

**FINANCIAL AGENCY AGREEMENT**  
**for**  
**ASSET MANAGEMENT SERVICES**  
**for**  
**EQUITY SECURITIES, DEBT OBLIGATIONS, AND WARRANTS**

This Financial Agency Agreement (FAA) is entered into as of December 23, 2009 (Effective Date), by and between the U.S. Department of the Treasury (Treasury), and KBW Asset Management, Inc. (Financial Agent).

**Recitals**

To implement the Emergency Economic Stabilization Act of 2008 (Act), the Treasury may designate Financial Institutions as financial agents of the United States to provide all such reasonable duties related to the Act as may be required.

Pursuant to the Act, the Treasury is establishing programs under which the Treasury will receive senior preferred shares, senior debt, and other equity securities and debt obligations, in addition to warrants for common stock or debt in lieu of warrants, from public and private Financial Institutions, and the Treasury has determined that it is in the interests of the United States to designate financial agents to provide asset management services for this portfolio of securities and obligations.

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 Act, 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 Exhibits A and C.

**2. Term**

A. The initial term of this FAA shall start on the Effective Date and shall expire on April 20, 2014 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 4 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 of the FAA 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 during the transition period.

D. The Financial Agent agrees to cooperate with the Treasury and/or any successor asset managers and to provide such services as are necessary to ensure an effective and orderly transfer or shutdown of services, functions, records, and data during the transition period.

E. If this FAA is terminated before the end of the initial or extended term, the Financial Agent will only be compensated for services performed through the effective date of 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. Unless specifically authorized otherwise by the Treasury in writing, the Financial Agent shall ensure that all employees of the Financial Agent and its affiliates and contractors providing services under this FAA are United States citizens or lawful permanent residents performing their work in the United States, and that the operation and maintenance of all systems and databases used in providing services under this FAA are in the United States.

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.

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.

F. Consistent with Section 3B, the Treasury may authorize the Financial Agent to engage non-citizens working outside the United States to perform certain functions, provided such functions represent routine commercial practices used to support Financial Agent customers receiving services similar to those under this FAA.

#### **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, business, or assignments, or related level of compensation to the Financial Agent and shall not adjust compensation on the basis that volumes, quantities, business, or activities 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. The Financial Agent shall follow generally accepted accounting principles 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.

#### **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 nonpublic information 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;
- to comply with 31 CFR Part 31, as may be amended from time to time, and with all conflict of interest, non-disclosure, and information barrier obligations and restrictions, and all conflict of interest mitigation measures, fully and in good faith, as set forth in this FAA; and
- to act only within the scope of its actual authority and to comply with all lawful instructions or directions received from the Treasury.

## **6. Nonpublic information**

A. The Financial Agent shall take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use, and shall document these measures in sufficient detail to demonstrate compliance. Nonpublic information shall include 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 in writing, or until the information becomes part of the body of public information from a source other than the Financial Agent. Nonpublic information includes, but is not limited to, information about the Treasury's business, economic, and policy plans, financial and asset information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII) , and sensitive but unclassified (SBU) information.

B. SBU information is defined as any information that the loss, misuse, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs. 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.

C. PII means any information 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 that the loss, misuse, or unauthorized access to or modification of could adversely affect the privacy that individuals are entitled to under the Privacy Act.

D. The Financial Agent shall use such nonpublic information 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) periodic 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 becomes part of the body of public information from a source other than the Financial Agent.

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 or Exhibit G, as applicable.

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 body duly charged with oversight of the Act, including the Government Accountability Office, the Special Inspector General created under the Act, the Treasury Office of the Inspector General and the Congressional Oversight Panel for the Act, after giving prior notice to the Treasury.

## **7. Breaches of nonpublic information**

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

B. In response to a reported breach of nonpublic information, the Treasury may request the Financial Agent to conduct an investigation and report detailed findings as to the cause and impact of the breach as well as the remediation taken. As determined by the Treasury after reviewing any investigation conducted by the Financial Agent, the Financial Agent may be liable and may be required to reimburse the Federal Government or any affected individual for any costs, expenses, or damages which result from the fraud, theft, willful misuse, or negligence of the Financial Agent, its affiliates or contractors, Financial Agent employees, or affiliate or contractor personnel 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 employees and affiliate and contractor personnel 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 90 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 described above. In addition, the SAS 70 Type II audit or equivalent, required by Section 15, must include review of the control

objectives, control activities, and testing of operational effectiveness of information technology security measures.

## **10. Personnel security**

A. The Treasury will rely on the Financial Agent's personnel security screening standards. The Financial Agent shall ensure that all of its employees and affiliate and contractor personnel who have access to nonpublic information have appropriate personnel security background checks.

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

C. Consistent with Section 3B, all Financial Agent employees and affiliate and contractor personnel who have access to nonpublic information must be U.S. citizens or lawful permanent residents performing their work in the continental United States.

## **11. Conflicts 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 assigned to management of the Treasury's portfolio under this FAA do not divulge 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 other 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 conflict of interest requirements of this FAA, the Financial Agent shall implement the conflict of interest mitigation and information barrier measures set forth in Exhibit F throughout the term of this FAA.

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

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

### **13. Representations and warranties**

The Financial Agent represents and warrants to the Treasury the following, the truth and accuracy of which are a continuing condition of the Financial Agent's responsibilities to the Treasury:

- 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 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 in managing the portfolio of securities and obligations.
- 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 matter 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 conflict 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 created under the Act, or 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.

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

A. The Treasury may authorize the Financial Agent to use its corporate 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. 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. Internal control program**

A. By April 1, 2010, 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 Exhibits A and C. 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 a SAS No. 70 Service Organization Type II report or an alternative independent third-party review of internal controls, on an annual basis covering operational services provided.

## **16. Reviews and audits**

The Treasury, the Treasury Office of the Inspector General, the Special Inspector General created under the Act, 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.

## **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, 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.

“Unlimited Rights” means non-exclusive 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. The Treasury shall have Unlimited Rights to 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 Unlimited Rights to all data produced or developed, or obtained without restriction, by the Financial Agent or an affiliate or contractor of the Financial Agent 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 an 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 loss incurred by reason of any investment decision made or other 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 (Custodian), 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, (iv) any inability to access the Custodian's systems or any missing or incorrect information contained on the Custodian's system.

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, or breach of a fiduciary duty by, the Financial Agent or an affiliate or contractor of the Financial Agent.

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

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

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

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

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

## **20. Defaults**

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

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

## **21. Remedies for default**

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

- A. The Treasury may terminate this FAA and cease its performance hereunder. If this FAA is terminated, the designation and authorization of the Financial Agent for purposes of providing the services under this FAA are 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 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 agreement with the Treasury, which shall be deemed terminated as of the effective date of such revocation.
- D. The Treasury may declare any other agreement between the Financial Agent and the Treasury to be in default.
- E. The Treasury in its sole discretion may put a Financial Agent on probation for failing to perform satisfactorily a service (or services) delineated in this FAA. Probation means that the Treasury will withhold some or all of the Financial Agent's compensation until in the Treasury's determination the Financial Agent has cured the non-performance issues. The Treasury reserves the right to consider other measures in addition to withholding the compensation if the Financial Agent is put on probation, including but not limited to, preclusion from additional work under the existing FAA and ineligibility to be designated for other work under a new agreement. The payment of compensation may also be adjusted consistent with Section 19 (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. Termination 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, 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 obligations 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 or an affiliate or contractor of the Financial Agent 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:

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

To the Financial Agent:

Peter E. Roth  
Chief Executive Officer  
KBW Asset Management, Inc.  
787 Seventh Avenue, 6<sup>th</sup> Floor  
New York, NY 10019

The party giving the notice should send an e-mail to the party receiving the notice advising that 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 and contractors, and any employee of the Financial Agent or any affiliate or contractor personnel shall not make statements to the media or issue press releases regarding their services under this FAA without the prior written consent of the Treasury.

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

## **28. Modifications**

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

## **29. Miscellaneous**

A. This FAA shall be governed by, and interpreted in accordance with, Federal law not the law of any state or locality. To the extent that a court looks to the laws of any state to determine or define the Federal law, it is the intention of the parties to this FAA that such court shall look only to the laws of the State of New York without regard to the rules of conflicts of laws.

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.

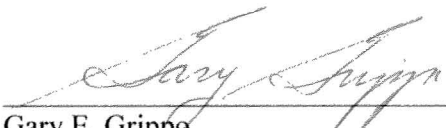
## **30. Incorporation by reference**

Exhibits A-F 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 Agency Agreement as of the Effective Date.

**Department of the Treasury**

  
\_\_\_\_\_  
Gary E. Grippo  
Deputy Assistant Secretary  
Fiscal Operations and Policy

12/23/09  
\_\_\_\_\_  
Date

**Financial Agent**

  
\_\_\_\_\_  
Peter E. Roth  
Chief Executive Officer

December 23, 2009  
\_\_\_\_\_  
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 Interests Mitigation
- Exhibit G Non-Disclosure Agreement for Named Individuals
- Exhibit H Quarterly Certification Form Regarding Named Individuals

## **EXHIBIT A**

### **SERVICES AND OTHER TERMS**

#### **1. Authorization and appointment**

The Treasury authorizes the Financial Agent to manage certain of its assets, acquired pursuant to the Emergency Economic Stabilization Act of 2008 (Act), in an account established by the Treasury (Account) which will be maintained with a custodian to be selected by the Treasury (Custodian). The Financial Agent will act as an asset manager with respect to the Account.

#### **2. Authority as Asset Manager**

A. Subject to the Asset Manager Guidelines contained in Exhibit C, the Financial Agent shall have the discretionary authority to manage and control the assets of the Treasury that are segregated in the Account, including the power to provide direction to the Custodian with respect to assets in the Account, to acquire and dispose of assets in the Account, and to hedge risks associated with assets in the Account. In the exercise of that power, the Financial Agent may invest and reinvest the assets in accordance with the Asset Manager Guidelines.

B. Except where consent of the Treasury is required under the Financial Agency Agreement (FAA) or this Exhibit, the Financial Agent is the Treasury's agent and attorney-in-fact in connection with its discretion to manage the Account. The Financial Agent's discretion shall include the authority (i) to execute waivers, consents, and other instruments with respect to assets in the Account, and (ii) to endorse, transfer, or deliver such assets.

#### **3. Custodian**

A. The Financial Agent shall not be responsible for any custodial arrangements involving any assets of the Account or for the payment of any custodial charges and fees, nor shall 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 shall 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 assets initially segregated into the Account will be senior preferred shares, senior debt, and other equity securities and debt obligations, in addition to warrants for common stock or debt in lieu of warrants, from public and private Financial Institutions (as that term is defined in the Act). Other types of assets and cash may be segregated into the Account at the Treasury's discretion.

C. The Treasury or the Custodian will promptly inform the Financial Agent of assets segregated into the Account over time. The Treasury or the Custodian will also establish reporting and accounting arrangements so that the Financial Agent will be fully informed at all times as to the detailed attributes of assets segregated into the Account. 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. Brokerage**

A. Unless the Treasury specifies otherwise in writing, the Treasury grants the Financial Agent authority and discretion to select and negotiate with brokers and dealers to effect purchases and sales of securities for the Account. The Financial Agent shall seek to obtain best execution of orders at the most favorable prices reasonably obtainable.

B. The Financial Agent may directly or indirectly effect transactions on behalf of the Treasury through electronic communication networks, alternative trading systems, or similar execution systems or trading venues.

#### **6. Advice and Coordination**

A. The Financial Agent shall provide the Treasury with on-going advice and ideas regarding management of the Account, market conditions, portfolio risks, asset valuations, asset management models, suggested changes to the Asset Manager Guidelines, and strategies for achieving the policy objectives of the Act.

B. The Financial Agent shall meaningfully participate in good faith in the Treasury's Council of Asset Managers, consisting of various asset managers designated as financial agents, to provide the Treasury with both collective advice and a diversity of strategic and tactical opinions.

C. As directed by the Treasury, the Financial Agent shall coordinate day-to-day operations as necessary with the Treasury's other asset managers designated as financial agents to ensure that portfolio strategies are not executed at cross purposes in the market.

#### **7. Legal actions**

The Treasury is responsible for participation in legal actions (such as class action suits and bankruptcies) pertaining to assets in the Account. The Financial Agent will take no action with respect to such legal actions. The Treasury will instruct the Custodian to direct any notices of such legal action to the Treasury.

## **8. 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 or in another reasonable manner and promptly confirmed in writing.

## **9. 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.

## **10. Operational Requirements**

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 disposition of assets for the Account. The Financial Agent shall:

### Portfolio Management

- Act as the Treasury's asset manager, consistent with the Asset Manager Guidelines.

### Valuation

- Determine the on-going market or economic value of (i) senior preferred shares, (ii) equity warrants, (iii) C Corporation shares, (iv) senior debt issued by mutual and S Corporation Financial Institutions, and/or (v) other equity securities or debt obligations issued to the Treasury by public and private Financial Institutions.

### Monitoring

- Analyze the on-going financial condition and capital structure of public and private Financial Institutions, in light of relevant market conditions, and conduct equity and debt financial analysis, on behalf of the Treasury as an investor representing the taxpayer.

- Devise, document, and execute monitoring and surveillance strategies in accordance with the Asset Manager and Guidelines.
- Monitor risks and volatility of the portfolio.
- Monitor public and private Financial Institution compliance with requirements imposed by the Act, such as executive compensation limits and dividend restrictions, in accordance with the Asset Manager Guidelines.

#### Disposition

- Advise on the strategy and optimal timing to execute warrants or monetize preferred shares and other equity securities or debt obligations, consistent with both the duty to the taxpayer and the goal of market stability, in accordance with the Asset Manager Guidelines.
- Establish vehicles to hold, sell, or otherwise monetize equity securities or debt obligations, in accordance with the Asset Manager Guidelines.

#### Input to the Treasury

- Provide advice and input on the Treasury's response to corporate actions, proxy voting, disclosures, mergers and acquisitions, de-listings, corporate re-organizations and other business notifications received from the public and private Financial Institutions.
- Advise the Treasury on potential recapitalization strategies prior to re-purchase, exercise, or step-up and step-down dates of equity securities and debt obligations issued by public and private Financial Institutions, and represent the Treasury in discussions on such recapitalization strategies with such Financial Institutions.

#### Coordination

- Work in good faith and coordinate with the Treasury's designated Custodian that will hold the Financial Institution securities and obligations.
- Work in good faith and coordinate with any Treasury contractors processing or adjudicating security agreements and other documents under the Act.

#### Trade Execution

- Execute and confirm transfers, trades, and other transactions as instructed by the Treasury and in accordance with the Asset Manager Guidelines.

## Operations

- Maintain records of (i) valuations, (ii) principal, interest, and dividend payments, (iii) cash flow projections, and (iv) any trades or transfers executed.
- Interface with the systems of the independent Custodian, selected by the Treasury, that will have possession and safekeeping of all assets.
- Reconcile books and records with the Custodian's and with the Treasury's accounting systems, as necessary.
- 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.
- Provide for all necessary operational and analytical hardware and software to support the services in this notice.
- Identify, document, and enforce internal controls on an on-going basis.
- Permit the Treasury's internal and external auditors, or other governmental oversight entities, to audit books and records related to the services provided under the FAA.

## Portfolio Analytics and Reporting

- Produce periodic and ad hoc status reports and analyses of Financial Institution performance and risks, using metrics and risk constraints established by the Treasury.
- Report portfolio performance and status against the Treasury's benchmarks and/or success metrics.
- Report on (i) securities and obligations held, (ii) positions in asset classes, (iii) securities and obligations characteristics, and (iv) transactions.
- Forecast expected principal, interest, and dividend payments given a range of market scenarios.
- Produce required valuation reports, at least monthly, incorporating pricing and relative value measures from external sources and models, as appropriate.
- Support the preparation of reports to oversight bodies.
- Retain all documentation and reports related to the services provided, subject to the Treasury's recordkeeping requirements.

- Respond promptly to the Treasury's verbal inquiries.

The Financial Agent has a fiduciary responsibility to perform all services in the best interests of the United States.

## **11. Transaction Structuring**

As requested by the Treasury, the Financial Agent shall analyze and document the structuring of potential capital restructuring actions involving bank holding companies and the valuation of assets connected to such transactions. Such analysis will include documenting the quality and accuracy of financial, corporate, and business information related to potential transactions, and reporting on the potential performance of investments, given a range of market scenarios and transaction structures.



**EXHIBIT B**  
**COMPENSATION**

**1. Base compensation**

A. For the first fifty (50) Financial Institutions whose equity securities, debt obligations, and warrants have been assigned to the Financial Agent to manage, the Financial Agent will receive an annualized fee of \$50,000 per Financial Institution. For the next fifty (50) Financial Institutions, the Financial Agent will receive an annualized fee of \$40,000 per Financial Institution. For each additional Financial Institution, the Financial Agent will receive an annualized fee of \$30,000. All such fees shall be paid quarterly in arrears, with the Financial Agent receiving a one-fourth pro rata amount for each quarter in which the Financial Agent is assigned equity securities, debt obligations, and warrants of a Financial Institution to manage. The Financial Agent must submit an invoice prior to receiving such compensation.

B. In cases where the Financial Agent is assigned the equity securities, debt obligations or warrants issued by a Financial Institution receiving exceptional assistance through programs established under the Act, the Financial Agent will receive an annualized fee of \$150,000 per Financial Institution. All such fees shall be paid quarterly in arrears, with the Financial Agent receiving a one-fourth pro rata amount for each quarter in which the Financial Agent is assigned such equity securities, debt obligations, or warrants. The Financial Agent must submit an invoice prior to receiving such compensation.

C. In cases where the Financial Agent is assigned the limited function of determining only the valuation of the equity securities, debt obligations, and warrants of a Financial Institution not otherwise assigned to the Financial Agent in accordance with Section 1A above, the Financial Agent will receive a quarterly fee of \$5,000 per Financial Institution, paid in arrears, for each quarter in which the Financial Agent is tasked to produce such valuation. The Financial Agent must submit an invoice prior to receiving such compensation.

D. The Financial Agent shall receive \$2,000,000 for the period ending March 5, 2010 for the provision of transaction structuring analysis and documentation in connection with investments in two financial institutions under the Automotive Industry Financing Program, as directed by the Treasury. The Financial Agent must submit an invoice prior to receiving such compensation.

**2. Incentive compensation**

Within one year of the Effective Date of this FAA, the Treasury will establish an incentive compensation schedule, in addition to the base compensation, for the Financial Agent. Such incentive compensation will be based on the overall returns to the Treasury and determined collectively for the group of financial agents operating under common Asset Manager Guidelines for a given portfolio, as defined by the Treasury. The Treasury will establish the incentive compensation schedule after consultation with the Financial Agent and after giving due consideration to the expected duration and disposition strategy for the assets under management.

### **3. Compensation adjustment for option years**

If the Treasury exercises the initial one-year extension to the term of this FAA, in accordance with Section 2B, then the Treasury in its sole discretion shall make an adjustment to the Financial Agent's base compensation to reflect increases in the cost of services performed for the Treasury. Such adjustment to base compensation shall remain in effect for the duration of the term of this FAA.

### **4. 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.

### **5. Probationary Status**

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

**EXHIBIT C**  
**ASSET MANAGER GUIDELINES**  
**&**  
**PERFORMANCE MEASURES**

**To Be Issued by the Treasury**

## EXHIBIT D

### ANNUAL CERTIFICATION FORMAT

This certificate is delivered as provided in Section 13 of the Financial Agency Agreement (FAA) effective [DATE], between the U.S. Department of the Treasury (the Treasury) and [Financial Institution name].

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

1. [Financial Institution name] 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;
2. [Financial Institution name] is taking all reasonable steps to ensure that nonpublic information obtained from or on behalf of the Treasury is properly safeguarded, in accordance with the FAA and 31 CFR Part 31 as may be amended from time to time;
3. all charges and expenses charged to the Treasury are accurate and attributable to services provided to the Treasury;
4. [Financial Institution name] is not on any Federal excluded parties, debarment, or suspension lists;
5. [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;
6. [Financial Institution name] has all governmental approvals or registrations required under law to authorize the performance of its obligations under the FAA, and is not aware of any legal or financial impediments to performing its obligations to the Treasury;
7. [Financial Institution name] is not subject to any pending or current enforcement actions that could impair its ability to provide any services under the FAA, or that could in any way pose a reputational risk to the Treasury or [Financial Institution name] in managing the portfolio of securities and obligations;
8. all employees of [Financial Institution name] and affiliate and contractor personnel who have access to nonpublic information are U.S. citizens or lawful permanent residents performing their work in the continental United States, unless specifically authorized by the Treasury in writing;
9. [Financial Institution name] covenants to disclose all actual or potential organizational conflicts of interest, 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 [Financial Institution name], in accordance with the FAA and 31 CFR Part 31, as may be amended from time to time, consistent with the conflict mitigation measures set forth in Exhibit F;
10. in accordance with the FAA and 31 CFR Part 31, as may be amended from time to time, [Financial Institution name] covenants to disclose to the Treasury Inspector General or the Special Inspector General created under the Act 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);

11. [Financial Institution name] covenants to disclose any other facts that the Treasury should reasonably expect to know about [Financial Institution name] and its affiliates and contractors to help protect the reputational interests of the Treasury and [Financial Institution name] in managing the portfolio of securities and obligations; and
12. any other provisions or statements contained in the FAA, 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 nonpublic information.

I understand and agree to the following terms and conditions:

1. By being granted conditional access to nonpublic 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 business, economic, and policy plans, financial information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII), and sensitive but unclassified (SBU) information.
3. PII includes, but is not limited to, information pertaining to an individual's education, bank accounts, financial transactions, medical history, and criminal or employment history and other 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 that the loss, misuse, or unauthorized access to or modification of could adversely affect the privacy that individuals are entitled to under the Privacy Act.
4. SBU information is any information where the loss, misuse, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs. This definition includes trade secret or other information protected under the Trade Secrets Act, and may include other information designated by the Treasury or as defined by other Federal Government sources.
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 nonpublic 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 and after 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 that pursuant to 31 CFR Part 31, 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **EXHIBIT F**

### **CONFLICTS OF INTEREST MITIGATION**

The following explains and memorializes certain of the minimum conflicts of interest mitigation controls the Financial Agent and any individuals approved by the Treasury to be seconded to the Financial Agent from any affiliate of the Financial Agent (the “Named Individuals”) shall implement and monitor throughout the term of the FAA. For purposes of this Exhibit F, the Named Individuals shall be deemed to be employees of the Financial Agent for all purposes related to the FAA during their period of secondment. The conflicts of interest mitigation controls are based on the Financial Agent’s role under the FAA. As more fully described in Exhibit A, the Financial Agent shall act as an asset manager for the portfolio of securities and obligations received by the Treasury under the Troubled Asset Relief Program (“TARP”) pursuant to the Emergency Economic Stabilization Act of 2008 (“Act”). In that role, the Financial Agent will be responsible for portfolio management, advisory services, operations, analytics and reporting for an assigned portion of the TARP portfolio.

#### **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, advisory or other business services to financial institutions that issued securities or obligations to the Treasury in exchange for funds under the TARP. 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 under the TARP. Because the Financial Agent may have knowledge of material nonpublic information regarding the Treasury’s planning, long-term strategy, trading objectives and portfolio holdings for the TARP, 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 direct or indirect proprietary interests in financial institutions that received funds from the Treasury under the TARP. Because the Financial Agent may have knowledge of material nonpublic information regarding the Treasury’s planning, long-term strategy, trading objectives and portfolio holdings for the TARP, 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.
4. The Financial Agent may be related to affiliates, including parent or subsidiary entities, that have or are eligible to receive funds from the Treasury under the TARP. 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 Named Individuals may advise a TARP-Funded Entity for which the Named Individuals may have developed or obtained material nonpublic information in the course of performing services under the FAA. Because the Named Individuals may have knowledge of the Treasury's planning, long-term strategy, or trading objectives regarding such TARP-Funded Entity, there exists a potential conflict of interest among the Named Individuals' duty to their employers, their employers' clients, and the Treasury.
6. The Named Individuals may advise other clients regarding entering into a financial services arrangement with, or the acquisition, management or disposition of the assets of, a TARP-Funded Entity for which the Named Individuals may have developed or obtained material nonpublic information in the course of performing services under the FAA. Because the Named Individuals may have knowledge of the Treasury's planning, long-term strategy, or trading objectives regarding such assets, there exists a potential conflict of interest among the Named Individuals' duty to their employers, their employers' clients, and the Treasury.
7. The Named Individuals may be interested in acquiring, on behalf of their employers or their employers' clients, the assets of a TARP-Funded Entity for which the Named Individuals may have developed or obtained material nonpublic information in the course of performing services under the FAA. Because the Named Individuals may have knowledge of the Treasury's planning, long-term strategy, or trading objectives regarding such assets, there exists a potential conflict of interest among the Named Individuals' duty to their employers, their employers' clients, and the Treasury.
8. 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 TARP 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.
9. Individuals employed by or associated with the Financial Agent may own, on behalf of their personal accounts, securities or obligations issued by financial institutions that received funds from the Treasury under the TARP. Because these individuals may have knowledge of material nonpublic information regarding the Treasury's planning, long-term strategy, trading objectives and portfolio holdings for the TARP, 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.

## **Mitigation Plans**

As a fiduciary of the Treasury, the Financial Agent owes a duty when performing services under the FAA to look solely to the best interests of the Treasury without considering the interests of other clients or its own proprietary interests. To that end, the Financial Agent agrees to implement the following mitigation plans and conflicts of interest mitigation controls.

### **Conflict of Interest #1: TARP-Funded Financial Institutions that are Clients of the Financial Agent**

The Financial Agent may provide revenue-generating business services, including asset management, advisory or other business services to financial institutions participating in programs under the Act. To address such actual or potential conflict of interest, the Financial Agent agrees to recuse itself from managing, on behalf of the Treasury, the securities or obligations issued by any financial institution for which the Financial Agent currently or prospectively provides material revenue-generating services. For purposes of this exhibit, revenue-generating business services are material if:

- (a) the resulting revenue from the entity and any of its related entities (as defined by 31 C.F.R. § 31.201 and known to the Financial Agent after performing reasonable due diligence) constitutes greater than five percent (5%) of the Financial Agent's revenue for the previous 12-month period, exclusive of revenue generated from Treasury under the FAA; or
- (b) in light of surrounding circumstances, the Treasury concludes that the Financial Agent's judgment and ability to represent the Treasury would be changed or influenced by the revenue-generating services.

Before the Treasury assigns management of the securities or obligations of a TARP-Funded Entity to the Financial Agent, the Financial Agent agrees to identify and report to the Treasury whether it provides revenue-generating services to the financial institution and its related entities. For purposes of this exhibit, "TARP-Funded Entities" refers to those financial institutions that appear on the most recently dated TARP Transaction Report available on the EESA website. The Financial Agent shall inform the Treasury whether the percentage of the Financial Agent's revenue from the TARP-Funded Entity and its related entities over the previous 12-month period constituted over or under 5% of the Financial Agent's total revenue during the period, exclusive of any revenue the Financial Agent received from Treasury. Upon obtaining and analyzing this information, as well as any additional information for which the Treasury subsequently makes a reasonable request, the Treasury may either:

- (a) decide not to assign the securities or obligations of a particular TARP-Funded Entity to the Financial Agent to manage on behalf of the Treasury; or
- (b) decide to assign the securities or obligations of a TARP-Funded Entity to the Financial Agent to manage on behalf of the Treasury, while permitting the Financial Agent to continue to simultaneously provide revenue-generating

services to said entity, on the basis that the Treasury determined such services to not be material and therefore not to present a conflict of interest.

For those TARP-Funded entities assigned to the Financial Agent that are also clients of the Financial Agent, the Financial Agent agrees to establish a compliance program, based on the Treasury's requirements and subject to the Treasury's approval, to test the revenue-generating business services for materiality on an ongoing basis.

If the Financial Agent intends to establish a new client relationship that may result in material revenue generation from a TARP-Funded Entity, the Financial Agent shall notify the Treasury prior to the establishment of the relationship and agree, at the request of the Treasury, to recuse itself from management on behalf of the Treasury of securities or obligations issued by such financial institution(s). The Financial Agent shall then assist Treasury in making arrangements to transfer the responsibility for management of the prospective client's securities or obligations to another asset manager employed by the Treasury.

## **Conflict of Interest #2: Fiduciary Accounts that Hold Securities of TARP-Funded Financial 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 nonpublic information obtained or developed pursuant to the FAA for the advantage of other client mandates. While providing asset management or advisory services to the TARP, some individuals within the Financial Agent may have access to material nonpublic information related to the TARP 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 agrees to implement information barriers sufficient to prevent the misuse or unauthorized dissemination of material nonpublic information. The components of such information barriers shall include:

Identification and Control of Restricted Persons. When an individual is in possession of material nonpublic information obtained or developed pursuant to the FAA regarding a publicly-traded TARP-Funded Entity managed by the Financial Agent, the individual shall be considered a "restricted person" with respect to the TARP. The Financial Agent's Compliance Department shall maintain a list of all such individuals, including the individuals' names, titles and the dates they became restricted persons, as well as the date of removal from the list. While in possession of material nonpublic 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 affiliates, or contractors is in possession of material nonpublic information obtained or developed pursuant to the FAA regarding a publicly-traded TARP-Funded Entity, the security of the TARP-Funded Entity 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 Code of Conduct or equivalent. The individuals in possession of the material nonpublic 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 Code of Conduct at least quarterly. Without limitation, the Compliance Department shall identify non-compliant transactions and take appropriate corrective action.

Use of Restricted Securities List. If the Financial Agent's Compliance Department finds it appropriate to halt trading in the security of a TARP-Funded Entity due to material nonpublic information derived from a significant transaction or proposed transaction involving the Financial Agent and the TARP-Funded Entity, the security shall be placed on the Financial Agent's Restricted List. When the security of a TARP-Funded Entity is on the Restricted Securities List, the Financial Agent shall be prohibited from any trading or investment activities regarding the security, except on behalf of the Treasury, without the specific approval of the Financial Agent's Compliance Department. The Financial Agent's Compliance Department shall employ testing to determine compliance with the Financial Agent's Code of Conduct at least quarterly. Without limitation, the Compliance Department shall identify non-compliant transactions and take appropriate corrective action.

Personal Trading Restrictions. When a security is on the Financial Agent's Restricted List, trading or investment activities in the security by the Financial Agent's employees 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 Department shall ensure that all reasonable steps to prohibit such investment activities are taken, including by enforcement of the Financial Agent's Code of Conduct, which shall include requirements for pre-clearance of all personal securities transactions, annual reporting of security holdings, 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 TARP-Funded Financial 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 nonpublic information obtained or developed pursuant to the FAA to the advantage of its proprietary interests. As stated above, all individuals in possession of material nonpublic information obtained or developed pursuant to the FAA regarding securities in the TARP 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 TARP-Funded Financial Institutions**

To address concerns that the Financial Agent may unduly favor the interests of its parent, subsidiary or affiliated entities, the Financial Agent agrees that it shall not advise its affiliates regarding, or assist them in arranging, transactions with the TARP. Furthermore, the Financial Agent agrees it shall be prohibited from managing the securities or obligations issued by affiliates that are TARP-Funded Entities.

The Financial Agent shall ensure the presence and effectiveness of information barriers designed to prevent the flow of nonpublic information related to the TARP between the Financial Agent and any affiliates. These information barriers shall include physical separation of workspaces, compliance monitoring and the use of partitioned information systems with no cross-access by any personnel outside of the Financial Agent. In addition, the Financial Agent (other than the Named Individuals) shall not be privy to information regarding the clientele of its affiliates, except as disclosed publicly by said clientele.

#### **Conflicts of Interest #5: Advisory Services on Behalf of TARP-Funded Financial Institutions**

To address the concern that the Named Individuals may advise a TARP-funded Entity for which the Named Individuals may have developed or obtained material nonpublic information in the course of performing services under the FAA, the Named Individuals agree to refrain from performing services for such TARP-Funded Entities during their period of secondment to the Financial Agent, as well as for a period of six months thereafter without the express approval from the Treasury, or until all such nonpublic information becomes part of the body of public knowledge from a source other than the Financial Agent or its affiliates, whichever is sooner (the “Cooling Off Period”).

#### **Conflicts of Interest #6: Advisory Services on Behalf of Clients with Regard to TARP-Funded Financial Institutions**

To address the concern that the Named Individuals may advise other clients regarding entering into a financial services arrangement with, or the acquisition, management or disposition of the assets of, a TARP-funded Entity for which the Named Individuals may have developed or obtained material nonpublic information in the course of performing services under the FAA, the Named Individuals agree to refrain from performing such services during their period of secondment to the Financial Agent and during the Cooling Off Period.

#### **Conflicts of Interest #7: Acquisition of Assets for which the Named Individuals Have Obtained Material Nonpublic Information**

To address the concern that the Named Individuals may advise on the acquisition of, for their employers’ own accounts or their employers’ clients’ accounts, the assets of a TARP-Funded Entity for which the Named Individuals may have developed or obtained material nonpublic information in the course of providing services under the FAA, the Named Individuals agree to refrain from acquiring such assets during their period of secondment to the Financial Agent and during the Cooling Off Period. Furthermore, in compliance with 31 CFR § 31.213, Named

Individuals shall not purchase or offer to purchase assets from the Treasury, nor assist anyone in purchasing or offering to purchase such troubled assets from the Treasury, at any point during the period of their secondment to the Financial Agent and during the Cooling Off Period, without the express written permission of the Treasury.

### **Conflict of Interest #8: 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 TARP. 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 TARP 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 TARP, including restricting the use of broker-dealers in arranging transactions of securities in the TARP portfolio issued by those same broker-dealers.

The Financial Agent shall also ensure the presence and effectiveness of information barriers designed to prevent the flow of nonpublic information related to the TARP between the Financial Agent and any broker-dealer affiliates. These information barriers shall include physical separation of workspaces, compliance monitoring and the use of partitioned information systems with no cross-access by any personnel outside of the Financial Agent.

### **Conflict of Interest #9: Personal Conflicts of Interest**

To address the concern regarding the objectivity of individuals performing services for the Treasury who may own, on behalf of personal accounts, securities issued by TARP-Funded Entities, the Financial Agent agrees that all individuals providing services on behalf of the Treasury shall be subject to a Code of Conduct. In particular, all key individuals and management officials, as defined in 31 C.F.R. § 31.201, performing services under the FAA shall disclose on a quarterly basis information equivalent to that required by the U.S. Office of Government Ethics Form 450 ("Form 450") to the Financial Agent's Compliance Department for review. In addition, 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 Restricted List.

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

As a requirement of the FAA, the Financial Agent shall maintain and enforce corporate-wide policies and procedures addressing potential conflicts of interests in the following areas. For purposes of this exhibit, the specific policies and procedures developed and implemented to address potential conflicts of interest regarding its work under the FAA are collectively referred to as the Conflicts of Interest Mitigation Controls. The Conflicts of Interest Mitigation Controls shall apply to the Financial Agent, Named Individuals during their period of secondment to the

Financial Agent and during the Cooling Off Period, any affiliates providing services under the FAA, their collective employees, contractors providing services, and their contractors' employees that provide services under the FAA.

Restrictions Regarding Material Nonpublic Information. While providing services to the TARP, some individuals within the Financial Agent may have access to material nonpublic information related to the TARP 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 (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 nonpublic 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. TARP-related nonpublic 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 nonpublic information, including but not limited to material nonpublic information, outside of the Financial Agent.

Controls over IT and Paper Files Related to Nonpublic Information. The Financial Agent's management, performance, and accounting systems shall restrict nonpublic information access only to those individuals who have a need to know such information. Paper files that include nonpublic information will also be appropriately segregated and controlled 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 the FAA that may contain nonpublic 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 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 to check the trades of an account against other accounts, including the TARP 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 refrain from making use of certain broker-dealers for the execution of transactions related to the TARP portfolio. To effect this right, the Treasury may require that, prior to initiation of a transaction related to the TARP portfolio, the Financial Agent disclose to the Treasury the list of potential broker-dealers in consideration for execution of such transaction and the reasons why the Financial Agent believes such broker-dealers are suited to provide best execution pursuant to the FAA.

Prohibition on Certain Interactions with Affiliates. The Financial Agent shall not provide advice to affiliates regarding, or assist them in arranging, transactions with the TARP. Further, the Financial Agent shall not transact with its affiliates, such as brokers-dealers, in managing assets

for the TARP.

Restriction on Crossed-As-Agent Transactions. The Financial Agent shall ensure that any contemplated transactions between the TARP portfolio and the Financial Agent or another client of the Financial Agent shall be disclosed to Treasury before execution occurs, and Treasury will have the right to refuse such transactions.

Limitation on Purchase of TARP Assets. As the Financial Agent will be assisting the Treasury in the valuation, management and disposition of TARP assets, the Financial Agent, management officials performing services under the FAA, and key individuals shall not purchase or offer to purchase assets from the TARP portfolio, nor assist anyone in purchasing or offering to purchase such troubled assets from the Treasury, during the term of the FAA.

Codes of Conduct. The Financial Agent shall maintain a Code of Conduct that sets out basic principles designed to guide employees in the course of their business activities. The code should require all employees and contractors to hold as strictly confidential client information, to include all nonpublic information obtained or developed pursuant to the FAA, and to know and comply with all company policies, procedures, laws and regulations that are applicable to their job duties. The code should require disclosure on a quarterly basis by employees of information equivalent to a Form 450 and also place restrictions on contractors', employees' and Related Persons' trading on behalf of personal accounts where conflicts may arise. In particular, unless an investment is exempt from prior notification, investments by employees must be pre-cleared and be subject to certain blackout and short-term trading restrictions. All employees and contractors shall be required to annually acknowledge that they are familiar with and abide by the Code of Conduct.

Training. All management officials and key individuals associated with the Financial Agent performing services under the FAA shall be required to participate in compliance training prior to, and annually thereafter, providing services to the TARP. The training program shall inform and advise each individual of their obligations and requirements under the FAA (including its exhibits).

Monitoring / Compliance. The Financial Agent shall maintain a staff of compliance professionals to test and monitor the Financial Agent's compliance policies and procedures and their effectiveness. The Financial Agent shall document such internal oversight and provide the Treasury with quarterly reports sufficient to evaluate the effectiveness of the Financial Agent's mitigation controls in ensuring compliance with all requirements of the FAA.

Appointment of TARP Compliance Officer. The Financial Agent shall appoint a TARP Compliance Officer to oversee compliance with this Exhibit F by all entities and individuals performing work under the 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 TARP Compliance Officer shall be independent from the investment and operations personnel and report directly to the CEO or Board of Directors, or, at the sole discretion of the Treasury, another senior executive such as the General Counsel. The TARP Compliance Officer may have other responsibilities within the Financial Agent, provided such responsibilities do not include portfolio management responsibilities.



Business Relationships of Members of the Board of Directors. The TARP Compliance Officer shall inquire as to, and keep records of, each member of the Financial Agent's Board of Directors' current business relationship with any TARP-Funded Entity, or any business relationship within the preceding 12-month period, which is other than possessing a bank account at a TARP-Funded Entity where the amount of funds invested in any one TARP-Funded Entity is less than the Federal Deposit Insurance Corporation coverage limit, having a mortgage from a TARP-Funded Entity on terms available to the general public, or holding investments in a mutual fund or sector-specific fund containing TARP-Funded Entity securities, and shall deliver such records to the Treasury periodically as the Treasury directs.

Incident Reporting. Anyone performing services under the FAA shall be required to promptly report any breaches or violations of the Conflicts of Interest Mitigation Controls or other requirements of the FAA to the Financial Agent's TARP Compliance Officer. A description of the incident shall be documented in an incident report and promptly provided to the Office of Financial Stability Chief Compliance Officer ("OFS CCO").

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 that selection. The Financial Agent shall not offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any employee of the Treasury, except as permitted by Government-Wide Ethics Rules, 5 C.F.R. part 2635. The Financial Agent shall not solicit or obtain from any Treasury employee, directly or indirectly, any information that is not public and was prepared for use by the Treasury for the purpose of evaluating a bid, proposal, or offer to enter into an agreement.

#### Certifications

- Organizational Conflicts of Interest Certification. In accordance with 31 CFR § 31.211, the Financial Agent shall certify quarterly in writing to the Treasury that it has no organizational conflicts of interest, or explain in detail the extent to which it cannot so certify, and (except to the extent already described in this Exhibit F) describe the actions it has taken and plans to take to mitigate these conflicts.
- Named Individuals Conflicts of Interest Certification. During the Named Individuals' period of secondment to the Financial Agent and during the Cooling Off Period, the Financial Agent shall provide to the Treasury a quarterly certification in the form set forth in Exhibit H. In providing such certification, the Financial Agent shall obtain an appropriate certification from the Named Individuals and any affiliate of the Financial Agent concurrently employing such Named Individuals. Any certification provided by the affiliate to the Financial Agent shall be for the benefit of the Financial Agent. Moreover, by providing such certification to the Financial Agent, such affiliate shall not be deemed to be (i) a party to the FAA, (ii) providing services to the Financial Agent under the FAA, or (iii) acting as a subcontractor, agent, subagent or consultant to the Financial Agent or the Treasury. Notwithstanding the foregoing, the Treasury shall the

right to audit such affiliate to determine the scope of the Named Individual's activities during the period of secondment and during the Cooling Off Period and the procedures used by the affiliate providing such certification. The Treasury's audit rights shall be limited to the foregoing, and shall not include the general business operations of such affiliate or the activities of any employees who are not Named Individuals.

- Personal Conflicts of Interest Certification. In accordance with 31 CFR § 31.212, the Financial Agent shall certify to the Treasury no later than ten business days after the effective date of the FAA, and then quarterly thereafter, that all management officials and 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.
- Communications with Treasury Employees Certification. In accordance with 31 CFR § 31.212, 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 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 has no information concerning a violation or possible violation of those prohibitions. In addition, each officer, employee and representative 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 management officials and key individuals providing services under the TARP shall certify quarterly to the Financial Agent's TARP Compliance Officer that he or she will comply with the requirements of the FAA and 31 C.F.R. § 31.217 to not share nonpublic information (as that term is defined in Section 6 of the FAA) with any unauthorized person or entity.

Subsequent Notification. The Financial Agent has a continuing obligation to search for and to report any potential organizational or personal conflicts of interest. The Financial Agent shall notify the Treasury in writing as soon as practicable, and in no instance later than two (2) business days, after learning of any new or expanded conflicts of interest that arise during the term of the FAA. The disclosure shall describe the steps the Financial Agent has taken or proposes to take to mitigate the potential conflict 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 with all conflicts of interest and confidentiality obligations and responsibilities set forth in the FAA. The Treasury plans to exercise this review authority within the first six (6) months of the signing of the FAA. Additional reviews may be conducted by oversight bodies with explicit authority over the TARP including the Office of the Special Inspector General for the Troubled Asset Relief Program

(“SIGTARP”) and the U.S. Government Accountability Office (“GAO”). The Financial Agent shall cooperate fully with the Treasury or its designated representative and provide it with any and all such information (in whatever form) requested by it in order to perform such a review.

Point of Contact. The OFS CCO shall be the contact official at the Treasury responsible for monitoring compliance with this Exhibit.

Changes to Conflicts of Interest Mitigation Controls. The Financial Agent and the Treasury agree that the TARP’s investment objectives, trade operations and policies, as well as the Financial Agent’s business, are likely to evolve over the term of the TARP. 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 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(s) of the Financial Agent.

## EXHIBIT G

### NON-DISCLOSURE AGREEMENT FOR NAMED INDIVIDUALS

#### Conditional Access to Nonpublic Information

I, \_\_\_\_\_, employee of Keefe, Bruyette and Woods, Inc., having been seconded to KBW Asset Management, Inc. (“KBWAM”), hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain United States Government nonpublic information.

I understand and agree to the following terms and conditions:

1. By being granted conditional access to nonpublic information, KBWAM 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 KBWAM 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 business, economic, and policy plans, financial information, trade secrets, information subject to the Privacy Act, personally identifiable information (PII) , and sensitive but unclassified (SBU) information.
3. PII includes, but is not limited to, information pertaining to an individual’s education, bank accounts, financial transactions, medical history, and criminal or employment history and other 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 that the loss, misuse, or unauthorized access to or modification of could adversely affect the privacy that individuals are entitled to under the Privacy Act.
4. SBU information is any information where the loss, misuse, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs. This definition includes trade secret or other information protected under the Trade Secrets Act, and may include other information designated by the Treasury or as defined by other Federal Government sources.
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 KBWAM and/or the Treasury that an individual is authorized to receive it.
7. I shall be bound by the Conflict of Interest Mitigation Plan, attached as Exhibit F to this Financial Agency Agreement between the Treasury and KBWAM.
8. Upon conclusion of my secondment to KBWAM, I shall not perform any services for any client/entity other than the Treasury that relate to or involve any nonpublic information I received during the course of my secondment to KBWAM for a period of six months without the express approval from the Treasury, or until all such nonpublic information becomes part of the body of public knowledge from a source other than KBWAM or its affiliates, whichever is sooner.
9. Prior to beginning my secondment to KBWAM, I did not have any nonpublic information related to the financial institutions that are the focus of the work that KBWAM will be performing under the FAA.
10. 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 nonpublic information not consistent with the terms of this Agreement.
11. 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, KBWAM and the Treasury.
12. 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 KBWAM and/or the United States taking administrative, civil or any other appropriate relief.
13. I understand that the willful disclosure of information to which I have agreed herein not to divulge may also constitute a criminal offense.
14. 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 and after my affiliation and/or employment with KBWAM or its affiliates ends.
15. 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.

16. 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.
17. I understand that if I am under U.S. Congressional or judicial subpoena, I may be required by law to release information, and that pursuant to 31 CFR Part 31, 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT H**

**QUARTERLY CERTIFICATION REGARDING NAMED INDIVIDUALS**

I, [Name of Authorized Official], am a duly authorized official of KBW Asset Management (“KBWAM”), which has entered into a financial agency agreement (the “FAA”) with the U.S. Department of the Treasury (“Treasury”) to provide certain advisory services. Certain individuals regularly employed by Keefe, Bruyette and Woods, Inc. (“KBW”) and approved by the Treasury (the “Named Individuals”) have been seconded to KBWAM to assist in providing the advisory services to the Treasury under the FAA. This quarterly certification is for the period from [DATE] to [DATE], and is provided in accordance with Exhibit F of the FAA. This certification is based on sub-certifications received by KBWAM from the Named Individuals and KBW. This certification and the sub-certifications are subject to audit as provided in the FAA.

I certify that:

Each of the Named Individuals have signed a Non-Disclosure Agreement in the form provided to KBWAM by the Treasury prior to beginning work on the FAA.

During the time period covered by this certification, none of the Named Individuals have:

- (1) advised a TARP-Funded Entity for which the Named Individual may have obtained or developed material nonpublic information in the course of performing services under the FAA;
- (2) advised other clients regarding entering into a financial services arrangement with, or the acquisition, management or disposition of the assets of, a TARP-Funded Entity for which the Named Individual may have obtained or developed material nonpublic information in the course of performing services under the FAA;
- (3) acquired, on behalf of KBWAM, KBW, KBWAM’s clients, KBW’s clients or their own personal accounts, the assets of a TARP-Funded Entity for which the Named Individual may have obtained or developed material nonpublic information in the course of performing services under the FAA.

KBW Asset Management

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_