

**MEMORANDUM OF AGREEMENT**  
**Between**  
**the U.S. Department of the Treasury and**  
**NeighborWorks America**

**I. PARTIES**

This Memorandum of Agreement (as may be modified, amended or restated from time to time, this “Agreement”) is entered into this 14th day of February, 2013 (the “Effective Date”), by and between the United States Department of the Treasury (“Treasury”) and the Neighborhood Reinvestment Corporation, doing business as NeighborWorks America, a non-profit corporation created by the United States Congress (“NeighborWorks”).

**II. AUTHORITIES**

- A. NeighborWorks has the authority to enter into this Agreement and perform its obligations hereunder pursuant to the Neighborhood Reinvestment Corporation Act of 1978, 42 U.S.C. §8101 *et seq.* (2013) (as amended, the “NRC Act”), which authorizes NeighborWorks to undertake efforts to provide housing services programs throughout the United States, among other tasks.
- B. Treasury has the authority to enter into this Agreement and perform its obligations hereunder pursuant to (i) Sections 101, 109 and 118 of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343 (as amended, “EESA”), pursuant to which Treasury established and administers the Making Home Affordable Program (“MHA”); and Section 8105(c)(3) of the NRC Act, which authorizes any department or agency of the Federal government to provide funds, with or without reimbursement, necessary to achieve the objectives and carry out the purposes of such Act.

**III. DEFINITIONS**

“Affiliate” means a separately incorporated or organized housing counseling agency affiliated or otherwise connected with an Intermediary or State HFA for the purposes of its housing counseling program.

“Applicable Laws” has the meaning set forth in Article XIII (D) hereof.

“Branch” or “Branch Office” means a Participating Agency’s organizational and subordinate unit that is not separately incorporated or organized, and is not itself a Participating Agency or Affiliate.

“Budget” has the meaning set forth in Article VI (B) (1) hereof.

“Data” means any recorded information, regardless of form or the media on which it may be recorded, regarding any of the activities performed in connection with the Operative Documents.

“Document Preparation and Submission (DPS) Fees” has the meaning set forth in the Summary of Work.

“Eligible Agency” has the meaning set forth in Article VII (A) (1) hereof.

“Event of Default” shall mean the occurrence of any of the circumstances set forth in Article XIV (B) hereof.

“Funding Agreement” has the meaning set forth in Article VII (B) (1) hereof.

“Funding Announcements” means, collectively, all funding announcements published by NeighborWorks in connection with the In-Take Component, together with any related guidelines or other supplemental documentation.

“HAFAs” means the Home Affordable Foreclosure Alternatives Program, a component program of MHA.

“HAMP” means the Home Affordable Modification Program, a component program of MHA, as more particularly set forth in the Statement of Work.

“HUD” means the U.S. Department of Housing and Urban Development.

“In-Take Component” has the meaning set forth in Article IV hereof.

“Initial Package” has the meaning set forth in Section 4 of Chapter II of the MHA Handbook or, with respect to HAFAs, such other documents as are required pursuant to Chapter IV of the MHA Handbook. Generally speaking, an Initial Package with respect to HAMP will include (i) a completed MHA Request for Mortgage Assistance, (ii) a completed Form 4506-T or Form 4506T-EZ, and (iii) evidence of income as set forth in Chapter II of the MHA Handbook.

“Intermediary” means a national or regional organization that provides housing counseling services through its Branches or Affiliates.

“Limited Rights” means non-exclusive rights to, without limitation, use, copy, maintain, modify, enhance, disclose, reproduce, prepare derivative works, and distribute, in any manner, for any purpose related to the administration, activities, review, or audit of, or public reporting regarding, MHA and to permit others to do so in connection therewith.

“Maximum Budgeted Amount” has the meaning set forth in Article VI (B) (1) hereof.

“MHA Handbook” means the MHA Handbook for Servicers of Non-GSE Mortgages, version 4.1 (Dec. 13, 2012), as amended and/or restated from time to time, and which can be found at the following URL: <https://www.hmpadmin.com/portal/programs/hamp.jsp>.

“NeighborWorks Network Organization (NWO)” means a chartered member of NeighborWorks.

“NFMC Program” means the National Foreclosure Mitigation Counseling Program.

“Operative Documents” means this Agreement, the Funding Agreements, the Funding Announcements, and any other agreements, instruments, certifications or documents governing or otherwise related to the matters described herein.

“Outreach Component” has the meaning set forth in Article IV hereof.

“Outreach Funds” has the meaning set forth in the Summary of Work.

“Oversight Fees” has the meaning set forth in the Summary of Work.

“Participating Agency” means each Intermediary, State HFA, or NWO that enters into a Funding Agreement with NeighborWorks in connection with the In-Take Component and any Subagency that is overseen by a Participating Agency.

“Recapture” means to recover, recapture, de-obligate or otherwise obtain repayment of.

“SAM” means the System for Award Management (which can be found at [www.sam.gov](http://www.sam.gov)).

“Start-Up Period” has the meaning set forth in Article IX (F) of this Agreement.

“State HFA” means a state housing finance agency, which is a unique public body, agency, or instrumentality created by a specific act of a state legislature and empowered to finance activities designed to provide housing and related facilities and services, for example through land acquisition, construction or rehabilitation, throughout a state.

“Statement of Work” has the meaning set forth in Article VI (A) hereof.

“Subagency” means each of the Affiliates and Branches overseen by an Intermediary or State HFA.

“Summary of Work” means the Summary of Work attached hereto as Appendix A, as supplemented by the Statement of Work. In the event of a conflict between the Summary of Work and the Statement of Work, the Statement of Work shall control.

“Supplemental Outreach Funds” has the meaning set forth in the Summary of Work.

“Unspent Funds” means (i) funds disbursed to NeighborWorks hereunder, (ii) funds disbursed by NeighborWorks to a Participating Agency pursuant to a Funding Agreement, and (iii) funds subsequently disbursed by a Participating Agency to a Subagency, and, in each case, not thereafter obligated, encumbered or otherwise expended by the applicable recipient in accordance with the Operative Documents.

#### **IV. PURPOSE**

NeighborWorks is a non-profit corporation established by Congress to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community residents and local government, relying largely on local initiative for the specific design of local

programs. In carrying out its mission, NeighborWorks delivers a number of programs and services through a network of local, regional nonprofit organizations serving more than 4,500 communities nationwide. NeighborWorks also serves as the administrator of the federally-funded National Foreclosure Mitigation Counseling (NFMC) Program, which seeks to address the nation's foreclosure crisis by dramatically increasing the availability of housing counseling for families at risk of foreclosure.

In 2009, Treasury established MHA pursuant to its authority under EESA to help stabilize the housing market by facilitating loan modifications and other foreclosure alternatives. Under MHA, Treasury provides financial incentives to homeowners, loan servicers and investors for successful transactions that comply with MHA requirements. In order to receive assistance under MHA, homeowners are required to submit Initial Packages to participating servicers and meet the eligibility requirements defined by Treasury. In an effort to increase the number of homeowners that successfully request assistance under MHA, Treasury desires to (i) support the cost of making trained housing counselors available to assist homeowners with the completion and delivery of the Initial Packages required under MHA, and (ii) enhance its marketing and outreach activities associated with MHA.

Accordingly, in furtherance of the objectives and purposes of MHA and those for which NeighborWorks was formed, Treasury will, on the terms and conditions set forth herein, provide funds to NeighborWorks to be used to (i) design and implement a process whereby trained housing counselors reach out to potentially eligible homeowners, and assist them with completing and delivering Initial Packages under MHA (the "In-Take Component"), and (ii) support local homeowner outreach events sponsored by Treasury in connection with MHA (the "Outreach Component"), all as more particularly described in the Summary of Work.

## **V. PERIOD OF PERFORMANCE**

- A. Period of Performance. The Period of Performance shall begin on the Effective Date and expire at midnight on March 31, 2014 or such earlier date on which this Agreement is terminated pursuant to the terms hereof, including, without limitation, Article XIV (Defaults and Remedies) and Article XV (Termination).
- B. Return of Funds.
  - i. Within forty-five (45) days after the expiration or earlier termination of the Period of Performance, NeighborWorks must return to Treasury any funds which Treasury has the right to Recapture from NeighborWorks hereunder, including, without limitation, Unspent Funds. Notwithstanding the foregoing, it is understood and agreed that certain administrative, monitoring, reporting, compliance and oversight obligations and requirements set forth in this Agreement may survive the expiration or termination of the Period of Performance and that NeighborWorks may reserve a reasonable amount of funds to pay for the cost of the same; provided, however, NeighborWorks shall return to Treasury any such reserved funds within ten (10) business days after Treasury notifies NeighborWorks in writing that all such requirements have been satisfied.

- ii. NeighborWorks shall use its reasonable best efforts to Recapture from Participating Agencies any funds which NeighborWorks has the right to Recapture under the applicable Funding Agreements, including, without limitation, Unspent Funds in the possession of the Participating Agencies. NeighborWorks shall return such Recaptured funds to Treasury within ten (10) business days after NeighborWorks' receipt of the same. The provisions of this Article V (B) (ii) shall not impair or otherwise affect Treasury's right to be subrogated to the rights of NeighborWorks as set forth in Article XIV (E) (ii) hereof.
- C. Subsequent Adjustments and Continuing Responsibilities. NeighborWorks acknowledges that the expiration or termination of the Period of Performance does not affect: (i) Treasury's right to disallow costs and Recapture funds on the basis of a later audit or other review; (ii) NeighborWorks' obligation to return any funds due as a result of later refunds, corrections, or other transactions; or (iii) requirements herein concerning compliance and records retention.
- D. Collection of Amounts Due. NeighborWorks acknowledges that any funds paid to NeighborWorks in excess of the amount to which NeighborWorks is finally determined to be entitled under the terms of this Agreement constitute a debt to the Federal Government of the United States of America. If not paid within a reasonable period after demand, Treasury may reduce the debt and/or charge interest by any lawful means.
- E. Extensions. The Period of Performance may only be extended with the prior written agreement of Treasury and NeighborWorks. Either Party may approve or deny any request for an extension in its sole discretion.

## **VI. STATEMENT OF WORK AND BUDGET**

- A. Statement of Work. Contemporaneously with the execution and delivery of this Agreement, NeighborWorks shall submit to Treasury for Treasury's approval a detailed statement of work, consistent with the Summary of Work, which sets forth NeighborWorks' responsibilities in connection with the In-Take Component and Outreach Component and other related details. The statement of work submitted by NeighborWorks and approved by Treasury, as may be modified from time to time in accordance with the terms hereof, is hereinafter referred to as the "Statement of Work" and is incorporated herein by reference as if fully set forth in this Agreement. NeighborWorks, and where applicable, each Participating Agency, will furnish the necessary personnel, materials, services, facilities, and otherwise do all things necessary for, or incidental to, the performance of the Statement of Work to Treasury's reasonable satisfaction. NeighborWorks shall notify Treasury in writing within fifteen (15) days after there is a change in key personnel responsible for satisfying NeighborWorks' obligations under this Agreement. Any substantive changes to the Statement of Work must be approved by both Treasury and NeighborWorks in writing prior to the implementation of such changes.

B. Budget.

1. Generally. Contemporaneously with the execution and delivery of this Agreement, NeighborWorks has submitted to Treasury for Treasury's approval a summary budget, together with certain detailed schedules and other supporting documentation setting forth the costs necessary to implement the In-Take Component and Outreach Component. The summary budget submitted by NeighborWorks and approved by Treasury, as may be modified from time to time in accordance with the terms hereof, is referred to herein as the "Budget" and is incorporated herein by reference as if fully set forth in this Agreement. Subject to all of the terms and conditions hereof and in reliance upon all representations, warranties, assurances, certifications, covenants and agreements contained herein or delivered hereunder from time to time (including, without limitation, documentation provided in support of the Budget), Treasury will provide NeighborWorks with up to \$18,262,000 (the "Maximum Budgeted Amount"), in accordance with the Budget.
2. Modifications to the Budget. NeighborWorks acknowledges that Treasury shall be under no obligation to provide funds in excess of the Maximum Budgeted Amount. NeighborWorks shall not request funds in excess of the Maximum Budgeted Amount except in connection with a request to modify the Budget pursuant to this paragraph. Any modification to the Budget, including reallocation of amounts between line items appearing on the Budget, is subject to Treasury's prior written approval. In addition, (x) any change to the methodology for calculating indirect costs included in the Budget, and (y) use of funds reserved for contingent and/or unexpected costs, in each case, are subject to Treasury's prior written approval. Treasury shall use reasonable efforts to respond (i) within five (5) business days of receiving any request for reallocation of amounts between Budget line items, and (ii) within ten (10) business days of receiving any request for funding in excess of the Maximum Budgeted Amount.
3. Additional Funding. Both parties recognize that NeighborWorks has devised a Statement of Work and Budget based on the best available information. In the event NeighborWorks believes costs will exceed Maximum Budgeted Amount, NeighborWorks may request additional funds from Treasury, which Treasury may approve or deny in Treasury's sole discretion. If Treasury declines to approve any request for additional funds attributable to reasonable, unforeseen increases in NeighborWorks' costs to perform its obligations hereunder, which cost increases are (i) not within NeighborWorks' control and (ii) evidenced by supporting documentation, which, in Treasury's reasonable discretion, justifies the cost increase, then NeighborWorks shall not be obligated to perform those activities and services to the extent not funded hereunder.

- C. Approved Activities. Funds provided by Treasury hereunder shall be used by NeighborWorks and Participating Agencies solely for the activities and purposes specified herein, on the terms and conditions provided herein, and such other conditions as Treasury may reasonably impose to the extent consistent with this Agreement, and, in

particular, the Statement of Work.

- D. Evaluation. NeighborWorks and each Participating Agency shall cooperate with Treasury and its designees in research or evaluative studies concerning the In-Take Component and the Outreach Component, as applicable, to the extent consistent with the Budget.

## VII. ELIGIBLE AGENCIES AND FUNDING AGREEMENTS

### A. Eligibility.

1. Eligibility with respect to the In-Take Component is limited to Intermediaries, State HFAs and NWOs that received awards in rounds 5 or 6 of the NFMC Program and are in good standing thereunder (i.e., are not in default of their obligations under the NFMC Program, have not been suspended from receiving funds under the NFMC Program and have not had their status as a HUD-approved housing counseling agency or HUD-approved intermediary suspended or revoked) (each an “Eligible Agency”). NeighborWorks has provided Treasury with a true, correct and complete list of Eligible Agencies as of the date hereof, provided, however, in determining that an agency’s status as a HUD-approved housing counseling agency or HUD-approved intermediary has not been suspended or revoked, NeighborWorks has relied solely on information provided by HUD as of the date hereof.
2. NeighborWorks shall enter into Funding Agreements only with Eligible Agencies that (i) complete an “intention to participate” application, as more particularly described in the Statement of Work, and (ii) NeighborWorks determines, in its best judgment, have the requisite ability and capacity to comply with the terms of the applicable Funding Agreement, which determination shall be based upon each Eligible Agency’s past and current performance under the NFMC Program, together with any other information about the Eligible Agency of which NeighborWorks has knowledge. Furthermore, NeighborWorks will contractually require that each Participating Agency contract or otherwise engage only those Subagencies that (a) meet or exceed the eligibility requirements for approval as a HUD-approved housing counseling agency under 24 CFR 214, and (b) the Participating Agency determines, in its best judgment, have the requisite ability and capacity to comply with the terms of the applicable Funding Agreement. Such requisite ability and capacity shall include, without limitation, skill and competency concerning: the interviewing of homeowners regarding financial circumstances, collection and review of standard disclosure and authorization documents, evaluation of income and asset documentation, and the eligibility and application requirements of MHA.
3. NeighborWorks shall, at Treasury’s request, (a) exclude or otherwise remove an organization or entity from participation in the In-Take Component, whether as a Participating Agency, Subagency or otherwise, and/or (b) impose additional requirements or special conditions on any such organization or entity which, in Treasury's reasonable determination, demonstrates any of the adverse behavior or

characteristics identified in Article XIV (A). Treasury may make requests pursuant to this paragraph in its sole discretion and at any time.

4. NeighborWorks shall not enter into Funding Agreements or otherwise contract with any organization that appears as an “excluded party” on SAM as of the date of such Funding Agreement or contract.

**B. Funding Agreements.**

1. NeighborWorks shall execute a written agreement (each a “Funding Agreement”) with each Participating Agency before disbursing funds provided by Treasury to such Participating Agency. All Funding Agreements must conform to a standard form of Funding Agreement approved by Treasury. In addition, notwithstanding anything to the contrary contained herein, NeighborWorks shall not commence the process of executing Funding Agreements without Treasury’s prior written approval.
2. The form of Funding Agreement shall contain such terms as are required under this Agreement, any terms required by Federal statute or regulation, any terms requested by Treasury in its reasonable discretion, and any additional terms consistent with this Agreement as NeighborWorks deems proper.
3. In furtherance of the foregoing, and not in limitation thereof, the form of Funding Agreement must, among other things, (i) clearly delineate the specific responsibilities and obligations of the Participating Agency, including appropriate time frames for reporting results to NeighborWorks and/or Treasury, for which the Participating Agency shall be held responsible, (ii) grant NeighborWorks and Treasury the right to Recapture funds directly from the Participating Agency as set forth herein and in the Funding Agreement, (iii) include a certification that the Participating Agency and each Subagency it oversees meets the applicable requirements in the Funding Agreement, (iv) require each Participating Agency to make periodic certifications to NeighborWorks and Treasury concerning its compliance with the terms of its Funding Agreement, (v) require the Participating Agency to comply with the provisions of this Agreement which are stated to apply to Participating Agencies, and (vi) require that the Participating Agency and any Subagency it oversees continue to meet the eligibility criteria described in Section (A) (1) of this Article VII throughout the term of the Funding Agreement.

- C. Funding Announcements. NeighborWorks shall afford Treasury a reasonable opportunity to review and comment on Funding Announcements prior to publication.

**VIII. CONDUCT OF WORK**

NeighborWorks shall submit all reports or other materials required to be provided to Treasury hereunder to such individuals as Treasury directs from time to time. Treasury may issue written instructions to NeighborWorks to supplement the Statement of Work. Such instructions must

be within the scope of the work set forth in this Agreement, and may not be of such a nature as to increase NeighborWorks' obligations above those provided for in the Budget, Period of Performance, or any other provisions of this Agreement. Treasury may, with prior written notice to NeighborWorks, designate one or more representatives to act on its behalf in connection with this Agreement, and/or to assist with management, monitoring or oversight of this Agreement.

NeighborWorks and each Participating Agency shall (i) perform its respective obligations under the Operative Documents in accordance with practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which NeighborWorks and the Participating Agency exercises or would exercise for itself under similar circumstances, and (ii) use qualified individuals with suitable training, education, experience and skills to perform its respective obligations.

## **IX. FUNDING**

- A. Generally. NeighborWorks shall be paid in accordance with the terms of this Agreement for all work required, performed, and accepted under the Agreement, in an amount not to exceed the Maximum Budgeted Amount.
- B. Multiple Sources of Funding.
- a. NeighborWorks shall not be entitled to receive funds hereunder for costs or services (or the portion thereof) which are funded from any other source. NeighborWorks shall include in its invoices under this Agreement only the portion of those costs or services for which NeighborWorks has not received an advance, and does not receive reimbursement, from any other funding source.
  - b. Participating Agencies shall not be entitled to receive funds under their respective Funding Agreements for costs or services (or the portion thereof) which are funded from any other source.
  - c. Treasury shall have the right to Recapture any funds provided hereunder which are obtained or used in violation of this Article IX (B). Funds provided under Funding Agreements which are obtained or used in violation of this Article IX (B) shall be subject to Recapture by NeighborWorks and/or Treasury, as more particularly set forth in such Funding Agreements.
- C. Burden of Proof. The burden of proof for payment due to NeighborWorks under this Agreement rests with NeighborWorks. All supporting records are subject to inspection and audit by Treasury at any time during the Period of Performance, and for a period of three years after the expiration of the Period of Performance, or the date of the last payment to NeighborWorks, whichever occurs last.
- D. Prompt Use of Funds. With respect to funds provided to NeighborWorks in the nature of a cost reimbursement paid in advance or otherwise required to be disbursed to third parties,

including, without limitation, funds to support DPS Fees, Outreach Support and Oversight Fees, NeighborWorks shall disburse such funds to the applicable recipient in a timely fashion.

E. Restrictions on Use of Funds. The funds provided by Treasury under this Agreement shall be used strictly in accordance with this Agreement or as otherwise approved in writing by Treasury.

1. Limitation on Payments to Contractors. NeighborWorks shall not use, and shall prohibit Participating Agencies from using, funds provided by Treasury hereunder to pay or to provide reimbursement for compensation of a contractor at a rate above the market rate for comparable services in the geographic region where such services are being provided.
2. Delinquent Federal Debt. NeighborWorks may not use funds provided by Treasury hereunder to pay or to provide reimbursement to any Participating Agency or contractor that is, to NeighborWorks' knowledge, delinquent on any Federal debt. In furtherance of the foregoing, and not in limitation thereof, NeighborWorks shall obtain a written certification from (i) each Participating Agency as of the date of the executed Funding Agreement, and (ii) each contractor as of the date of an executed contractor agreement for the purpose of complying with the terms of this Article IX (E) (2).
3. Cost Reimbursements. All restrictions set forth in this Agreement and the Funding Agreements with respect to the use of funds by NeighborWorks and Participating Agencies shall be deemed to apply not only to funds provided in advance and thereafter expended by the recipient, but also to funds provided as reimbursement for costs previously incurred and paid by the recipient.

F. Start-Up Period.

1. NeighborWorks shall use its reasonable best efforts to accomplish each of the following (the "Preliminary Objectives") within the first eight (8) weeks following the Effective Date (the "Start-Up Period"):
  - a. Complete all developments described in the Statement of Work related to the Internet Portal and GrantWorks, and any other information technology necessary for the effective implementation of the In-Take Component.
  - b. Prepare the Compliance Plans (as defined in Appendix E) in a form approved by Treasury; or, if such documents cannot reasonably be prepared during the Start-Up Period, then at a minimum, prepare a description of the key risks and mitigating controls to be tested under the Compliance Plans, in a form approved by Treasury, which NeighborWorks shall then use as the framework for developing the Compliance Plans.

- c. Prepare the Compliance Policy (as defined in Appendix E) in a form approved by Treasury.
- d. Select a Compliance Agent (as defined in Appendix E) to be approved by Treasury.
- e. Prepare the form of “intention to participate” application and form of Funding Agreement, each in a form approved by Treasury.
- f. Review all “intention to participate” applications submitted during the Start-Up Period and make provisional funding allocations for DPS Fees, Oversight Fees and Outreach Funds, all in accordance with the Statement of Work.
- g. Prepare guidance relating to approved outreach activities, as more particularly described in the Statement of Work, in a form approved by Treasury.
- h. Prepare such training materials and otherwise make such arrangements as are necessary to commence training as more particularly described in the Statement of Work.
- i. Develop the operational and performance metrics described in Article XI of the Agreement and Appendix D (Reporting Requirements) and establish the related reporting regime.
- j. Provide the deliverables required under Article XVIII (B) (i)-(iii) hereof (Security of Confidential Information).

Treasury shall respond in a timely fashion to requests for approval of the foregoing items. Treasury hereby acknowledges that NeighborWorks’ ability to accomplish the Preliminary Objectives is highly dependent upon Treasury providing responses in a timely fashion.

2. Notwithstanding anything to the contrary contained herein, during the Start-Up Period, Treasury’s obligation to provide funds in connection with the In-Take Component shall be limited to funding costs which are reasonably necessary to complete the Preliminary Objectives. Funding of all other amounts related to the In-Take Component, including, without limitation, DPS Fees, Oversight Fees, Outreach Funds and Supplemental Outreach Funds, is expressly conditioned on the completion of the Preliminary Objectives to Treasury’s reasonable satisfaction, which NeighborWorks shall certify to in writing at Treasury’s request.

## **X. PAYMENT REQUESTS**

- A. Payment Method and Procedures. NeighborWorks shall request and receive payment pursuant to the procedures set forth on Appendix B attached hereto, or such other

methods and procedures as Treasury may provide from time to time. NeighborWorks is required to separately account for the funds provided by Treasury under this Agreement.

- B. Active Registration in SAM. Treasury will not release funds to NeighborWorks if NeighborWorks does not have an active registration in SAM; and where the DUNS number, Taxpayer Identification Number (TIN), and name and address of the applicant organization do not match SAM data files.
- C. Payment Terms.
1. Allowable Costs. Treasury's obligation to provide funds hereunder is limited to costs incurred in the performance of this Agreement which are determined by Treasury to be allowable, allocable, and reasonable in accordance with (A) the provisions of this Agreement, (B) applicable federal cost principles as outlined in OMB Circular A-122 (Cost Principles for Non-Profit Organizations), now codified in 2 CFR 230, and OMB Circular A-87 (Cost Principles for State, Local and Indian Tribal Governments), now codified in 2 CFR 225, and (C) any other authoritative guidance which Treasury determines is applicable, upon prior written notice to NeighborWorks (collectively, "Allowable Costs").
  2. Period of Availability of Funds. Any funds requested by NeighborWorks must be for Allowable Costs resulting from obligations that NeighborWorks incurs (i) during the Period of Performance, in accordance with the Budget, or (ii) thereafter, as set forth in Article V (B) (i).
  3. Profits. No fee, profit, or other increment above Allowable Costs shall be paid to NeighborWorks or any Participating Agency.
  4. Standards for Financial Management Systems. NeighborWorks shall maintain and operate financial management systems that meet or exceed the standards for fund control and accountability as established by OMB Circular A-110, 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*, as amended.
- D. Source Documentation of Expenses. NeighborWorks shall maintain source documentation of direct costs, such as invoices, receipts, cancelled checks, and salary reports, to support all requests for payment. This information must be made available to Treasury upon request and maintained for a period of at least three years after the expiration of the Period of Performance, or the date of last payment, whichever occurs last.
- E. Certification. In addition to the other requirements set forth in this Article X, NeighborWorks shall provide, concurrently with each request from NeighborWorks for payment, a certification signed by an authorized representative of NeighborWorks in the form attached hereto as Appendix C.

- F. Withholding or Suspension of Payment. Treasury may, in its discretion, withhold or suspend payment to NeighborWorks for failure to comply materially with any term, agreement, covenant or condition of this Agreement or any of the other Operative Documents. NeighborWorks shall, at Treasury's request, withhold or suspend payment to any Participating Agency that fails to comply materially with any term, agreement, covenant or condition set forth in this Agreement, the applicable Funding Agreement or any of the other Operative Documents.
- G. Payment in Error. In the event of a discrepancy or error in the amount of funds provided by Treasury hereunder, at Treasury's election, (x) NeighborWorks shall remit to Treasury the amount of any overpayment within thirty (30) days of receiving a refund request from Treasury, or (y) Treasury may immediately offset the amount of the overpayment against other amounts due and payable to NeighborWorks by Treasury, upon prior written notice to NeighborWorks. NeighborWorks shall still be obligated to disburse funds to third parties to the extent required hereunder, notwithstanding such offset.
- H. Funds Recapture.
1. Treasury may Recapture (i) any Unspent Funds from the entity holding such Unspent Funds, (ii) from NeighborWorks, any funds provided hereunder and obtained or used by NeighborWorks in violation of this Agreement, (iii) from each Participating Agency, any funds provided hereunder and obtained or used by such Participating Agency in violation of the applicable Funding Agreement, and (iv) such other funds as Treasury is permitted to Recapture under this Agreement and the Funding Agreements.
  2. NeighborWorks shall, and shall require each Participating Agency to, cooperate with Recapture requests, including any documentation requests, and shall return all requested funds within the timeframes required in the Operative Documents or otherwise stated in Treasury's written requests. Treasury may utilize Recaptured funds in any manner allowable under the law.

## **XI. REPORTING**

As a general matter, NeighborWorks shall develop and maintain operational and performance metrics and a detailed financial reporting system to track, to the satisfaction of Treasury, applicable data concerning the volume and performance of the In-Take and Outreach Components. Such information shall be compiled into a report by NeighborWorks in a format and with the frequency agreed upon by the parties from time to time, but with respect to the In-Take Component, no more frequently than monthly. Treasury may impose additional reporting requirements or request additional metrics from time to time, with NeighborWorks' consent (which shall not be unreasonably withheld) and provided the same is within the constraints of the Budget. Treasury may make any or all data reported by NeighborWorks available to the public. NeighborWork shall implement procedures designed to omit personally identifiable information (PII) from any materials provided by NeighborWorks or its contractors (including, without limitation, HOPE Loan Port®) to Treasury. However, to the extent Treasury comes into

possession of PII, Treasury shall not release such information in violation of applicable laws, including, without limitation, the Privacy Act.

In addition to other reporting requirements contained herein, NeighborWorks shall provide the reports described on Appendix D attached hereto. Submission by NeighborWorks of any reports required in this Article beyond the agreed upon and stated due dates will be considered delinquent unless extended, in writing, by Treasury.

## **XII. OVERSIGHT AND INTERNAL CONTROL**

### **A. General Oversight of NeighborWorks and Participating Agencies.**

1. NeighborWorks and each Participating Agency shall comply with all monitoring and oversight conducted by Treasury related to this Agreement.
2. Treasury, the Treasury Inspector General, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), the Government Accountability Office (GAO), and other entities designated by Treasury (collectively, the “Examiners”) shall have the right during normal business hours to conduct unannounced, informal onsite visits and to conduct formal onsite and offsite physical, personnel and information technology testing, security reviews, and audits of NeighborWorks and each Participating Agency, and to examine all books, records and data related to the activities performed and funds provided under this Agreement and the Funding Agreements. NeighborWorks and each Participating Agency shall promptly provide any data or other reporting requested by the Examiners.
3. NeighborWorks and the Participating Agencies shall promptly take corrective and remedial actions associated with reporting and reviews as directed by Treasury or its designee and provide evidence of the effective implementation of corrective and remedial actions as Treasury shall require.

### **B. Fraud Monitoring.** NeighborWorks acknowledges that Treasury or its designees may develop and implement practices to monitor, detect and prevent fraud related to MHA, including the In-Take and Outreach Components, and monitor compliance with Applicable Laws. NeighborWorks covenants that it will fully and promptly cooperate with Treasury's or its designees' inquiries about any alleged, perceived or actual fraud and comply with any anti-fraud and legal compliance procedures which Treasury may require.

### **C. NeighborWorks' Oversight of Participating Agencies.**

1. NeighborWorks shall, in consultation with Treasury as provided herein, establish processes and procedures to monitor the performance of Participating Agencies and maintain quality control over such performance. In particular, NeighborWorks shall (i) monitor Participating Agencies using methodologies, including, without limitation, sampling methodologies, designed to validate that funds provided by Treasury are used solely for authorized purposes in compliance with Applicable

- Laws and the provisions of the Operative Documents; and (ii) advise each Participating Agency of requirements imposed on the Participating Agency by Applicable Laws and this Agreement, and any supplemental requirements imposed by NeighborWorks.
2. Pursuant to procedures approved by Treasury or otherwise in consultation with Treasury, NeighborWorks shall take reasonable action to resolve any known compliance-related problems with this Agreement, the Funding Agreements and other applicable agreements and laws. Such compliance-related problems include, but are not limited to: knowledge gaps of participating housing counselors regarding program requirements and patterns or practices of poor performance which impact the quality of data submitted by the Participating Agency.

D. Internal Control Reviews.

1. NeighborWorks shall develop, enforce and review on a periodic basis the performance of its internal control program, which shall be designed to (i) minimize the risk of fraud; (ii) mitigate conflicts of interest; and (iii) enhance compliance with this Agreement to the reasonable satisfaction of Treasury (the “Internal Control Program”). In addition, NeighborWorks shall provide to Treasury copies of its audited financial statements and an independent auditor’s report issued under OMB Circular A-133, in each case, relating to NeighborWorks’ fiscal year ending on September 30, 2012, and each subsequent fiscal year that falls, in whole or in part, within the Period of Performance.
2. NeighborWorks shall provide Treasury or its designee with access to all final audit reviews and reports that, in whole or in part, relate to or reference the activities described herein, including those prepared by internal audit departments and/or independent auditing firms, to enable Treasury to examine NeighborWorks and the Participating Agencies for compliance with applicable provisions of this Agreement, the Funding Agreements and Applicable Laws. A copy of the reviews and reports will be provided to Treasury upon request.

E. Compliance Requirements. Additional requirements relating to the internal control and other compliance reviews for NeighborWorks and Participating Agencies, and reporting by NeighborWorks in relation thereto, are set forth on Appendix E attached hereto (the “Compliance Requirements”), which requirements shall be implemented by NeighborWorks and the Participating Agencies to Treasury’s satisfaction.

F. Inspection and Acceptance. Treasury shall have the right to inspect, correct and accept any work product or other deliverables provided for under this Agreement. NeighborWorks shall inspect and accept the services and deliverables provided to it by its Participating Agencies and the acceptance of such services and deliverables shall be subject to satisfactory Participating Agency performance.

- G. Financial Statements. During the Period of Performance, and thereafter for so long as NeighborWorks has reserved funds pursuant to Article V (B)(i) hereof, NeighborWorks shall provide Treasury with annual audited financial statements no later than one hundred eighty (180) days after the end of its fiscal year, commencing with the first fiscal year ending after the Effective Date.
- H. Records Retention. NeighborWorks and each Participating Agency shall retain all data, books, reports, documents, audit logs and records, including electronic records, related to this Agreement, the applicable Funding Agreement and the activities performed in connection therewith. Unless otherwise directed by Treasury, NeighborWorks and each Participating Agency shall retain these records for at least three (3) years following the expiration or earlier termination of this Agreement, or such longer period of time as may be required under Applicable Laws.

### **XIII. OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS.**

- A. No Conflicts. NeighborWorks hereby represents, warrants and covenants that the execution and delivery of this Agreement, and the performance by NeighborWorks of its obligations hereunder, do not and will not conflict with, result in a breach of, or constitute a default under any existing agreement or instrument to which NeighborWorks is subject to or bound.
- B. Disclosure. NeighborWorks hereby represents and warrants that neither this Agreement nor any certification, document or instrument delivered to Treasury by NeighborWorks pursuant to this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of circumstances under which they were made, not misleading. NeighborWorks has disclosed, in writing, to Treasury all facts that might reasonably be expected to result in a material adverse effect upon NeighborWorks' ability either to conduct its business or to carry out the purpose of this Agreement. NeighborWorks has not knowingly and willfully made or used a document or writing containing any false, fictitious or fraudulent statement or entry as part of its correspondence or communication with Treasury.
- C. Notice of Material Events. NeighborWorks shall promptly notify Treasury in writing in reasonable detail of any of the following events:
- (i) any proceeding instituted against NeighborWorks in, by or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets or properties of NeighborWorks;
  - (ii) any material adverse change in the condition, financial or otherwise, or operations of NeighborWorks;
  - (iii) the occurrence of an Event of Default, or any event which can reasonably be expected to result in an Event of Default;

- (iv) problems, delays, or adverse conditions, real or anticipated, that will materially impair NeighborWorks' ability to accomplish the purpose of this Agreement, with a description of actions taken or contemplated to be taken, and any assistance needed to resolve the situation;
  - (v) favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned;
  - (vi) as soon as legally possible, any change in NeighborWorks' organizational form or structure, including by way of merger, acquisition or other change in control, and any action taken by NeighborWorks or its board of directors in furtherance of any of the foregoing; and
  - (vii) any other facts or information that NeighborWorks may learn and that Treasury would reasonably expect to be informed about in order to protect the reputational interests of Treasury and MHA, including, without limitation, facts or information concerning NeighborWorks, the Participating Agencies and their respective contractors.
- D. Congressional Inquiries. Treasury shall use reasonable efforts to inform NeighborWorks of any formal, written inquiries received from Congress that both (i) relate directly to the subject matter of this Agreement, and (ii) contain information which NeighborWorks would reasonably expect to know in order to protect its reputational interests.
- E. Compliance with Applicable Laws. NeighborWorks represents and warrants that it is in compliance with, and covenants that it shall perform its obligations under this Agreement in compliance with and subject to, all applicable Federal, State, and local laws, regulations, regulatory guidance, statutes, ordinances, codes, OMB Circulars and other requirements ("Applicable Laws"). NeighborWorks shall require each Participating Agency to perform its respective obligations under the applicable Operative Documents in compliance with and subject to Applicable Laws.
- F. False Statements. NeighborWorks acknowledges that the provision of false or misleading information to Treasury in connection with this Agreement may constitute a violation of (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§ 3729-3733). NeighborWorks covenants to immediately disclose to Treasury any discovered credible evidence, in connection with this Agreement and the activities performed hereunder, that a management official, employee, or contractor of NeighborWorks has committed, or may have committed, a violation of the referenced statutes or other wrongdoing.
- G. WARRANTIES. (I) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO DELIVERABLES AND

SERVICES PROVIDED UNDER THIS AGREEMENT, AND (II) EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

#### **XIV. DEFAULTS AND REMEDIES**

A. Special Conditions. Treasury may, in its discretion, impose additional requirements or special conditions on NeighborWorks, which may involve, among other things, withholding payment of funds, if, in Treasury's reasonable determination, NeighborWorks demonstrates any of the following adverse behavior or characteristics:

- (i) sustained poor performance;
- (ii) is financially unstable or lacks an appropriate management structure;
- (iii) has not complied with the terms and conditions of this Agreement; or
- (iv) has engaged in behavior which, in Treasury's determination, poses a material risk to the reputational interests of Treasury or MHA;

provided that the applicable party is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

B. Events of Default. Each of the following shall be deemed an Event of Default under this Agreement: (1) any material failure by NeighborWorks to comply with the terms and conditions of this Agreement, (2) any representation, warranty or covenant made by NeighborWorks in this Agreement, or any certification made by NeighborWorks and provided hereunder from time to time, is or becomes materially false, misleading, incorrect or incomplete, (3) NeighborWorks or any of its employees or contractors commits a grossly negligent, willful or intentional, or reckless act (including, but not limited to, misrepresentation or fraud) in connection with its performance under this Agreement.

C. Notice of Default. Prior to exercising or imposing any remedy contained in Section D below other than Section D (i), Treasury will notify NeighborWorks in writing of the applicable Event of Default and the proposed remedy. In addition, if such Event of Default is, in Treasury's reasonable determination, curable, Treasury will provide NeighborWorks with a reasonable opportunity to take corrective action. The notice shall identify, as applicable, (1) the Event of Default, (2) the required corrective action by NeighborWorks, (3) the date by which the corrective action must be taken, and (4) the consequences for failing to take corrective action and/or the proposed remedy.

D. Remedies. Subject to Section C above, Treasury may take one or more of the following actions upon the occurrence of an Event of Default:

- (i) withhold payment of funds until the Event of Default is cured;
- (ii) wholly or partly reduce, suspend, or terminate Treasury's commitment to provide funds under this Agreement;
- (iii) Recapture from NeighborWorks any (x) Unspent Funds, (y) funds that were obtained or used by NeighborWorks in violation of this Agreement, and/or (z) funds that were otherwise provided by Treasury hereunder and related to the Event of Default;
- (iv) terminate this Agreement, effective immediately or otherwise; and/or
- (v) take any other remedies available at law or in equity.

E. Enforcement of Funding Agreements.

- (i) NeighborWorks shall enforce the terms and conditions of each Funding Agreement, including, without limitation, by exercising the rights and remedies available to it thereunder, in accordance with policies and procedures acceptable to Treasury or otherwise at Treasury's request.
- (ii) Treasury shall, if it chooses in its sole discretion, be subrogated and entitled to the rights of NeighborWorks under all or Funding Agreements. If requested by Treasury, NeighborWorks shall execute documents to evidence the transfer to Treasury of these rights and remedies. NeighborWorks shall permit Treasury to sue, compromise, or settle any transaction or litigation involving these rights and remedies as if Treasury had assumed all the rights and remedies of NeighborWorks under the Funding Agreements.
- (iii) Treasury shall be named in each Funding Agreement as an intended third-party beneficiary thereof and shall be entitled to enforce any right thereunder for Treasury's benefit.
- (iv) NeighborWorks shall fully cooperate with, and provide reasonable support and assistance to, Treasury in connection with Treasury's efforts, if any, to enforce any rights and remedies available to Treasury, whether by subrogation, as a third party beneficiary, or otherwise, under or in connection with each Funding Agreement.

## **XV. TERMINATION**

Either party may, in its sole discretion and for any reason, elect to terminate this Agreement in its entirety upon sixty (60) days written notice to the other party. NeighborWorks and each Participating Agency shall thereafter diligently proceed to wind down its respective activities

related to this Agreement, and shall be entitled to payment of all amounts due and payable as of the date on which this Agreement is terminated.

## **XVI. DISPUTES**

Treasury and NeighborWorks agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises under the Agreement, the parties will use all reasonable efforts to promptly 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 expeditiously referred up the respective chain of command of each party in an attempt to resolve the matter. Pending resolution of the dispute, NeighborWorks shall continue diligent performance of its obligations under the Agreement to the extent such obligations are not the direct subject of the dispute. Treasury and NeighborWorks reserve the right to pursue other legal or equitable rights they may have concerning any dispute.

## **XVII. AUDIT REQUIREMENTS**

NeighborWorks shall perform its obligations hereunder in a manner that would satisfy the requirements of the Single Audit Act (31 U.S.C. §§ 7501-07) and OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (Revised June 27, 2003), as they may be amended from time to time, as if such requirements applied. This includes, without limitation, the requirements of a pass-through entity subject to the Single Audit Act, 31 U.S.C. § 7502(f) (2), and OMB Circular A-133, §400(d), such as sharing information with Participating Agencies; monitoring the activities and finances of Participating Agencies; ensuring that Participating Agencies satisfy the single audit requirements; reviewing Participating Agencies' audits; and ensuring that corrective action is taken to resolve audit findings.

## **XVIII. SECURITY OF CONFIDENTIAL INFORMATION**

- A. Systems Confidentiality Protocols. NeighborWorks shall, and shall require each Participating Agency to, undertake customary and industry standard efforts to ensure that their respective systems developed and utilized in connection with this Agreement and the Funding Agreements protect the confidentiality of a homeowner's personal and financial information, both electronic and paper, whether the information is received from the homeowner or from another source. NeighborWorks shall, and shall require each Participating Agency to, undertake customary and industry standard efforts so that neither they nor their respective systems vendors disclose any homeowner's personal or financial information to anyone except for authorized personnel in accordance with this Agreement or the applicable Funding Agreement. The only exception to this requirement shall be when a homeowner expressly grants permission. NeighborWorks and Treasury hereby acknowledge: (1) that the systems used by NeighborWorks in performance of its obligations hereunder, including, without limitation, HOPE LoanPort®, CounselorMax and GrantWorks, are systems external to Treasury, and will not be connected to, or have access to Treasury information systems, and (2) that none of the foregoing systems is a Treasury information system.

- B. Compliance with Applicable Laws and Regulations. NeighborWorks shall, and shall require each Participating Agency and contractor to, comply with applicable Federal statutes, regulations, policies and procedures governing the security of the system(s) to which NeighborWorks or the Participating Agency, as applicable, has access, including, but not limited to (i) Federal Information Security Management Act (FISMA) of 2002; (ii) OMB Circular A-130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources; (iii) Federal Information Processing Standards 201 (FIPS 201), Sections 2.1 and 2.2; (iv) Homeland Security Presidential Directive 12 (HSPD-12); and (v) OMB Memorandum M-05-24, Implementing Guidance for HSPD-12).

NeighborWorks may demonstrate compliance with applicable Federal statutes, regulations, policies and procedures governing the security of the system(s) to which NeighborWorks has access by providing Treasury with the following:

- (i) Certified copy of a (a) SAS-70 Certification, or (b) Type II SSAE 16/Service Organizational Control Report (SOC 2), in each case, completed in the last 24 months, from the respective contractors for the HOPE LoanPort® and CounselorMax systems, and shall require such contractors to maintain such certifications during the life of the Agreement.
  - (ii) A completed IT Security Checklist (in a form to be provided by Treasury);
  - (iii) Such other deliverables as the parties agree to.
- C. Procedures. NeighborWorks must establish, implement and administer procedures to comply with all security and privacy policies outlined in this Article XVIII.
- D. Confidentiality. Treasury will use reasonable best efforts to hold in confidence the reports (each a “Report”) delivered pursuant to Section (B) (i) of this Article (except to the extent that any such Report can be shown to have been (i) previously known by Treasury on a non-confidential basis, (ii) in the public domain through no fault of Treasury or (iii) otherwise lawfully available to Treasury (and without violation of any other confidentiality obligation of Treasury)); provided that nothing herein shall prevent Treasury from disclosing any Report (x) to the extent required by applicable laws or regulations, (y) to any governmental, regulatory or enforcement agency or representative thereof or pursuant to any legal or judicial process, or (z) with the consent of NeighborWorks (not to be unreasonably withheld). Treasury understands that the Reports may contain commercially sensitive confidential information entitled to an exception from a Freedom of Information Act request.

## **XIX. INTELLECTUAL PROPERTY**

Treasury shall have Limited Rights with respect to all Data produced, developed or obtained by NeighborWorks and/or each Participating Agency or contractor thereof in connection with the In-Take Component and Outreach Component. NeighborWorks consents, and shall require each

Participating Agency to consent, to the publication of its name, this Agreement and any other Operative Document, and the use and publication of its Data, subject to applicable state and federal laws regarding confidentiality, in any form and on any media utilized by Treasury, including, but not limited to, on any website or webpage hosted by Treasury, in connection with MHA.

Notwithstanding anything to the contrary contained herein, Treasury acknowledges that NeighborWorks and its contractor, HOPE LoanPort®, shall retain all right, title and interest in their respective proprietary data and other intellectual property developed prior to this Agreement. Further, Treasury acknowledges that any and all modifications and enhancements to CounselorMax, GrantWorks or any other proprietary software and intellectual property of NeighborWorks is the property of NeighborWorks. In addition, NeighborWorks and Treasury acknowledge that any and all modifications and enhancements to HOPE LoanPort® or any other proprietary software and intellectual property of HOPE LoanPort® shall be the property of HOPE LoanPort® and/or its licensors. NeighborWorks agrees, and where applicable, shall ensure through any related contract or Funding Agreement, that Treasury retains an unlimited right of use of CounselorMax, GrantWorks, HOPE LoanPort®, and any other proprietary software and intellectual property related to, and for the duration of, this Agreement.

In addition, NeighborWorks agrees, and where applicable, shall ensure through any related contract or Funding Agreement, that Treasury retains a perpetual unlimited right of use of any and all developments, modifications, and enhancements to CounselorMax, GrantWorks, HOPE LoanPort®, or any other proprietary software and intellectual property, in so far as said development, modification, or enhancement was paid for with funds provided by Treasury to NeighborWorks under this Agreement. In so far as Treasury desires general access to and/or full use of CounselorMax, GrantWorks, HOPE LoanPort®, and any other proprietary software and intellectual property, NeighborWorks and/or its contractor, HOPE LoanPort®, shall have the right to charge fees customarily charged for access to and support of CounselorMax, GrantWorks, HOPE LoanPort®, and that other associated proprietary software and intellectual property.

## **XX. PRIVACY ACT; FREEDOM OF INFORMATION ACT; OVERSIGHT BODIES**

- A. NeighborWorks acknowledges that it, and each Participating Agency, may be required to assist Treasury with responses to inquiries made under the Privacy Act of 1974, 5 USC § 552a (the “Privacy Act”), inquiries made under the Freedom of Information Act, 5 USC § 552, formal inquiries from Congressional committees and members, the Government Accountability Office, Inspector Generals, and other governmental entities, as well as inquiries from media and consumer advocacy groups about MHA and the activities performed by NeighborWorks and Participating Agencies in connection with this Agreement.
- B. NeighborWorks covenants that it will, and will require Participating Agencies to, respond promptly and accurately to all such requests made by Treasury, comply with any related procedures which Treasury may establish, and provide related training to employees and contractors. In connection with Privacy Act inquiries, NeighborWorks covenants that it

will, and will require Participating Agencies to, provide updated and corrected information as appropriate about homeowner' records to ensure that any system of record maintained by Treasury is accurate and complete.

**XXI. NOTICES**

All legal notices under the Agreement shall be in writing and addressed to each party at the address listed below, or at such other address as may be designated in writing by such party from time to time. All such notices under the Agreement shall be considered received: (a) when personally delivered; (b) when delivered by commercial overnight courier with verification receipt; (c) when sent by confirmed facsimile or electronic mail, or (d) three (3) days after having been sent, postage prepaid, via certified mail, return receipt requested.

To NeighborWorks:

NeighborWorks America  
1325 G Street, NW  
Suite 800  
Washington, D.C. 20005

Attn: [REDACTED]  
Telephone No.: [REDACTED]  
Facsimile No.: [REDACTED]

With a copy to:

NeighborWorks America  
1325 G Street, NW  
Suite 800  
Washington, D.C. 20005

Attn: [REDACTED]  
Telephone No.: [REDACTED]  
Facsimile No.: [REDACTED]

To Treasury:

U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C., 20220

Attn: [REDACTED]  
Telephone No.: [REDACTED]  
Facsimile No.: [REDACTED]  
Email address: [REDACTED]

**XXII. MISCELLANEOUS**

- A. No Waiver; Cumulative Rights. No delay or omission by Treasury to exercise any right, power or remedy available to it under this Agreement or applicable law or to insist upon strict compliance by NeighborWorks with its obligations hereunder shall impair, or constitute or be construed as a waiver of, any such right, power or remedy, including, without limitation, Treasury's right to demand exact compliance with the terms of this Agreement. No waiver will be valid unless in writing and signed by an authorized officer of the party providing the waiver. Each and every right, power, and remedy conferred in this Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein conferred or now or hereafter existing at law or in equity.
- B. Counterparts. This Agreement may be executed in two or more counterparts, and it shall not be necessary that the signatures of each of the parties hereto be contained on any one counterpart thereto; each counterpart shall be deemed an original, but all counterparts together shall constitute one and the same instrument.
- C. Section Headings and Subheadings. The section headings and subheadings contained in this Agreement are included for convenience only, and shall not limit or otherwise affect the terms of this Agreement.
- D. Further Assurances. Each party hereto shall execute and deliver such additional documents as may be necessary or desirable to consummate the rights and obligations contemplated by this Agreement.
- E. Assignment; Successors and Assigns. This Agreement shall not be assigned by any of the parties hereto without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of Treasury and NeighborWorks and their respective successors and permitted assigns.
- F. Relationship of the Parties. Neither of the parties is an agent of the other party and neither party has the authority to represent or bind the other party to anyone else as to any matter. This Agreement 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.
- G. Survival. Any provisions of this Agreement that expressly or by their operation should reasonably continue to apply to a party after the expiration or termination (in whole or in part) of this Agreement shall continue in full force and effect for such time as is necessary to fully carry out the intent of such provisions. All representations, warranties, covenants, and agreements made by NeighborWorks in this Agreement or in any document, report, certificate, financial statement, note, or instrument now or hereafter furnished in connection with this Agreement shall survive the execution and delivery of this Agreement and the payment of funds hereunder by Treasury.

- H. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.
- I. Entire Agreement. This Agreement constitutes the entire agreement by and between NeighborWorks and Treasury with respect to the subject matter hereof, and it supersedes all prior or contemporaneous agreements, understandings, communications and proposals, whether electronic, oral, or written, by and between NeighborWorks and Treasury in respect thereof.
- J. Amendment. This Agreement may be amended solely by a written agreement executed by both parties hereto.
- K. Appendices. All Appendices to this Agreement are incorporated herein by reference as if fully set forth herein, and all references herein to “this Agreement” shall include all Appendices attached hereto.
- L. No Third Party Beneficiaries. Nothing express or implied herein is intended or shall be construed to confer upon, or to give, any person other than Treasury and NeighborWorks, and their respective successors and permitted assigns, any right, remedy or claim under or by reason of this Agreement or of any term, condition, representation, warranty, covenant, or agreement contained herein, and all of the terms, conditions, representations, warranties, covenants, and agreements contained herein shall be for the sole and exclusive benefit of Treasury and NeighborWorks, and their respective successors and permitted assigns.
- M. Headings. The descriptive headings of the various articles and sections contained in this agreement were formulated and are for convenience only and shall not be deemed to affect the meaning or construction of the provisions hereof.
- N. Publicity. NeighborWorks shall consult with Treasury to develop a communication and outreach strategy to ensure that any public messages related to the In-Take and Outreach Components is consistent with the intent of this Agreement. NeighborWorks shall notify Treasury at least two (2) business days in advance of any such public message and provide a copy of any proposed press releases or other public statement (including, without limitation, marketing and outreach materials) that refer to the In-Take and Outreach Components, NeighborWorks' participation therein or the results thereof. Treasury shall have the right to object to or modify such press release or statement, in its sole discretion. In the event Treasury does not respond to the press release or statement within such two (2) business day period then it shall be deemed permissible to publish. Neither party shall issue any advertising, signage, or press release in connection with the subject matter of this Agreement mentioning the other party, without prior consultation with such other party; provided, however, neither party shall be permitted to use the other party's logo without such other party's prior written consent. Nothing in this paragraph shall prevent a party from disclosing any information to the extent required by applicable

laws or regulations or by any subpoena or similar legal process. This Section shall survive the termination or expiration of this Agreement.

- O. Limitation of Liability. IN NO EVENT SHALL TREASURY'S LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT, UNDER ANY THEORY OF LAW OR CAUSE OF ACTION, EXCEED THE MAXIMUM BUDGETED AMOUNT. IN NO EVENT SHALL EITHER PARTY, OR ITS RESPECTIVE OFFICERS, DIRECTORS EMPLOYEES, AGENTS OR AFFILIATES, BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND UNDER ANY LEGAL THEORY OR CAUSE OF ACTION IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORSEEABLE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT (I) TREASURY'S OBLIGATION TO REMIT THE MAXIMUM BUDGETED AMOUNT IN ACCORDANCE WITH THE TERMS HEREOF, OR (II) NEIGHBORWORKS' OBLIGATION TO REMIT TO TREASURY FUNDS WHICH ARE SUBJECT TO RECAPTURE IN ACCORDANCE WITH THE TERMS HEREOF.

[No further text on this page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

UNITED STATES DEPARTMENT OF THE  
TREASURY

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

Name: Timothy G. Massad

Title: Assistant Secretary for Financial Stability

Date: February 14, 2013

NEIGHBORHOOD REINVESTMENT  
CORPORATION D/B/A NEIGHBORWORKS  
AMERICA

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

Name: Eileen Fitzgerald

Title: Chief Executive Officer

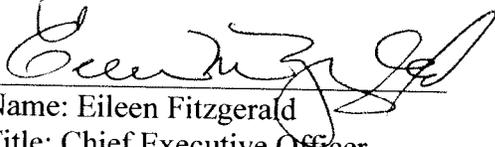
Date: February 14, 2013

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date.

UNITED STATES DEPARTMENT OF THE  
TREASURY

By: \_\_\_\_\_  
Name: Timothy G. Massad  
Title: Assistant Secretary for Financial Stability  
Date: February 14, 2013

NEIGHBORHOOD REINVESTMENT  
CORPORATION D/B/A NEIGHBORWORKS  
AMERICA

By:   
Name: Eileen Fitzgerald  
Title: Chief Executive Officer  
Date: February 14, 2013

**Appendix A:**

**Summary of Work  
Making Home Affordable Program**

<p><b>1. Overview</b></p>	<p>NeighborWorks will collaborate with Treasury to design and implement a process whereby housing counseling agencies participating in the NFMCA Program help homeowners apply for foreclosure prevention assistance under MHA. Specifically, Participating Agencies will (i) conduct outreach to potentially eligible homeowners, (ii) make preliminary assessments of eligibility, (iii) assist homeowners with preparing Initial Packages for MHA and (iv) deliver the completed Initial Packages to the appropriate servicer using a secure, internet-based document delivery portal (the Internet Portal).</p>
<p><b>2. Payments to Participating Agencies</b></p>	<p><b>Document Preparation and Submission (DPS) Fees.</b> Participating Agencies will be eligible to receive a fee (DPS Fee) for each Initial Package which is delivered by the agency to the appropriate servicer via the Internet Portal, provided the applicable servicer confirms, among other things, that the Initial Package is complete and that the homeowner meets the basic eligibility criteria for the applicable MHA Program. DPS Fees will be paid monthly in arrears.</p> <p><b>Oversight Fees.</b> State HFAs and Intermediaries who oversee a network of Subagencies will be eligible to receive an oversight fee (Oversight Fee). Fifty percent (50%) of Oversight Fees will be disbursed upon execution of a Funding Agreement, with the balance payable monthly thereafter based on the number of Initial Packages delivered by the applicable Participating Agency and Subagencies.</p> <p><b>Outreach Funds.</b> Participating Agencies will be eligible to receive funds (Outreach Funds) to support the cost of approved outreach activities designed to reach homeowners that are potentially eligible for MHA. Fifty percent (50%) of Outreach Funds will be disbursed upon execution of the Funding Agreement with the balance payable after the initial disbursement has been exhausted.</p> <p><b>Supplemental Outreach Funds.</b> Participating Agencies will be eligible to receive supplemental funds (Supplemental Outreach Funds) for outreach activities designed to target populations that are potentially eligible for MHA but require culturally and linguistically specialized services or are either underrepresented by mortgage modifications or disproportionately impacted by predatory lending or unemployment. Supplemental Outreach Funds will be disbursed according to approved outreach plans.</p>

<b>3. Internet Portal</b>	NeighborWorks will, itself or through the use of a third party contractor, develop and maintain an Internet Portal through which (i) Initial Packages can be electronically delivered by Participating Agencies to the applicable loan servicer, and (ii) servicers can electronically verify that the Initial Packages meet the requirements described above. In furtherance of the foregoing, NeighborWorks has elected to contract with HOPE Loan Port®.
<b>4. Counselor Training</b>	NeighborWorks will train Participating Agencies and their respective housing counselors to enable them to provide the in-take services contemplated herein. This training will generally consist of a combination of in-classroom training at NeighborWorks Training Institute, regional placed-based trainings and live webinars.
<b>5. Compliance</b>	NeighborWorks will develop and implement a compliance regime to evaluate compliance with project requirements, as more particularly described in the Agreement and Appendix E thereto.
<b>6. Homeowner Outreach Events</b>	At Treasury’s option, NeighborWorks will collaborate with Treasury on (i) up to six (6) “traditional” homeowner outreach events, at the rate of one per month beginning in April 2013 (each a “ <u>Traditional Event</u> ”), and (ii) up to twelve (12) “virtual” homeowner outreach events, at the rate of approximately two per month beginning in April 2013 (each a “ <u>Virtual Event</u> ”). Virtual Events will target markets and populations that may not be sufficiently served through Traditional Events.

## **Appendix B**

### Payment Procedures

1. Submission of Invoices. NeighborWorks will submit a single, itemized monthly invoice to Treasury, to include all payments described in the Agreement. Invoices must be submitted to Treasury within thirty (30) days after the end of each calendar month. Invoices should be submitted by electronic mail to such person(s) as Treasury instructs from time to time. Invoices shall contain a breakdown of each Budget line item from which funds are being requested.
2. Payment of Invoices. Treasury will use reasonable efforts to pay approved invoices (i.e., accompanied by appropriate supporting documentation and consistent with the Budget) within ten (10) business days after receipt from NeighborWorks. Payments will be made by electronic funds transfer to the account specified in SAM (the System for Award Management), or in such other manner as the parties agree to from time to time.
3. Transaction Processing and Support
  - a. In-Take Component
    - i. DPS Fees. Funds for DPS Fees will be billed monthly in arrears for Initial Packages accepted by the servicer in the prior calendar month, as more particularly described in the Statement of Work, together with a report generated by the Internet Portal which provides supporting data, by Participating Agency.
    - ii. Outreach Funds; Supplemental Outreach Funds. Outreach Funds will be billed monthly in accordance with the disbursement schedule described in the Statement of Work. NeighborWorks will provide to Treasury a true, correct and complete list of all Participating Agencies and validate that the amount of each Outreach Allocation, and the initial disbursement thereof, is calculated based on the methodology set forth in the Statement of Work. NeighborWorks will maintain each agency's approved outreach plan and provide to Treasury upon request. Supplemental Outreach Funds will be billed monthly in accordance with procedures to be agreed upon by NeighborWorks and Treasury.
    - iii. Oversight Fees. Funds for Oversight Fees will be billed monthly in accordance with the disbursement schedule described in the Statement of Work. NeighborWorks will provide to Treasury a true, correct and complete list of all Intermediaries, State HFAs and the Subagencies they oversee, and validate that the amount of each Oversight Allocation, and the initial disbursement thereof, is calculated based on the methodology set forth in the Statement of Work. The balance will be billed monthly at the rate specified in

the Statement of Work for each Initial Package accepted by the servicer in the previous calendar month, together with a report generated by the Internet Portal which provides supporting data, by Participating Agency.

- iv. Training. Funds for delivery of in-classroom training (inclusive of lodging) at NW Training Institutes will be billed based on a pre-approved fixed cost per student in attendance, as evidenced by attendance logs. Funds for delivery of locally conducted place-based trainings (not to exceed a pre-approved fixed cost per training event) will be billed monthly in arrears, based on Allowable Costs actually incurred by NeighborWorks. NeighborWorks will provide a General Ledger Summary and, at Treasury's request, Third Party Documentation (each as defined below).
  - v. Other. All other funds for the In-Take Component will be billed monthly in arrears, based on Allowable Costs actually incurred by NeighborWorks. NeighborWorks will provide a general ledger summary, itemized by Budget line item, reflecting costs incurred during the prior calendar month and otherwise in a format that will enable Treasury to (i) validate that the costs are attributable to the Agreement and (ii) determine which Budget line item(s) such costs correspond to (the "General Ledger Summary"). Additionally, at Treasury's request, NeighborWorks shall provide copies of invoices or other evidence of payment ("Third Party Documentation") with respect to third party costs (for example, use of temporary staff).
- b. Outreach Component. Funds for Traditional Events and Virtual Events will be billed monthly in arrears, based on Allowable Costs actually incurred by NeighborWorks and otherwise consistent with the cost assumptions described in the Statement of Work. NeighborWorks will provide a General Ledger Summary and, at Treasury's request, Third Party Documentation.

**Appendix C**

**Form of Certification**

[insert date]

The United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C., 20220

Ladies/Gentlemen:

Reference is made to the Memorandum of Agreement dated as of February [ ], 2013 (as amended, supplemented or otherwise modified and in effect from time to time, the “Agreement”) by and between the Neighborhood Reinvestment Corporation, doing business as NeighborWorks America (“NeighborWorks”) and the United States Department of the Treasury (“Treasury”). Capitalized terms used but not otherwise defined herein shall have the meaning given them in the Agreement.

In accordance with the Agreement, NeighborWorks hereby requests that Treasury disburse the amount set forth on the attached invoice.

NeighborWorks hereby certifies to Treasury, as of the date hereof, that:

- (a) no default or Event of Default has occurred and is continuing as of the date hereof [other than \_\_\_\_\_];
- (b) each of the representations and warranties made by NeighborWorks in the Agreement are true and correct in all material respects on and as of such date, as if made on and as of the date hereof [other than \_\_\_\_\_];
- (c) NeighborWorks is in compliance with the covenants and other agreements set forth in the Agreement, which shall remain in full force and effect [other than \_\_\_\_\_];
- (d) all data and information set forth in the attached invoice or provided in support thereof is true, correct and complete in all material respects;
- (e) all amounts included in the attached invoice comply with the Budget, and NeighborWorks has not received funding from other sources for such amounts;

In the event that any part of the certification made herein is discovered not to be true and correct after the date hereof, NeighborWorks shall notify Treasury immediately.

NEIGHBORHOOD REINVESTMENT CORPORATION  
D/B/A NEIGHBORWORKS AMERICA

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[Name of Authorized Official]  
[Title of Authorized Official]

## **Appendix D**

### Reporting Requirements

#### **Budget & Governance:**

NeighborWorks will provide monthly general ledger reports and supporting documentation for all invoices submitted to Treasury, as more particularly set forth on Appendix B to the Agreement (Payment Procedures).

NeighborWorks will provide quarterly financial reporting (i.e., detailed and roll-up reports) to Treasury indicating overall performance against Budget line items. Treasury and NeighborWorks will collaborate to develop a monthly governance structure to develop and communicate business objectives, project implementation, performance reporting and controls.

#### **Internet Portal:**

NeighborWorks will provide Treasury monthly reports from the Internet Portal showing detailed and rollup reporting of activity by Participating Agency and by application status. NeighborWorks will monitor and analyze the Internet Portal and related reporting, report any agency and servicer bottlenecks to Treasury, and provide plans for remedying such bottlenecks as requested by Treasury.

#### **Performance Reporting:**

NeighborWorks will provide to Treasury a true, correct and complete list of all Participating Agencies and update such list as needed throughout the Period of Performance. NeighborWorks will validate that allocations for DPS Fees, Outreach Funds and Oversight Fees are calculated based on the methodology set forth in the Statement of Work, and that Supplemental Outreach Funds have been allocated based on the approved methodology.

NeighborWorks will develop performance metrics and reporting requirements for Participating Agencies, to be set forth in the “intention to participate” forms and Funding Agreements. NeighborWorks will also develop a methodology for evaluating each agency’s success or failure as measured against the agency’s approved outreach plans.

#### **Traditional and Virtual Events:**

NeighborWorks shall prepare a scope of work for each Traditional Event and Virtual Event as set forth in the Statement of Work. NeighborWorks and Treasury will develop mutually agreed-upon performance metrics for each Traditional and Virtual Event. On the day of each event, NeighborWorks will provide an overall performance report in a form to be agreed upon by NeighborWorks and Treasury.

#### **Risk Analysis/Compliance and Internal Audit:**

NeighborWorks will provide the reports and materials referred to in Article XII (Oversight and Internal Control) of the Agreement and Appendix E (Compliance Requirements) thereto.

## Appendix E

### Compliance Requirements

- A. NeighborWorks will engage a third party service provider (the Compliance Agent) approved by Treasury to conduct quality control and compliance reviews of Participating Agencies in accordance with policies and procedures approved by Treasury. NeighborWorks will manage all aspects of the relationship, including but not limited to:
1. Executing any necessary contracts or agreements with the Compliance Agent.
  2. Developing a risk assessment process acceptable to Treasury to determine the nature and frequency of reviews to be conducted of the Participating Agencies.
  3. Establishing an overall schedule of reviews (the Compliance Work Plan) acceptable to Treasury for the Compliance Agent for performing compliance reviews of all Participating Agencies and monitoring progress against the Compliance Work Plan.
  4. Reporting no less frequently than monthly to Treasury on the status of the Compliance Work Plan.
  5. Preparing a detailed written test plan acceptable to Treasury of all required audit procedures (the Compliance Test Plan, and together with the Compliance Work Plan, collectively, the Compliance Plans), including, without limitation, (i) procedures designed to validate that funds provided by Treasury are used only for the MHA-related activities described herein and that Participating Agencies are otherwise in compliance with the terms of their respective Funding Agreements, and (ii) a description of any testing methodologies used, such as sampling methodologies, for testing steps.
  6. Directing the Compliance Agent to provide copies of all final compliance reports to Treasury concurrently with delivery of same to NeighborWorks and the Participating Agencies.
  7. NeighborWorks will direct the Compliance Agent to provide Treasury, upon request, access to the results of the completed Compliance Test Plan, all relevant work and working papers, and findings related to any compliance reviews and to cooperate with any sub-testing performed by Treasury or its designees, and to promptly address any questions or deficiencies noted by Treasury resulting from any working paper reviews.
  8. Reviewing compliance reports and any applicable findings from the Compliance Agent and discussing those materials with Treasury on a monthly or as needed basis.
  9. Developing procedures acceptable to Treasury to assess and assign severity ratings to findings identified in the compliance reports. NeighborWorks will work with the Participating Agencies to determine the appropriate remediation actions necessary to promptly resolve any findings reported by the Compliance Agent. Procedures will also

be developed to track and monitor the current status of findings, with reporting of this status to Treasury on a monthly basis.

- B. Participating Agencies must agree that Treasury may conduct evaluations, audits and investigations concerning the funds provided under the Funding Agreement and other Operative Documents.
- C. NeighborWorks will develop, subject to approval by Treasury, a policy setting forth the consequences for non-compliance or poor performance by Participating Agencies (the Compliance Policy), which policy shall provide for, among other things:
  - 1. NeighborWorks's oversight of Participating Agencies' efforts to remediate or cure identified findings from reviews by the Compliance Agent or other parties.
  - 2. Recapturing, de-obligating or withholding funds from Participating Agencies based on established criteria, which may include substantial adverse findings that cannot be cured or have not been cured within a reasonable period of time after notice thereof.
  - 3. Termination of the Funding Agreement.
  - 4. Reduction of the DPS Allocation or other allocations set forth in the Funding Agreement.
- D. NeighborWorks will encourage any internal audit or quality assurance personnel to: provide Treasury with access to all relevant work and test plans, working papers and final reports related to any reviews covering matters relating to the Agreement, in whole or in part; to cooperate with any sub-testing performed by Treasury; and to promptly address any questions or deficiencies noted by Treasury resulting from any working paper or final report reviews.
- E. NeighborWorks shall comply with any requests from Treasury to modify (1) the Compliance Plans, including, without limitation, by adding compliance reviews or procedures not included in the initial Compliance Plans, and (2) any other deliverables described above, in each case, to the extent consistent with the Budget.
- F. NeighborWorks shall promptly advise Treasury of any material defaults it reasonably believes has been or may have been committed by Participating Agencies under their respective Funding Agreements.