports, relevant SEC filings, bank management reviews, and periodic financial and other submissions (e.g., annual audits and interim unaudited quarterly financial statements as well as related financial data) made by each institution to Treasury at a frequency to be specified by Treasury. Deliverables are expected to include, but are not limited to, regular reporting and credit scoring pertaining to the Treasury investment performance, health and financial condition of all Participating Institutions utilizing financial condition and performance metrics; reporting on regulatory actions; notice of upcoming corporate actions (e.g. mergers, acquisitions, divestitures, change-in- control transactions, and investments); and summaries of noteworthy items identified through discussions with an institution's management or other personnel. Further, the financial agent is expected to provide updates in the event of interim revisions to an institution's credit rating or noteworthy items which could impact Treasury's investment.

- Provide summaries of news reports, including publicly available regulatory actions (including but not limited to enforcement actions, restrictions on dividend payments by banks, holding companies and holding company subsidiaries and other publicly available agreements with the state and federal banking agencies), on Participating Institutions to Treasury in a format and frequency to be established by Treasury. Where relevant, the Financial Agent is expected to provide its views with respect to the potential impact(s) of events to the Participating Institutions.
- Identify and monitor institution financials, potential mergers and acquisitions and corporate actions in the context of any potential or existing federal or state regulatory restrictions related to the payment of dividends or interest, or identifying other concerns related to the upstreaming of cash between legal entities, to the extent such information is publicly available.
- Evaluate pending corporate actions (e.g. mergers, acquisitions, divestitures, change-in-control transactions, and investments) which require Treasury consent per the Securities Purchase Agreement assess the potential impact to Treasury's investment, and provide a summary of relevant findings, including supporting documentation and analysis as appropriate.
- As directed by Treasury, assess the impact of corporate actions and/or other announcements which do not require Treasury's consent under the Securities Purchase Agreement but which may affect the health of the Participating Institution and evaluate any potential impact to Treasury's investment, such as in the case of significant mergers, branch sales/acquisitions, asset sales/acquisitions (e.g. loan pools), whole bank acquisitions, divestitures, capital raises, etc. These requests may be driven, for example, by (1) publicly available information brought to Treasury's attention through the Financial Agent's news retrieval service to Treasury addressed above; or (2) communication by the institution to its investors, including Treasury. Sample deliverables may include pro forma financial statements, projected capital levels and dividend/interest capacity presentation, analysis of

the pro forma and projected financial statements and a summary of resulting findings and insights.

- Forecast expected principal, interest and dividend payments given a range of market scenarios, operating and market assumptions, and for specified time horizons, taking into account local or regional economic circumstances as appropriate.
- Monitor the risks and volatility of the overall Treasury Programs, subject to Treasury guidance, and communicate that information to Treasury in a format and frequency established by Treasury.
- As requested, perform additional or ad hoc analysis on the Participating Institutions or related relevant market subjects.

#### *Transaction Structuring Services*

- As requested, present ideas, insights, and conclusions based on research and analysis on potential and prospective specific restructuring proposals and proposed corporate actions that (i) require Treasury consent including, as appropriate, suggesting alternative approaches to the proposal if the asset manager concludes that an alternative is more beneficial to the Treasury, including the basis for that view and (ii) do not require Treasury consent but, in the judgment of Treasury, potentially could have a material effect on an institution's financial condition, dividend/interest and principal payment, and Treasury's investment risk exposure. With respect to restructuring proposals, the financial agent may be expected to address, among other considerations, implications of any requested financial concession by Treasury; the sufficiency of recapitalization proposals; whether Treasury will receive equitable treatment relative to other investors in the resulting capital structure; the merits and limitations of potential alternatives; financial motivations of the institution's other stakeholders such as debt, equity and new equity investors; and negotiating strategy. The timing, process, staffing, analysis and research, including the resulting insights and conclusions, and reporting will be according to any guidance communicated by the Treasury with the expectation that the level of service will be consistent across proposals including periods in which the asset manager is assigned multiple proposals with similar or concurrent deadlines, taking into account different levels of complexity across proposals. Given the nature of these activities, it is anticipated that the financial agent may be required to conduct additional due diligence through such items including, but not limited to, participation in additional meetings with bank management and other relevant parties, performing loan level reviews, adjusting stress tests to incorporate any additional unrecognized losses, forecasting post- transaction pro-forma financial statements and capital ratios, and prospective internal rates of return for new investors, and/or other on site evaluations, as requested.
- As requested, present conclusions, insights, and ideas based on research and analysis on the strategy and optimal timing for disposition activities.
- At the Treasury's express request and instructions, represent the Treasury in discussions with, or provide assessments to Treasury, in connection with third-party negotiations with respect to restructuring proposals and proposed corporate actions as well as the execution of the disposition activities.

### *Communication with Participating Institutions*

- Financial Agent will communicate with a participating institution's management in a frequency and format determined by Treasury.

### *Valuation*

- As requested, determine the market value of individual Assets and/or the entire portfolio incorporating condition of individual Participating Institution issuers of securities, pricing and relative value measures from external sources and models as appropriate incorporating, as directed by Treasury, specific assumptions.

### *Operations*

- Provide for all necessary operational and analytical hardware and software to support the services in this agreement, including but not limited to providing the Treasury with an up to date copy of the asset management model(s) including, as appropriate, models applied to monitoring investments and condition of underlying Participating Institutions, Treasury repayment projections, risk credit scoring and asset and portfolio valuation.
- Submit deliverables in specified formats and in accordance to the delivery dates requested by the Treasury.
- Identify, document, and enforce internal controls on an on-going basis.
- Maintain a compliance program designed to detect and prevent violations of Federal securities laws, and to identify, document, and enforce controls to mitigate conflicts of interest.
- Permit the Treasury's internal and external auditors, or other governmental oversight entities, to audit books and records related to the services in this notice.
- Support the preparation of reports to oversight bodies, including the United States Congress, and other parties as requested.
- Retain all documentation and reports related to the services, subject to the Treasury's record keeping requirements.
- Respond promptly to the Treasury's verbal and written inquiries.

### *Brokerage*

- Upon the written direction of an Authorized Person with respect to this FAA (as defined in Section 7 of this Exhibit), the Financial Agent may directly or indirectly effect transactions on behalf of the Treasury. Additionally, the Treasury may grant the Financial Agent the authority and discretion to select and negotiate with brokers and dealers to effect purchases

and sales of securities for the Account.

### *Research and Analysis*

- The Financial Agent shall provide, when requested, on-going research and analysis, as well as ideas regarding management of the Account, for Treasury's consideration, according to the Treasury's communicated schedule. This may include, but is not limited to, research and analysis of market conditions, industry related research, portfolio risks and risks to timely payment [e.g. quarterly dividend or interest payments and timely redemption] on investments in specific participating institutions, as well as restructuring proposals from Participating Institutions. Further, the Financial Agent may provide, for the Treasury's consideration, assessments, based on research and analysis of alternative investment restructuring strategies, divestment of Assets, and/or proposed corporate actions. These assessments should consider any effect to the Treasury position as investor in the institution (including, but not limited to, certainty of quarterly Treasury interest and dividend payment and repayment of principal and position in the institution's capital structure). The assessments should also consider how the Treasury's financial interests are protected with respect to consideration such as certainty of repayment and the resulting position in the capital structure. The Financial Agent should offer any suggested changes to the Asset Manager Guidelines, and strategies for achieving the policy objectives and reporting requirements for the Treasury Programs.

### *Coordination*

- Work in good faith and coordinate with other firms, federal agencies, and governmental agencies that are involved with SBLF and TARP, as directed by Treasury. In particular, the Financial Agent will be required to develop, implement, and maintain a consistent asset management framework, assessment methodology, and reporting formats where appropriate.
- The Financial Agent has a fiduciary responsibility to perform all services in the best interests of the United States.

### **3. Custodian**

A. The Financial Agent will not be responsible for any custodial arrangements involving any assets of the Account or for the payment of any custodial charges and fees, nor will the Financial Agent have possession or custody of any such assets. All payments, distributions, and other transactions in cash, securities, or other assets in respect of the Account will be made directly to or from the Custodian, and the Financial Agent shall have no responsibility for transmittal or safekeeping of such cash, securities, or other assets of the Account.

B. The Treasury or the Custodian will inform the Financial Agent of material changes or modifications to assets in the Account as deemed appropriate by Treasury. The Treasury will direct the Custodian to furnish to the Financial Agent, from time to time, such reports concerning assets, receipts, and disbursements as the Financial Agent shall reasonably request.

### **4. Investment limitations and guidelines**

The Treasury may, from time to time, communicate in writing to the Financial Agent

amendments or revisions to the Asset Manager Guidelines, which the Financial Agent shall acknowledge in writing. Until such amendments, revisions, or subsequent guidelines are communicated from the Treasury to the Financial Agent, the Account shall be managed in accordance with the existing Asset Manager Guidelines.

## **5. Legal actions**

The Treasury is responsible for participation in legal actions (such as, but not limited to, class action suits and bankruptcies) pertaining to assets in the Account. The Financial Agent will take no action with respect to such legal actions.

## **6. Communication**

A. The Treasury will provide the Financial Agent with a certificate of names and specimen signatures of all the individuals (“Authorized Persons”) who are authorized to act on behalf of the Treasury with respect to the Account, and will provide prompt updates to the certificate as Authorized Persons change.

B. The Financial Agent may rely upon any notice, instruction, or other communication that the Financial Agent reasonably believes (based on the most recent certificate of the Treasury received by the Financial Agent) to have been given by an Authorized Person.

C. To the extent reasonable and practical, communications from the Treasury to the Financial Agent, or vice versa, shall be made in writing (including through electronic media) or in another reasonable manner and promptly confirmed in writing.

## **7. Unencumbered Assets**

All assets managed by the Financial Agent for the Treasury 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 managed by the Financial Agent.



## **EXHIBIT B**

### **COMPENSATION**

#### **1. Base compensation**

A. For each Participating Institution in the Treasury Programs assigned to the Financial Agent to manage, the Financial Agent shall receive an annualized fee of \$8,500 per institution. All such fees shall be paid quarterly in arrears for services rendered, with the Financial Agent receiving an amount equal to one-fourth of the annualized fee for each quarter in which the Financial Agent is assigned an equity security or debt obligation of a Participating Institution in the Treasury Programs to manage. However, this quarterly amount will be prorated to reflect an assignment, issued in writing, with a start date and/or end date that creates a period of performance that covers a partial calendar quarter. The Financial Agent must submit an invoice prior to receiving such compensation.

#### **2. 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.

#### **3. Probationary Status**

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

#### **4. Sole compensation**

The Financial Agent shall solely be compensated for its performance of its obligations under this FAA as set forth above. The Financial Agent shall not be entitled to any other form of compensation or reimbursement for the performance of its obligations under this FAA.

**EXHIBIT C**

**ASSET MANAGER GUIDELINES**

**&**

**PERFORMANCE MEASURES**

**Effective Date**

These guidelines are effective December 1, 2017.

**Review**

The Treasury will review these guidelines regularly and will issue updates as needed.

**Financial Agent Objectives**

The Financial Agent shall:

- Implement asset management guidelines in accordance with the Treasury's investment philosophy, any specific direction with respect to operating, credit score rating methodology and modeling assumptions communicated by the Treasury, policy goals, statutory and oversight body reporting requirements and portfolio objectives, as announced to the Financial Agent by the Treasury from time to time.
- Identify and report on a timely basis as required and communicated by the Treasury any risks, trends, and events relevant to achieving the Treasury's objectives.
- Perform the functions of (1) monitoring, (2) transaction structuring services, (3) communication with Participating Institutions, (4) valuation, (5) operations, and (6) coordination as described in Exhibit A.
- Identify and report on a timely basis any risks, trends, and events relevant to achieving the portfolio objectives.
- Apply these guidelines consistently to the investment positions in all institutions while reflecting the risk exposures presented by the individual Treasury investments, to help ensure that portfolio management is impartial and protected from undue external influence.
- Implement these guidelines in accordance with industry standards and best practices of comparable asset class investments customary for a non-discretionary institutional investor client.
- Not represent that it is empowered to exercise the statutory or policy authorities of the Treasury or of a Federal bank regulator unless expressly authorized in these guidelines.

- Work in good faith with the Treasury’s independent custodian, which shall be responsible for holding all assets, receiving and processing all interest, dividends, and other portfolio income, and serving as the official document repository for the Treasury Programs.

### **Asset Acquisition**

The Financial Agent shall not acquire assets for the Treasury Programs. The Treasury will acquire all assets as a result of investments or commitments in public and private financial institutions, and will assign management of particular positions to the Financial Agent after acquisition.

### **Cash Management**

The Financial Agent shall not manage or invest cash generated by the Treasury Programs. Principal, interest, and other income from the Treasury Programs will be deposited in the Treasury through the Treasury Programs’ custodian.

### **Asset Management**

- **Customary Practices.** The Financial Agent shall use customary commercial practices to carry out all monitoring, research, management interaction, analysis, reporting, and other due diligence and asset management duties described in these guidelines. The Financial Agent shall manage the Treasury’s positions in the same manner, and with same sources and uses of information, as for other institutional investors that have investment positions similar to the Treasury’s positions, while recognizing the Treasury’s policy goals set forth above.
- **No Use of Supervisory Information.** For the avoidance of doubt, the Treasury shall not furnish the Financial Agent with any bank supervisory information, or any other material non-public information obtained by virtue of the Treasury’s statutory, regulatory, policy, or political position, and the Financial Agent’s interaction with financial institution management shall be as an asset manager under these guidelines and not as an entity or agent authorized to exercise any other statutory or policy authorities of the Treasury.
- **Interaction with Institution Management.** For the avoidance of doubt, Financial Agent’s interaction with institution management shall be as an asset manager under these guidelines and not as an entity or agent authorized to exercise any other statutory or policy authorities of the Treasury.

### **Interaction with Financial Institution Management**

- **Clarification of Public Information.** The Financial Agent may inquire with management, as necessary and customary for an asset manager or institutional investor, taking into account the level of risk posed by Treasury investment in the particular Participating Institution and any Treasury guidance, with questions or clarifications on corporate actions, interpretation of

publicly available information and implications for financial condition and repayment outlook and other information disseminated to investors, and in the case of private institutions, on regularly distributed information to major stakeholders and publicly available regulatory reports.

- **Dialogue.** Subject to the Treasury's approval and direction, the Financial Agent may engage in dialogue with management, in a manner and frequency customary for an asset manager or institutional investor, to the extent necessary to examine issues or circumstances that may materially affect the Treasury's investment in the institution subject to Treasury guidance.
- **Advocacy.** Unless expressly directed by the Treasury, the Financial Agent shall not proactively engage or negotiate with management on the Treasury's behalf on strategic business initiatives, changes in corporate strategy or governance, or changes in the capital structure. However, the Financial Agent shall provide on-going assessment and reports to the Treasury on these matters based on the risks to the Treasury's investment, the potential need for a workout, prospects for maximizing returns for the taxpayer, and the Treasury's rights as an investor under the terms of the security purchase agreement.

### **Surveillance and Reporting**

- **Material Non-Public Information.** Unless expressly directed by the Treasury, the Financial Agent shall not seek material non-public information in developing research opinions or assessments of a publicly-held financial institution. In all cases, Nonpublic Information shall be protected in accordance with the confidentiality provisions of Section 6 of the FAA and the entities and individuals in possession of material Nonpublic Information are subject to the Conflict of Interest provisions in Exhibit F.
- **Research.** The Financial Agent shall obtain necessary information about the financial institution from the public domain, including research issued by third parties, and through other information distributed to shareholders, to fulfill its responsibilities under these guidelines.
- **Financial Models.** The Financial Agent shall maintain up-to-date financial models as defined by Treasury guidance, as applicable, and analytics to evaluate the ongoing fundamental condition of the institution and provide a basis for identifying and evaluating risks. As noted above, upon request, asset manager will share the full model with Treasury in a timely manner including but not limited to all inputs, outputs and assumptions.
- **Baseline Assessment.** Subject to the Treasury's approval, the Financial Agent may conduct a baseline review of an institution to achieve a more in-depth validation of valuations and risks assessments. The baseline review may entail an on-site visit, conference calls with institution management, loan level portfolio review and/or additional data calls, as determined by the Treasury.

## Corporate Actions

- **Analysis of Corporate Actions.** At the Treasury's express request, the Financial Agent shall monitor, analyze, and provide the Treasury with timely and necessary recommendations on corporate actions, class voting issues, proxy voting, disclosures, consents, waivers, and other publicly disclosed events that could impact the Treasury's investment or compliance responsibilities.
- **Class Voting Rights.** At the Treasury's express request, the Financial Agent shall make formal recommendations to the Treasury on its class voting rights in corporate actions that will affect the Treasury's position in a financial institution, consistent with the portfolio objectives of these guidelines. Based on the Treasury's express instructions, the Financial Agent shall exercise the Treasury's class voting rights.
- **Treasury's Representative.** At the Treasury's express request and instructions, the Financial Agent shall represent the Treasury in discussions with, or provide advice to, financial institution management on its proposed corporate actions, changes in the capital structure, and mergers and acquisitions.
- **Advocacy of Corporate Actions.** Unless expressly directed by the Treasury, the Financial Agent shall not proactively engage or negotiate with management on potential corporate actions on the Treasury's behalf.

## Compliance with EESA

- **Dividend Policy.** With the Treasury's express request and instructions, the Financial Agent shall review and monitor dividend declarations and dividend payments to ensure that financial institutions adhere to the restrictions set forth in the Act, regulations, and security purchase agreements, and with the Treasury's prior decisions on proposed dividend increases.
- **Dividend Increases.** With the Treasury's express request and instructions, the Financial Agent shall analyze proposed dividend increases and recommend whether the Treasury should consent to any such increases.
- **Share Repurchases.** With the Treasury's express request and instructions, the Financial Agent shall review and monitor share repurchases of junior preferred shares, preferred shares ranking pari passu with the Treasury's senior preferred shares, and common shares, to ensure that financial institutions adhere to the restrictions set forth in security purchase agreements.

## Disposition and Hedging

The Financial Agent shall not dispose of any assets or hedge any positions or exposures, unless expressly directed by the Treasury. However, consistent with the Treasury Programs' objectives, the Financial Agent shall periodically provide the Treasury with ideas and analysis for the Treasury Programs as a whole on the potential timing and strategy for disposition, measures to limit downside risks or lock-in upside profit, and timing and strategy for exercising warrants.

## **Withdrawals by Financial Institutions**

- **Warrant Repurchases.** As requested by the Treasury, the Financial Agent shall provide analysis and advice on the fair market value of warrants upon request from a financial institution to repurchase warrants in connection with redemption of the Treasury's investment.
- **Warrant Liquidations.** As requested by the Treasury, the Financial Agent shall provide analysis and advice on the fair market value of warrants in connection with the Treasury's liquidation of such warrants, and shall execute the trades necessary to liquidate such warrants.

## **Performance Measures**

- **Program Office Inputs.** Offices within the Treasury who are users or receivers of deliverables or research services by the asset manager in connection with the performance of duties and obligations stated within the FAA will provide narrative feedback during the performance period to accomplish the following: 1) Describe key activities during the performance period, 2) List any deliverables produced during the performance period, 3) Describe significant accomplishments by the asset manager during the performance period, 4) Describe predictive quality of asset manager investment review and monitoring and 5) Describe any key challenges during the performance period.
- **Rating Measurements.** Performance measures will be rated on criteria based upon quantitative and qualitative performance.
- **Weightings and Scores.** Sub elements of the quantitative and qualitative ratings will be assessed on a 1-3 scale indicating the following: 1- Requires Improvement, 2-Fully Meets Expectations, or 3-Exceeds Expectations. The weightings of the sub-elements relative to their contribution to an overall measurement may be adjusted to accurately reflect the needs within that performance period.

## 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] 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 any contractors performing services under the 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 Institution, in accordance with the FAA, as many 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; and.

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 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.

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

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Signature

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Date

## **EXHIBIT F**

### **CONFLICTS OF INTEREST MITIGATION**

The following explains and memorializes certain of the minimum conflicts of interest mitigation controls the FSI Group, LLC (FSI 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 provide asset management services 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 portfolio management, monitoring, transaction structuring services, communication with Participating Institutions, valuation, operations, and coordination for Treasury Programs as set forth in Exhibit A of the FAA.

#### **Conflicts of Interest**

The following have been identified as actual or potential conflicts of interest associated with the Financial Agent providing services under the FAA.

1. The Financial Agent may provide asset management or other business services to financial institutions that issued securities or obligations to the Treasury in exchange for funds in the Treasury portfolio of securities. Because the Financial Agent may be responsible for the management of securities or obligations issued by these financial institutions for the Treasury, there exists a potential conflict of interest between the Financial Agent’s duty to the Treasury and its duty to its other clients.
2. The Financial Agent may operate, on behalf of its clients, fiduciary accounts that hold securities or obligations issued by financial institutions that received funds from the Treasury portfolio of securities. Because the Financial Agent may have knowledge of material, non-public information regarding the Treasury’s planning, long-term strategy, trading objectives and portfolio holdings, there exists a potential conflict of interest between the Financial Agent’s duty to the Treasury and its duty to its other clients.
3. The Financial Agent may maintain indirect proprietary interests in financial institutions that received funds from the Treasury portfolio of securities, as a result of investments made in client portfolios structured as pooled investment vehicles. Because the Financial Agent may have knowledge of material non-public information regarding the Treasury’s planning, long-term strategy, trading objectives and portfolio holdings, there exists a potential conflict of interest between the Financial Agent’s duty to the Treasury and its duty to its corporate shareholders.
4. The Financial Agent may be related to affiliates, other than Named Affiliates, including parent or subsidiary entities (together, collectively, “Unnamed Affiliates”) that have received funds from the Treasury portfolio. Because the Financial Agent may be responsible for the management of securities or obligations issued by such financial institutions for the Treasury, there exists a potential conflict of interest between the Financial Agent’s duty to the Treasury and its duty to its shareholders to maximize profit.

5. The Financial Agent may be affiliated with or may have Revenue-Sharing Agreements (e.g. soft-dollar arrangements, commission recapture agreements, pay-for-flow agreements, etc.) with broker-dealers who could influence transaction execution. Because the Financial Agent may be responsible for executing transactions on behalf of the Treasury portfolio, there exists a potential conflict of interest between the Financial Agent's duty to the Treasury and its duty to its shareholders to maximize profit.
6. The Financial Agent may have clients or large investors that themselves (or who's clients) may be interested in acquiring Securities from Treasury. Because the Financial Agent may be asked to opine on the appropriate price, volume, timing or allocation of sales of such Securities, , there exists a potential conflict of interest between the Financial Agent's duty to the Treasury and its interests with respect to its other clients or large investors.
7. Individuals employed by or associated with the Financial Agent may own, on behalf of their personal accounts, securities or obligations issued financial institutions that received funds from the Treasury portfolio. Because these individuals may have knowledge of material non-public information regarding the Treasury's planning, long- term strategy, trading objectives and portfolio holdings, there exists a potential conflict of interest between their duty to represent the interests of the Treasury and their desire to represent their own interests that could impair these individuals' objectivity.

### **Mitigation Plans**

As a financial agent to the Treasury, the Financial Agent owes a loyalty and fair dealing to the Treasury without considering the interests of other clients or its own proprietary interests when performing services under the FAA as more fully set forth in Section 5 of this FAA. To address the conflicts of interest identified above, the Financial Agent agrees to implement the following conflict of interest mitigation plans and associated conflicts of interest mitigation controls.

#### **Conflict of Interest #1: Participating Institutions that are Clients of the Financial Agent**

The Financial Agent may provide revenue-generating business services, including asset management services, to financial institutions participating in Treasury programs. To address such actual or potential conflict of interest, the Financial Agent agrees not to provide business services to any financial institution for which the Financial Agent currently provides services to Treasury.

#### **Conflict of Interest #2: Fiduciary Accounts that Hold Securities of Participating Institutions**

To address the concern that the Financial Agent may unduly favor its clients at the expense of the Treasury, the Financial Agent agrees, in addition to complying with all other applicable laws and regulations, to implement a structure that ensures that the Financial Agent does not use any knowledge of non-public information obtained or developed pursuant to the FAA for the advantage of other client mandates. While providing asset management services to the Treasury, some individuals within the Financial Agent and among its Named Affiliates and contractors may have access to material non-public information related to the Treasury program, 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. The Financial Agent shall have a period of ninety (90) days after completion of services on a Participating Institution for the Treasury, during which no key individual performing services under this FAA shall perform any business services on behalf of the Financial Agent’s other clients or its fiduciary accounts with respect to the Participating Institution (the “Cooling Off Period”). The Cooling Off Period shall also apply to all key individuals’ personal trading activity.

The Financial Agent also agrees to implement information barriers sufficient to prevent the misuse or unauthorized dissemination of material non-public information. The components of such information barriers shall include:

Identification and Control of Restricted Persons. When an individual is in possession of material non-public information obtained or developed pursuant to the FAA regarding a publicly-traded Participating Institution managed by the Financial Agent, the individual shall be considered a “restricted person” with respect to the Treasury security. The Financial Agent’s Compliance Department shall maintain a list of all such individuals, including the individual’s name, title and the dates they became restricted persons, as well as the date of removal from the list. While in possession of material non-public information, restricted persons shall be considered behind the “ethical wall,” and are subject to the transaction restrictions specified below.

Use of Securities Watch List. When an individual associated with the Financial Agent, its Named Affiliates, or contractors is in possession of material non-public information obtained or developed pursuant to the FAA regarding a publicly-traded Participating Institution, the security of the Participating Institution shall be placed on the Financial Agent’s “Securities Watch List” and be subject to enhanced compliance review as specified in the Financial Agent’s insider trading policy. The individuals in possession of the material non-public information shall be prohibited from transacting in the security, on behalf of either organizational or personal accounts, except in performance of the FAA. The Financial Agent’s Compliance Department shall employ testing to determine compliance with the Financial Agent’s insider trading policy at least quarterly. Without limitation, the Compliance Department shall identify non-compliant transactions and take appropriate corrective action.

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 Participating Institution (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.

Personal Trading Restrictions. During the term of this FAA, trading or investment activities in Securities by key individuals or their Related Persons are prohibited. For purposes of this exhibit, Related Persons are spouses or domestic partners of the Financial Agent's employees, their minor children, anyone else living in employee's household, partnerships in which the employee is a general partner or corporations in which the employee is a controlling shareholder, trusts of which the employee is a trustee, and estates of which the employee is an executor. The Financial Agent's Compliance Officer shall ensure that all reasonable steps to prohibit such investment activities are taken, including enforcement of the Financial Agent's Code of Conduct, which shall include requirements for pre-clearance of certain personal securities transactions, annual reporting of security holdings and quarterly reporting of personal securities transaction activity, and receipt of duplicate trade confirmations from brokers or custodians.

### **Conflict of Interest #3: Proprietary Accounts that Hold Securities of Participating Institutions**

To address concerns that the Financial Agent may unduly favor its proprietary interests at the expense of the Treasury, the Financial Agent agrees to implement a structure that ensures that the Financial Agent does not use any knowledge of non-public information obtained or developed pursuant to the FAA to the advantage of its proprietary interests. As stated above, all individuals in possession of material non-public information obtained or developed pursuant to the FAA regarding securities in the portfolio shall be considered restricted persons, and subject to the requirements and limitations described in the preceding "Conflict of Interest #2" mitigation plan. In addition, the Financial Agent shall implement the use of a Restricted List and the personal trading restrictions as explained in the preceding mitigation plan.

### **Conflict of Interest #4: Affiliations with Participating Institutions**

To address concerns that the Financial Agent may unduly favor the interests of its parent, subsidiary and affiliated entities (other than Named Affiliates), the Financial Agent agrees that it shall not advise the Unnamed Affiliates regarding, or assist them in arranging, transactions within Treasury programs. Furthermore, the Financial Agent agrees it shall be prohibited from managing the securities or obligations issued by Unnamed Affiliates that are Participating Institutions.

The Financial Agent shall ensure the presence and effectiveness of information barriers designed to prevent the flow of non-public information related to the Treasury mandate between the Financial Agent and any Unnamed Affiliates. These information barriers shall include the use of partitioned information and compliance systems, with no cross-access by any personnel from either the Financial Agent and any Unnamed Affiliates of the Financial Agent. In addition, the Financial Agent shall not be privy to information regarding the clientele of its Unnamed Affiliates, except as disclosed publicly by said clientele.

### **Conflict of Interest #5: Affiliations with Broker-Dealers**

To address the concern that the Financial Agent may unduly favor its corporate interests by utilizing related organizations in the execution of transactions, the Financial Agent agrees that it shall not transact with any affiliated broker-dealers in managing assets for the Treasury.

Furthermore, the Financial Agent shall disclose on a quarterly basis any Revenue-Sharing Agreements with broker-dealers that are in consideration for use in the execution of transactions in the course of carrying out the services under the FAA. The Financial Agent agrees that all transactions executed on behalf of the Treasury shall not be eligible for inclusion in any such Revenue-Sharing Agreements. In addition, the Treasury reserves the right to restrict the Financial Agent's use of certain broker-dealers in the execution of transactions on behalf of the Treasury, including restricting the use of broker-dealers in arranging transactions of securities in the Treasury portfolio issued by those same broker-dealers.

#### **Conflict of Interest #6: Investor and Other Customer Interest in Acquiring Securities from the Treasury Portfolio**

To address the concern that the Financial Agent may unduly favor its other clients at the expense of the Treasury, the Financial Agent agrees to restrict the purchase of Securities pursuant to a disposition and/or restructuring process executed by the Financial Agent. Neither the Financial Agent nor any Financial Agent Exchange Act Affiliate shall purchase from the Treasury any of the Securities for the account of its customers (unless expressly directed by a customer of the Financial Agent or a customer of a Financial Agent Exchange Act Affiliate for such customer's account) or for any fund or account with respect to which it may exercise investment discretion, unless specifically requested or otherwise authorized by the Treasury. For the avoidance of doubt, the purchase of Securities by the Financial Agent or Financial Agent Exchange Act Affiliates from the Treasury through the use of anonymous electronic trading platforms shall not be prohibited by this mitigation plan.

To address the concern that the Financial Agent may unduly favor its Investor or its Investor's clients, the Financial Agent agrees to remove the convertible feature of its February 28, 2013 Convertible Promissory Note (Note) issued to its Investor. Further, within 10 business days of the Effective Date of this FAA, the Financial Agent shall make a Form ADV filing with the U.S. Securities and Exchange Commission reflecting that the Note issued by the Financial Agent to its investor is not convertible into equity of the Financial Agent. Should this filing not occur, or should the Note be or become convertible, this FAA shall be null and void.

#### **Conflict of Interest #7: Personal Conflicts of Interest**

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 Participating Institution, 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.

## 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. 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.

- 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.
- 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.
- Fair Allocation Policy. The Financial Agent Group shall follow a trade allocation policy requiring fair allocation of trades and investment opportunities and that complies with the Investment Advisers Act of 1940 in all material respects. This policy shall require the Financial Agent Group to check the trades of an account against other accounts, including the Treasury Program portfolio, to detect any potential instances of unfair allocations and front running.



- Right of Refusal for Broker-Dealers. At its sole discretion, the Treasury may require that the Financial Agent Group refrain from making use of certain broker-dealers for transactions related to the Treasury Program portfolio. To effect this right, the Treasury may require that, prior to initiation of a transaction related to the Treasury Program portfolio, the Financial Agent Group disclose to the Treasury the list of potential broker-dealers in consideration for execution of such transaction and the reasons why the Financial Agent Group believes such broker-dealers are suited to provide best execution pursuant to the FAA.
- 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 Compliance Officer to oversee compliance with this Exhibit E 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 Compliance Officer shall be independent from the investment and operations personnel.
- Business Relationships of Members of the Board of Directors. The Compliance Officer shall inquire as to, and keep records of, each member of the Board of Directors' current business relationship with any Participating Institution, or any business relationship within the preceding 12-month period, which is other than: possessing a bank account at an Participating Institution where the amount of funds invested in any Participating Institution is less than the Federal Deposit Insurance Corporation coverage limit; having a mortgage from an Participating Institution on terms available to the general public, or holding investments in

a mutual fund or sector-specific fund containing Participating Institution securities, and shall deliver such records to the Treasury periodically as the Treasury directs.

- 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. The Financial Agent shall submit to the Treasury the below certifications. Certifications shall be executed by the Financial Agent's Compliance Officer.
  - 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 E 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 D 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**

Each quarter, the Financial Agent shall update its Treasury-approved Off-Boarding Plan, as revised from time to time to take into account personnel departing from the Treasury Programs or providing services deemed by the Treasury to be at lower levels of risk, for the Treasury's approval.

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 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, as part of the Financial Agent's Treasury-approved Off-boarding Plan.
  
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**