



1. DEFINITIONS

1.1 In these terms & conditions, unless the context otherwise requires, the following expressions shall have the meanings set out below:

“Agreement” means the agreement for the provision of services incorporating these terms and conditions, formed upon the execution by both parties of a Terms of Reference setting out the scope of Services to be provided;

“Commencement Date” means the date set out on page 3 below on which Klarity FX begins supplying Services to the Customer;

“Business Purposes” means any purposes involving the use of currency for the Customer’s account in connection with the conduct of the Customer’s business (which business does not include the trading of currency);

“Customer” means the San Jose Police & Fire Department Retirement Plan (including without limitation its Board);

“Fee” means the price for the provision of Services indicated at the bottom of this Agreement;

“Forex Information” means all foreign exchange information which is disclosed to the Customer by Klarity FX pursuant to and in connection with this Agreement;

“Klarity FX” means Klarity FX, Inc.;

“Intellectual Property” means all inventions, registered and unregistered designs, copyright work, trade mark and Confidential Information;

“Terms of Reference” means the letter issued by Klarity FX to Customer setting out the scope of the Services; and

“Services” means the services set out in the Terms of Reference to be provided by Klarity FX for Business Purposes only.

2. THE SERVICES

2.1 The Customer agrees that the Forex Information and any other information provided in the course of the Services is to be exclusively used by the Customer for its Business Purposes in the ordinary course of its business.

2.2 Klarity FX agrees to provide the Customer with the Services within a reasonable time as agreed between the parties from time to time; provided that any Forex Information or reports required for quarterly and annual reports to the board of Customer will be provided to Customer in a commercially reasonable time prior to the applicable board meeting (to the extent Klarity FX is timely made aware of such board meeting and provided any required information of Customer necessary therefore).

2.3 Klarity FX hereby grants the Customer a non-exclusive non-transferable license to use the Forex Information supplied in the course of the Services for its internal purposes only and solely for Business Purposes. Klarity FX agrees Customer may use and disclose the Forex Information in any proceeding or litigation related to any FX transactions. For any other reason, Customer will request use and disclosure and Klarity FX will not unreasonably deny such request.

2.4 Klarity FX shall use the level of skill and care in providing the Services that a reasonably prudent person supplying the same kind of services would provide in similar circumstances.

2.5 Klarity FX shall use the levels of skill that a reasonably prudent person supplying the same kind of service would provide in similar circumstances to ensure that the Services and particularly Forex Information provided to the Customer is accurate at the time such information is supplied, however, the Customer acknowledges that the nature of the foreign exchange markets means that Forex Information can change instantaneously and therefore agrees that Klarity FX may change the Forex

Information without prior notice to the Customer. However, notice shall be provided to the Client as soon as reasonably possible.

2.6 In the event that Klarity FX provides a currency monitoring service, time shall not be of the essence for the communication by Klarity FX of notice of the fluctuation in currency levels, save that Klarity FX shall use its reasonable efforts to notify the Customer of the specified fluctuation. Klarity FX shall give such notice of the specified currency fluctuation by whatever commercially reasonable means and by whatever commercially reasonable medium it deems expedient at the time.

2.7 Klarity FX warrants it is not a registered commodity trading advisor and may refuse to provide information in relation to any futures or options contracts where, in Klarity FX sole discretion, the provision of such information could be deemed to require registration under the U.S. Federal Commodity Exchange Act, the Investment Advisor Act of 1940, or any other relevant state or federal legislation.

2.8 CUSTOMER AGREES AND CONSENTS THAT KLARITY FX MAY RECORD ALL TELEPHONE CONVERSATIONS BETWEEN KLARITY FX AND THE CUSTOMER, WITH OR WITHOUT AN AUTOMATIC WARNING TONE. KLARITY FX RESERVES THE RIGHT TO REPRODUCE AND STORE A TRANSCRIPT OF THE RECORDED TELEPHONE CONVERSATION AND USE EITHER THE TRANSCRIPT OR THE RECORDING OF THE TELEPHONE CONVERSATION FOR TRAINING AND QUALITY CONTROL PURPOSES, AND TO RESOLVE ANY DISPUTES BETWEEN CUSTOMER AND KLARITY FX IN RESPECT OF THE SERVICE (AND CUSTOMER CONSENTS TO ALL SUCH USE BY KLARITY FX).

3. FEES

3.1 The Customer shall pay the annual fee, in a single installment. The fee is due and payable within ten (10) days from receipt of the invoice, in cleared funds.

3.2 Fees due under this Agreement are exclusive of any taxes, duties and levies, including without limitation, sales and use taxes, excise taxes, transfer taxes, service taxes and value added taxes. Customer is liable for and shall pay any taxes imposed by any foreign, federal, state, local or other taxing authorities based on the transactions and payments under this Agreement, other than any taxes based on Klarity FX’s net income.

3.3 Klarity FX shall not, save if the Services change, vary the Fee within 12 months of the Commencement Date.

3.4 Klarity FX reserves the right to charge the Customer interest in respect of late payment of any Fee due under this Agreement (as well after as before judgment if any) at the rate of one and one-half (1.5%) percent per month (or the maximum rate permitted by applicable law, whichever is less) from the due date until payment is made in full.

4. DURATION

4.1 This Agreement shall commence on the Commencement Date for a fixed period of thirty six (36) months.

5. INTELLECTUAL PROPERTY

5.1 The Customer acknowledges that the content, format and presentation of the material in relation to the Services and Forex Information which Klarity FX provides to the Customer under this Agreement may contain Intellectual Property which is either Klarity FX property or licensed to Klarity FX. In no event will the Customer have or acquire any rights to or in respect of Intellectual Property in the Services.

5.2 The Customer agrees that it shall not remove, change, alter any copyright or other proprietary notices or claim rights over any Intellectual Property either existing or created during the term of this Agreement.

6. CONFIDENTIALITY

6.1 Each of the Customer and Klarity FX shall maintain strict confidentiality and shall not disclose to any third party any information relating to the other party that comes into its possession (including any Forex Information imparted to it by Klarity FX in the course of the Services) ("Confidential Information") and shall not use Confidential Information except for the purposes permitted under this Agreement, except as noted above.

6.2 Without prejudice to clause 6.1 above the Customer shall not reproduce, alter or amend or distribute any part of the Forex Information provided by Klarity FX without the express written consent of Klarity FX.

6.3 Neither party shall be liable for the disclosure of any Confidential Information that: (A) is in the public domain at the time of disclosure; (B) was demonstrably in the possession of or demonstrably known by a party prior to its receipt from the other; (C) is demonstrably independently developed by a party without use of the Confidential Information provided by the other; (D) becomes known to a party from a source other than the other party without breach of the first party's obligations under the Agreement; (E) is used and disclosed in any proceeding or litigation related to FX transactions; or (F) Klarity FX has consented to the use and disclosure.

6.4 Each party may disclose Confidential Information if such disclosure is required by law, regulation or judicial order provided that the party subject to such disclosure requirement has provided (to the extent permitted by law) written notice to the other party promptly upon receiving notice of such requirement in order to enable the other party to seek a protective order or otherwise prevent disclosure of the other party's Confidential Information.

6.5 Notwithstanding anything to the contrary in this Agreement, Klarity FX acknowledges that Customer will present certain Forex Information to its board and otherwise use FX reports at and in connection with its board meetings. The disclosure of any Forex Information or reports at such a board meeting will not be a breach of this Section 6 or otherwise be a breach of this Agreement.

7. LIMITATION OF LIABILITY

7.1 The following provisions set out each party's entire liability to the other party in respect of any breach of its contractual obligations, negligence or any other liability arising under the Agreement (an 'Event of Default'). Each party acknowledges that the limitation of liability set out herein is reasonable in consideration of the level of Fees and the Customer's acknowledged obligation to bear all its insurable risk for its dealings in foreign exchange markets.

7.2 Nothing in this clause 7 shall be deemed to be an attempt by a party to limit its liability to the other party for willful misconduct or for death or personal injury resulting from such party's negligence or that of its employees, agents, or sub-contractors.

7.3 Subject to the provisions of clauses 7.2 and 7.4 Klarity FX entire liability in respect of any Event of Default or series of related Events of Default shall be limited to damages of an amount equal to the aggregate of the Fee paid by the Customer to Klarity

FX during the 12 month period preceding the relevant Event of Default or the first in any series of related Events of Default.

7.4 Notwithstanding anything in this Agreement, but except with respect to (i) breaches of Confidential Information by a party and or its employees and agents or (ii) failure to have rights to Third Party Products (as defined below), for each of which their shall be no limitations on a party's liability, in no event shall either party be liable for any loss of profits, goodwill, anticipated savings, loss or corruption of data, loss caused by the failure or delay of any third party in the transmission, provision or delivery of any information relating to the Service or any special, indirect, incidental or consequential loss or damage regardless of the form of action (including loss or damage suffered by the a party as a result of an action brought by a third party) and even if such loss was reasonably foreseeable or the party was advised as to the possibility thereof.

8. WARRANTY AND REIMBURSEMENT

8.1 The Customer represents, warrants and covenants that, in all matters relating to this Agreement and the Services, the Customer is and will be an "Eligible Contract Participant" as defined in Section 1(a)(12)(A)(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation — (I) that has total assets exceeding \$5,000,000; or (II) the investment decisions of which are made by— (aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15U.S.C. 80b-1 et seq.) or this chapter; (bb) a foreign person performing a similar role or function subject as such to foreign regulation; (cc) a financial institution; or (dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company.

8.2 Klarity FX represents, warrants and covenants to Customer that it has any all licenses required to perform the Services for Customer under this Agreement; Each party agrees to comply with all applicable laws, rules and regulations in connection with such party's performance under this Agreement.

8.3 Klarity FX represents, warrants and covenants to Customers that it has the necessary rights to use any third party software and data used by Klarity FX for the Services provided to Client hereunder ("Third Party Products") and will not infringe upon the rights of any third party with respect to the use thereof.

8.4 Each party hereby reimburses and will reimburse, defend and hold the other party harmless against any and all damages, costs, liabilities, penalties, expenses (including reasonable attorneys' fees) and settlement amounts incurred in connection with any suit, claim, or action or any kind resulting from any breach (or any claim that, if true, would constitute a breach) of its representations, warranties, or covenants set forth in this Section 8. The parties agree that if the matter is in litigation and one party is defending the other party, no settlement can be entered into unless both parties agree to the proposed settlement.

9. ACKNOWLEDGEMENT AND DISCLAIMER OF WARRANTY

9.1 The Customer hereby acknowledges that the Services are an information service only and that no advice or guidance provided by Klarity FX shall be exclusively relied upon by the Customer in the conduct of its business.

9.2 Klarity FX MAKES, AND CUSTOMER RECEIVES, NO REPRESENTATIONS, WARRANTIES OR CONDITIONS (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES REGARDING THE SPEED OR ACCURACY OF THE SERVICES OR THE FOREX INFORMATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE, TITLE, ACCURACY OR NONINFRINGEMENT OF THIRD-PARTY RIGHTS, OR ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION.

10. FORCE MAJEURE

10.1 Klarity FX shall not be deemed in breach of this Agreement or otherwise liable to the Customer for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control (an "Event of Force Majeure") including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion, civil commotion, failure of computer equipment or communications systems or industrial dispute of a third party.

10.2 If Klarity FX is affected by an Event of Force Majeure, it shall notify the Customer of that fact as soon as reasonably practicable.

11. ASSIGNMENT

11.1 The rights and obligations of the Customer under this Agreement are personal to the parties and shall not be assigned, delegated, transferred, subcontracted or otherwise disposed of by a party without the prior written consent of the other party; Klarity FX shall perform the Services with its employees within the United States.

12. ENTIRE AGREEMENT

12.1 This Agreement, including the Terms of Reference, constitutes the entire agreement and understanding of the parties in connection with the subject matter hereof and supersedes all oral communications and prior writing relating to it; provided that neither party shall benefit from excluding liability for fraudulent misrepresentation or fraud. Without prejudice to the foregoing, the Customer acknowledges that it has not relied on, or been induced to enter into the Agreement by, any representations, warranties or other assurances except those set out in this Agreement.

12.2 In the event of any conflict between the provisions of these terms and conditions and the Terms of Reference these terms and conditions shall prevail.

13. NOTICES

13.1 Any notice to be given under this Agreement shall be deemed properly given if delivered by hand, sent by prepaid first class post, facsimile or email to the recipient party's usual address, current fax number or current email address in each case for the attention of the recipient party's Company Secretary, and shall be deemed to be delivered on service if by hand, at the expiry of 48 hours from the time of posting if by post, immediately upon completion or transmission with a successful transmission report by facsimile and immediately on transmission with a special delivery report if by email.

14. RELATIONSHIP OF PARTIES

14.1 Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the parties. Neither party, nor either party's agents, have any authority of any kind to bind the other party in any respect whatsoever, and the relationship of the parties is, and at all times shall continue to be, that of independent contractors.

15. AMENDMENT AND WAIVER

15.1 No waiver or modification of this Agreement or any provision of it shall be valid unless in writing and duly executed by both parties, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration or

litigation between the parties arising out of or affecting this Agreement, or the rights or obligations of the parties hereunder, unless such waiver or modification is in writing and duly executed by both parties. The parties further agree that the provision of this clause may not be waived except as set forth herein.

16. SEVERABILITY

16.1 If any term, provision, covenant or condition of this Agreement is held by a court or arbitral panel of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

17. GOVERNING LAW

This Agreement is to be construed in accordance with and governed by the internal laws of the State of California. Each party hereby submits to the exclusive jurisdiction of the courts sitting in San Jose in the State of California.

TRANSACTIONAL COST ANALYSIS AGREEMENT

Date: July 1st, 2021

Parties:

1 'Klarity FX': Klarity FX, Inc. whose principal place of business is at 220 Sansome Street, Suite 980, San Francisco, California 94104

2 'The Customer': City of San Jose 1961 Police & Fire Department Retirement Plan whose principal place of business is at 1737 North First Street, Suite 580, San Jose, California, 95112

Commencement date: July 1st 2021 _____

Service as detailed in attached Terms of Reference

[Signature] _____

Signed by: **Prabhu Palani**
[Print name] _____

Position: **Chief Investment Officer** _____

Duly authorized for and on behalf of: **Customer** _____

Fee: \$22,487 per year for the period of July 1st, 2021 – June 30th, 2024

[Signature] **Amarjit Singh Sahota** _____

Signed by: **Amarjit Sahota**
[Print name] _____

Position: **Director & Corporate Officer** _____

Duly authorized for and on behalf of Klarity FX, Inc.



- ☐ FOR YOUR ELECTRONIC SIGNATURE
☐ FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: _____
STAFF EMAIL: _____

SCANNED SIGNATURE AUTHORIZATION

DATE: 24 June 2021

TOTAL PAGES: _____
(INCLUDING THIS PAGE)

CONSULTANT NAME: AMARJEET SAHOTA - KLARITY FX, INC.

EMAIL: ASAHOTA@KLARITYFX.COM

PHONE: 415-678-2888

☒ I agree to use electronic signatures

SIGNATURE OF CONSULTANT: 

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS):

TO BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- ☐ USE OF A PASSWORD PROTECTED WEBSITE
☐ CONFIRMED BY A KNOWN TELEPHONE NUMBER
☐ PERSONALLY KNOWN TO CITY STAFF