



BNY MELLON

*Execution Copy*

**AMENDED AND RESTATED CUSTODY AGREEMENT**

**By and Among**

**THE BANK OF NEW YORK MELLON**

**And**

**SAN JOSE FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM**

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## AMENDED AND RESTATED CUSTODY AGREEMENT

This Amended and Restated Custody Agreement is made and entered into as of the latest date set forth on the signature page hereto (the “**Effective Date**”) by and between **THE BANK OF NEW YORK MELLON**, a bank organized under the laws of the state of New York (“**BNY Mellon**”) and the **SAN JOSE FEDERATED CITY EMPLOYEES’ RETIREMENT SYSTEM** (the “**Customer**”). BNY Mellon and Customer are collectively referred to as the “**Parties**” and individually as a “**Party**”.

### RECITALS

WHEREAS, the Parties entered into a Custody Agreement on September 25, 2020 (the “Custody Agreement”) by which Customer appointed BNY Mellon as the custodian of certain of its assets, and BNY Mellon agreed to provide such services on the terms and conditions set forth therein; and

WHEREAS, the Parties have agreed to amend and restate the Custody Agreement to reflect revisions to Section 7, Section 16 thereof, and the inclusion of a Schedule of Insurance attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and intending to be legally bound, the Parties agree as follows.

### 1. DEFINITIONS

Whenever used in this Agreement, the following words have the meanings set forth below:

“**Account**” or “**Accounts**” has the meaning set forth in Section 2.2.

“**Act**” has the meaning set forth in Section 10.1(a).

“**Affiliate**” means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by or under common control with such entity.

“**Agreement**” means, collectively, this Custody Agreement, the Benefit Plan Schedule, any Exhibits hereto and any other documents incorporated herein by reference.

“**Assets**” has the meaning set forth in Section 2.1(b).

“**Authorized Person**” has the meaning set forth in Section 3.1.

“**Benefit Plan Schedule**” means the Benefit Plan Schedule attached hereto that contains additional provisions for custody of employee benefit plan Assets.

“**BNY Mellon**” has the meaning set forth in the introductory paragraph.

“**Cash**” means the money and currency of any jurisdiction which BNY Mellon accepts for deposit in an Account.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Confidential Information**” means, with respect to a Party, the terms of this Agreement and all non-public business and financial information of such Party (including, with respect to Customer, information regarding the Accounts and including, with respect to BNY Mellon, information regarding its practices and procedures related to the services provided hereunder) disclosed to the other Party in connection with this Agreement.

“**Customer**” has the meaning set forth in the introductory paragraph.

“**Data Terms Website**” means <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor website the address of which is provided by BNY Mellon to Customer.

“**Depository**” means the Depository Trust Company, Euroclear, Clearstream Banking S.A., the Canadian Depository System, CLS Bank and any other securities depository, book-entry system or clearing agency authorized to act as a system for the central handling of securities pursuant to the laws of the applicable jurisdiction, and any successors to, and/or nominees of, any of the foregoing.

“**Effective Date**” has the meaning set forth in the introductory paragraph.

“**Electronic Access Services**” means such services made available by BNY Mellon or a BNY Mellon Affiliate to Customer to electronically access information relating to the Accounts and/or transmit Instructions.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Instructions**” means, with respect to this Agreement, instructions issued to BNY Mellon by way of (a) one of the following methods (each as and to the extent specified by BNY Mellon as available for use in connection with the services hereunder): (i) the Electronic Access Services; (ii) third-party electronic communication services, including secure e-mail containing, where applicable authorization codes, passwords or authentication keys, or otherwise appearing on their face to have been transmitted by an Authorized Person, or (iii) third-party institutional trade matching utilities used to effect transactions in accordance with such utility’s customary procedures or (b) such other method as may be agreed upon in writing by the Parties and that appear on their face to have been transmitted by an Authorized Person .

“**Market Data**” means pricing, valuations or other commercially sourced data applicable to any Security. Market Data also includes security identifiers, bond ratings and classification data.

“**Market Data Providers**” means vendors and analytics providers and any other Person providing Market Data to BNY Mellon.

“**Nexen**” means the BNY Mellon’s web-based information reporting and instruction platform and shall include any successor web-based information reporting and instruction platform implemented by BNY Mellon and made available to its customers.

“**Non-Custody Assets**” has the meaning set forth in Section 17.1.

“**Party**” or “**Parties**” has the meaning set forth in the introductory paragraph.

“**Person**” or “**Persons**” means any entity or individual.

“**Sanctions**” means all economic sanctions laws, rules, regulations, executive orders and requirements administered by any governmental authority of the United States (including the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury) or any other applicable domestic or foreign authority with jurisdiction over Customer.

“**Securities**” means all (a) debt and equity securities and (b) instruments representing rights or interests therein, including rights to receive, subscribe to or purchase the foregoing; in each case as may be agreed upon from time to time by BNY Mellon and Customer and which are from time to time delivered to or received by BNY Mellon and/or any Subcustodian for deposit in an Account.

“**Standard of Care**” has the meaning set forth in Section 14.1.

“**Subcustodian**” means a bank or other financial institution (other than a Depository) that is selected and used by BNY Mellon or a BNY Mellon Affiliate in connection with the settlement of transactions and/or custody of Assets hereunder, and any successors to, and/or nominees of, any of the foregoing.

“**Tax Obligations**” means taxes, withholding, certification and reporting requirements, claims for exemptions or refund, interest, penalties, additions to tax and other related expenses.

“**Third Party Data**” has the meaning set forth in Section 9.3(a).

## 2. APPOINTMENT OF CUSTODIAN; ACCOUNTS

### 2.1 Appointment of Custodian

- (a) Customer represents that it is the type of benefit plan identified on the Benefit Plan Schedule, and it will immediately notify BNY Mellon if the Customer ceases to be so qualified.
- (b) Customer hereby appoints BNY Mellon as custodian of all Securities and Cash to be held by BNY Mellon under, and in accordance with the terms of, this Agreement (collectively, “**Assets**”), and BNY Mellon hereby accepts such appointment. The Parties acknowledge and agree that BNY Mellon’s duties pursuant to such appointment will be limited solely to those duties expressly undertaken pursuant to this Agreement.
- (c) Notwithstanding the foregoing, BNY Mellon has no obligation or authority:
  - (i) With respect to any Assets until they are actually received in an Account;

- (ii) To inquire into, make recommendations, supervise or determine the suitability of any transactions affecting any Account or to question any Instructions that appear on their face to have been transmitted by an Authorized Person;
  - (iii) To determine the adequacy of title to, or the validity or genuineness of, any Assets received by it or delivered by it pursuant to this Agreement or
  - (iv) To determine that Instructions are in accordance with the terms of the Customer and applicable law.
- (d) Cash held hereunder may be subject to additional deposit terms and conditions issued by BNY Mellon or the applicable Subcustodian from time to time, including rates of interest and deposit account access which terms and conditions shall be made available to Customer through Nexen.
- (e) If Customer engages in securities lending activities, such activities will be subject to certain additional and/or modified terms to be set forth in a separate written agreement between Customer and BNY Mellon or a BNY Mellon Affiliate.

## 2.2 Establishment of Accounts

BNY Mellon will establish and maintain one or more accounts in which BNY Mellon will hold Assets in accordance with this Agreement (each, an “**Account**,” and collectively, the “**Accounts**”).

## 3. AUTHORIZED PERSONS AND INSTRUCTIONS; ELECTRONIC ACCESS

### 3.1 Authorized Persons

Promptly following the Effective Date, Customer and/or its designee (including any of Customer’s investment managers) will furnish BNY Mellon with one or more written lists specifying the names and titles of all Persons authorized to act on behalf of Customer with respect to this Agreement (each, an “**Authorized Person**”). Customer will be responsible for keeping such lists and/or other documentation current, and will update such lists and/or other documentation, as necessary from time to time, pursuant to Instructions.

### 3.2 Instructions

- (a) Except as otherwise expressly provided in this Agreement, BNY Mellon will have no obligation to take, and shall not take any action hereunder unless and until it receives Instructions issued in accordance with this Agreement.
- (b) Customer will be responsible for ensuring that (i) only Authorized Persons issue Instructions to BNY Mellon and (ii) all Authorized Persons safeguard and treat with extreme care any user and authorization codes, passwords and authentication keys used in connection with the issuance of Instructions.
- (c) Where Customer may or is required to issue Instructions, such Instructions will be issued by an Authorized Person.



- (d) BNY Mellon will be entitled to deal with any Authorized Person until notified otherwise pursuant to Instructions, and will be entitled to act and rely upon any Instruction received by BNY Mellon from an Authorized Person.
- (e) All Instructions must include all information necessary, and must be delivered using such methods and in such format as BNY Mellon may require and be received within BNY Mellon's established cut-off times and otherwise in sufficient time to enable BNY Mellon to act upon such Instructions. BNY Mellon will make available the required format(s) of Instructions and cut-off times to Customer on or before the Effective Date and will make available notice of any changes thereto prior to the effective date of any such changes .
- (f) BNY Mellon may in its sole discretion decline to act upon any Instructions that do not comply with requirements set forth in Section 3.2(e) or that conflict with applicable law or regulations or BNY Mellon's operating policies and practices in which event BNY Mellon will promptly notify Customer and will include the reason for BNY Mellon's decision for declining to act. BNY Mellon will make available to Customer at all times BNY Mellon's then-current and relevant operating policies and practices.
- (g) Customer acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to BNY Mellon and that there may be more secure methods of transmitting Instructions than the method selected by the sender. Customer agrees that the security procedures, if any, to be followed by Customer and BNY Mellon with respect to the transmission and authentication of Instructions provide to Customer a commercially reasonable degree of protection in light of its particular needs and circumstances.

### **3.3 BNY Mellon Actions Without Instructions**

Notwithstanding anything to the contrary set forth in this Agreement, Customer hereby authorizes BNY Mellon, without Instructions, to take any administrative or ministerial actions with respect to an Account that it deems reasonably necessary or appropriate to perform its obligations under this Agreement, including the following:

- (a) Receive income and other payments due to the Accounts; provided, however, that BNY Mellon will have no duty to pursue collection of any amount due to an Account, including for Securities in default, if such amount is not paid when due;
- (b) Carry out any exchanges of Securities or other corporate actions not requiring discretionary decisions, and any such exchange or corporate action will be made available to Customer;
- (c) Facilitate access by Customer or its designee to ballots or online systems to assist it in the voting of proxies received by BNY Mellon in its capacity as custodian for eligible positions of Securities held in the Accounts (excluding bankruptcy matters), all of which will be exercised by Customer or its designee and not by BNY Mellon;

- (d) Forward to Customer or its designee (as directed by Customer) information (or summaries of information) that BNY Mellon receives in its capacity as custodian from Depositories or Subcustodians concerning Securities in the Accounts (excluding bankruptcy matters);
- (e) Forward to Customer or its designee (as directed by Customer) notice of bankruptcy cases relating to Securities held in the Accounts and notice of any required action(s) related to such bankruptcy cases as may be received by BNY Mellon in its capacity as custodian. BNY Mellon will take no further action nor provide further notification related to the bankruptcy case ;
- (f) Unless otherwise elected by Customer, and in accordance with BNY Mellon's standard terms and conditions, provide class action filing services for settled claims related to Securities with industry recognized identifiers;
- (g) Endorse for collection checks, drafts or other negotiable instruments received on behalf of the Accounts;
- (h) Deposit Cash in accounts bearing interest at a reasonable rate in the banking department of BNY Mellon or an affiliated banking organization; and
- (i) Execute and deliver, solely in its capacity as custodian, certificates, documents or instruments incidental to BNY Mellon's performance under this Agreement,.

### **3.4 Funds Transfers**

With respect to each Instruction for a Cash transfer, when the Instruction is to credit or pay a party by both a name and a unique numeric or alpha-numeric identifier (e.g., IBAN or ABA or account number), BNY Mellon and any other bank participating in the Cash transfer will be entitled to rely solely on such numeric or alpha-numeric identifier, even if it identifies a party different from the party named. Such reliance on an identifier will apply to beneficiaries named in the Instruction, as well as any financial institution that is designated in the Instruction to act as an intermediary in such Cash transfer. To the extent permitted by applicable law, the parties will be bound by the rules of any transfer system used to effect a Cash transfer under this Agreement.

### **3.5 Electronic Access**

If Customer elects to use the Electronic Access Services in connection with this Agreement, the use thereof will be subject to any terms and conditions contained in a separate written agreement between the Parties or their Affiliates. If an Authorized Person elects, with BNY Mellon's prior consent, to transmit Instructions through a third-party electronic communications service, BNY Mellon will not be responsible or liable for the reliability or availability of any such service.

## **4. SUBCUSTODIANS, DEPOSITORIES AND AGENTS**

### **4.1 Use of Subcustodians and Depositories**

- (a) BNY Mellon will be entitled to utilize Subcustodians and Depositories in connection with its performance hereunder.
- (b) BNY Mellon will only utilize Subcustodians that have entered into an agreement with BNY Mellon or a BNY Mellon Affiliate, and Assets held through a Subcustodian will be held subject to the terms and conditions of such Subcustodian's respective agreement.
- (c) Assets deposited in a Depository will be held subject to the rules, procedures, terms and conditions of such Depository. Subcustodians may hold Assets in Depositories in which such Subcustodians participate.
- (d) Unless otherwise required by local law or practice or a particular Subcustodian agreement, Assets deposited with Subcustodians or Depositories may be held in a commingled account in the name of, as applicable, BNY Mellon, a BNY Mellon Affiliate or the applicable Subcustodian, for its clients.

### **4.2 Liability for Subcustodians**

- (a) BNY Mellon will exercise the Standard of Care in selecting, retaining and monitoring Subcustodians.
- (b) With respect to Assets held by a Subcustodian, BNY Mellon will be liable to Customer for the activities of such Subcustodian under this Agreement to the extent that BNY Mellon would have been liable to Customer under this Agreement if BNY Mellon had performed such activities itself in the relevant market in which such Subcustodian is located; provided, however, that with respect to Securities held by a Subcustodian that is not a BNY Mellon Affiliate:
  - (i) BNY Mellon's liability will be limited solely to the extent resulting directly from BNY Mellon's failure to exercise the Standard of Care in selecting, retaining, and monitoring such Subcustodian; and
  - (ii) To the extent that BNY Mellon is not liable pursuant to Section 4.2(b)(i), BNY Mellon will notify Customer of any losses incurred by the Customer as a result of the acts or the failure to act by any Subcustodian including a Subcustodian's failure to perform its duties in accordance with the agreements between BNY Mellon and such Subcustodian and BNY Mellon's sole responsibility to Customer will be to: (A) take reasonable and appropriate action to recover such loss from such Subcustodian, and (B) forward to the Account any amounts so recovered (exclusive of costs and expenses incurred by BNY Mellon in connection therewith).

#### **4.3 Liability for Depositories**

BNY Mellon will have no responsibility or liability for the activities of any Depository arising out of or relating to this Agreement or any cost or burden imposed on the transfer or holding of Assets held with such Depository.

#### **4.4 Use of Agents**

Subject at all times to compliance with its Standard of Care and all other terms and conditions of this Agreement, BNY Mellon may appoint agents, including BNY Mellon Affiliates, on such terms and conditions as it deems appropriate to perform its obligations hereunder. Except as otherwise specifically provided herein, no such appointment will discharge BNY Mellon from its obligations hereunder.

### **5. CORPORATE ACTIONS**

#### **5.1 Notification**

BNY Mellon will notify Customer or its designee in writing of rights or discretionary corporate actions as promptly as practicable under the circumstances, provided that BNY Mellon has actually received, in its capacity as custodian, notice of such right or discretionary corporate action from the relevant issuer, or from a Subcustodian, Depository or third party vendor. Without actual receipt of such notice by BNY Mellon, BNY Mellon will have no responsibility or liability for failing to so notify Customer.

#### **5.2 Exercise of Rights**

Whenever there are voluntary rights that may be exercised or alternate courses of action that may be taken with respect to Securities in an Account, Customer or its designee (as directed by Customer) will be responsible for making any decisions relating thereto and for instructing BNY Mellon to act. In order for BNY Mellon to act, Customer must issue Instructions either: (a) using the BNY Mellon-generated form provided along with BNY Mellon's notice under Section 5.1 or (b) if Customer is not using such BNY Mellon-generated form, clearly indicating, by reference to the options provided on such BNY Mellon-generated form, which action Customer is electing. Each such Instruction will be addressed as BNY Mellon may from time to time request, and issued by such time as BNY Mellon will advise Customer or its designee.

#### **5.3 Partial Redemptions, Payments, Etc.**

BNY Mellon will advise Customer or its designee (as directed by Customer) upon its notification, in its capacity as custodian, of a partial redemption, partial payment or other action with respect to a Security affecting fewer than all such Securities held within an Account. If BNY Mellon or any Subcustodian or Depository holds any Securities affected by one of the events described, BNY Mellon or such Subcustodian or Depository may select the Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

## **6. SETTLEMENT**

### **6.1 Settlement Instructions**

Promptly after the execution of each Securities transaction, Customer will issue to BNY Mellon Instructions to settle such transaction. Unless otherwise agreed by BNY Mellon and subject to Section 8.1, Assets will be credited to the relevant Account only when actually received by BNY Mellon.

### **6.2 Settlement Funds**

For the purpose of settling a Securities transaction, Customer will provide BNY Mellon with sufficient immediately available funds or Securities, as applicable, by such time and date as is required to enable BNY Mellon to settle such transaction in the country of settlement and in the currency to be used to settle such transaction.

### **6.3 Settlement Practices**

Securities transactions will be settled using practices customary in the jurisdiction or market where the transaction occurs, which may include the delivery of Securities or Cash to a counterparty or its agents against, as applicable, the receipt of Securities or Cash in the future. Customer assumes full responsibility for all risks involved in connection with BNY Mellon's delivery of Securities or Cash in accordance with such practices.

## **7. TAX MATTERS**

### **7.1 Tax Obligations**

- (a) To the extent that BNY Mellon has received the Tax Information within the time stipulated, BNY Mellon will perform the following services with respect to Tax Obligations:
  - (i) Unless prohibited by law or regulation, at the reasonable request of Customer, BNY Mellon will provide to Customer such information received by BNY Mellon in its capacity as custodian that could, in Customer's reasonable belief, assist Customer or its designee in the submission of any reports or returns with respect to Tax Obligations. An Authorized Person will inform BNY Mellon in writing as to which party or parties will receive information from BNY Mellon;
  - (ii) BNY Mellon will, upon receipt of sufficient Tax Information from Customer (as reasonably determined by BNY Mellon), file claims for exemptions or refunds with respect to withheld taxes in those markets where it provides such services and subject to BNY Mellon's service level description (in each case as made available to Customer from time to time). Where Customer (for whatever reason) fails or neglects to provide BNY Mellon with or to review and confirm the Tax Information within the time stipulated by BNY Mellon, then such failure or neglect may result in the disapplication of withholding tax relief or the obligation on Customer to immediately return

amounts already refunded by a tax authority. Customer may, however, elect to appoint its own tax agent to file claims for exemptions or refunds in any or all markets, with advance notice to BNY Mellon of such appointment and subject to such terms as separately agreed in writing between Customer and BNY Mellon; and

- (iii) BNY Mellon or the applicable Subcustodian will withhold appropriate amounts, as required by applicable tax laws, with respect to amounts received and is authorized to debit the relevant Account in the amount of a Tax Obligation and to pay such amount to the appropriate taxing authority.

Customer's receipt of the foregoing services is dependent upon its subscription to BNY Mellon's information reporting system, and Customer will be responsible for enrolling its designated Authorized Persons in such system. Customer acknowledges that BNY Mellon may, at any time, amend the scope of its tax service offering and notice of such changes will be made available to BNY Mellon's customers through its information reporting system. Such changes may require additional documentation, attestations or declarations to be entered into by Customer in order to continue receiving the relevant tax service in a particular market.

- (b) Customer acknowledges that BNY Mellon is a service provider and not an economic beneficiary of any transaction.
- (c) Customer will be responsible for understanding its Tax Obligations, and will be solely responsible and liable for all Tax Obligations with respect to any Assets held on behalf of Customer and any transaction related thereto.
- (d) Customer will provide BNY Mellon with Tax Information to enable BNY Mellon to comply with BNY Mellon's obligations under any applicable tax laws or with any tax authority enquiry.
- (e) Customer acknowledges and agrees that none of BNY Mellon nor any BNY Mellon Affiliate is a tax adviser and none of BNY Mellon nor any BNY Mellon Affiliate will, under any circumstances, provide tax advice to Customer. Customer will obtain its own independent tax advice for any tax-related matters or Tax Obligations.

## 7.2 Payments

Where BNY Mellon receives Instructions to make distributions or transfers out of an Account in order to pay Customer's third party service providers, Customer acknowledges that in making such payments BNY Mellon is acting in an administrative capacity, and not as the payor, for tax information reporting and withholding purposes.

## **8. CREDITS AND ADVANCES**

### **8.1 Contractual Settlement and Income**

BNY Mellon may, in its sole discretion, as a matter of bookkeeping convenience, credit the relevant Account with the proceeds resulting from the purchase, sale, redemption or other delivery or receipt of Securities, or interest, dividends or other distributions payable on Securities prior to its actual receipt thereof. All such credits will be conditional until BNY Mellon's actual receipt of such proceeds and may be reversed by BNY Mellon to the extent that such proceeds are not received. Actual receipt of proceeds with respect to a transaction will not be deemed to have occurred, and the transaction will not be considered final, until BNY Mellon has received sufficient immediately available funds or Securities specifically applicable to such transaction that, under applicable local law, rule or practice, are irreversible and not subject to any security interest, levy or other encumbrance.

### **8.2 Advances**

If BNY Mellon receives an Instruction that, if processed, would result in an overdraft in an Account, BNY Mellon may, in its sole discretion, advance funds in any currency hereunder.

### **8.3 Repayment**

If: (a) BNY Mellon has advanced funds to an Account; (b) an overdraft has occurred in an Account (including overdrafts incurred in connection with the settlement of securities transactions, funds transfers or foreign exchange transactions) or (c) the Customer is for any other reason indebted to BNY Mellon, Customer, agrees to repay BNY Mellon (on demand or upon becoming aware thereof) the amount of such advance, overdraft or indebtedness, plus accrued interest at a rate then charged by BNY Mellon to its institutional custody clients in the relevant currency. Rates of interest charged by BNY Mellon on Advances are made available by BNY Mellon on NEXEN – “Daily Rates” link.

### **8.4 Securing Repayment**

If any advance of funds is made by BNY Mellon to purchase or to make payment on or against delivery of Securities under this Agreement, BNY Mellon will have a continuing security interest in and right of setoff against such Securities and the proceeds thereof, until such time as BNY Mellon is repaid the amount of such advance; provided that Customer does not hereby grant a security interest in any Securities issued by an affiliate (as defined in Section 23A of the U.S. Federal Reserve Act) of BNY Mellon. If at any time before such repayment the market value of such Securities is less than the amount of the advance made to finance their purchase, BNY Mellon will have a continuing security interest in and right of setoff against any Cash held by BNY Mellon or any BNY Mellon Affiliate at any time for and in the name of Customer as is necessary to fully secure the repayment of such advance. If Customer is indebted to BNY Mellon for overdrafts or for any other reason, BNY Mellon will be entitled to collect from the Accounts sufficient Cash for reimbursement, and if such Cash is insufficient, upon prior notice of such insufficiency to Customer, to sell such Securities as the Customer may promptly direct or, in the absence of such prompt direction, as BNY Mellon may determine in its reasonable discretion, to the extent necessary to obtain reimbursement. In this regard, BNY Mellon



will be entitled to all the rights and remedies of a pledgee, secured creditor and/or securities intermediary under applicable laws, rules and regulations as then in effect as if Customer is in default. Subject to any legal or regulatory restrictions, such security interest will be superior to any and all other liens, security interests or claims and will not be subject to any right of set-off or retention, counterclaim, lien or security of equal status. Customer will not take any action with respect to the Securities which is inconsistent with the rights granted to BNY Mellon hereunder, other than as necessary for Customer to conduct its business in the ordinary course and as contemplated by this Agreement, and will take any and all additional action which may be reasonably requested by BNY Mellon and required to assure the priority of such security interest in favor of BNY Mellon. .

## **9. STATEMENTS; BOOKS AND RECORDS; THIRD PARTY DATA**

### **9.1 Statements**

BNY Mellon will make available to Customer, through the Electronic Access Services or such other method as may be agreed upon by the Parties, a monthly statement reflecting all transfers to or from the Accounts during such month and all holdings in the Accounts as of the last business day of such month. Customer will promptly review each such statement and, within ninety (90) days of when such statement is made available by BNY Mellon, notify BNY Mellon of any exception or objection thereto. Notwithstanding the foregoing, Customer may notify BNY Mellon of any such exceptions or objections at any time; provided, however, that BNY Mellon will not be responsible or liable for any losses that could have been mitigated had such notice been provided during such ninety (90) day period.

### **9.2 Books and Records**

BNY Mellon will identify on its books and records the Assets belonging to the Customer, whether held directly or indirectly through Subcustodians or Depositories. Securities held in the Accounts will be held in registered form in the name of BNY Mellon or one of its nominees and will be segregated on BNY Mellon's books and records from BNY Mellon's own property. Customer and its authorized representatives will have the right, at Customer's own expense and with reasonable prior written notice to BNY Mellon, to have access to, and copies of, those books and records directly pertaining to the Accounts. Any such access will occur during BNY Mellon's normal business hours and will be subject to BNY Mellon's applicable security policies and procedures.

### **9.3 Third Party Data**

- (a) Customer acknowledges that BNY Mellon will be receiving, utilizing and relying on Market Data and other data provided by Customer and/or by third parties in connection with BNY Mellon's performance of the services hereunder (collectively, "**Third Party Data**"). , BNY Mellon is entitled to rely without inquiry on all Third Party Data provided to BNY Mellon hereunder (and all Instructions related to Third Party Data), and BNY Mellon makes no assurances or warranties in relation to the accuracy or completeness of Third Party Data and will not be responsible or liable for any losses or damages incurred as a result of any Third Party Data that is inaccurate or incomplete except to the extent, if any, resulting from BNY Mellon's



failure to adhere to the Standard of Care in reporting such Third Party Data. BNY Mellon may follow Instructions with respect to Third Party Data, even if such Instructions direct BNY Mellon to override its usual procedures and data sources or if BNY Mellon, in performing services for itself or others (including services similar to those performed for Customer), receives different Third Party Data for the same or similar Securities.

- (b) To the extent that BNY Mellon provides values of, and pricing information in relation to, Securities, Customer acknowledges and agrees that:
  - (i) BNY Mellon is authorized to use generally recognized pricing services including Market Data Providers, brokers, dealers and other market makers. In the event that such pricing services are unable to provide a value of or pricing information in respect of Securities and BNY Mellon provides values and pricing information, BNY Mellon will so advise Customer, but will have no other responsibility or liability in respect of such valuation or pricing information;
  - (ii) Certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and the variance between such calculated amounts and actual market values may be material;
  - (iii) Certain third party service providers may not permit Customer's directed price to be used, which may result in differences between third party service provider reports and custodial reports;
  - (iv) Performance measurement and analytic services may use different data sources than those used by BNY Mellon to provide Market Data for an Account, which may result in differences between custodial reports and performance measurement and analytic reports; and
  - (v) BNY Mellon may require Customer to execute supplemental documentation prior to providing pricing for certain Securities.
- (c) Certain Market Data may be the intellectual property of Market Data Providers, which impose additional terms and conditions upon Customer's use of such Market Data. Such additional terms and conditions can be found on the Data Terms Website. Customer agrees to those terms and conditions as they are posted on the Data Terms Website from time to time.

## 10. DISCLOSURES

### 10.1 Required Disclosure

- (a) With respect to Securities that are registered under the U.S. Securities Exchange Act of 1934, as amended, or that are issued by an issuer registered under the U.S. Investment Company Act of 1940, as amended, the U.S. Shareholder Communications Act of 1985 (the "**Act**") requires BNY Mellon to disclose to issuers

of such Securities, upon their request, the name, address and securities position of BNY Mellon's clients who are "beneficial owners" (as defined in the Act) of the issuer's Securities, unless the beneficial owner objects to such disclosure. The Act defines a "beneficial owner" as any person who has or shares the power to vote a security (pursuant to an agreement or otherwise) or who directs the voting of a security. Customer has designated on the signature page hereof whether (i) as beneficial owner, it objects to the disclosure of its name, address and securities position to any U.S. issuer that requests such information pursuant to the Act for the specific purpose of direct communications between such issuer and Customer or (ii) it requires BNY Mellon to contact Customer's investment manager with respect to relevant Securities to make the decision as to whether it objects to the disclosure of the beneficial owner's name, address and securities position to any U.S. issuer that requests such information pursuant to the Act.

- (b) With respect to certain Securities issued outside the United States, BNY Mellon may disclose information to issuers of Securities as required by the organizational documents of the relevant issuer or in accordance with local market practice.
- (c) In connection with any disclosure contemplated by this Section 10.1, Customer agrees to supply BNY Mellon with any required information requested by BNY Mellon in connection with legal and /or market requirements as outlined in this Section 10.1 .

## **10.2 Foreign Exchange Transactions**

In connection with this Agreement, Customer may enter into foreign exchange transactions (including foreign exchange hedging transactions) with BNY Mellon or a BNY Mellon Affiliate acting as a principal or otherwise through customary channels. Customer may issue standing Instructions with respect to any such foreign exchange transactions, subject to any rules or limitations that may apply to any foreign exchange facility made available to Customer. With respect to any such foreign exchange transactions, BNY Mellon or such BNY Mellon Affiliate is acting as a principal counterparty on its own behalf and is not acting as a fiduciary or agent for, or on behalf of, Customer, its investment manager or any Account.

## **10.3 Investment of Cash**

In connection with this Agreement, Customer may issue standing Instructions to invest Cash in one or more sweep investment vehicles. Such investment vehicles may be offered by a BNY Mellon Affiliate or by a client of BNY Mellon, and BNY Mellon may receive compensation therefrom. By making investment vehicles available, BNY Mellon and its Affiliates will not be deemed to have recommended, endorsed or guaranteed any such investment vehicle in any way or otherwise to have acted as a fiduciary or agent for, or on behalf of, Customer, its investment manager or any Account. BNY Mellon will have no liability for any loss incurred on any such investments. Customer understands that Cash may be uninvested if it is received or reconciled to an Account after the applicable deadline to be swept into the selected investment vehicle.

## **11. REGULATORY MATTERS**

### **11.1 USA PATRIOT Act**

Section 326 of the U.S. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (including its implementing regulations) requires BNY Mellon to implement a customer identification program pursuant to which BNY Mellon must obtain certain information from Customer in order to verify Customer's identity prior to establishing an Account. Accordingly, prior to establishing an Account, Customer will be required to provide BNY Mellon with certain information, including Customer's name, physical address, tax identification number and other pertinent identifying information, to enable BNY Mellon to verify Customer's identity. Customer acknowledges that BNY Mellon cannot establish an Account unless and until BNY Mellon has successfully performed such verification.

### **11.2 Sanctions**

- (a) Throughout the term of this Agreement, Customer: (i) will have in place and will implement policies and procedures designed to prevent violations of Sanctions, including measures to accomplish effective and timely scanning of all relevant data with respect to incoming or outgoing assets or transactions relating to this Agreement; (ii) will ensure that neither Customer nor any of its Affiliates, directors, officers or employees is an individual or entity that is, or is owned or controlled by an individual or entity that is: (A) the target of Sanctions or (B) located, organized or resident in a country or territory that is, or whose government is, the target of Sanctions and (iii) will not, directly or indirectly, use the Accounts in any manner that would result in a violation by Customer or BNY Mellon of Sanctions.
- (b) Customer will promptly provide to BNY Mellon such information as BNY Mellon reasonably requests in connection with the matters referenced in this Section 11.2, including information regarding the Accounts, the Assets and the source thereof, and the identity of any individual or entity having or claiming an interest therein. BNY Mellon may decline to act or provide services in respect of any Account, and take such other actions as it, in its reasonable discretion, deems necessary or advisable, in connection with the matters referenced in this Section 11.2. If BNY Mellon declines to act or provide services as provided in the preceding sentence, except as otherwise prohibited by applicable law or official request, BNY Mellon will inform Customer as soon as reasonably practicable.

## **12. COMPENSATION**

### **12.1 Fees and Expenses**

In consideration of BNY Mellon's services provided hereunder, BNY Mellon will be (a) paid the fees set forth in the fee schedule separately executed by the Parties (as such fee schedule may be amended by BNY Mellon from time to time upon one hundred and twenty (120) days' prior written notice to Customer) and (b) reimbursed for any out-of-pocket and incidental expenses incurred by BNY Mellon in connection therewith. Unless otherwise agreed by the Parties, such amounts will be payable to BNY Mellon within thirty (30) days

of Customer's receipt of the relevant invoice. Without limiting BNY Mellon's other rights set forth in this Agreement, BNY Mellon may charge interest on overdue amounts at a rate then charged by BNY Mellon to its institutional custody clients in the relevant currency. BNY Mellon is authorized to charge and collect from the Account its fees and expenses unless such fees and expenses are paid directly by Customer.

## 12.2 Other Compensation

Customer acknowledges that, as part of BNY Mellon's compensation, BNY Mellon will earn interest on Cash balances held by BNY Mellon (including disbursement balances, balances arising from purchase and sale transactions and when Cash otherwise remains uninvested) as provided in BNY Mellon's compensation disclosures.

## 13. REPRESENTATIONS, WARRANTIES AND COVENANTS

### 13.1 BNY Mellon

BNY Mellon represents and warrants that: (a) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (b) it has the requisite corporate power and authority to enter into and perform its obligations under this Agreement; (c) the individual executing this Agreement on its behalf has the requisite authority to bind BNY Mellon to this Agreement; (d) BNY Mellon has duly executed this Agreement so that its terms constitute valid, binding and enforceable obligations of BNY Mellon; (e) neither the execution of this Agreement nor the acts contemplated hereunder will violate any legislative, regulatory or judicial act or order applicable to the BNY Mellon; (f) the personnel of BNY Mellon responsible for managing BNY Mellon's duties and obligations hereunder are qualified and experienced in the performance of the various functions contemplated and required by this Agreement, and (g) BNY Mellon has completed, obtained and performed all registrations, filings, approvals, authorizations, consents or examinations required by any government or governmental authority for its acts contemplated by this Agreement.

### 13.2 Customer

Customer represents and warrants that: (i) it is duly organized, validly existing and in good standing in its jurisdiction of organization; (ii) it has the requisite corporate power and authority to enter into and to carry out the transactions contemplated by this Agreement and (iii) the individual executing this Agreement on its behalf has the requisite authority to bind Customer to this Agreement.

## 14. LIABILITY

### 14.1 Standard of Care

In performing all of its duties and obligations under this Agreement, BNY Mellon will exercise the standard of care and diligence that a professional custodian would observe in these affairs taking into account the prevailing rules, practices, procedures and circumstances in the relevant market ("**Standard of Care**").

## 14.2 Limitation of Liability

- (a) BNY Mellon's liability arising out of or relating to this Agreement will be limited solely to those damages that are caused by BNY Mellon's negligence, willful misconduct, fraud, or breach or failure to perform its obligations under this Agreement in accordance with the Standard of Care. In no event will BNY Mellon be liable for any indirect, incidental, consequential, exemplary, punitive or special losses or damages, or for any loss of revenues, profits or business opportunity, arising out of or relating to this Agreement (whether or not foreseeable and even if BNY Mellon has been advised of the possibility of such losses or damages).
- (b) Notwithstanding anything to the contrary set forth in this Agreement, in no event will BNY Mellon be liable for any losses or damages arising out of any of the following:
  - (i) Customer's or an Authorized Person's decision to invest in or hold Assets in any particular country, including any losses or damages arising out of or relating to: (A) the financial infrastructure of a country; (B) a country's prevailing custody and settlement practices; (C) nationalization, expropriation or other governmental actions; (D) a country's regulation of the banking or securities industry; (E) currency and exchange controls, restrictions, devaluations, redenominations, fluctuations or asset freezes; (F) laws, rules, regulations or orders that at any time prohibit or impose burdens or costs on the transfer of Assets to, by or for the account of the Customer or (G) market conditions which affect the orderly execution of securities transactions or affect the value of securities;
  - (ii) BNY Mellon's reliance on Instructions;
  - (iii) BNY Mellon's receipt or acceptance of fraudulent, forged or invalid Securities (or Securities which are otherwise not freely transferable or deliverable without encumbrance in any relevant market);
  - (iv) For any matter with respect to which BNY Mellon is required to act only upon the receipt of Instructions, (A) BNY Mellon's failure to act in the absence of such Instructions or (B) Instructions that are late or incomplete or do not otherwise satisfy the requirements of Section 3.2(e), whether or not BNY Mellon acted upon such Instructions;
  - (v) BNY Mellon receiving or transmitting any data to or from Customer or any Authorized Person via any non-secure method of transmission or communication selected by Customer;
  - (vi) Customer's or an Authorized Person's decision to invest in Securities or to hold Cash in any currency; or
  - (vii) The insolvency of any Person, including a Subcustodian that is not a BNY Mellon Affiliate, Depository, broker, bank or a counterparty to the

settlement of a transaction or to a foreign exchange transaction, except as provided in Section 4.2.

### **14.3 Force Majeure**

BNY Mellon will not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement to the extent caused, directly or indirectly, by any event beyond its reasonable control, including acts of God, strikes or other labor disputes, work stoppages, acts of war, terrorism, general civil unrest, governmental or military actions, legal constraint or the interruption, loss or malfunction of utilities or communications or computer systems. BNY Mellon will promptly notify Customer upon the occurrence of any such event and will use commercially reasonable efforts to minimize its effect.

### **14.4 Indemnification**

(a) Except to the extent prohibited by applicable law, Customer will indemnify and hold harmless BNY Mellon from and against all losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) incurred by BNY Mellon arising out of or relating to BNY Mellon's performance under this Agreement, except to the extent resulting from BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care. The Parties agree that the foregoing will include reasonable counsel fees and expenses incurred by BNY Mellon in its successful defense of claims that are asserted by Customer against BNY Mellon arising out of or relating to BNY Mellon's performance under this Agreement.

(b) Subject to the limitations set forth in Section 14 hereof, BNY Mellon shall indemnify, hold harmless and, if requested, defend the Customer, its officers, , employees, and agents, and the Board and members of the Board (collectively, the "Customer Indemnified Parties"), from and against all direct losses, costs, expenses, damages and liabilities (including reasonable counsel fees and expenses) for which BNY Mellon would otherwise be liable pursuant to the terms hereof, incurred by any Customer Indemnified Party to the extent resulting from BNY Mellon's failure to perform its obligations under this Agreement in accordance with the Standard of Care. The Parties agree that the foregoing shall include counsel fees and expenses incurred by a Customer Indemnified Party in a successful defense of claims that are asserted by BNY Mellon against a Customer Indemnified Party arising out of or relating to Customer's performance under this Agreement..

### **14.5 Insurance**

(a) BNY Mellon shall at all times during the term of this Agreement, maintain, at its own expense, insurance with respect to the Assets held in the Accounts in such amounts and covering such risks as BNY Mellon maintains for its own account or for the accounts of other similarly situated customers of BNY Mellon and is otherwise reasonable and customary in light of prevailing industry standards. BNY Mellon has provided to Customer evidence of BNY Mellon's insurance coverage(s) as of the Effective Date of this Agreement ("Current Coverages"). BNY Mellon shall provide the Client with prompt written notice of any material changes to the Current Coverage(s), as outlined in Exhibit



B, during the term of this Agreement. The limits of insurance shall not limit the liability of BNY Mellon, its officers, employees, agents, representatives or Subcustodians. .

## **15. CONFIDENTIALITY**

### **15.1 Confidentiality Obligations**

Each Party agrees to use the Confidential Information of the other Party solely to accomplish the purposes of this Agreement and, except in connection with such purposes or as otherwise permitted herein, not to disclose such information to any other Person without the prior written consent of the other Party. Notwithstanding the foregoing, BNY Mellon may: (a) use Customer's Confidential Information in connection with certain functions performed on a centralized basis by BNY Mellon, its Affiliates and joint ventures and their service providers (including audit, accounting, risk, legal, compliance, sales, administration, product communication, relationship management, compilation and analysis of customer-related data and storage); (b) disclose such information to its Affiliates and joint ventures and to its and their service providers who are subject to confidentiality obligations and (c) store the names and business contact information of Customer's employees and representatives relating to this Agreement on the systems or in the records of its Affiliates and joint ventures and its and their service providers. In addition, BNY Mellon may aggregate information regarding Customer and the Accounts on an anonymized basis with other similar client data for BNY Mellon's and its Affiliates' reporting, research, product development and distribution and marketing purposes

### **15.2 Exceptions**

The Parties' respective obligations under Section 15.1 will not apply to any such information: (a) that is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than the receiving Party; (b) that was known to the receiving Party as of the time of its disclosure and was not otherwise subject to confidentiality obligations; (c) that is independently developed by the receiving Party without reference to such information; (d) that is subsequently learned from a third party not known to be under a confidentiality obligation to the disclosing Party or (e) that is required to be disclosed pursuant to applicable law, rule, regulation, requirement of any law enforcement agency, court order or other legal process or at the request of a regulatory authority.

## **16. TERM AND TERMINATION**

### **16.1 Term**

The term of this Agreement will commence on October 1, 2020 and will continue in effect until October 1, 2025 in accordance with the provisions herein.

### **16.2 Termination**

(a) Either Party may terminate this Agreement by giving to the other Party a notice in writing specifying the date of such termination, which will be not less than ninety (90) days after the date of such notice.

(b) The Customer may terminate this Agreement effective immediately by giving to the Custodian a notice thereof in writing upon any of (i) the filing or commencement of any voluntary or involuntary insolvency, bankruptcy or other similar action affecting the Custodian or any BNY Mellon Affiliate, or (ii) the appointment of any receiver or trustee in respect of the Custodian or any of its assets or any of the assets of any BNY Mellon Affiliate; or (iii) the assignment of this Agreement by Custodian pursuant to Section 17.2(a) hereof.

(c) For the avoidance of doubt, nothing in this Section 16.2 is intended or shall be construed to prevent or prohibit the Customer from transferring or directing the transfer of some, all or substantially all of the Securities, Cash and/or other Assets from any Account at any time and from time to time.

### 16.3 Effect of Termination

Upon termination hereof, Customer will pay to BNY Mellon such compensation as may be due to BNY Mellon, and will reimburse BNY Mellon for other amounts payable or reimbursable to BNY Mellon hereunder, through the date of termination. BNY Mellon will follow such reasonable Instructions as Customer issues concerning the transfer of custody of records, Assets and other items; provided that (a) BNY Mellon will have no responsibility or liability for shipping and insurance costs associated therewith and (b) full payment has been made to BNY Mellon of its compensation, costs, expenses and other amounts to which it is entitled hereunder. If any Assets remain in any Account after termination, BNY Mellon may deliver to Customer such Assets. In the event of any termination of this Agreement, all of the terms and conditions of this Agreement shall continue to apply through the Effective Termination Date and through any period following the Effective Termination Date, during which any Assets remain in any Account.

### 16.4 Survival

Any and all provisions of this Agreement which by their nature or effect are required or intended to be observed, kept or performed after the expiration or termination of this Agreement will survive the expiration or any termination of this Agreement and remain binding upon and for the Parties' benefit, including Section 13 (Representations, Warranties and Covenants); Section 14 (Liability); Section 15 (Confidentiality); Section 16.3 (Effect of Termination); Section 16.4 (Survival) and Section 17.4 (Governing Law/Forum).

## 17. GENERAL

### 17.1 Non-Custody Assets

At Customer's request pursuant to Instructions, subject to BNY Mellon's approval and as an accommodation to Customer, BNY Mellon will provide consolidated recordkeeping services reflecting on statements provided to Customer securities and other assets not held by BNY Mellon ("**Non-Custody Assets**"). Non-Custody Assets will be designated on BNY Mellon's books as "assets not held in custody" or by other similar designation and will not constitute Assets for purposes of this Agreement. Customer acknowledges and agrees that, notwithstanding anything contained elsewhere in this Agreement, (a)



Customer will have no security entitlement against BNY Mellon with respect to Non-Custody Assets; (b) BNY Mellon will rely, without independent verification, on information provided by Customer or its designee regarding Non-Custody Assets (including positions and market valuations) and (c) BNY Mellon will have no responsibility whatsoever with respect to Non-Custody Assets or the accuracy of any information maintained on BNY Mellon's books or set forth on account statements concerning Non-Custody Assets.

## **17.2 Assignment/U.S. Special Resolution Regime Transferability**

- (a) Neither Party may, without the other Party's prior written consent, assign any of its rights or delegate any of its duties under this Agreement (whether by change of control, operation of law or otherwise); provided, however that BNY Mellon may, without the prior written consent of Customer, assign this Agreement or any of its rights, or delegate any of its duties hereunder: (a) to any BNY Mellon Affiliate; (b) to any successor to the business of BNY Mellon to which this Agreement relates, in which event BNY Mellon agrees to provide notice of such successor to Customer or (c) as otherwise permitted in this Agreement. Any purported assignment or delegation by a Party in violation of this provision will be voidable at the option of the other Party. This Agreement will be binding upon, and inure to the benefit of, the Parties and their respective permitted successors and assigns.
- (b) Notwithstanding anything herein to the contrary, in the event BNY Mellon becomes subject to a proceeding under a U.S. special resolution regime, the transfer of the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) from BNY Mellon will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if the Agreement (and any interest and obligation in or under, and any property securing, the Agreement) were governed by the laws of the United States or a state of the United States; and, in the event BNY Mellon or any affiliate becomes subject to a proceeding under a U.S. special resolution regime, default rights with respect to the Agreement that may be exercised against BNY Mellon are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regime if the Agreement were governed by the laws of the United States or a state of the United States.

## **17.3 Amendment**

This Agreement may be amended or modified only in a written agreement signed by an authorized representative of each Party. For purposes of the foregoing, email exchanges between the Parties will not be deemed to constitute a written agreement.

## **17.4 Governing Law/Forum**

- (a) The substantive laws of the state of California (without regard to its conflicts of law provisions) will govern all matters arising out of or relating to this Agreement, including the establishment and maintenance of the Accounts and for purposes of the Uniform Commercial Code and all issues specified in Article 2(1) of the Hague Securities Convention.

- (b) Each Party irrevocably agrees that all legal actions or proceedings brought by it against the other Party arising out of or relating to this Agreement will be brought solely and exclusively before the state or federal courts situated in San Jose, California. Each Party irrevocably submits to personal jurisdiction in such courts and waives any objection which it may now or hereafter have based on improper venue or *forum non conveniens*.

#### **17.5 Business Continuity/Disaster Recovery**

BNY Mellon will implement business continuity and disaster recovery plans designed to minimize interruptions of service and ensure recovery of systems and applications used to provide the services under this Agreement. Such plans will cover the facilities, systems, applications and employees that are critical to the provision of the services hereunder, and will be tested at least annually to validate whether the recovery strategies, requirements, and protocols are viable and sustainable.

#### **17.6 Sovereign Immunity**

BNY Mellon hereby acknowledges that the Customer reserves all immunities, defenses, rights or actions arising out of its sovereign and/or governmental status or under the Eleventh Amendment to the United States Constitution, and that no waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of its entry into this Agreement or any other agreement related thereto, by any express or implied provision thereof or by any acts or omissions to act by the Client or its designees. The Customer represents and warrants that the foregoing does not and shall not be interpreted (or be asserted by Client) to, relieve the Customer from any of its contractual obligations under this Agreement or any other agreement related thereto, and that BNY Mellon shall have the right to judicially enforce such obligations at law or in equity.

#### **17.7 Non-Fiduciary Status**

Customer hereby acknowledges and agrees that BNY Mellon is not a fiduciary by virtue of accepting and carrying out its obligations under this Agreement and has not accepted any fiduciary duties, responsibilities or liabilities with respect to its services hereunder, including with respect to the management, investment advisory or sub-advisory functions of Customer.

#### **17.8 Notices**

Other than routine communications in the ordinary course of providing or receiving services hereunder (including Instructions), notices given hereunder will be: (a) addressed to BNY Mellon or Customer at the address set forth on the signature page (or such other address as either Party may designate in writing to the other Party), (b) addressed to any designee of Customer upon receipt of Instruction to address such notice(s) to Customer's designee, or (c) sent by hand delivery, by certified mail, return receipt requested, or by overnight delivery service, in each case with postage or charges prepaid. All notices given in accordance with this Section will be effective upon receipt.

### **17.9 Entire Agreement**

This Agreement constitutes the sole and entire agreement among the Parties with respect to the matters dealt with herein, and merges, integrates and supersedes all prior and contemporaneous discussions, agreements and understandings between the Parties, whether oral or written, with respect to such matters.

### **17.10 No Third Party Beneficiaries**

This Agreement is entered into solely between, and may be enforced only by, the Parties. Each Party intends that this Agreement will not, and no provision of this Agreement will be interpreted to, benefit, or create any right or cause of action in or on behalf of, any party or entity other than the Parties.

### **17.11 Counterparts/Facsimile**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and said counterparts when taken together will constitute one and the same instrument and may be sufficiently evidenced by one set of counterparts. This Agreement may also be executed and delivered by facsimile or email with confirmation of delivery and/or receipt.

### **17.12 Interpretation**

The terms and conditions of this Agreement are the result of negotiations between the Parties. The Parties intend that this Agreement will not be construed in favor of or against a Party by reason of the extent to which such Party or its professional advisors participated in the preparation or drafting of this Agreement.

### **17.13 No Waiver**

No failure or delay by a Party to exercise any right, remedy or power it has under this Agreement will impair or be construed as a waiver of such right, remedy or power. A waiver by a Party of any provision or any breach of any provision will not be construed to be a waiver by such Party of such provision in any other instance or any succeeding breach of such provision or a breach of any other provision. All waivers will be in writing and signed by an authorized representative of the waiving Party.

### **17.14 Headings**

All section and subsection headings in this Agreement are included for convenience of reference only and will not be considered in the interpretation of the scope or intent of any provision of this Agreement.

### **17.15 Severability**

If a court of competent jurisdiction determines that any provision of this Agreement is illegal or invalid for any reason, such illegality or invalidity will not affect the validity of the remainder of this Agreement. In such case, the Parties will negotiate in good faith to

replace each illegal or invalid provision with a valid, legal and enforceable provision that fulfills as closely as possible the original intent of the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Agreement as of the Effective Date.

**THE BANK OF NEW YORK MELLON**

By: *Yolanda I Diaz*  
Name: *Yolanda I Diaz*  
Title: *Director*  
Date: *4/21/23*

**Address for Notice:**

The Bank of New York Mellon  
*240 Greenwich Street*  
*NY, NY, 10286*  
Attention: *Asset Servicing - AO*

**SAN JOSE FEDERATED CITY EMPLOYEES' RETIREMENT SYSTEM**

By: *Prabhu*  
Name: Prabhu Palani  
Title: Chief Investment Officer  
Date: April 21, 2023

**Address for Notice:**

1737 North First Street, Suite 600  
San Jose, CA 95112  
Attention: Investment Division

Pursuant to Section 10.1(a):  
 as beneficial owner, Customer OBJECTS to disclosure  
 as beneficial owner, Customer DOES NOT OBJECT to disclosure  
 BNY Mellon will CONTACT THE CUSTOMER'S INVESTMENT MANAGER with respect to relevant Securities to make the decision whether it objects to disclosure  
  
IF NO BOX IS CHECKED, BNY MELLON WILL RELEASE SUCH INFORMATION UNTIL IT RECEIVES A CONTRARY INSTRUCTION FROM CUSTOMER.

## BENEFIT PLAN SCHEDULE

### ADDITIONAL PROVISIONS FOR CUSTODY OF BENEFIT PLANS

The following additional terms and conditions supplement the Agreement and will in all respects be considered part of the Agreement.

#### 1. Company Party

Customer is a governmental retirement plan and, accordingly, no company sponsor is a party to this Agreement.

#### 2. Plan Type; Representations and Warranties

- (a) Customer represents and warrants that the Customer is one of the following (select one), and it will immediately notify BNY Mellon if the Customer ceases to be so qualified or any of the representations and warranties are or become untrue:
- ERISA Qualified Plan.** The Customer is a qualified plan under Section 401(a) of the Code that is subject to ERISA and is tax exempt under 501(a) of the Code..
  - Governmental Plan.** The Customer is a qualified plan under Section 401(a) of the Code. Customer further represents that it is a “governmental plan” as that term is defined in Section 414(d) of the Code and Section 3(32) of ERISA and the Customer is not subject to ERISA.
  - Church Plan.** The Customer is a qualified plan under Section 401(a) of the Code and is tax-exempt under 501(a) of the Code. Customer further represents that the it is a “church plan” as that term is defined in Section 3(33) of ERISA with respect to which no election has been made under Section 410(d) of the Code and the Customer is not subject to ERISA.
  - VEBA.** The Customer is a voluntary employees’ beneficiary association within the meaning of Section 501(c)(9) of the Code and is subject to ERISA.
- (b) Customer represents, warrants and covenants that Customer (and/or its duly appointed investment manager) shall be solely responsible for assuring that Customer and any transaction involving any Assets shall comply with applicable provisions of ERISA and the Code, including Sections 404 and 406 of ERISA and Section 4975 of the Code, and any similar law.

## EXHIBIT A CROSS-TRADING INFORMATION

As part of the Cross-Trading Program covered by the Department of Labor Prohibited Transaction Exemption (“PTE”) 95-56 granted to Mellon Bank, N.A. and its affiliates (“**BNY Mellon**”), BNY Mellon is to provide to each affected employee benefit plan the following information:

### I. The Existence of the Cross-Trading Program

BNY Mellon has developed and intends to utilize, wherever practicable, a Cross-Trading Program for Indexed Accounts and Large Accounts as those terms are defined in PTE 95-56.

### II. The “Triggering Events” Creating Cross-Trade Opportunities

In accordance with PTE 95-56, three “Triggering Events” may create opportunities for Cross-Trading transactions. They are generally the following (see PTE 95-56 for more information):

1. A change in the composition or weighting of the index by the independent organization creating and maintaining the index;
2. A change in the overall level of investment in an Indexed Account as a result of investments and withdrawals on the Indexed Account’s opening date, where the Indexed Account is a bank collective fund, or on any relevant date for non-bank collective funds; provided, however, a change in an Indexed Account resulting from investments or withdrawals of assets of BNY Mellon’s own plans (other than BNY Mellon’s defined contributions plans under which participants may direct among various investment options, including Indexed Accounts) are excluded as a “Triggering Events”; or
3. A recorded declaration by BNY Mellon that an accumulation of cash in an Indexed Account attributable to interest or dividends on, and/or tender offers for portfolio securities equal to not more than .5% of the Indexed Account’s total value has occurred.

### III. The Pricing Mechanism Utilized for Securities Purchased or Sold

Securities will be valued at the current market value for the securities on the date of the crossing transaction.

Equity Securities - the current market value for the equity security will be the closing price on the day of trading as determined by an independent pricing service; unless the security was added to or deleted from an index after the close of trading, in which case the price will be the opening price for that security on the next business day after the announcement of the addition or deletion.

Debt Securities - the current market value of the debt security will be the price determined by BNY Mellon as of the close of the day of trading according to the Securities and Exchange Commission's Rule 17a-7(b)(4) under the Investment Company Act of 1940. Debt securities that are not reported securities or traded on an exchange, will be valued based on an average of the highest current independent bids and the lowest current independent offers on the day of cross trading. BNY Mellon will use reasonable inquiry to obtain such prices from at least three independent sources that are brokers or market makers. If there are fewer than three independent sources to price a certain debt security, the closing price quotations will be obtained from all available sources.

IV. The Allocation Method and Other Procedures

Direct cross-trade opportunities will be allocated among potential buyers or sellers of debt or equity securities on a pro-rata basis. With respect to equity securities, please note BNY Mellon imposes a trivial dollar amount constraint to reduce excessive custody ticket charges to participating accounts.



**EXHIBIT B**

**Schedule of Insurance**

The Bank, at the Bank's sole cost and expense, shall procure and maintain for the duration of this Agreement against claims for injuries to persons or damage to property which may arise from, or in connection with, the performance of the services hereunder by the Bank, its agents, representatives, employees, or subcontractors.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

- i. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence" Form Number CG 0001); and
- ii. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
- iii. Professional Liability Errors and Omissions insurance; and
- iv. Crime Coverage and/or Bankers Blanket Bond

There shall be no endorsements reducing the scope of coverage required above.

B. Minimum Limits of Insurance.

The Bank shall maintain limits no less than:

- i. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Letter Agreement or the general aggregate limit shall be twice the required occurrence limit.
- ii. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the City of San José, the Board of Administration for San Jose Federated City Employees' Retirement System, Board of Administration for San Jose Police and Fire Department Retirement Plan, their officers, employees, agents and contractors.

- iii. Professional Errors and Omissions: \$10,000,000 aggregate.
- iv. Combination Crime Coverage and/or Bankers Blanket Bond: A Combination Crime policy and/or Bankers Blanket Bond with minimum limits not less than \$1,000,000 for:
  - Form A: Employee Dishonesty
  - Form B: Forgery or Alteration
  - Form C: Theft, Disappearance, Destruction Inside/Outside Premises
  - Form D: Robbery and Safe Burglary Inside/Outside Premises

C. Deductibles and Self-Insured Retentions.

Bank shall be solely responsible for meeting its deductible or self-insured retention obligations.

D. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

- i. Commercial General Liability Coverage:
  - 1. The City, the Board, their officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, the Bank; products and completed operations of the Bank; and automobiles owned, leased, hired or borrowed by Bank. The coverage shall contain no special limitations on the scope of protection afforded to City, the Board, their officers, employees, agents and contractors.
  - 2. The Bank's insurance coverage shall be primary insurance as respects City, the Board, their officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, the Board, their officers, employees, agents, or contractors shall be -excess of Bank's insurance and shall not contribute with it.
  - 3. Any failure to comply with reporting provisions of the policies by the Bank shall not affect coverage provided City, the Board, their officers, employees, agents or contractors.
  - 4. Coverage shall state that the Bank's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Coverage shall contain a waiver of subrogation in favor of the City, the Board, their officers, employees, agents and contractors.

- E. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that if coverage is materially reduced, non-renewed or restrictively modified by the carrier, such carrier will endeavor to give not less than thirty (30) days' prior written notice thereof to the City Risk Manager.
- F. Acceptability of Insurers. Insurance is to be placed with financially sound insurers.
- G. Verification of Coverage. The Bank shall furnish City with certificates of insurance affecting coverage required by this Agreement. Proof of insurance shall be mailed to the following address, or any subsequent address as may be directed in writing:  

Investment Division  
City of San Jose Office of Retirement Services  
1737 North First Street, Suite 600  
San José, CA 95112
- H. Subcontractors. The Bank shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor. The General Partner shall obtain separate certificates evidencing each subcontractor's insurance coverage, if applicable.
- I. Amendment/Modification of Insurance Requirements. These insurance requirements may be amended or waived by the mutual agreement of General Partner and the City Risk Manager, provided the City Risk Manager determines that the amendment or modification will not substantially increase the Board's or City's liability for activities permitted under this Agreement. In the event any insurance policy required by this Letter Agreement is canceled or reduced in coverage, General Partner shall provide notice to the City Risk Manager of such cancellation or reduction.



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: \_\_\_\_\_  
STAFF EMAIL: \_\_\_\_\_

## SCANNED SIGNATURE AUTHORIZATION

DATE: 4/21/23 TOTAL PAGES: (INCLUDING THIS PAGE) 140  
CONSULTANT NAME: ~~The Bank of New York Mellon~~ Yolanda Diaz  
EMAIL: Yolanda.diaz@bnymellon.com  
PHONE: 213 553 4334

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