

THE BANK OF NEW YORK MELLON, LONDON BRANCH

AND

THE BANK OF NEW YORK MELLON SA/NV

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TERMS OF BUSINESS FOR FX TRANSACTIONS

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## 1. SCOPE AND APPLICATION

- 1.1 These Terms of Business, together with the appendices hereto, as may be amended and/or supplemented from time to time (these "**Terms**") (a) set out the basis on which each of The Bank of New York Mellon, London Branch and The Bank of New York Mellon SA/NV (each referred to as "**BNYM**" for the purpose of these Terms) may provide Services to, and enter into with or for, you (whether on your own behalf or on behalf on an Underlying Principal) foreign exchange transactions ("**FX Transactions**" and each an "**FX Transaction**"); and (b) shall govern each FX Transaction entered into on or after these Terms come into effect, in relation to any of the Services.

You (or your Underlying Principal) acknowledge and accept that BNYM will act as principal and not as agent on your (or your Underlying Principal's) behalf, unless BNYM specifically agrees to do so otherwise in writing in respect of particular Services. In relation to the provision of currency administration services to clients, The Bank of New York Mellon SA/NV may agree with clients to execute Orders against its own account or with The Bank of New York Mellon or, to transmit such Orders to The Bank of New York Mellon for execution.

### 1.2 For all purposes of these Terms:

- (a) unless defined in the body of these Terms, defined words and phrases used in these Terms shall have the meaning set out in the Appendices;
- (b) any references to "**you**" and "**your**" under these Terms are to you alone except as provided in Clauses 1.2(c) and 1.2(d) below or as expressly provided otherwise in a specific context under these Terms;
- (c) any reference to "**you**" or "**your**" in Clauses 1.4, 5.1, 13, 14.3, 16.2 and 16.7 shall, as the context requires, mean: (i) where you enter into an FX Transaction as principal, you; or (ii) where you enter into an FX Transaction as Investment Manager or agent for an Underlying Principal, your Underlying Principal as to whom the FX Transaction is allocated;
- (d) any references to "**you**" or "**your**" in Clauses 2.1, 3.11, 3.12, 3.4, 4.4, 9.1, 9.2, 9.4, 10.1, 10.2, 15.5, 16.1, 16.9, 17.4, 18, 19.2, 20.9, 21, 23, 24, 25, 26, 27, 29, 33, 34 and 35 shall, as the context requires, mean (i) where you enter into an FX Transaction as principal, you; and (ii) where you enter into an FX Transaction as Investment Manager or agent for an Underlying Principal, both you as Investment Manager or agent and your Underlying Principal as to whom the FX Transaction is allocated;
- (e) any reference to "**BNYM**" shall, as the context requires, mean:
  - (i) in respect of any FX Transaction between you and The Bank of New York Mellon, London Branch, The Bank of New York Mellon, London Branch,
  - (ii) in respect of any FX Transaction between you and The Bank of New York Mellon SA/NV, The Bank of New York Mellon SA/NV, and

- (iii) in addition, where The Bank of New York Mellon SA/NV transmits your Orders to, or executes your Orders with, The Bank of New York Mellon, The Bank of New York Mellon SA/NV, as applicable in the relevant context, provided however that references to “BNYM” shall not include The Bank of New York Mellon SA/NV in the context of (A) contractual obligations under any resultant FX Transaction; and (B) Clauses 16 (Events of Default) and 31 (EMIR).
- (f) any reference to EU legislation or any provision of such legislation shall also refer to:
  - (i) such legislation or provision to the extent it forms part of UK domestic law pursuant to section 3(1) of the European Union (Withdrawal) Act 2018 (the “EUWA”) and as amended pursuant to section 8 of the EUWA;
  - (ii) any UK “EU-derived domestic legislation” (as defined in section 2(1) of the EUWA) or provision thereof made relating to such legislation.
- 1.3 These Terms which are posted on BNYM’s website constitute a legally binding contract which you are deemed to have read and accepted for yourself (and on behalf of any Investment Manager or agent representing you and on behalf of any Underlying Principals on whose behalf you are acting as Investment Manager or agent) by giving instructions to enter into any FX Transactions or accepting a Service in relation to an FX Transaction.
- 1.4 Subject to Clauses 1.5 and 1.6, each FX Transaction and each Service entered into between you and BNYM prior to the date of these Terms and still outstanding after the dispatch of these Terms to you shall be governed by these Terms.
- 1.5 Each Service and FX Transaction may also be subject to any Supplemental Terms communicated to you, from time to time.
- 1.6 These Terms, any FX Transactions entered into by you (on your own behalf or on behalf of your Underlying Principal) and Services provided to you under these Terms shall be subject to Applicable Regulations (including without limitation EMIR) such that in the event of any conflict between these Terms and any such Applicable Regulations, the latter will prevail. Without prejudice to the foregoing sentence, these Terms are subject to any Existing Master Agreement, Confirmations, or any Supplemental Terms. Where we have entered into any Supplemental Terms, any Existing Master Agreement or any separate terms or a separate agreement with you in respect of an FX Transaction and the contents of those terms conflict with the content of these Terms, then the contents of any such Supplemental Terms, any Existing Master Agreement or any separate terms or a separate agreement shall prevail in respect of such transactions save to the extent that such terms are not permitted under, or themselves conflict with, any Applicable Regulations.
- 1.7 Where, and to the extent that any FX Transaction is not a MIFID Financial Instrument or a Service (or element thereof) is not MIFID Business, Clause 3.2 of these Terms shall not apply in respect of such FX Transactions or Service or BNYM’s duties and

obligations in respect thereof, unless BNYM determines otherwise in its sole and absolute discretion.

- 1.8 The obligations and liabilities of The Bank of New York Mellon, London Branch and The Bank of New York Mellon SA/NV shall be several, and not joint and several.
- 1.9 In relation to Regulation (EU) No 1286/2014 (“**PRIIPs Regulation**”), BNYM do not manufacture, advise on or sell packaged retail and insurance-based investment products within the scope of PRIIPs Regulation (“**PRIIPs**”) and, as set out in Clause 2.3 below, do not provide services to Retail Clients. Therefore, you acknowledge and agree that BNYM is not required to, and shall not, prepare, make available or publish any key information documents (“**KID**”) in respect of any PRIIPs or any of the FX derivatives BNYM enters into with you (or where you act as Investment Manager or agent, your Underlying Principal) or for you. Clauses 1.10 to 1.12 are relevant to The Bank of New York Mellon, London Branch only.
- 1.10 Notwithstanding Clauses 1.9 and 2.3, if a Retail Client would like to utilise FX services from The Bank of New York Mellon, London Branch, this can only occur when the Retail Client has appointed an Investment Manager to act on their behalf and The Bank of New York Mellon, London Branch has agreed to treat the Investment Manager (and not the Retail Client), as its client per Clause 2.5(a).
- 1.11 Where the scenario described in Clause 1.10 exists, you as Investment Manager undertake, that you have the mandate to exercise discretionary investment management powers for the Retail Client (which, for the avoidance of doubt, will be your Underlying Principal) in respect of a potential PRIIP or FX derivative and will, unless exercising such powers, refrain from entering into any PRIIP or FX derivative with The Bank of New York Mellon, London Branch on behalf of such Retail Client or, restrict the onward distribution of any PRIIP or FX derivative to any retail investor.
- 1.12 You further acknowledge and agree that The Bank of New York Mellon, London Branch does not permit any PRIIPs or FX derivatives to be sold to or entered into for any Retail Clients other than as contemplated in Clauses 1.10 and 1.11 above and accordingly, it is not required, and will not provide you or any other person with a KID.

## 2. **YOUR STATUS**

- 2.1 For the purpose of (and as defined in) the Conduct of Business Rules, BNYM will have classified you as either an Eligible Counterparty or a Professional Client. You shall notify BNYM immediately and in writing if, at any point, you (or your Underlying Principal as applicable) cease to fall within such client classification. Where BNYM has classified you (or your Underlying Principal where applicable) as a Professional Client, you (acting on your own behalf or on behalf of your Underlying Principal) may also request in writing to be classified as an Eligible Counterparty.
- 2.2 You understand that a written request to be classified as an Eligible Counterparty will result in a lesser degree of protection under the Conduct of Business Rules. If you are recategorised as an Eligible Counterparty, the protections and investor compensation rights lost will include, but are not limited to, the following:
  - (a) BNYM's obligation to act in accordance with your best interests;

- (b) BNYM's obligation not to give or receive inducements;
  - (c) BNYM's obligation to achieve best execution in respect of your orders; and
  - (d) BNYM's obligation to execute orders subject to certain constraints as regards timing and handling relative to other clients' orders.
- 2.3 BNYM does not trade FX with, and therefore will not accept, any Retail Clients, nor any Professional Clients who seek reclassification as Retail Clients and services will not be offered to such clients.
- 2.4 Should you elect to choose a different client categorisation, BNYM will inform you of whether or not it can accept it and, if BNYM does accept it, of the consequences of the re-categorisation. However, until BNYM receives such a request and informs you of its acceptance of it, BNYM shall deal with you on the basis of its original categorisation, as would have been communicated to you.
- 2.5
- (a) In respect of any FX Transactions entered into, Services provided, or MiFID Business performed by The Bank of New York Mellon, London Branch with or to you under these Terms, where you are acting for or on behalf of an Underlying Principal, for the purposes of client classification under the Conduct of Business Rules, only you (and not any Underlying Principal) shall be The Bank of New York Mellon, London Branch's client and The Bank of New York Mellon, London Branch accepts no responsibility towards your Underlying Principal(s) unless it agrees separately with you a different treatment. When acting for an Underlying Principal, you will be solely responsible for fulfilling any regulatory obligations in respect of that Underlying Principal, and you agree that the Underlying Principal (whether disclosed to The Bank of New York Mellon, London Branch or not) shall not be The Bank of New York Mellon, London Branch's client nor have any rights hereunder, unless explicitly provided for in these Terms or unless The Bank of New York Mellon, London Branch agrees otherwise in writing. You undertake to provide The Bank of New York Mellon, London Branch with evidence of the identity of any Underlying Principal of yours or any other information reasonably required by The Bank of New York Mellon, London Branch.
  - (b) In respect of any FX Transactions entered into, Services provided, or MiFID Business performed by The Bank of New York Mellon SA/NV with or to you under these Terms, where you are acting for or on behalf of an Underlying Principal, for the purposes of client classification under the Conduct of Business Rules, only the Underlying Principal shall be The Bank of New York Mellon SA/NV's client. You undertake: (i) to provide The Bank of New York Mellon SA/NV with evidence of the identity of any Underlying Principal of yours and with any other information reasonably required by The Bank of New York Mellon SA/NV; (ii) to pass on to the relevant Underlying Principal, as soon as reasonably practicable, any client categorisation notification that The Bank of New York Mellon SA/NV sends to you for the purposes of being sent to such Underlying Principal; and (iii) to send to The Bank of New York Mellon SA/NV,

as soon as reasonably practicable, any communication received by you from an Underlying Principal relating to their client categorisation.

- 2.6 Where you are acting as Investment Manager or agent on behalf of more than one Underlying Principal, and at the time an FX Transaction is entered into you have not notified BNYM of the allocation of such FX Transaction amongst your Underlying Principals, then: (i) you undertake to fully allocate the FX Transaction, and promptly (on the same day the FX Transaction is entered into) notify BNYM of such allocation amongst your Underlying Principals as applicable, each of whom will (from the time of such notification) be liable as principal in respect of the part of the FX Transaction allocated to it; and (ii) until you have fully allocated the FX Transaction and notified BNYM of such allocation, without prejudice to any concurrent liability of your Underlying Principals, you shall be liable as principal in respect of all obligations and liabilities to be performed in respect of any unallocated portion of that FX Transaction. For the avoidance of doubt, any Underlying Principal can only act through you under these Terms.

### 3. **HANDLING AND EXECUTION OF ORDERS**

- 3.1 The range of different Order types which BNYM may accept shall be determined by BNYM in its absolute discretion. Details of the types of Orders BNYM accept are set out in its Order Execution Policy. BNYM reserves the right to accept other types of Orders not listed in its Order Execution Policy. The terms of Appendix 8 (Algorithmic Orders) and Appendix 9 (The Bank of New York Mellon SA/NV - Spot FX Orders) will apply to the types of Orders as set out therein.
- 3.2 Unless otherwise expressly provided by any Supplemental Terms, BNYM shall execute any Order on your behalf in accordance with its Order Execution Policy (to the extent applicable) and the Conduct of Business Rules. Nothing in these Terms shall oblige BNYM to do anything that it believes to be contrary to any Applicable Regulations.
- 3.3 You confirm that you have read and agreed to BNYM's Order Execution Policy. You will be responsible for checking for any update to BNYM's Order Execution Policy that is published from time to time.
- 3.4 As provided by the Order Execution Policy, there is the possibility that BNYM may, in certain circumstances, execute your Orders outside a Trading Venue (such as a regulated market, multilateral trading facility or organised trading facility). You (or your Underlying Principal as applicable) consent to such execution outside a Trading Venue generally within the circumstances provided by the Order Execution Policy.
- 3.5 Unless otherwise provided by any Supplemental Terms agreed with you or for you in relation to any specific FX Transaction and/or the Order Execution Policy, if BNYM accepts an Order from you, BNYM will seek to action it as soon as reasonably practicable in the circumstances. However, provided BNYM has acted reasonably, it will not be responsible for any Losses incurred by you (or any person on whose behalf you are acting) if BNYM is unable to action an Order, or if the execution or transmission of an Order fails or is delayed, including without limitation, as a result of: (a) any delay or any change in market conditions; (b) BNYM taking steps to check your authorisation of an Order; (c) BNYM taking steps to ensure that funds are available for settlement; (d) compliance by BNYM with its internal procedures and anti-money



laundrying legislation; (e) a delay in the receipt of cleared funds necessary to settle the FX Transaction; and (f) delays due to the performance of credit checks or any other check.

- 3.6 BNYM reserves the right, in its absolute discretion, to accept, refuse or to return a previously accepted Order in whole or in part and to execute any accepted Order in whole or in one or more parts at any time. Where BNYM accepts an Order, returns any previously accepted Order or executes a transaction pursuant to an Order BNYM shall use reasonable endeavours to notify accordingly but any failure or delay in providing such notice shall not affect the effectiveness of such acceptance, return or execution as the case may be. Execution of an Order by BNYM in whole or in part (which shall be evidenced by execution of a transaction in the foreign exchange markets (which may be with another desk, office or Affiliate of BNYM) in respect to an Order) shall constitute a binding agreement to an FX Transaction between you and BNYM. Cancellation of an Order may not be possible. BNYM reserves the right, in its absolute discretion, to refuse to accept or only partially accept any cancellation of an Order. In any event, BNYM will be unable to cancel an Order unless it is able to cancel any orders that BNYM may have given to the market (including another desk, office or Affiliate of BNYM) in order to execute your Order. BNYM makes no representation or warranty that such a cancellation may be possible prior to any execution or under any circumstances. An Order may only be withdrawn or amended by you with BNYM's consent.
- 3.7 BNYM has the right (but is not obligated) to set limits and/or parameters to control your ability to place Orders at BNYM's absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by BNYM at any time and at its absolute discretion.
- 3.8 BNYM may require you to limit the number of open FX Transactions which you (or where you act as Investment Manager or agent, your Underlying Principal) may have at any time and may, in its sole discretion, close out any one or more FX Transactions in order to ensure that such position limits are maintained.
- 3.9 In dealing with you BNYM will act on an execution-only basis as principal counterparty unless otherwise agreed with or communicated to you by BNYM, in writing, as being on an advisory basis or a discretionary management basis. In relation to the provision of currency administration services to clients, The Bank of New York Mellon SA/NV may agree with clients to execute Orders against its own account or with The Bank of New York Mellon or, to transmit such Orders to The Bank of New York Mellon for execution.
- 3.10 The way BNYM accepts instructions from you may vary depending on the specific Service required and on the specific means agreed in the Supplemental Terms. BNYM may accept instructions to enter into FX Transactions with you (on your own behalf or where you act as Investment Manager or agent, the Underlying Principal) in writing, via Electronic Services, via any other electronic communication, by telephone or via specific online portals or proprietary BNYM websites or Electronic Service for FX trading to which BNYM may or may have granted you access. Any instruction is transmitted at your and, where applicable, your Underlying Principal's, own risk and BNYM shall not be liable for any Losses suffered on account of any instruction not being received by it. You authorise BNYM to act on any instruction received (by

whatever means transmitted, whether or not in writing) which purports, and which BNYM believes in good faith, to come from you or to have been given on your behalf regardless of whether you have provided BNYM with notice of a list of persons authorised to act on your behalf. If BNYM enters into any FX Transaction upon any such instruction, BNYM shall be entitled to rely absolutely on any instructions from you or given on your behalf and shall not be under any liability on account of anything done by any of its employees in good faith in accordance with or pursuant to any instructions received from you or given on your behalf. You will indemnify BNYM and each of its Affiliates against all Losses which BNYM and/or any of its Affiliates may incur and against all claims which may be made against BNYM and/or any Affiliate as a result of relying on any such instructions.

- 3.11 Neither BNYM nor any Affiliate, nor any director, officer or employee of BNYM or an Affiliate, shall be responsible for any delays, inaccuracies or omissions in the receipt of instructions or in the transmission of Orders or other information to BNYM or an Affiliate by you except to the extent such delays, inaccuracies or omissions are caused by its own gross negligence, fraud or wilful default.
- 3.12 BNYM shall not be under any liability for relying in good faith on any inaccurate information or data it receives from you or any authorised third party or any of their respective directors, employees or agents, in circumstances where BNYM had no reason to believe that such information was inaccurate.
- 3.13 Should you (or an Underlying Principal) be subject to any Reporting Obligations pursuant to Article 9 of EMIR or Article 26 of MiFIR or otherwise in relation to any FX Transaction you (whether on your or an Underlying Principal's behalf) enter into with BNYM, upon your request and following execution of a Reporting Delegation Agreement or such other reporting services terms with BNYM, BNYM may help you meet such reporting obligations by assisting in your discharging of such requirements or reporting on your (or Underlying Principal's) behalf relevant data to the applicable trade repository, approved reporting mechanism or approved publication arrangement, subject to the conditions and the terms specified in the Reporting Delegation Agreement or such other reporting services terms with BNYM.
- 3.14 Should you (or an Underlying Principal) be subject directly or indirectly to any transparency requirements pursuant to Title II of MiFIR in relation to any FX Transaction you (whether on your or an Underlying Principal's behalf) enter into with BNYM, then BNYM may assist you in your discharging such requirements pursuant to such other terms as may be agreed between you and BNYM.

#### **4. ELECTRONIC SERVICES**

- 4.1 BNYM may grant you access to or make available to you certain Electronic Services from time to time, either directly or through a third party service provider in relation to, amongst other services, the pricing, trading and execution of FX Transactions. Any such Electronic Service provided or made available by BNYM may be subject to Supplemental Terms which shall be read in conjunction with these Terms. In addition, terms, conditions and restrictions with respect to any particular Service provided through Electronic Services (such as privacy and internet security matters), together with any disclaimers related to the specific Services and pricing methodology of the

relevant FX Transaction, may be set forth on the relevant BNYM websites and or other BNYM designated access portals used for the relevant Electronic Service.

- 4.2 You acknowledge that BNYM has the right, unilaterally and with immediate effect and unless otherwise provided by the Supplemental Terms governing the use of the specific Electronic Service, to suspend or terminate (at any time, with or without cause or prior notice) all or any part of any Electronic Service, or your access to any Electronic Service, to change the nature, composition or availability of any Electronic Service, or to change the limits BNYM sets on the trading you may conduct through any Electronic Service.
- 4.3 You accept that BNYM reserves the right to terminate your access to any Electronic Service, in order to ensure and/or restore the orderly operation of the electronic platform. Furthermore, you accept that BNYM or any relevant third party may, from time to time, perform maintenance that may include shutting down, restarting, or refreshing the servers to ensure the effective and efficient operation of the trading platform(s) or other related systems; these actions may cause the trading platform(s) or other related systems to being inaccessible for a period of time. You accept that BNYM bears no responsibility for any loss caused by any of the actions referred to in this Clause 4.3.
- 4.4 You accept that BNYM bears no responsibility for any unauthorised access to any information, including information regarding your trading activity, whilst such information is being transmitted to BNYM through an Electronic Service.
- 4.5 Where The Bank of New York Mellon SA/NV provides iFX Manager® service to you, the Electronic Access Terms and Conditions contained in Appendix 7 shall apply to such service in addition to these Terms and any Supplemental Terms.

## **5. PRICING METHODOLOGY - PROVIDING A QUOTE**

- 5.1 The relevant pricing methodology applicable to your FX Transaction together with details of how BNYM quotes for each FX Transaction will largely depend on the Service to which the relevant FX Transaction relates and may be provided in the relevant Supplemental Terms and will, in any case be subject to the Order Execution Policy.
- 5.2 You may request an RFQ for an FX Transaction, to amend or close all or any part of an FX Transaction, at any time. BNYM will be under no obligation to, but may, at its sole and absolute discretion, provide a quote or RFQ and accept and act on your instruction to enter into or close an FX Transaction.
- 5.3 If BNYM decides to respond to an RFQ upon request, it may do so either in writing, verbally by telephone or any electronic communication including via an Electronic Service or by such other means set out in the Supplemental Terms or communicated to you in writing. BNYM may, acting reasonably, accept or reject your instructions at any time until an FX Transaction has been executed. An FX Transaction will be entered into or, as the case may be, amended or closed only when your offer has been received and accepted by BNYM.
- 5.4 Always subject to BNYM's discretion, if BNYM becomes aware that any of the factors set out in Clause 5.5 are not satisfied at the time you (acting on your own behalf or on behalf of an Underlying Principal) offer to enter into or close an FX Transaction,

BNYM reserves the right to reject your offer at the level quoted. If BNYM has, nevertheless, already entered into, amended or closed an FX Transaction prior to becoming aware that a condition set out in Clause 5.5 has not been met it may, at its discretion, either treat such an FX Transaction as void from the outset or close it at its then prevailing price. However, BNYM may, in its discretion, allow you to enter into or, as the case may be, amend or close the FX Transaction in which case you will be bound by such FX Transaction, notwithstanding that the factors in Clause 5.5 were not satisfied. Where BNYM refuses to act on any instruction, BNYM may notify you of BNYM's refusal but BNYM will not be under any obligation to do so or to give a reason for a refusal to act.

**5.5 BNYM's quote will be subject to the following factors:**

- (a) the quote must be obtained from BNYM as set out in Clause 5.3;
- (b) if you obtain the quote by telephone, it must be given by a person who is a dealer employed by BNYM and your offer to enter into or close an FX Transaction must be provided at the time the quote is provided or within the time limits specified therein unless the dealer giving the quote has informed you before you make the offer to open, amend or close an FX Transaction that the quote is no longer valid;
- (c) if you obtain the quote electronically via an Electronic Service, your offer to enter into or close an FX Transaction, and BNYM's acceptance of your offer, must be given while the quote is still valid;
- (d) the quote must not be manifestly erroneous;
- (e) a Force Majeure Event must not have occurred;
- (f) when you offer to enter into an FX Transaction an Event of Default must not have occurred in respect of you, nor must you have acted in such a way as to trigger an Event of Default;
- (g) the telephone or electronic communication in which you offer to enter into or close an FX Transaction must not be terminated before BNYM has received and accepted your offer; and
- (h) when you offer to enter into or close an FX Transaction, the resulting FX Transaction must not result in you (or your Underlying Principal) exceeding any credit or other limit placed upon your (or your Underlying Principal's) dealings.

**6. TRADE CONFIRMATIONS**

- 6.1** BNYM shall send or procure the sending of one or more Confirmations to you setting out the agreed details of an FX Transaction normally at the end of the trading day on which an FX Transaction is agreed. A Confirmation may be dispatched by SWIFT, facsimile, email or in electronic form through an Electronic Service (including by means of BNYM's Treasury Payment services, websites or online portals such as via iFX Manager or iConfirm), which shall have the same effect as if provided to you in hard copy. Failure to send a Confirmation will not invalidate an FX Transaction.

- 6.2 You shall be solely responsible for checking any Confirmation (and, where relevant pursuant to Clause 13.4 below, such Trade Settlement Information as contained therein) and any other trading information or statements of account you receive from, or on behalf of, BNYM. Any Confirmation shall be conclusive and shall override any oral or informal trade summary or information that may be provided to you by or on behalf of BNYM.
- 6.3 A Confirmation shall bind you (and where you act as Investment Manager or agent, your Underlying Principal) unless you have objected to such Confirmation in writing within one Business Day of dispatch of that Confirmation by BNYM to you. You shall send any such written objection to BNYM in accordance with Clause 32.2 with a detailed explanation of the grounds for the objection. BNYM shall not be bound by a Confirmation which it issues in manifest error.
- 6.4 Where an objection does not lead to timely confirmation within the applicable time period prescribed under EMIR, you and BNYM shall follow the Dispute Identification and Resolution Procedure set out in Appendix 3 of these Terms.

## **7. AUTHORISATIONS**

- 7.1 You authorise BNYM to give instructions and provide information (including financial information) concerning you (or an Underlying Principal) to its Affiliates or any third party acting on your behalf, who shall be entitled to rely on any such instructions or information without further enquiry.
- 7.2 You authorise BNYM, which shall exercise such authority on its sole discretion, to transfer any currency to any custodian or bank appointed by you in connection with any FX Transaction in accordance with the terms of such FX Transaction and/or your instructions.

## **8. COMMUNICATIONS AND TELEPHONE TAPING**

- 8.1 You may communicate with BNYM in writing, by electronic communication or orally (including without limitation by email and telephone). The language of such communications shall be English and documents sent by BNYM to you shall be in English (except where otherwise agreed or notified).
- 8.2 You agree that your use of electronic communications will be for the purposes of your business, trade or profession. You agree that the requirements of the e-Commerce Directive (2000/31/EC), as implemented in the United Kingdom, Belgium, Germany or Ireland (as the case may be) are excluded to the fullest extent permissible by law.
- 8.3 BNYM may make and retain records of any telephone conversations and electronic communications between you and BNYM (including between your employees or agents and employees of BNYM or any Affiliates) in compliance with Applicable Regulations. Further information can be found in BNYM's Online Privacy Policy which may be amended from time to time. The website where such information is available can be found using this link: <https://www.bnymellon.com/RID>.
- 8.4 MiFID specifically requires BNYM to make and retain records of telephone conversations and electronic communications which relate to the reception,

transmission and execution of client orders for MiFID Financial Instruments. BNYM will retain a copy of the recording of such conversations and communications with you, and these will be available to you on request for a period of five years (and, where requested by a regulator, for a period of up to seven years) or any longer period as may be required under Applicable Regulations, including without limitation, where applicable the requirement to retain records for a period of ten years pursuant to Belgian anti-money laundering rules.

- 8.5 BNYM may record such telephone conversations without use of a warning tone. Such records will be BNYM's sole property. BNYM's voice records will be accepted by you as conclusive evidence of the orders, instructions or conversations recorded.
- 8.6 To the extent permitted by Applicable Regulations, by virtue of accepting Services hereunder, you agree (including, where applicable, on behalf of your employees and agents) that BNYM may record, monitor and retain all electronic communications for the purposes of ensuring compliance with BNYM's legal and regulatory obligations and internal policies, and in connection with the Services and/or FX Transactions contemplated by these Terms.
- 8.7 BNYM may retain such records for whatever period may be required as a matter of its internal policies and/or Applicable Regulations.
- 8.8 Unless otherwise specified in these Terms, any notice required to be delivered by you or BNYM to the other party pursuant to these Terms shall be delivered in accordance with the terms under Clause 32.2 and any relevant Supplemental Terms to the relevant address specified by such other party to BNYM or you (as applicable) from time to time.

## 9. **REPRESENTATIONS AND WARRANTIES**

- 9.1 On a continuing basis, you represent and warrant to BNYM and agree that:
  - (a) you are duly organised and existing and in good standing under the laws of your jurisdiction;
  - (b) you have full power, authority and capacity to enter into an FX Transaction and perform your obligations under these Terms and to confer on us such authorities as are necessary so that these Terms will be binding upon you;
  - (c) these Terms and any service or FX Transaction executed by you or for you constitute your legal, valid and binding obligations, enforceable against you in accordance with the provisions of these Terms, subject only to applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally;
  - (d) all necessary corporate or other consents and authorities to enable you to enter into all FX Transactions and to receive all services under these Terms have been obtained and will be maintained by you;
  - (e) you have obtained and are in compliance with the terms of all authorisations, consents and approvals of any government or other regulatory body necessary to enable you to enter into all FX Transactions under these Terms, and you shall

provide BNYM with copies of such consents or approvals as it may reasonably require;

- (f) you are and will be knowledgeable of and experienced in the risks of entering into FX Transactions under these Terms, capable of evaluating the merits and risks of such transactions and able to bear the economic risks of such transactions;
- (g) the information set out in any EMIR Counterparty Classification Letter delivered by you to BNYM (as updated from time to time) is accurate in all material respects;
- (h) no Event of Default with respect to you has occurred and is continuing, and no such event or circumstances will occur as a result of entering into or performing your obligations under these Terms;
- (i) you confirm that any information given to BNYM by you or on your behalf in connection with these Terms, FX Transactions and Services, is complete, accurate and not misleading;
- (j) subject to Clause 27, each payment by you shall be made without any deduction or withholding on account of tax, save where such deduction or withholding is required by law, in which case the amount of payment due shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required;
- (k) upon request from BNYM, you will provide BNYM with such information as is necessary for it to perform its obligations under Applicable Regulations; and
- (l) either
  - (i) you do not and will not hold assets constituting, directly or indirectly, plan assets subject to (x) the fiduciary responsibility and prohibited transaction sections of the U.S. Employee Retirement Income Security Act of 1974 ("**ERISA**"); (y) the prohibited transaction provisions of Section 4975 of the U.S. Internal Revenue Code, (such assets in (x) and (y) being referred to as "**Plan Assets**"); or (z) any U.S. federal, state or local law that is similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the U.S. Internal Revenue Code ("**Similar Law**"); or
  - (ii) your assets constitute Plan Assets but (x) these Terms and each transaction entered into hereunder will be entered into and performed on your behalf by a qualified professional asset manager (within the meaning of U.S. Department of Labor Prohibited Transaction Class Exemption ("**PTCE**") 84-14 ("**QPAM Exemption**")); and (y) such person has all requisite power and authority to enter into these Terms and each transaction hereunder on your behalf; and (z) neither the entering into nor the performance of these Terms or any transaction hereunder will result in a non-exempt prohibited transaction under

Section 406 of ERISA or Section 4975 of the U.S. Internal Revenue Code by reason of the application of the QPAM Exemption, all the conditions of which shall be met; or

- (iii) your assets are subject to Similar Law but (x) the entering into and performance of these Terms and each transaction entered into hereunder will not result in a breach of Similar Law, or result in any tax, rescission right, or other penalty on BNYM including by reason of an applicable exemption, all of the conditions of which shall be met.

9.2 In respect of The Bank of New York Mellon SA/NV's provision of the Services or activities ancillary to the provision of the Services, on a continuing basis you represent and warrant to The Bank of New York Mellon SA/NV that neither you nor any guarantor of your obligations under FX Transactions are:

- (a) a US person or an affiliate conduit of a US person, as each of those terms are used in Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013), published by the United States Commodity Futures Trading Commission, as amended, revised or updated from time to time;
- (b) a "special entity" as defined in Section 4s(h)(2)(C) of the U.S. Commodity Exchange Act, as amended, or any rule or regulation promulgated thereunder (including CFTC Regulation 17 CFR 23.401(c));
- (c) a person specified under Article 1-8-6, paragraph 1, item (ii), sub-items (i) or (ro) of the Japanese Cabinet Order for Enforcement of the Financial Instruments and Exchange Act (*kin'yuu shouhin torihiki hou sekou rei*), as supplemented by Article 15 of the Japanese Cabinet Office Ordinance on Definitions provided in Article 2 of the Financial Instruments and Exchange Act (*kin'yuu shouhin torihiki hou dai ni jou ni kiteisuru teigi ni kansuru naikaku furei*) and as amended from time to time; or
- (d) persons resident, incorporated or established in the Republic of Singapore ("**Singapore Persons**").

In respect of The Bank of New York Mellon SA/NV's provision of the Services or activities ancillary to the provision of the Services, on a continuing basis, you represent and warrant to The Bank of New York Mellon SA/NV that if any of your Underlying Principals are constituted as pooled funds or other investment vehicles, the investors in such Underlying Principals are not solely or substantially Singapore Persons. For this purpose, the investors in an Underlying Principal shall be "substantially" Singapore Persons if at least 50% are Singapore Persons.

9.3 In relation to any FX Transaction entered into pursuant to these Terms, if you are acting as Investment Manager or agent on behalf of any Underlying Principal then, on a continuing basis you additionally represent, warrant and undertake to BNYM that:

- (a) you have full power, authority and capacity from each of your Underlying Principals to enter into and perform your obligations under these Terms



including without limitation, entering into FX Transactions on your Underlying Principal's behalf;

- (b) you will not execute any FX Transaction on behalf of any entity that is a U.S. governmental entity, a U.S. employee benefit plan subject to Title I of ERISA, a U.S. governmental plan defined in Section 3 of ERISA, a U.S. employee benefit plan defined in ERISA that elects to be a Special Entity (as such term is defined in §17 CFR 23.401(c)), or any U.S. endowment;
- (c) you are expressly authorised by your Underlying Principal or each of your Underlying Principals to instruct us in relation to any FX Transaction and each FX Transaction is entered into on the relevant Underlying Principal's or Underlying Principals' behalf and the relevant Underlying Principal or Underlying Principals shall be liable in respect of all obligations and liabilities to be performed in respect of any such FX Transaction;
- (d) you have carried out all due diligence required under relevant laws, including without limitation, all applicable prevention and detection of money laundering, client identification, sanctions (for the avoidance of doubt, including any prevention and detection of terrorism legislation), laws and regulations, to satisfy yourself of the good standing of your Underlying Principal or each of your Underlying Principals and that each of your Underlying Principals is not involved in any money laundering or criminal activity;
- (e) you assume full responsibility for, and shall ensure compliance with, without limitation any and all suitability, supervision control, registration, credit review, market abuse laws, rules and regulations and other requirements and restrictions of Applicable Regulations in respect of your Underlying Principals;
- (f) you will use all reasonable endeavours to ensure that any Underlying Principal on whose behalf you act as agent complies with and fulfils all of its obligations under any FX Transactions entered into pursuant to these Terms; and
- (g) each Underlying Principal is able to, and hereby does, make the representations in this Clause 9 as if all references to "you" in this Clause 9 are references to each Underlying Principal, and you have carried out the requisite due diligence to satisfy yourself of this.

9.4 Where applicable to you pursuant to the provisions of the Spot Letter in relation to Standing Instruction FX Service (as defined in Appendix 4 "the Spot Letter"), you agree that the representations, warranties and undertakings contained in the Spot Letter constitute your representations, warranties and undertakings to BNYM for the purposes of these Terms.

9.5 You will notify BNYM as soon as you become aware that any of the representations, warranties and undertakings contained in Clauses 9.1, 9.2, 9.3 and/or 9.4 cease to be true.

## **10. NO RELIANCE - NO ADVICE**

- 10.1 Neither BNYM nor any of its Affiliates shall owe you any duty to advise you upon the merits, suitability and appropriateness of any FX Transaction or Services entered into or contemplated by you unless specifically agreed otherwise in writing.
- 10.2 Without limitation to the generalities of the foregoing, neither BNYM nor any of its Affiliates shall give you legal, regulatory, accounting, taxation, financial or any other advice in relation to any FX Transaction or series of FX Transactions, Services or trading decisions or products and you are solely responsible for seeking and obtaining your own advice and taking your own trading decisions.
- 10.3 You (whether you act for yourself or on behalf of an Underlying Principal) agree that you will rely on your own judgement for all trading decisions and FX Transactions or series of FX Transactions and that you are not in any way acting in reliance on BNYM or any Affiliate. You acknowledge that you are not relying on any communication (written or oral) from BNYM or any Affiliate as investment advice or as recommendation to enter into any FX Transaction, it being understood that information and explanations related to the terms and conditions of an Order or an FX Transaction will not be considered investment advice or a recommendation to enter into an FX Transaction.
- 10.4 Any market commentary, or other information communicated to you, is not personalised to, tailored to or based on a consideration of your (or, where applicable, any Underlying Principal's) individual circumstance, is incidental to the provision of services by BNYM under these Terms and should not be relied upon. Neither BNYM nor any of its Affiliates gives any representation, warranty or guarantee as to the accuracy or completeness of any such information or as to the regulatory, legal, accounting, taxation or other consequences of any investment or traded products. Any market information does not constitute an assurance or guarantee as to the expected outcome of any transaction. You should also be aware that market conditions and pricing may change between the time we provide you with information and the time you approach us with a view to entering into a trade.
- 10.5 BNYM may provide services related to investment research or financial analysis to you, in accordance with the terms agreed between us from time to time.

## **11. INFORMATION ABOUT BNYM**

### **The Bank of New York Mellon**

- 11.1 The Bank of New York Mellon is a banking corporation organised pursuant to the laws of the State of New York, with its registered address at 240 Greenwich Street, New York, New York 10286. The Bank of New York Mellon is supervised and regulated by the New York State Department of Financial Services and the US Federal Reserve.
- 11.2 The Bank of New York Mellon operates in England through its branch at One Canada Square, London E14 5AL (160 Queen Victoria Street, London EC4V 4LA with effect from 30 September 2022) and is authorised by the PRA (whose address is 20 Moorgate London, EC2R 6DA) and is subject to regulation by the PRA and the FCA (whose address is 12 Endeavour Square, London E20 1JN).

- 11.3 Pursuant to Title VII of The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the applicable rules thereunder, The Bank of New York Mellon is provisionally registered as a swap dealer with the Commodity Futures Trading Commission and is a swap dealer member of the National Futures Association (NFA ID 0420990), and conditionally registered as a security-based swap dealer with the Securities and Exchange Commission.

#### **The Bank of New York Mellon SA/NV**

- 11.4 The Bank of New York Mellon SA/NV is a Belgian public limited liability company, with its registered address at Multi Tower, Boulevard Anspachlaan 1, B-1000 Brussels, Belgium, authorised and regulated as a significant credit institution by the European Central Bank ("**ECB**"), under the prudential supervision of the National Bank of Belgium (whose address is boulevard de Berlaimont 14 1000 Brussels, Belgium) ("**NBB**") and under the supervision of the Belgian Financial Services and Markets Authority ("**Belgian FSMA**") for conduct of business rules.
- 11.5 The Bank of New York Mellon SA/NV operates through its head office in Brussels and, to the extent permitted by Applicable Regulations, it may operate through branches in Amsterdam, Dublin, Frankfurt, London, Luxembourg, Milan and Paris (among others, as may be established from time to time). Details of additional applicable regulation by the competent authorities in each of those branch locations is set out below.

(a) *The Bank of New York Mellon SA/NV, Amsterdam branch*

In the Netherlands, The Bank of New York Mellon SA/NV trades as the Bank of New York Mellon SA/NV, Amsterdam branch, and is registered in the Dutch chamber of commerce (n° 34363596). The Amsterdam branch has its registered office at WTC Building, Strawinskylaan 337, 1077 XX, Amsterdam, the Netherlands. The Amsterdam branch is subject to limited additional regulation by the Dutch Authority for the Financial Markets and the Dutch Central Bank.

(b) *The Bank of New York Mellon SA/NV, Dublin branch*

In Ireland, The Bank of New York Mellon SA/NV trades as The Bank of New York Mellon SA/NV, Dublin Branch and is registered with the Companies Registration Office in Ireland with No. 907126. Its registered office is at Riverside Two, Sir John Rogerson's Quay, Dublin 2, D02 KV60, Ireland. The Dublin branch is subject to supervision by the Central Bank of Ireland for conduct of business purposes.

(c) *The Bank of New York Mellon SA/NV, Frankfurt branch*

In Germany, The Bank of New York Mellon SA/NV is trading as The Bank of New York Mellon SA/NV, Asset Servicing, Niederlassung Frankfurt am Main, and has its registered office at MesseTurm, Friedrich-Ebert-Anlage 49, 60327 Frankfurt am Main, Germany. The branch is registered with the Commercial Register at the Municipal Court of Frankfurt am Main, Germany - No. HRB 12731. It is subject to limited additional regulation by the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht).

(d) *The Bank of New York Mellon SA/NV, London branch*

The Bank of New York Mellon SA/NV, London branch (registered at Companies House in England & Wales with company number FC029379 and branch number BR014361) is subject to limited additional regulation by the Financial Conduct Authority and Prudential Regulation Authority. Details about the extent of the regulation by the Financial Conduct Authority and Prudential Regulation Authority of the London branch are available from us on request. Its registered office is at One Canada Square, London E14 5AL, United Kingdom.

(e) *The Bank of New York Mellon SA/NV, Luxembourg branch*

The Bank of New York Mellon SA/NV, Luxembourg branch (registered with the Luxembourg companies' register (RCS) under number B105087) is subject to limited additional regulation by the Commission de Surveillance du Secteur Financier. Its registered office is at 2-4 rue Eugene Ruppert, Vertigo Building – Polaris, L-2453 Luxembourg.

(f) *The Bank of New York Mellon SA/NV, Milan branch*

The Bank of New York Mellon SA/NV, Milan branch (registered with the Milan Chamber of Commerce with registration number MI-2115805) is subject to limited additional regulation by Banca d'Italia. Its registered office is at Via Mike Bongiorno, 13, Diamantino Building – 5th Floor, 20124 Milano, Italy.

(g) *The Bank of New York Mellon SA/NV, Paris branch*

The Bank of New York Mellon SA/NV, Paris branch (with Company No. RCS Paris 538 228 420), is subject to limited additional supervision by the Autorité de Contrôle Prudentiel et de Résolution. Its office is at 7 rue Scribe, 75009 Paris, France.

11.6 Without prejudice to the generality of Clause 14.4, The Bank of New York Mellon SA/NV may delegate its provision of the Services or activities ancillary to the provision of the Services to its Affiliates and their branches located outside the European Economic Area to facilitate its provision of the Services to you outside standard European trading hours. Such delegation shall not include any such Affiliate entering into FX Transactions as principal.

11.7 Where The Bank of New York Mellon SA/NV delegates its provision of the Services or activities ancillary to the provision of the Services to its Affiliates and their branches in accordance with Clause 11.6 the Affiliates and their branches are independent contractors in the performance of each and every part of the delegated activities and nothing contained herein shall be construed to be inconsistent with this status.

## 12. **THE FINANCIAL SERVICES COMPENSATION SCHEME**

12.1 The Bank of New York Mellon, London Branch is covered by the Financial Services Compensation Scheme (the "FSCS"). In respect of deposits, details of this scheme, and the eligibility of a customer to receive compensation in the event Bank of New York Mellon, London Branch is unable to meet its financial obligations, will be provided

separately by BNYM. In respect of deposits, all eligible depositors will be entitled to claim up to £85,000. In respect of investments, payments under the scheme are subject to a maximum payment to any eligible investor of £85,000. The protection levels described above may be altered from time to time.

- 12.2 For further information about the compensation provided by the FSCS (including the amounts covered and eligibility to claim) please refer to the FSCS website [www.FSCS.org.uk](http://www.FSCS.org.uk) or call the FSCS on 0800 678 1100 or 020 7741 4100. Please note only compensation related queries should be directed to the FSCS.
- 12.3 The Bank of New York Mellon SA/NV is a member of the Belgian deposit guarantee scheme. However, as The Bank of New York Mellon SA/NV is licensed as an assimilated settlement institution in accordance with the NBB Law of 22 February 1998, deposits held at The Bank of New York Mellon SA/NV are not eligible for protection. More information is available at <http://fondsdegarantie.belgium.be>.
13. **CLIENT MONEY AND AUTHORITY TO DEBIT ACCOUNTS, SET-OFF AND GENERAL LIEN**
- 13.1 The Bank of New York Mellon, London Branch shall act as banker, and not trustee, in respect of any money held on your behalf in an account with The Bank of New York Mellon, London Branch. As a result:
- (a) The Bank of New York Mellon, London Branch shall not therefore hold such money in accordance with the client money rules of the FCA Rules (or equivalent). The Bank of New York Mellon, London Branch shall not segregate any such money from its own and shall not be liable to account for any profits. As the money is not held in accordance with the client money rules of the FCA Rules (or equivalent), if BNYM fails you will only rank as a general creditor of BNYM for such money.
  - (b) in the event of The Bank of New York Mellon's insolvency, the client money distribution rules of the FCA Rules (or equivalent) will not apply in relation to the money and you will not be entitled to share in any distribution under those rules.
- 13.2 The Bank of New York Mellon SA/NV is a fully licensed credit institution and shall therefore not be subject to the client money rules of the Conduct of Business Rules. The Bank of New York Mellon SA/NV shall not segregate any such money from its own and shall not be liable to account for any profits.
- 13.3 **Internal Settlement Mandate:** Where you (or your Underlying Principal, your depositary or your Underlying Principal's depositary) maintain accounts with BNYM or its Affiliates, you (on your own behalf or on behalf on your Underlying Principal, your depositary or your Underlying Principal's depositary, as applicable) hereby agree (and represent that you have taken all necessary steps to ensure) that BNYM shall be entitled to debit or instruct its Affiliates to debit those accounts (whether those accounts are in respect of cash or other assets) in respect of any amount due and payable to BNYM by you or your underlying Principal under any FX Transactions or under these Terms ("**Internal Settlement Mandate**"). BNYM may at any time by notice to you (which may be given through its website as referred to in Clause 30.9) terminate any

Internal Settlement Mandate in whole or in part. If an FX Transaction is entered into and such FX Transaction would have been subject to the terminated Internal Settlement Mandate had it not been terminated, then a new Internal Settlement Mandate as described in this Clause 13.3 will be deemed to be created in favour of such BNYM entity with whom the new FX Transaction is entered into on the trade date of such FX Transaction. For the avoidance of doubt, this Internal Settlement Mandate does not apply to any transactions executed under the Standing Instruction FX Service which shall instead be subject to a separate Standing Instruction FX Service Mandate in accordance with paragraph F of Appendix 4 (Spot Letter) of these Terms. This Clause 13.3 does not apply where the only FX Service being received is the Standing Instruction FX Service (as determined by BNYM).

- 13.4 **MT304 Mandate:** If you (or your Underlying Principal, your depositary or your Underlying Principal's depositary) maintain any account(s) with any banker or custodian which is not BNYM or any of its Affiliates (a "**Third Party Custodian**") and agree with such Third Party Custodian that BNYM may transmit Trade Settlement Information (as defined below) for the purpose of settling any FX Transactions with you (or your Underlying Principal) through any of those accounts, then you may complete a standing instruction in a form to be provided by BNYM ("**MT304 Mandate**") authorising BNYM to transmit such Trade Settlement Information to such Third Party Custodian, for such Underlying Principal (if not yourself) and in respect of such relevant accounts, in each case as identified in the MT304 Mandate. Conditional upon the making and effectiveness of such MT304 Mandate, you hereby authorise and instruct BNYM, subject always to the terms of Clause 6 (Trade Confirmations) above and in addition to sending a copy of each Confirmation to you, to promptly send to the relevant Third Party Custodian such information as contained in each Confirmation as BNYM determines relevant for the purpose of settlement of all FX Transactions with you (or your Underlying Principal) ("**Trade Settlement Information**") via the SWIFT electronic messaging system using Message Type 304. The contents of the Confirmation (and therefore also the contents of the Trade Settlement Information) shall be your sole responsibility (you shall check the Confirmation pursuant to Clause 6 above) and the information sent above by BNYM to the Third Party Custodian shall constitute an authorised instruction (howsoever described) to the Third Party Custodian in accordance with the terms of the relevant custody or banking agreement between you (or your Underlying Principal, your depositary or your Underlying Principal's depositary) and the Third Party Custodian in force from time to time. By completing an MT 304 Mandate, you hereby represent and warrant that you are duly authorised by the account holder (if not yourself) to do so. You may terminate any MT304 Mandate by notice to BNYM indicating a proposed termination date for that MT304 Mandate provided that the MT304 Mandate will only be effectively terminated on the effective termination date (which may be a date after the proposed termination date) communicated by BNYM to you for that MT304 Mandate. Without prejudice to your right to terminate an MT304 Mandate, BNYM reserves the right in its sole and absolute discretion to terminate any MT304 Mandate at any time by prior notice to you, or if that is not practicable, as soon as reasonably practicable thereafter. All notices and communications to any party in relation to any MT304 Mandate must be sent to the email address specified in the MT304 Mandate for notices to that party. Save as explicitly set out above, BNYM shall have no further obligations, duties or liabilities whatsoever in this regard, including with respect to any custody or settlement

arrangements between you (or your Underlying Principal, your depositary or your Underlying Principal's depositary) and any Third Party Custodian.

- 13.5 Without prejudice to any other rights to which The Bank of New York Mellon may be entitled, The Bank of New York Mellon may at any time and without notice to you set-off any amount (whether actual or contingent, present or future) owed by you to The Bank of New York Mellon against any amount (whether actual or contingent present or future) owed by The Bank of New York Mellon to you. For these purposes, The Bank of New York Mellon may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.
- 13.6 Without prejudice to any other rights to which The Bank of New York Mellon SA/NV may be entitled, The Bank of New York Mellon SA/NV may at any time and without notice to you set-off any amount (whether actual or contingent, present or future) owed by you to The Bank of New York Mellon SA/NV against any amount (whether actual or contingent present or future) owed by The Bank of New York Mellon SA/NV to you. For these purposes, The Bank of New York Mellon SA/NV may ascribe a commercially reasonable value to any amount which is contingent or which for any other reason is unascertained.
- 13.7 All cash and financial instruments held by The Bank of New York Mellon or any Affiliates or nominees for you shall be subject to a general lien in The Bank of New York Mellon's favour, insofar as any outstanding obligations remain due from you to The Bank of New York Mellon. You agree that such investments may also be made subject to a lien or security interest in favour of an eligible custodian. This general lien is in addition, and without prejudice, to any other security interest granted by you to The Bank of New York Mellon under any other agreement.
- 13.8 All cash and financial instruments held by The Bank of New York Mellon SA/NV or any Affiliates or nominees for you shall be subject to a general lien in The Bank of New York Mellon SA/NV's favour, insofar as any outstanding obligations remain due from you to The Bank of New York Mellon SA/NV. You agree that such investments may also be made subject to a lien or security interest in favour of an eligible custodian. This general lien is in addition, and without prejudice, to any other security interest granted by you to The Bank of New York Mellon SA/NV under any other agreement.

#### **14. FEES AND CHARGES**

- 14.1 You shall be responsible for BNYM's proper and reasonable charges, unless otherwise agreed. Charges will be determined in accordance with BNYM's rates in effect at the time the charges are incurred or as otherwise notified to you, verbally or in writing, prior to dealing in each FX Transaction. Any alteration to these charges will be notified to you prior to such change becoming effective.
- 14.2 BNYM is required to inform you that, in providing Services, BNYM may accept and retain minor non-monetary benefits from third parties, where permitted according to Applicable Regulations, for example: participation in conferences, seminars and other training events on the benefits and features of a specific MiFID Financial Instrument or an investment service; or hospitality of a reasonable *de minimis* value, such as food and drink during a business meeting or a conference, seminar or other training events.

- 14.3 All amounts payable by you to BNYM shall be due and payable on demand without set-off, counterclaim or deduction.
- 14.4 You (whether on your or an Underlying Principal's behalf) authorise BNYM to use the services of one or more other persons or entities (including its Affiliates) in connection with the pricing, execution, clearance and/or settlement of any FX Transaction or in the performance of BNYM's obligations, and such persons or entities may act as principal and earn a spread, may receive custodial fees, licensing fees, clearing and settlement fees and/or other remuneration and share it with BNYM.
- 14.5 Notwithstanding the foregoing, you (or your Underlying Principal as applicable) agree to the fullest extent permissible under Applicable Regulations to a limited application of the detailed information requirements on costs and associated charges contained in Article 50 of Commission Delegated Regulation (EU) 2017/565 and any other related Applicable Regulations.

## 15. MATERIAL INTERESTS AND CONFLICTS

- 15.1 When BNYM enters into FX Transactions with, or otherwise provides Services to, you (whether you act for yourself or on behalf of an Underlying Principal), BNYM, an Affiliate or some other person connected with BNYM, may have an interest, relationship or arrangement that is material in relation to the transactions concerned. BNYM and its Affiliates may also engage in hedging or other positioning activity for their own account or on behalf of another customer before or after the provision of a price to you for an FX Transaction in order to manage its exposure under that FX Transaction, its general market risk, or other trading activities. Such activity may detrimentally affect the price you (or an Underlying Principal) receive or whether a barrier or level that has been specified has been reached. Any profits derived from these activities may be retained by BNYM to the extent permitted by Applicable Regulations. Conflicts of interest may also arise between BNYM's different clients.
- 15.2 BNYM is required to and does maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients. Further information about how BNYM handles any potential conflict of interest can be found at the link below, which may be amended from time to time.  
<https://www.bnymellon.com/RID>.
- 15.3 BNYM or any of its Affiliates may also act as agent for, provide banking, custody, investment management or other services to, and generally engage in any kind of business with, others to the same extent as if BNYM was not a service provider under these Terms. Nothing in these Terms shall be deemed to restrict the right of BNYM or its Affiliates to perform such services for any other person or entity, and the performance of such services for others will not be deemed to violate or give rise to any duty or obligation to you not specifically undertaken by BNYM under these Terms.
- 15.4 If BNYM, or any of its Affiliates, provide services which are ancillary to BNYM's functions under these Terms, BNYM or any of its Affiliates, as appropriate, may



receive and retain any fee, commissions, spreads or other compensation in relation to such service, business or activity to the extent permitted by Applicable Regulation.

- 15.5 The provision of any Service by BNYM pursuant to these Terms will not, unless specifically agreed between you and BNYM in writing, give rise to any advisory, fiduciary or equitable duties on the part of BNYM or its Affiliates. You agree that nothing contained in these Terms shall create any fiduciary, trustee, agency, joint venture or partnership relationship between BNYM or any Affiliate of BNYM, on the one hand, and you or any affiliate of yours on the other.

## 16. EVENTS OF DEFAULTS

- 16.1 Each of the following shall be deemed to be an "**Event of Default**" for the purposes of these Terms:

- (a) the occurrence at any time with respect to you or, if applicable, any guarantor or other credit support provider of you, of an Event of Default under Section 5 of the Existing Master Agreement (or what would be an Event of Default under Section 5 of the form of 2002 ISDA Master Agreement if you and BNYM had entered into an Existing Master Agreement in such form).
- (b) the occurrence of an event of default or a termination event (howsoever described) under any Existing Master Agreement or any Supplemental Terms;
- (c) a material breach of these Terms or any Applicable Regulations (including any failure by you, to deliver or arrange to be delivered any currency when due pursuant to any FX Transaction);
- (d) the occurrence of any of the following events:
  - (i) failure by you to make any payment or delivery (when due) to BNYM or an Affiliate in respect of any FX Transactions or agreement entered into between you and BNYM or an Affiliate (such payment or delivery, an "**Amount Owed**") within any applicable grace period; and
  - (ii) any Amount Owed is declared to be or otherwise becomes due and payable or deliverable prior to its originally specified maturity as a result of an event of default (however described).

- 16.2 Where you are subject to a system of law that does not permit termination to take place after the occurrence of an Event of Default, (a) we shall not be required to serve you with notice of termination; and (b) termination of these Terms shall be deemed to have occurred as of the time immediately preceding the Event of Default (an "**Automatic Early Termination Event**"). When an Automatic Early Termination Event occurs, the close out provisions under this Clause 16 shall occur automatically.

- 16.3 With regard to FX Transactions, upon the occurrence of an Event of Default (or at any time when BNYM reasonably considers it necessary or commercially prudent), BNYM shall have, in addition to any rights and remedies under any Supplemental Terms or agreement, the right (but not the obligation), to take any or all of the following actions set out Clauses 16.3(b) and 16.3(d) below, and in respect of FX Transactions which there exists no Existing Master Agreement or no other relevant agreement containing

provisions for set-off and/or netting only, BNYM shall have the right to take any or all of the following actions set out in the clauses below, at its sole discretion and without notice:

- (a) to cancel, close out, terminate, replace or reverse any Orders and/or FX Transactions or pending FX Transactions (or portions thereof), enter into any other transaction or take, or refrain from taking, such other action, at such time or times and in such manner as, at its sole discretion, BNYM considers necessary, desirable, expedient or appropriate to protect BNYM (and/or its Affiliates) or to cover, reduce or prevent BNYM's loss or otherwise recover any amount owed by you (or, where you are acting as agent on behalf of any Underlying Principal(s), your Underlying Principal(s)) to BNYM (and/or its Affiliates) under these Terms;
  - (b) to sell any or all of the financial instruments or other property which BNYM may be holding or entitled to receive on your behalf and to apply the proceeds of such sale in or towards satisfaction of any obligation or liability you may have to BNYM;
  - (c) to set-off and/or net any or all liabilities or outstanding obligations of BNYM to you (including the value owed by BNYM to you upon close-out of any FX Transaction) against any of Your Obligations and/or any or all of your liabilities or outstanding obligations to BNYM (including the value owed by you to BNYM upon close-out of any FX Transaction), and to direct any Affiliate or third party acting for BNYM in connection with the provision of the services under these Terms, to satisfy any of Your Obligations using any money or assets otherwise payable or deliverable to you; and
  - (d) to terminate with immediate effect these Terms.
- 16.4 BNYM is not obliged to exercise its rights under this Clause 16 and any such rights are without prejudice to any other rights to which BNYM (or any Affiliate) is otherwise entitled.
- 16.5 Where any set-off, consolidation, combination or transfer requires the conversion of one currency to another, such conversion shall be carried out at such rates and in such manner as BNYM may, in its absolute discretion, determine.
- 16.6 Any valuation of any position or transaction following the close-out, cancellation or termination of such position or transaction pursuant to BNYM's rights above, shall be determined by BNYM in its sole and absolute discretion. For the purposes of valuing any positions or transactions in respect of BNYM's rights above, BNYM may, without limitation, take into account such factors as it deems relevant including, but without limitation, reasonable transaction costs, fees, commissions and expenses which would be incurred in connection with a purchase, sale or realisation of an investment and/or traded product.
- 16.7 Until you have paid or discharged in full all Your Obligations, any monies from time to time payable, or financial instruments deliverable, to you by BNYM with respect to any FX Transaction up to the value of Your Obligations shall not be due and payable or deliverable to you.

- 16.8 Where in relation to any FX Transaction entered into pursuant to these Terms you are acting as agent for any Underlying Principal, any Event of Default and/or an Automatic Early Termination Event in relation to you shall constitute an Event of Default and/or an Automatic Early Termination Event in respect of any such Underlying Principal, unless otherwise determined by BNYM.
- 16.9 If an Event of Default occurs in relation to you, you shall immediately give written notice thereof to BNYM, specifying the relevant Event of Default. Neither the existence nor non-existence of such notification by you shall prejudice the rights and remedies available to BNYM under these Terms.
- 16.10 Where an Event of Default and/or an Automatic Early Termination Event occurs in relation to an Underlying Principal on whose behalf you are acting as agent, these Terms may (at BNYM's discretion) be terminated by BNYM in relation to such Underlying Principal without affecting the continuation of these Terms in relation to you and any other Underlying Principal on whose behalf you act. Consequently, unless BNYM states otherwise, the termination, close out or other actions pursuant to this Clause 16 in respect of FX Transactions relating to one such Underlying Principal (and the associated applicable Existing Master Agreement) shall not be considered to affect FX Transactions relating to other Underlying Principals or to you as principal (and the associated applicable Existing Master Agreements).
- 16.11 For the purpose of giving effect to this Clause 16, if BNYM so requests at any time, you (whether you act for yourself or on behalf of an Underlying Principal) shall promptly execute and sign all such transfers, assignments, further assurances, powers of attorney or other documents and do all such other acts and things as may reasonably be required for BNYM to exercise any of its rights under these Terms.
- 17. TERMINATION ON NOTICE**
- 17.1 BNYM may, by sending you a notice in writing under these Terms, terminate these Terms at any time.
- 17.2 Any notice of termination given by BNYM may take effect immediately or on such later date as the notice may specify.
- 17.3 You may also terminate these Terms by giving notice in writing of termination, which will take effect ten Business Days after the date on which BNYM receives such notice.
- 17.4 Upon termination under these Terms, BNYM and you will honour and fulfil any FX Transactions agreed to but not settled before the date of any such termination and BNYM shall continue to be authorised pursuant to Clause 13.3 and, if relevant, Clause 13.4 to settle or to transmit instruction to settle such FX Transactions.
- 17.5 Where under these Terms you are acting as agent or Investment Manager on behalf of more than one Underlying Principal, BNYM may (at its discretion) terminate these Terms in relation to any such Underlying Principal pursuant to this Clause 17 without affecting the continuation of these Terms in relation to you and any other Underlying Principal.

- 17.6 Any termination of these Terms will not affect accrued rights under these Terms or in respect of any FX Transaction(s) entered into under these Terms, or any provision of these Terms intended to survive termination, including, without limitation, Clauses 1.8, 8, 10, 12, 15, 17, 18, 20, 23, 24, 25, 27, 28, 29, 30 and 32.
18. **EXCLUSION, RESTRICTION OF LIABILITY AND INDEMNITY**
- 18.1 Notwithstanding any provision to the contrary in these Terms, to the maximum extent permitted by Applicable Regulations, neither BNYM, nor its Affiliates shall be responsible or liable for any Losses sustained by you, howsoever arising, under or in connection with these Terms, except insofar as, and then only to the extent that, such Losses arise directly from BNYM's or such Affiliate's gross negligence, wilful default or fraud.
- 18.2 Without prejudice to the generality of Clause 18.1, none of the BNYM entities, or any Affiliate, shall be responsible or liable for any Losses arising out of or relating to, directly or indirectly:
- (a) any refusal to accept and/or execute any Order;
  - (b) any adverse tax, deductions, accounting or other implications of any FX Transaction whatsoever;
  - (c) any delay or change in market conditions before any particular FX Transaction is effected;
  - (d) any act or omission of yours, including any error, negligence or misconduct of yours;
  - (e) BNYM's, or any Affiliate's, reasonable reliance on any instructions, notices, or communications that it believes to be from a person authorised by you to give the same;
  - (f) any action taken by BNYM or any Affiliate, any other executing broker, clearing house, clearing broker, any Market Infrastructure or any other third party, to comply with their respective Applicable Regulations;
  - (g) further to (f) above, as a result of the operation or provision of the default rules of any Market Infrastructure or of any default arrangements of any designated system under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 or made under any laws that implement in the UK or elsewhere Directive 98/26/EC on settlement finality in payment and securities settlement systems. In such circumstances, neither BNYM nor its Affiliates, shall have any obligation to deliver cash or investments to any greater extent than those received and in the event of any shortfall, may apportion cash or investments received between clients of BNYM or its Affiliates in such amounts as they consider fair and equitable.
- 18.3 Subject to Clause 18.5 below, you will indemnify BNYM and/or each Affiliate and each of their respective directors, officers or employees against any Losses which may be suffered or incurred by BNYM and/or any of them directly or indirectly in connection with or as a result of any Service performed or action permitted under these

Terms (including, for the avoidance of doubt, the occurrence of any Events of Default), unless caused by the gross negligence, wilful default or fraud of the person claiming indemnity under this Clause 18.3.

- 18.4 Subject to Clause 18.5 below, in no event shall BNYM or any Affiliate, or any of their respective directors, officers or employees be liable to you for any consequential, indirect, punitive, special or incidental damages or Losses howsoever caused.
- 18.5 Nothing in these Terms will exclude or restrict any liability for fraud or any duty or liability BNYM may have to you under the FCA Rules (or other Applicable Regulation) which may not be excluded or restricted thereunder, or require you to indemnify or compensate BNYM to any extent prohibited by such regulations.
- 18.6 The Bank of New York Mellon SA/NV has benefited from a guarantee issued by The Bank of New York Mellon Corporation (the "**Parent Guarantee**"). The Parent Guarantee guarantees the obligations of The Bank of New York Mellon SA/NV with regards to certain derivatives and FX Transactions entered into by The Bank of New York Mellon SA/NV.
- 18.7 The Parent Guarantee is being, or has been, partially terminated on 1 April 2018 ("**Parent Guarantee Termination Date**"). The Parent Guarantee shall cease, or ceased, to apply to any derivatives and FX Transactions entered into by The Bank of New York Mellon SA/NV from and after the Parent Guarantee Termination Date. The Parent Guarantee will continue to apply to derivatives and FX Transactions entered into by The Bank of New York Mellon SA/NV before the Parent Guarantee Termination Date.

## 19. **AMENDMENTS AND ASSIGNMENT**

- 19.1 BNYM may amend these Terms at any time by at least 10 days written notice to you and any such amendment shall become effective on the date specified in the notice. Notwithstanding the foregoing, where reasonably considered by BNYM to be necessary or desirable for compliance with Applicable Regulations, BNYM may also amend these Terms with such amendments to be effective immediately on notice to you. In any event, by continuing to accept Services from or placing an Order with BNYM after publication of such amended Terms on BNYM's website: <https://www.bnymellon.com/us/en/disclaimers/foreign-exchange-disclosures.jsp>, you agree to be subject to such amended Terms. Any such amendments will also apply in respect of any commitment or FX Transaction already entered into by BNYM. If you do not accept any such amendments, you must cease submitting Orders and notify BNYM in writing. You cannot amend these Terms except by written agreement signed by you and BNYM.
- 19.2 You agree that BNYM may at any time cause all or any part of its rights, benefits and/or obligations under or in connection with these Terms and/or any FX Transaction entered into under these Terms to be assigned or transferred to any Affiliate subject to giving you notice thereof.

20. **CONFIDENTIALITY, INFORMATION SHARING AND DATA PRIVACY**

- 20.1 The Parties acknowledge that the term ‘consent’ referred to in the following Clauses 20.2 to 20.8 does not constitute consent within the meaning of the GDPR or UK GDPR (as defined at clause 20.9).
- 20.2 You agree and consent on your own behalf and on behalf of any Underlying Principals that BNYM and any of its Affiliates (including each of their respective branches and representative offices, individually and/or collectively) ("**BNYM entities**") may use Your Information and Your Personal Data, in connection with acting either as the contracting entity under these Terms, or under an FX Transaction or as service provider or intermediary to you, or otherwise in connection with the performance of the Services and any other obligations under these Terms or FX Transactions and in connection with certain other activities related thereto, including, without limitation, audit, accounting, tax, administration, risk management, credit, legal, compliance, operations, sales and marketing, relationship management, information technology, records and data storage, performance measurement, data aggregation and compilation and analysis of such data (collectively, the "**Activities**").
- 20.3 Notwithstanding anything to the contrary in these Terms, each BNYM entity may, in connection with the Activities or for any other purpose permitted under these Terms, collect, use, store and disclose, within and outside of Australia, the European Economic Area, United Kingdom, Hong Kong, Japan, Singapore and the United States (including but not limited to the United States, Australia, Canada, Cayman Islands, European Economic Area, United Kingdom, Hong Kong, India, Japan, Republic of Korea and Singapore) Your Information to: (x) other BNYM entities; and (y) third party service providers who are required to maintain the confidentiality of Your Information. In addition, BNYM may aggregate Your Information (other than Your Personal Data) with other data collected and/or calculated by BNYM, and BNYM will own all such aggregated data, **provided that** BNYM shall not distribute the aggregated data in a format that identifies you or any particular Underlying Principal or individual after such aggregation.
- 20.4 You represent that you have lawful grounds (and BNYM relies on your representation) to give the authorisation of BNYM's collection, use, storage and disclosure of Your Information, including Your Personal Data, as set out herein. You consent on your behalf and on behalf of the Underlying Principals to the disclosure of Your Information to governmental, tax, regulatory, law enforcement and other authorities in relevant jurisdictions where BNYM operates and/or otherwise as required by law, rule or guideline (including tax reporting regulations) or requested by such authorities. You also consent on your behalf and on behalf of the Underlying Principals to the disclosure of Your Information (including identity) to trade repositories, approved reporting mechanism, approved publication arrangement and any other infrastructure as may be required or permitted by law or regulation in the relevant jurisdictions by BNYM directly or through a third party service provider.
- 20.5 In relation to the collection, use, storage and disclosure of Your Personal Data by BNYM entities, to the extent that each BNYM entity is required to obtain consent under the applicable personal data laws in any jurisdiction, you confirm that by providing Your Personal Data to BNYM, you have lawful grounds to allow each BNYM entity to collect, use, store and disclose Your Personal Data in accordance with these Terms and

the notice contained at <https://www.bnymellon.com/apac/en/privacy.jsp> ("**Personal Data Notice**").

- 20.6 For the avoidance of doubt, where consent is not required in the particular jurisdiction, each BNYM entity is providing notice of its collection, use, storage and disclosure of Your Personal Data in accordance with this Agreement and the Personal Data Notice, receipt of which is acknowledged by you. You agree that BNYM may make amendments and additions to this Personal Data Notice by posting a revised version of this Personal Data Notice at the abovementioned website link (or such other link as BNYM may advise you from time to time). You agree that its maintenance and/or continued use of any service provided by any BNYM entity and continued provision of Your Personal Data to a BNYM entity after any such revised version is posted constitutes your deemed confirmation that you continue to have lawful grounds to permit each BNYM entity to collect, use, store and disclose Your Personal Data in accordance with the revised Personal Data Notice. This provision shall survive termination of these Terms.
- 20.7 You shall provide BNYM with all reasonable assistance and co-operation in connection with any investigation, proceedings or request for information in relation to the provision of Services or FX Transactions entered into under these Terms by any relevant regulatory, supervisory, exchange or self-regulatory body, including but not limited to, co-operating with any dispute resolution mechanisms of, or providing any information or records requested by, such a regulatory, supervisory, Exchange or self-regulatory body.
- 20.8 Subject to the foregoing provisions of this Clause 20, BNYM will treat Your Information and all other information we hold about you or FX Transactions as confidential.
- 20.9 **Data Protection Clause: Controller to Controller**
- (a) For the purposes of this clause, "Data Protection Laws" means all applicable laws and regulations relating to the processing of Personal Data, including The General Data Protection Regulation (EU) 2016/679 ("**GDPR**") and all Member State laws, rules, regulations and regulatory guidance supplementing the GDPR and any laws relating to the processing of Personal Data enacted in the United Kingdom, including the GDPR as incorporated into the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 ("**UK GDPR**") and the UK Data Protection Act.
  - (b) To the extent applicable, the parties acknowledge and agree that they are separate and independent Controllers in relation to any information relating to an identified or identifiable natural person ("**Personal Data**") processed pursuant to the relationship between the parties and shall each comply with their respective obligations under applicable Data Protection Laws. It is not intended that either party shall act as a Processor to the other party in respect of any Personal Data. "Controller" and "Processor" have the meanings set out in the GDPR or UK GDPR, as applicable.
  - (c) You shall ensure that any Personal Data that you provide to BNYM has been obtained in compliance with applicable Data Protection Laws, and shall take

such steps as are required, including the giving of information, making of notices and obtaining of valid consents, to ensure that BNYM is entitled to process such Personal Data as set out in these Terms, any supplemental terms, contracts or documents in connection with any Services and FX Transactions and BNYM's privacy notice.

- (d) BNYM's privacy notice is contained at <https://www.bnymellon.com/emea/en/privacy.jsp>, receipt of which is hereby acknowledged by you, and shall apply to BNYM's use, storage, and disclosure of Personal Data pursuant to these Terms, any supplemental terms, contracts or documents in connection with any Services and FX Transactions. You acknowledge that BNYM may make amendments to its privacy notice by posting a revised version at the abovementioned website link (or such other link as BNYM may advise from time to time).
- (e) If BNYM acts as a Processor for you in respect of any Personal Data, the terms applicable to BNYM's engagement as a Processor shall be set out in the agreement between the parties.

## 21. **FORCE MAJEURE**

Neither BNYM nor any Affiliate shall be liable to you, or have any responsibility of any kind for any Losses incurred or suffered by you, for the non-performance, partial performance or delay in performance of any of its obligations hereunder caused by any cause beyond the control of BNYM or any of its Affiliates (a "**Force Majeure Event**"), including: (a) fire, flood, storm, earthquake or other acts of God, war, hostilities, expropriation, strike, lockout, work to rule or other industrial dispute, terrorist or criminal action, civil unrest, lack of energy supply or embargoes; (b) any unavailability, impairment, breakdown or failure of transmission or communication, data processing or computer facilities, bank or electronic transfer systems, postal or other strikes or similar industrial action; (c) any failure or delay of any relevant Market Infrastructure or custodian through which a Service or your FX Transaction is entered into or settled; (d) the imposition, introduction, amendment or change (including a change in interpretation) of any legislation, regulation, directive, policy, tax treaty, foreign exchange control, limits on the repatriation of currency, rule, trade embargo or foreign investment or ownership rules by any governmental or supranational body, exchange, regulatory or self-regulatory organisation or clearing system or any failure or delay by any of the foregoing in publicising or enforcing or applying the same. Where a Force Majeure Event occurs that prevents or delays the performance by BNYM and/or any of its Affiliates of any of their obligations under these Terms or an FX Transaction: (a) all such obligations shall be suspended for the duration of the Force Majeure Event; and (b) for the avoidance of doubt, any such obligation that would, but for the Force Majeure Event, have fallen due shall not fall due, or be deemed for any purpose to fall due, for the duration of the Force Majeure Event. In no event shall BNYM or any Affiliate have any liability for any consequential, indirect, punitive, special or incidental damages, liabilities, claims, losses, expenses, awards, proceedings or costs howsoever caused.



## **22. COMPLAINTS**

- 22.1 If you have a complaint about BNYM, you should raise it by contacting your BNYM Relationship Manager in the first instance. Your BNYM Relationship Manager will try to resolve the complaint in accordance with the 'EMEA Complaints Handling Policy' as amended from time to time (the website where such information is available can be found using this link: <https://www.bnymellon.com/RID>). Your BNYM Relationship Manager will provide you with information on the policy at the time he or she receives your complaint (or at any time on request).
- 22.2 BNYM will endeavour to resolve your complaint as quickly as possible, and will acknowledge receipt of a complaint within three Business Days. BNYM will provide full details of its internal complaints procedure to you on written request.
- 22.3 Upon resolution of your complaint, BNYM will send to you a final response communication, including the nature of the resolution and any applicable remedy.
- 22.4 Clients of The Bank of New York Mellon, London Branch may have the right to refer a complaint to the UK Financial Ombudsman Service if you satisfy the definition of an 'eligible complainant'. Eligible complainants are typically individuals and businesses below a certain size and consequently you may not fall within the jurisdiction of the UK Financial Ombudsman Service.
- 22.5 Clients of The Bank of New York Mellon SA/NV may have the right to refer a complaint to the Belgian Ombudsfin if you are an eligible complainant. Eligible complainants are individuals acting outside the scope of their profession, and for limited issues, small business, and consequently you may not fall within the jurisdiction of the Belgian Ombudsfin.
- 22.6 Clients of The Bank of New York Mellon SA/NV, Dublin Branch may also have the right to refer a complaint to the Financial Services Ombudsman of Ireland if you are an eligible consumer, such as a private individual, trust, partnership or small company.

## **23. GOVERNING LAW AND JURISDICTION**

- 23.1 These Terms and any contractual, pre-contractual or non-contractual rights, obligations or liabilities arising in any way out of, in relation, to or in connection with these Terms, and any issue as to the existence, validity or termination of these Terms shall be governed by and construed in accordance with English law and each party irrevocably agrees that the courts of England shall have jurisdiction to settle any disputes which may arise out of or in connection with these Terms and that, accordingly, any proceedings may be brought in such courts.
- 23.2 Nothing contained in Clause 23.1, however, shall limit the right of BNYM (or, where appropriate, its Affiliates) to take proceedings against you in any other court of competent jurisdiction, nor shall the taking of proceedings in one of more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 23.3 If you are situated outside England and Wales, process by which any proceedings in England are begun may be served on you by being delivered to the address in England

or Wales nominated by you for this purpose. This does not affect the right of BNYM to serve process in another manner permitted by law.

24. **WAIVER OF IMMUNITY**

You irrevocably waive, to the fullest extent permitted by any Applicable Regulations, with respect to you and your revenues and assets (irrespective of their use or intended use), all sovereign or other immunities and privileges to which you or your revenues or assets might otherwise be entitled in the courts of any jurisdiction in any suit, action or proceeding relating to any dispute (including, without limitation, immunity from (i) suit and legal process, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment or seizure of your assets whether before or after judgement, and (v) execution or enforcement of any judgment or award by any means). You consent to the grant of such relief in any form and irrevocably agree that you will not claim any such immunity or privilege in any suit, action or proceeding relating to any dispute.

25. **RIGHTS OF THIRD PARTIES**

- 25.1 Subject only to the extent explicitly set out under Clause 25.2 below, a person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 ("**Act**").
- 25.2 You acknowledge that any Affiliate of BNYM may enforce these Terms subject to and in accordance with this Clause 25 and the provisions of the Act. The parties to these Terms do not require the consent of any Affiliate to rescind or vary these Terms at any time.

26. **NO WAIVER**

Failure to exercise or a delay in exercising a right or remedy under these Terms or by law, by BNYM, does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided under these Terms or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy by BNYM. Any waiver by BNYM in respect of any breach of these Terms must be in writing and signed by BNYM to be effective. A waiver by BNYM in respect of a breach of these Terms does not constitute a waiver by BNYM of a subsequent or prior breach in respect of these Terms.

27. **FATCA**

Where any payment by BNYM or you under these Terms is subject to any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"), the amount of payment due *shall not* be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required.

## 28. ELIGIBLE CONTRACT PARTICIPANT

Each of the parties shall be deemed to represent to the other party on each date on which an FX Transaction is entered into that:

- (a) it is an "eligible contract participant" as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (18), and the material terms of each Transaction will be individually negotiated and tailored by it; and
- (b) it is an "eligible commercial entity" as such term is defined in the Commodity Exchange Act, as amended 7 U.S.C. § 1 (a) (17).

## 29. RISK WARNING

- 29.1 This disclosure is provided to you in compliance with MiFID and the Conduct of Business Rules. Please be aware that there are certain risks involved in entering into FX Transactions. You should not enter into FX Transactions unless you understand their nature and the extent of exposure to risk that you will incur.
- 29.2 All financial products carry a certain degree of risk. This disclosure does not provide an exhaustive list of all of the potential risks of entering into FX transactions. This disclosure is intended to provide you with a general description of the nature and risks of FX Transactions so that you are reasonably able to take a decision to enter into an FX Transaction on an informed basis.
- 29.3 We refer you to the risk information contained within the Regulatory Information Document, as amended from time to time, a copy of which can be found at the following link: <https://www.bnymellon.com/RID>.
- 29.4 We refer you to the General Disclosure Statement for Transactions (a copy of which can be found at the link below) which describes the general risks of entering into derivative transactions. For the purpose of this disclosure references to "Transactions" in the General Disclosure Statement for Transactions should be read to refer to derivatives transactions generally.  
<https://www.bnymellon.com/us/en/disclaimers/dodd-frank-title-vii-disclosures.jsp>
- 29.5 We refer you to the Disclosure Annex for Foreign Exchange Transactions (a copy of which can be found at the links below) which describes specific risks associated with FX Transactions. For the purposes of this disclosure references to "Foreign Exchange Transactions" in the Disclosure Annex for Foreign Exchange Transactions should be read to include "FX Transactions" as defined under these Terms.  
<https://www.bnymellon.com/us/en/disclaimers/dodd-frank-title-vii-disclosures.jsp>
- 29.6 References to United States rules, regulations and laws in the General Disclosure Statement for Transactions and the Disclosure Annex for Foreign Exchange Transactions provided in Clauses 29.3 and 29.5 may not be applicable to you.
- 29.7 Foreign Exchange Transactions exposes investors to the risk of adverse changes in foreign currency exchange rates. Foreign currency exchange rates can be volatile and are driven by a variety of factors relating to the economies of the territories whose currencies are being traded. A movement in foreign currency exchange rates may have a favourable or an unfavourable effect on the gain or loss achieved on such transactions.

The weakening of a country's currency relative to a benchmark currency or the currency of your portfolio will negatively affect the value of an investment denominated in that currency.

- 29.8 The use of leverage or gearing in Foreign Exchange Transactions has the effect of magnifying potential positive or negative outcomes, and can lead to large losses as well as gains. The use of leverage means that a relatively small movement in the value of the underlying asset could result in a disproportionately large movement in the value of the investment, and could have either a beneficial or detrimental effects on the value of your investment.
- 29.9 A Foreign Exchange Transaction may be subject to the risk that the counterparty to the Foreign Exchange Transaction is unable to meet its payment obligations and may also be subject to price volatility due to such factors as creditworthiness and other economic factors.
- 29.10 A Foreign Exchange Transaction may be subject to the risk that the counterparty to the Foreign Exchange Transaction is subject to "*bail-in*" or equivalent measures, where the counterparty goes into a resolution (or bank rescue) procedure. In a bail-in, a governmental or other regulatory body (known in the EU as a "resolution authority") may require that your net rights after the application of any close-out netting provisions in such Foreign Exchange Transactions are written-off in whole or part, or converted into equity. The purpose of such bail-in is to prevent insolvency proceedings, and will therefore precede formal insolvency. This means that you may lose some or all of your net rights after the application of any close-out netting provisions, where a counterparty to a Foreign Exchange Transaction is in financial difficulty, even outside of an insolvency scenario and absent a technical default.
- 29.11 These disclosures made pursuant to this Clause 29, cannot disclose the nature of all risks of all FX Transactions and you should not rely on the highlighted risks as the being the only risks in relation to FX Transactions. You should read any product/transaction specific disclosures or documentation provided to you or Supplemental Terms governing your FX Transaction. This disclosure must not be relied on as investment advice or a personal recommendation. This disclosure is not intended to give you any contractual right, nor intended to be relied upon as legal, tax or other advice. Where you are unclear as to the meaning of any the information in this disclosure you should seek independent legal or financial advice.

### 30. **PROVISION OF INFORMATION**

- 30.1 Orders handled by BNYM, or quotes given by BNYM in connection with a potential Order, may result in details of the Order, quote or any resulting FX Transaction being provided to a regulator or government authority or made public, as further described below.
- 30.2 Where BNYM provides a Service which results in a FX Transaction, BNYM may be required by Applicable Regulations to report details of the FX Transaction (including but not limited to details about you and your staff and/or clients) to a regulator or government authority (a "**Transaction Reporting Requirement**").

- 30.3 Transaction Reporting Requirements may arise as a result of various activities, including (but not limited to) where BNYM executes an Order on your behalf, enters into an FX Transaction with you on our own account, receive and transmit an Order to another executing firm. Each of the foregoing requirements to make information public may be referred to as a "**Market Transparency Requirement**".
- 30.4 Where BNYM executes an Order with you or on your behalf, BNYM may be required to provide such details to an Execution Venue, to enable the Execution Venue to comply with its requirements under Applicable Regulations to make such details public. If BNYM acts as the Execution Venue, BNYM may be directly required to make such details public. In addition, where BNYM provides quotes to you in respect of a potential FX Transaction, BNYM may be required to make public the details of such quotes, if BNYM is a Systematic Internaliser in the MiFID Financial Instrument to which the quote relates.
- 30.5 In order for BNYM to comply with its Transaction Reporting Requirements or Market Transparency Requirements (as applicable) you agree to provide such information (and updates to such information as may have already been provided) relating to you and your agents, employees, Underlying Principals or others, including a relevant LEI Code, as BNYM may reasonably require in order to (and in time for BNYM to) comply with any such requirements in respect of your FX Transactions or the Services provided or expected to be provided to you ("**Counterparty Data**").
- 30.6 You hereby:
- (a) represent to BNYM that such Counterparty Data as you deliver is, at the time of delivery, true, accurate and complete in every material respect;
  - (b) acknowledge and agree that BNYM may use the Counterparty Data to comply with its Transaction Reporting Requirements or Market Transparency Requirements, and rely on the Counterparty Data without investigation, unless and until you inform BNYM otherwise; and
  - (c) undertake to provide BNYM, on reasonable notice, with any material changes or updates to the Counterparty Data.
- 30.7 You acknowledge and agree that BNYM may refuse to enter into, execute, transmit, deal in or otherwise arrange any FX Transaction where you have not provided such information, including a relevant LEI Code, (and waived or procured the waiver of any confidentiality or data protection/privacy obligations in respect of such information) as BNYM may reasonably require:
- (a) in order for BNYM to comply with any Transaction Reporting Requirements or Market Transparency Requirements in respect of such Transaction; or
  - (b) where BNYM's non-receipt of such information (including, without limitation, an applicable LEI Code) would mean that BNYM is prohibited by Applicable Regulations to enter into, execute, transmit, deal in or otherwise arrange (as the case may be) such FX Transaction (including, without limitation, pursuant to Article 13(2) of Commission Delegated Regulation (EU) 2017/590).

- 30.8 Pursuant to the Belgian rules implementing Directive (EU) 2018/843 of 30 May 2018 (5th Anti-Money Laundering Directive) and certain reporting requirements under Belgian law, The Bank of New York Mellon SA/NV is legally required to disclose information regarding its clients entering into these Terms to a central registry organised by the National Bank of Belgium. Further information on our disclosure obligation under such regime will be made available on our website <https://www.bnymellon.com/emea/en/regulatory-resources.jsp#5AMLD> from 20<sup>th</sup> June 2020 and you agree to review such information (and any future amendments thereto) when published on our website and consent to the disclosure of your (or, where applicable, your Underlying Principal's) information as set out therein.
- 30.9 You consent to the provision by BNYM of the following information, where not personally addressed to you, by means of a website (which may or may not be in addition to other means of communication):
- (a) general information about BNYM and its Services;
  - (b) information about the nature and risks of certain MiFID Financial Instruments;
  - (c) information concerning the safeguarding of MiFID Financial Instruments and holding of client money;
  - (d) information on costs and associated charges;
  - (e) information about BNYM's order handling and execution policies, conflicts of interest policies, complaints policies and other policies of BNYM;
  - (f) amendments to Terms of Business for FX Transactions of The Bank of New York Mellon, London Branch and The Bank of New York Mellon SA/NV; and
  - (g) any other information required to be provided to you under applicable law or regulation.

The websites where such information is available can be found using these links:

<https://www.bnymellon.com/RID>

<https://www.bnymellon.com/us/en/disclaimers/dodd-frank-title-vii-disclosures.jsp>

<https://www.bnymellon.com/us/en/disclaimers/foreign-exchange-disclosures.jsp>

### 31. **EMIR**

- 31.1 The provisions of Appendix 3 shall apply to these Terms. Unless otherwise agreed between the parties to these Terms, for the purposes of Appendix 3, BNYM shall be the Portfolio Data Sending Entity and you shall be the Portfolio Data Receiving Entity.
- 31.2 Before or as soon as reasonably practicable following your entry into of these Terms you shall complete and deliver an EMIR Counterparty Classification Letter, via such means as requested by BNYM from time to time (including by ISDA Amend or by email to [TMG.FX@bnymellon.com](mailto:TMG.FX@bnymellon.com)), to BNYM in respect of you or, where you are acting as Investment Manager or agent for an Underlying Principal, such Underlying

Principal, information as to your status or such Underlying Principal's status for the purposes of EMIR. You shall undertake all reasonable endeavours to ensure that you monitor the accuracy of the information so provided and shall inform BNYM (via the same means) of any changes to such information, prior to such time as such changes take effect or, where this is not possible, as soon as practicable thereafter.

- 31.3 You undertake to obtain, maintain and renew as applicable a LEI Code for you and any Underlying Principal and to inform BNYM of such LEI Code and any change thereto from time to time.

## 32. **GENERAL**

- 32.1 If at any time any provision of these Terms becomes, or is deemed by an authority of competent jurisdiction to be, invalid, unenforceable or contrary to Applicable Regulations, neither the legality, validity or enforceability of the remaining provisions of these Terms nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired by such provision.
- 32.2 All notices by either party hereunder shall be sent by electronic delivery or by overnight mail or delivery service (return receipt requested), to the other party to the relevant contact details specified in these Terms. Any party may by notice to the other change the address at which notices or other communications are to be given to it. Any notice shall be effective only upon the receipt thereof by the party to whom sent and shall be effective only for the purpose and in the specific instance for which it is given.

Unless otherwise specifically provided, notices shall be sent to BNYM at:

The Bank of New York Mellon/ The Bank of New York Mellon SA/NV (as the case may be)

160 Queen Victoria Street, London, EC4V 4LA Attention: Head of EMEA Legal – Markets

Notices shall be sent to client at its address as communicated to BNYM.

## 33. **OPT-IN TO U.S. SPECIAL RESOLUTION REGIMES**

- 33.1 In the event BNYM or any of its Affiliates becomes subject to a proceeding under a U.S. special resolution regime, then, notwithstanding any other provisions in these Terms :
- (a) the transfer of these Terms (and any interest and obligation in or under, and any property securing, these Terms) from BNYM will be effective to the same extent as the transfer would be effective under the U.S. special resolution regime if these Terms (and any interest and obligation in or under, and any property securing, these Terms) were governed by the laws of the United States or a state of the United States; and
  - (b) any default or termination rights with respect to these Terms that may be exercised against BNYM are permitted to be exercised to no greater extent than the default or termination rights that could be exercised under the U.S. special

resolution regime if these Terms were governed by the laws of the United States or a state of the United States.

34. **FINSA**

- 34.1 You acknowledge and understand that in connection with each FX Transaction, BNYM is entering into the transactions as a counterparty, i.e. it is acting for its own account or for the account of one of its affiliates, and as a result, with respect to each such FX Transaction, you will *not* be considered a "client" (within the meaning of the Swiss Financial Services Act, the "FinSA") and you will *not* benefit from the protections otherwise afforded to clients under the FinSA.

35. **CONTRACTUAL RECOGNITION OF BAIL-IN AND RESOLUTION STAYS – BRRD ARTICLES 55 AND 71A**

- 35.1 **Contractual Recognition of Bail-In – BRRD Article 55.** Notwithstanding and to the exclusion of any other term of these Terms or any other agreements, arrangements, or understanding between you and The Bank of New York Mellon SA/NV, you acknowledge and accept that a BRRD Liability arising under these Terms, any Supplemental Terms, any Existing Master Agreement and any FX Transaction, may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of The Bank of New York Mellon SA/NV to you under these Terms, any Supplemental Terms, any Existing Master Agreement and any FX Transaction, that (without limitation) may include and result in any of the following, or some combination thereof:
  - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon.
  - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities, or other obligations of The Bank of New York Mellon SA/NV or another person (and the issue to or conferral on you of such shares, securities, or obligations).
  - (iii) the cancellation of the BRRD Liability.
  - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period.
- (b) the variation of the terms of these Terms, any Supplemental Terms, any Existing Master Agreement and any FX Transaction, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

For the purposes of the above:



**“Bail-in Legislation”** means the law of 25 April 2014 on the status and supervision of credit institutions, and any other law or regulation relating to the transposition of Directive 2014/59/EU under Belgian law.

**“Bail-in Powers”** means any Write-down and Conversion Powers as defined herein in relation to the Bail-in Legislation.

**“BRRD”** means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**“BRRD Liability”** means a liability in respect of which the relevant Bail-in Powers in the applicable Bail-in Legislation may be exercised.

**“Relevant Resolution Authority”** means the resolution authority with the ability to exercise any Bail-in Powers in relation to The Bank of New York Mellon SA/NV.

**"Write-down and Conversion Powers"** means any write-down, conversion, transfer, modification or suspension power existing from time to time under, and exercised in compliance with, any law or regulation in effect in Belgium, relating to the transposition of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, including but not limited to the Bail-In Legislation and Regulation (EU) No 806/2014 and the instruments, rules and standards created thereunder, pursuant to which:

(a) any obligation of a bank or investment firm or affiliate of a bank or investment firm can be reduced, cancelled, modified or converted into shares, other securities or other obligations of such entity or any other person (or suspended for a temporary period); and

(b) any right in a contract governing an obligation of a bank or investment firm or affiliate of a bank or investment firm may be deemed to have been exercised.

- 35.2 **Contractual Recognition of Resolution Stays - BRRD Article 71a.** The terms of paragraph 2 (captioned “Stay in Resolution”) and paragraph 6 (captioned “Definitions”) of the ISDA BRRD II Omnibus Jurisdictional Module are incorporated into and form a part of these Terms and any Existing Master Agreement, and these Terms and any Existing Master Agreement shall be deemed a Covered Agreement for purposes thereof. For purposes of incorporating the ISDA BRRD II Omnibus Jurisdictional Module, The Bank of New York Mellon SA/NV shall be deemed to be a Regulated Entity, The Bank of New York Mellon SA/NV and you shall be deemed to be a Module Adhering Party, and Belgium shall be deemed to be a Covered Member State. In the event of any inconsistencies between these Terms and any Existing Master Agreement and paragraph 2 or paragraph 6 of the ISDA BRRD II Omnibus Jurisdictional Module, the ISDA BRRD II Omnibus Jurisdictional Module will prevail.

## Appendix 1 DEFINED TERMS

In these Terms, the following defined terms shall have the following meanings unless specified otherwise:

**"Affiliate"** means any entity of which The Bank of New York Mellon Corporation controls, directly or indirectly, not less than 30 per cent. of the voting stock or interest in such entity;

**"Applicable Regulations"** means collectively, as applicable to the provision of any Services, all laws, rules, regulations, directives, decisions and together with, to the extent that BNYM determines that they are applicable, customs, practice, guidance and, codes of conduct of any market or governmental or regulatory authority or any self-regulatory organisation, including without limitation any accounting rules, fiscal regulations, anti-money laundering, terrorist financing and sanctions laws, rules, procedures, guidance and regulations, all as amended from time to time;

**"Business Day"** means in respect of The Bank of New York Mellon, London Branch a day (other than a Saturday or Sunday) on which banks are open for general business in London, and in respect of The Bank of New York Mellon SA/NV, a day (other than a Saturday or Sunday) on which banks are open for general business in Brussels;

**"CBI"** means the Central Bank of Ireland;

**"Client Money Rules"** means, in respect of The Bank of New York Mellon, London Branch, the rules relating to client money set out in the CASS sourcebook of the FCA Rules and in respect of The Bank of New York Mellon SA/NV, the rules relating to client money set out in the Applicable Regulations implementing MiFID into Belgian law;

**"Conduct of Business Rules"** means, in respect of The Bank of New York Mellon, London Branch, the rules set out in the COBS sourcebook of the FCA Rules and in respect of The Bank of New York Mellon SA/NV, the rules set out in the Applicable Regulations implementing MiFID into Belgian law and into Irish law;

**"Custody Rules"** means, in respect of The Bank of New York Mellon, London Branch, the rules relating to custody set out in the CASS sourcebook of the FCA Rules and in respect of The Bank of New York Mellon SA/NV, the rules relating to custody set out in the Applicable Regulations implementing MiFID into Belgian law;

**"Confirmation"** means one or more confirmations or contract notes setting out the agreed details of an FX Transaction;

**"Electronic Services"** means certain electronic services that BNYM may, from time to time, either directly or through a third party service provider grant you access or make available to you in relation to, amongst other services, the pricing, trading and execution of FX Transactions, including, without limitation, BNYM's FX Payment and Treasury Payment services;

**"Eligible Counterparty"** means as defined in the Conduct of Business Rules;

**"EMIR Counterparty Classification Letter"** means a letter substantially in the form of the EMIR Classification Letter or Appendix A (European Union) to the Master Regulatory

Disclosure Letter, in each case as published by ISDA, or such other form of notice as may be notified to you by, or agreed by you with, BNYM from time to time with like effect, including but not limited to the EMIR Questionnaire produced by BNYM;

**"EMIR"** means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012;

**"Execution Venue"** means a Trading Venue (or their respective operators) or a Systematic Internaliser (each, as defined under Article 4 of MiFID) or a market maker or liquidity provider (within the meaning contemplated at Article 1 of Commission Delegated Regulation (EU) 2017/575);

**"Existing Master Agreement"** means a master netting agreement (including but not limited to any ISDA Master Agreement or Deutscher Rahmenvertrag für Finanztermingeschäfte) governing FX Transactions that has been entered into between you and BNYM (including a deemed master netting agreement), together with any associated schedules and any credit support documentation and any FX Transaction confirmations, **provided that** such master netting agreement does not exclude FX Transactions;

**"FCA"** means The Financial Conduct Authority or any organisation that will replace the FCA or take over the conduct of its affairs;

**"FCA Rules"** means the rules of the FCA as from time to time varied, amended or substituted by the FCA;

**"Investment Manager"** under these Terms means a firm or an overseas financial services institution acting as an investment manager, as these terms are used under FCA Rules, as applicable;

**"ISDA"** means the International Swaps and Derivatives Association, Inc.

**"LEI Code"** means a legal entity identifier alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization;

**"Losses"** means any and all costs, losses, liabilities, damages, costs, expenses (including reasonable legal fees and expenses), penalties, taxes, judgments, fines, fees, proceedings, amounts to be paid in settlement, expenses, claims, actions, investigations, damages or taxes sustained by either party;

**"Major Currencies"** means US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish złoty and Romanian leu;

**"Market Infrastructure"** includes any executing broker, clearing broker, exchange, regulated market, clearing house, central clearing counterparty or multilateral trading facility (as such terms are defined in the Glossary to the FCA Rules) or other trading venue through or in connection with which BNYM and/or its Affiliates enter into or provide the Services from time to time;

**"MiFID"** means the Markets in Financial Instruments Directive (EU Directive 2014/65/EU);

**"MiFIR"** means the Markets in Financial Instruments Regulation (EU Regulation 600/2014);

**"MiFID Business"** means "investment services and activities" and "ancillary services" as such terms are defined and used in MiFID;

**"MiFID Financial Instrument"** means a "financial instrument" as such term is defined and used in MiFID;

**"Order"** means any instructions received by BNYM from or on behalf of a client in relation to an FX Transaction;

**"Order Execution Policy"** means the Order Execution Policy provided to you by BNYM (which shall include, as defined in the Order Execution Policy, the General Order Execution Policy and the relevant Specific Order Execution Policy as applicable, which may be amended from time to time);

**"PRA"** means the UK Prudential Regulation Authority;

**"Professional Client"** means as defined in the Conduct of Business Rules;

**"Reporting Delegation Agreement"** means the agreement to be entered between the client and BNYM, whereby the client delegates to BNYM to report, on the client's behalf, relevant data to a trade repository, approved reporting mechanism, approved publication arrangement or any other infrastructure as may be required or permitted by law or regulation in the relevant jurisdictions;

**"Reporting Obligation"** means the obligation to report details of derivative contracts that are concluded, modified or terminated to a trade repository (or ESMA), approved reporting mechanism, approved publication arrangement and any other infrastructure as may be required or permitted by law or regulation in accordance with Article 9 of EMIR, Article 26 of MiFIR or otherwise;

**"Retail Client"** means as defined in the Conduct of Business Rules;

**"RFQ"** means a request for quote in relation to an FX Transaction;

**"Services"** means the services described in Appendix 2;

**"Spot Letter"** means the foreign exchange standing instruction spot representation letter set out in Appendix 4;

**"Spot Transaction"** means a contract for the exchange of one currency against another, under the terms of which delivery is scheduled to be made within the longer of 2 trading days in respect of the Major Currencies, or where at least one currency is not a Major Currency, the longer of 2 trading days or the period generally accepted in the market for that currency pair as the standard delivery period (a contract will not be a Spot Transaction where, irrespective of the explicit terms, there is an understanding between the parties that delivery is to be postponed and not performed within the specified time period). For the purpose of the definition of "Spot Transaction", **"trading day"** means any day of normal trading in the jurisdiction of both the currencies that are exchanged and in the jurisdiction of a third currency where the exchange of those currencies involves converting them through that third currency for the purposes of

liquidity and the standard delivery period for the exchange of those currencies references the jurisdiction of that third currency.

**"Supplemental Terms"** means:

- (i) any supplemental terms, contracts or pricing disclosure documents in connection with or for the provision of any foreign exchange services (including, without limitation, currency administration / FX overlay services, howsoever described),
- (ii) any terms governing your access to any Electronic Service for the order transmission and execution of an FX Transaction,
- (iii) any regulatory undertaking, representation and/or disclosure letters or protocols published by ISDA,
- (iv) non-disclosure agreements, or similar undertakings relating to confidentiality,

in each case, as communicated to, or entered into with, you from time to time, by any means (including, without limitation, electronically via the ISDA Amend platform and ISDA's website);

**"Systematic Internaliser"** is defined in Article 4(20) of MiFID;

**"Trading Venue"** is defined in Article 4(24) of MiFID;

**"Underlying Principal"** means any person on whose behalf you are acting in any capacity, including as Investment Manager, agent or trustee and whether disclosed to BNYM or not, including without limitation a natural person, corporate entity, person acting in the capacity as trustee, sub-fund or protected cell or analogous segregated component, partnership or unincorporated association;

**"Your Information"** means data regarding you, any Underlying Principal and any affiliate or subsidiaries or account(s) of you, or the Underlying Principals and their respective affiliates and subsidiaries and Your Personal Data;

**"Your Personal Data"** means personal data of employees and representatives of you, of the Underlying Principals and of each of your or any Underlying Principals' affiliates and/or subsidiaries; and

**"Your Obligations"** means any indebtedness, liabilities, obligations, payment of fees or charges or any other sum that is due from you (or an Underlying Principal, as applicable) to BNYM and/or any Affiliate including, without limitation, any expenses and/or any costs incurred as a result of any buy-in, any outstanding payment or undischarged obligation to deliver any financial instruments in relation to an Order, an FX Transaction or otherwise or any contingent or prospective liability (including any payment pursuant to any indemnity).

## Appendix 2

### THE SERVICES

The Services include, but are not limited to the following foreign exchange services:

- (a) such standing instructions as may be set up from time to time in connection with your custodial account(s) established with BNYM or an Affiliate to make requests automatically to execute FX Transactions pursuant to a foreign exchange pricing program;
- (b) FX Transactions executed upon your *ad hoc* instructions;
- (c) currency administration services including without limitation FX Transactions entered into in connection with share class hedging and portfolio hedging;
- (d) FX Transaction entered into in connection with cash management transactions;
- (e) BNYM's FX Payments services including without limitation BNYM's Treasury Payment services;
- (f) direct dealing in FX Transactions via BNYM's FX sales and trading desk and e-Commerce platforms upon receipt of an Order or a RFQ request for quote;
- (g) Algorithmic execution of Orders; and
- (h) such other services as BNYM may designate as comprising Services for the purposes of these Terms from time to time.

Appendix 3  
**EMIR**

**PART I**  
**PORTFOLIO RECONCILIATION AND DISPUTE RESOLUTION**

**(1) Agreement to Reconcile Portfolio Data**

The parties agree to reconcile portfolios as required by the Portfolio Reconciliation Risk Mitigation Techniques.

- (a) *One-way Delivery of Portfolio Data.* If one party is a Portfolio Data Sending Entity and the other party is a Portfolio Data Receiving Entity:
  - (i) on each Data Delivery Date, the Portfolio Data Sending Entity will provide Portfolio Data to the Portfolio Data Receiving Entity;
  - (ii) on each PR Due Date, the Portfolio Data Receiving Entity will perform a Data Reconciliation;
  - (iii) if the Portfolio Data Receiving Entity identifies one or more discrepancies which such party determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify the other party in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding; and (iv) if the Portfolio Data Receiving Entity does not notify the Portfolio Data Sending Entity that the Portfolio Data contains discrepancies by 4p.m. local time in the place of business of the Portfolio Data Sending Entity on the fifth Joint Business Day following the later of the PR Due Date and the date on which the Portfolio Data Sending Entity provided such Portfolio Data to the Portfolio Data Receiving Entity, the Portfolio Data Receiving Entity will be deemed to have affirmed such Portfolio Data.
- (b) *Exchange of Portfolio Data.* If both parties are Portfolio Data Sending Entities:
  - (i) on each Data Delivery Date, each party will provide Portfolio Data to the other party;
  - (ii) on each PR Due Date, each party will perform a Data Reconciliation; and
  - (iii) if a party identifies one or more discrepancies which such party determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify the other party in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve any such discrepancies in a timely fashion for so long

as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding.

- (c) *Alternate Process.* If both parties are Portfolio Data Receiving Entities, the parties will agree a process for reconciling Portfolio Data in order to meet the requirements of the Portfolio Reconciliation Risk Mitigation Techniques.

**(2) Change of Status**

- (a) Each party may change its own designation with the written agreement of the other party (such agreement not to be unreasonably withheld or delayed and for this purpose the parties agree, without limitation, that it will not be unreasonable for a party to withhold agreement where agreement would result in the other party having different designations in respect of such party and one or more Affiliates of such party). If, as a result of any such change of designation, both parties will be Portfolio Data Receiving Entities, Part I(1)(c) will apply.
- (b) If a party believes, acting reasonably and in good faith, that the parties are required to perform Data Reconciliation at a greater or lesser frequency than that being used by the parties at such time, it will notify the other party of such in writing, providing evidence on request. From the date such notice is effectively delivered, such greater or lesser frequency will apply and the first following PR Due Date will be the earlier of the date agreed between the parties and the last Joint Business Day in the PR Period starting on the date on which the immediately preceding Data Reconciliation occurred (or, if no Joint Business Day occurs which is within such PR Period and is on or following the date such notice is effective, the first Joint Business Day following the later of the end of such PR Period and the date such notice is effective).

**(3) Use of agents and third party service providers**

For the purposes of performing all or part of the actions under Part I(1) and Part I(2), each party may appoint:

- (a) an Affiliate to act as agent, immediately on written notice to the other party; and/or
- (b) subject to the other party's agreement (such agreement not to be unreasonably withheld or delayed and which may include any such agreement existing prior to the Implementation Date (as defined in the Protocol)), (i) an entity other than an Affiliate as agent and/or (ii) a qualified and duly mandated third party service provider.

**(4) Dispute Identification and Resolution Procedure**

The parties agree that they will use the following procedure to identify and resolve Disputes between them:

- (a) either party may identify a Dispute by sending a Dispute Notice to the other party;



- (b) on or following the Dispute Date, the parties will consult in good faith in an attempt to resolve the Dispute in a timely manner, including, without limitation, by exchanging any relevant information and by identifying and using any Agreed Process which can be applied to the subject of the Dispute or, where no such Agreed Process exists or the parties agree that such Agreed Process would be unsuitable, determining and applying a resolution method for the Dispute; and
- (c) with respect to any Dispute that is not resolved within five Joint Business Days of the Dispute Date, refer issues internally to appropriately senior members of staff of such party or of its Affiliate, adviser or agent in addition to actions under (b) immediately above (including actions under any Agreed Process identified and used under (b) immediately above) and to the extent such referral has not occurred as a result of action under (b) immediately above (including any Agreed Process).

(5) **Internal processes for recording and monitoring Disputes**

Each party agrees that, to the extent the Dispute Resolution Risk Mitigation Techniques apply to each party, it will have internal procedures and processes in place to record and monitor any Dispute for as long as the Dispute remains outstanding.

(6) **Relationship to other portfolio reconciliation and dispute resolution processes**

This Part I and any action or inaction of either party in respect of it are without prejudice to any rights or obligations the parties may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. Action or inaction by a party in respect of this Part I will not be presumed to operate as an exercise or waiver, in whole or part, of any right, power or privilege such party may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. In particular, but without limitation, (a) any valuation in respect of one or more Relevant Transactions for the purposes of this Part I will be without prejudice to any other valuation with respect to such Relevant Transaction(s) made for collateral, close out, dispute or other purpose; (b) the parties may seek to identify and resolve issues and discrepancies between themselves before either party delivers a Dispute Notice; and (c) nothing in this Part I obliges a party to deliver a Dispute Notice following the identification of any such issue or discrepancy (notwithstanding that such issue or discrepancy may remain unresolved) or limits the rights of the parties to serve a Dispute Notice, to commence or continue an Agreed Process (whether or not any action under Part I(4) has occurred) or otherwise to pursue any dispute resolution process in respect of any such issue or discrepancy (whether or not any action under Part I(4) has occurred).

## PART II CONFIDENTIALITY WAIVER

Notwithstanding anything to the contrary in this agreement or in any non-disclosure, confidentiality or other agreement between the parties, each party hereby consents to the disclosure of information:

- (1) to the extent required or permitted under, or made in accordance with, the provisions of EMIR and any applicable supporting law, rule or regulation ("**EMIR and Supporting Regulation**") which mandate reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) EMIR and Supporting Regulation regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other party is required or accustomed to act ("**Reporting Requirements**"); or
- (2) to and between the other party's head office, branches or Affiliates, or any persons or entities who provide services to such other party or its head office, branches or Affiliates, in each case, in connection with such Reporting Requirements.

Each party acknowledges that pursuant to EMIR and Supporting Regulation, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

Each party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any trade repository registered in accordance with Article 55 of EMIR or recognised in accordance with Article 77 of EMIR or one or more systems or services operated by any such trade repository ("**TR**") and any relevant regulators (including without limitation, the European Securities and Markets Authority and national regulators in the European Union and United Kingdom) under EMIR and Supporting Regulation and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, a party may use a third party service provider to transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. Each party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the counterparty's home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law; (ii) any agreement between the parties to maintain confidentiality of information contained in this agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

The consenting party represents and warrants that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

### **PART III MANDATORY REPORTING**

#### **1. Counterparties that are NFC-s**

- (a) With respect to FX Transactions entered between you (or your Underlying Principal) and The Bank of New York Mellon SA/NV, if you (or your Underlying Principal) are an NFC- established in the European Union (or, until the end of the transitional period following the United Kingdom's departure from the European Union, the United Kingdom), The Bank of New York Mellon SA/NV is responsible under Article 9(1a) of EMIR for complying with any Reporting Obligation under EMIR, provided that you have provided BNYM with such information that BNYM cannot reasonably be expected to possess as is required for reporting purposes. Any EMIR Reporting Delegation Agreement in place with BNYM shall not apply with respect to such FX Transactions entered between you (or your Underlying Principal) and The Bank of New York Mellon SA/NV.
- (b) You acknowledge that BNYM may request information from you for reporting purposes from time to time, and may notify you of the data The Bank of New York Mellon SA/NV will report with respect to you and all your FX Transactions. Unless and until you give notice to BNYM at [BNYMellonDelegatedReporting@bnymellon.com](mailto:BNYMellonDelegatedReporting@bnymellon.com) to amend that data, it will continue to be used for reporting all FX Transactions with you.
- (c) Any election by you (or your Underlying Principal) to report under EMIR the FX Transactions entered into with The Bank of New York Mellon SA/NV shall be made by notice to BNYM at [BNYMellonDelegatedReporting@bnymellon.com](mailto:BNYMellonDelegatedReporting@bnymellon.com) and The Bank of New York Mellon SA/NV shall cease reporting under Article 9(1a) of EMIR, and you shall commence making reports, within such timescale as agreed between you and BNYM.
- (d) If such election has been made, and you wish to revoke such election, notice of revocation shall be given to BNYM at [BNYMellonDelegatedReporting@bnymellon.com](mailto:BNYMellonDelegatedReporting@bnymellon.com) and The Bank of New York Mellon SA/NV shall commence reporting under Article 9(1a) of EMIR, and you shall cease making reports, within such timescale as agreed between you and BNYM.
- (e) You shall undertake all reasonable endeavours to ensure that you monitor your status (or that of your Underlying Principal) as an NFC-, and to inform BNYM of any change to such status prior to the time such change takes effect. On receipt of notice by BNYM in accordance with Clause 31.2, The Bank of New York Mellon SA/NV will cease reporting under Article 9(1a) of EMIR from the later of (i) 2 London Business Days from the date such notice was received; (ii) the date such change takes effect or (iii) such date as agreed between you and BNYM. Any EMIR Reporting Delegation Agreement entered into between you (or your Underlying Principal) and BNYM shall then apply with respect to the FX Transactions entered between you (or your Underlying Principal) and The Bank of New York Mellon SA/NV. Where no such EMIR Reporting

Delegation Agreement is in place, BNYM may, on request, nevertheless continue reporting as your delegate on its standard EMIR Reporting Delegation Agreement terms notified to you for up to 10 London Business Days pending you entering into an EMIR Reporting Delegation Agreement with BNYM.

## **2. Counterparties other than NFC-s**

You shall undertake all reasonable endeavours to ensure that you monitor your status (or that of your Underlying Principal) for the purposes of EMIR and to inform BNYM if such status changes to NFC- prior to the time such change takes effect. On receipt of notice by BNYM in accordance with Clause 31.2, The Bank of New York Mellon SA/NV will, unless:

- (a) following the end of the transitional period following the United Kingdom's departure from the European Union, you or your Underlying Principal is a NFC-established in the United Kingdom or
- (b) you make an election in accordance with 1(c) above,

commence reporting under Article 9(1a) of EMIR FX Transactions entered between you (or your Underlying Principal) and The Bank of New York Mellon SA/NV from:

- (i) where you had entered into an EMIR Reporting Delegation Agreement with BNYM, the later of (i) 2 London Business Days from the date such notice was received; (ii) the date such change takes effect; or (iii) such date as agreed between you and BNYM. Such EMIR Reporting Delegation Agreement in place with BNYM shall then cease to apply with respect to FX Transactions entered between you (or your Underlying Principal) and The Bank of New York Mellon SA/NV; or
- (ii) where no such EMIR Reporting Delegation Agreement was in place, the later of (i) 5 London Business Days from the date such notice was received; (ii) the date such change takes effect; or (iii) such date as agreed between you and BNYM. Provided that where your reports had been made to a trade repository other than the trade repository used by BNYM from time to time for reporting FX Transactions, you acknowledge that BNYM will be unable to make reports until existing FX Transactions between you and The Bank of New York Mellon SA/NV are ported to BNYM's trade repository, and you shall undertake all reasonable endeavours to facilitate porting as promptly as possible.

## PART IV COMMON PROVISIONS

### (1) Remedies for Breach

Without prejudice to the rights, powers, remedies and privileges provided by law, failure by a party to take any actions required by or to otherwise comply with Part I or any inaccuracy of the representation and warranty in Part II, in either case, will not constitute an event of default in respect of such party or any other event which permits either party to terminate any Relevant Transaction or other transaction under this agreement.

### (2) Definitions

For the purposes of Part I, Part II and Part III of Appendix 3, the following defined terms shall have the following meanings:

**"agent"** means an entity appointed to act solely on the appointing party's behalf to deal with the other party in relation to all or part of the actions under the relevant provision.

**"Affiliate"** means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Agreed Process"** means any process agreed between the parties in respect of a Dispute other than the Dispute Resolution Procedure including, without limitation, the process in (a) Section 13 of any ISDA Master Agreement; (b) Paragraph 4 of an ISDA Credit Support Annex (Bilateral Form – Transfer); or (c) Paragraph 5 of each of the ISDA Credit Support Deed (Bilateral Form – Security Interest) and the ISDA Credit Support Annex (Bilateral Form), in each case as may be amended between the parties, if applicable.

**"Data Delivery Date"** means each date agreed as such between the parties **provided that**, in the absence of such agreement, the Data Delivery Date will be the Joint Business Day immediately prior to the PR Due Date.

**"Data Reconciliation"** means, in respect of a party receiving Portfolio Data, a comparison of the Portfolio Data provided by the other party against such party's own books and records of all outstanding Relevant Transactions between the parties in order to identify promptly any misunderstandings of Key Terms.

**"Dispute"** means any dispute between the parties (a) which, in the sole opinion of the party delivering the relevant Dispute Notice, is required to be subject to the Dispute Resolution Procedure (or other Agreed Process) pursuant to the Dispute Resolution Risk Mitigation Techniques; and (b) in respect of which a Dispute Notice has been effectively delivered.

**"Dispute Date"** means, with respect to a Dispute, the date on which a Dispute Notice is effectively delivered by one party to the other party save that if, with respect to a Dispute, both parties deliver a Dispute Notice, the date on which the first in time of

such notices is effectively delivered will be the Dispute Date. Each Dispute Notice will be effectively delivered if delivered in the manner agreed between the parties for the giving of notices in respect of this agreement.

**"Dispute Notice"** means a notice in writing which states that it is a dispute notice for the purposes of Part I(4) and which sets out in reasonable detail the issue in dispute (including, without limitation, the Relevant Transaction(s) to which the issue relates).

**"Dispute Resolution Procedure"** means the identification and resolution procedure set out in Part I(4).

**"Dispute Resolution Risk Mitigation Techniques"** means the dispute resolution risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 15 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union or, as the context may require, the equivalent technical standards applying under EMIR in the United Kingdom from time to time.

**"EMIR"** means, as the context may require, Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012, or EMIR as it forms part of "retained EU law" in the United Kingdom as defined in the European Union (Withdrawal) Act 2018 (as amended from time to time).

**"EMIR and Supporting Regulation"** has the meaning given to it in Part II(1).

**"EMIR Reporting Delegation Agreement"** means, any Reporting Delegation Agreement in respect of Reporting Obligation under Article 9 of EMIR.

**"European Union"** means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between member states that are primarily located in Europe.

**"Joint Business Day"** means a day that is a Local Business Day in respect of each party.

**"Key Terms"** means, with respect to a Relevant Transaction and a party, the valuation of such Relevant Transaction and such other details the relevant party deems relevant from time to time which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the Relevant Transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the Relevant Transaction. For the avoidance of doubt, "Key Terms" does not include details of the calculations or methodologies underlying any term.

**"Local Business Day"** means, in respect of a party and unless otherwise agreed between the parties in writing, a day on which commercial banks and foreign exchange markets settle payments and are open for general business in the place of the location of the office(s) that such party transacts Relevant Transactions with the other party from time to time, as determined by the other party.

**"London Business Day"** means, for the purposes of Part III, a day (other than a Saturday or Sunday) on which banks are open for general business in London.

**"NFC-"** means a non-financial counterparty as defined in EMIR, other than a non-financial counterparty that is subject to the clearing obligation in accordance with Article 10(1) of EMIR, but shall not include any alternative investment fund (AIF), UCITS or institution for occupational retirement scheme provision that has no legal personality (IORP) that would otherwise be a financial counterparty if not carved-out from the definition of financial counterparty under Article 2(8)(d), (e) or (f) of EMIR.

**"NFC+"** means a non-financial counterparty as defined in EMIR that is subject to the clearing obligation in accordance with Article 10(1) of EMIR.

**"Portfolio Data"** means, in respect of a party providing or required to provide such data, the Key Terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail that would be reasonable to the Portfolio Data Sending Entity if it were the receiving party. Unless otherwise agreed between the parties, the information comprising the Portfolio Data to be provided by a party on a Data Delivery Date will be prepared as at the close of business on the immediately preceding Local Business Day of, and as specified in writing by, the party providing the Portfolio Data.

**"Portfolio Data Receiving Entity"** and **"Portfolio Data Sending Entity"** each means a party to this agreement who adheres to the Protocol as such, subject to Part I(2)(a) above.

**"Portfolio Reconciliation Requirements"** means the requirements one or both parties are subject to in accordance with the Portfolio Reconciliation Risk Mitigation Techniques.

**"Portfolio Reconciliation Risk Mitigation Techniques"** means the portfolio reconciliation risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union or, as the context may require, the equivalent technical standards applying under EMIR in the United Kingdom from time to time. .

**"PR Due Date"** means each date agreed as such between the parties **provided that** the PR Due Date will be the PR Fallback Date where either (a) no date is agreed or (b) the agreed date occurs after the PR Fallback Date.

**"PR Fallback Date"** means: (a) in respect of the PR Period starting on the PR Requirement Start Date, the last Joint Business Day in such PR Period; and, otherwise, (b) the last Joint Business Day in the PR Period starting on the calendar day immediately following the last calendar day of the immediately preceding PR Period. If there is no Joint Business Day in a PR Period, the PR Due Date will be the first Joint Business Day following the end of the PR Period.



**"Protocol"** means the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by the International Swaps and Derivatives Association, Inc. on 19 July 2013.

**"PR Period"** means, with respect to the parties:

- (a) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur each business day, one Joint Business Day;
- (b) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per week, one calendar week;
- (c) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per quarter, three calendar months; or
- (d) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per year, one calendar year.

**"PR Requirement Start Date"** means the first calendar day on which the Portfolio Reconciliation Requirements apply to one or both of the parties and Part I applies to the parties.

**"Relevant Transaction"** means any transaction which is subject to the Portfolio Reconciliation Risk Mitigation Techniques and/or the Dispute Resolution Risk Mitigation Techniques.

**"Reporting Requirement"** has the meaning given to it in Part II(1).

**"third party service provider"** refers to an entity that the parties agree will perform all or part of the actions under the relevant provision for both parties.

**"TR"** has the meaning given to it in Part II.

## Appendix 4 - SPOT LETTER

### FX Standing Instruction Spot Representation Letter (“Spot Letter”)

A. You represent and warrant to BNYM that each foreign exchange transaction entered into by the you with BNYM pursuant to the Standing Instruction FX Service will be:

- (1) a Spot Transaction, or,
- (2) an FX Securities Conversion Transaction.

For purposes of the foregoing:

- (i) **“Standing Instruction FX Service”** means a BNYM custody related foreign exchange service where you may, in relation to Custodial Accounts, make requests to execute foreign exchange transactions with BNYM pursuant to a BNY Mellon Standing Instruction FX Program or Universal FX Program.
- (ii) **“Custodial Accounts”** means cash and/or securities accounts held by you (or your underlying clients) with BNY Mellon and/or its affiliates.
- (iii) **“BNY Mellon Standing Instruction FX Program”** means any pricing and execution program made available by BNYM from time to time for custody related foreign exchange service that may be entered into via standing instructions or ad hoc requests including, without limitation, the Defined Spread Program, the Session Range Program and the Benchmark Program, but, for the avoidance of doubt, shall not include pricing programs for any other (non-custody related) foreign exchange service, including, without limitation, pricing programs for foreign exchange services pursuant to programmatic currency administration service, howsoever described or documented.
- (iv) **“FX Securities Conversion Transaction”** means a contract for the exchange of one currency against another currency where the contract for the exchange of those currencies is used solely for the purpose of the sale or purchase of a transferable security and where the actual exchange of one currency against another is executed contemporaneously in an amount equal to the price of the security and is settled during the Market Standard Delivery Period; provided that such transaction has not been structured to evade and settlement has not been intentionally delayed in order to avoid applicable foreign exchange regulatory requirements;
- (v) **“Market Standard Delivery Period”** means the period generally accepted in the market for the settlement of the sale or purchase of that transferable security as the standard delivery period or 5 Trading days whichever is shorter;
- (vi) **“Spot Transaction”** means a contract for the exchange of one currency against another, under the terms of which delivery is scheduled to be made within 2 Trading days (a contract will not be a Spot Transaction where, irrespective of the explicit

terms, there is an understanding between the parties that delivery is to be postponed and not performed within the specified time period);

(vii) “**Trading day**” means any day of normal trading in the jurisdiction of both the currencies that are exchanged.

(viii) “**Universal FX Program**” means any pricing and execution program made available by BNYM from time to time via a Universal FX Agreement.

(ix)

B. You undertake that you will not make any request for any foreign exchange transaction pursuant to the Standing Instructions FX Service that will not satisfy the definition of a Spot Transaction or a FX Securities Conversion Transaction.

C. Without prejudice to any other rights that BNYM has to not execute any request for a transaction under the Standing Instructions FX Service or any other foreign exchange service, and notwithstanding the representations and warranties that you provide in paragraph A above, you acknowledge that BNYM may refuse to action any such request and, to the extent you wish to enter into such a transaction, you are required to either: (x) alter certain terms of the request (such as reducing the tenor of the transaction to a tenor acceptable by BNYM), or (y) execute the request through alternative foreign exchange service channels.

D. You represent and warrant that:

(1) You have due consent and authority to make the representations, acknowledgments and undertakings set out above or, as the case may be, on behalf of each underlying client;

(2) You have sufficient experience and expertise either from your own professionals or your advisors to reasonably understand the characteristics of derivative contracts relating to currencies and the classification of such contracts as financial instruments for the purposes of Directive 2014/65/EU of the European Parliament and the Council, and the relevant exclusions that apply (“**Financial Instrument Exclusions**”), and has not and will not rely on BNYM for such understanding;

(3) you have processes and procedures in place to consider the applicability of Financial Instrument Exclusions and that such processes and procedures can either identify transactions that do not qualify for a Financial Instrument Exclusion, or ensure that such transactions are not executed with BNYM; and

(4) you shall promptly provide such further information in relation to the processes and procedures referred to in (iii) above as may be reasonably required by BNYM from time to time to enable BNYM to satisfy itself of the existence and extent of such processes and procedures.

- E. You, or, as the case may be, you on behalf of each underlying client, agree and acknowledge that (a) each representation and warranty above shall be deemed repeated on each day on which you, or, as the case may be, each such underlying client, enters into a foreign exchange transaction with BNYM pursuant to the Standing Instruction FX Service, and (b) that BNYM shall rely on the accuracy and truthfulness of each representation and warranty above in entering into foreign exchange transaction with you, or, as the case may be, such underlying client.
- F. You agree that, instead of the Internal Settlement Mandate in Clause 13.3 of these Terms, the following Standing Instruction FX Service Mandate shall apply to transactions executed under the Standing Instruction FX Service:

Where you (or your Underlying Principal, your depositary or your Underlying Principal's depositary) maintain accounts with BNYM or its Affiliates, you (on your own behalf or on behalf on your Underlying Principal, your depositary or your Underlying Principal's depositary, as applicable) hereby agree (and represent that you have taken all necessary steps to ensure) that BNYM shall be entitled to debit or instruct its Affiliates to debit those accounts (whether those accounts are in respect of cash or other assets) in respect of any amount due and payable to BNYM under any Spot Transactions and FX Securities Conversion Transactions arising from the Standing Instruction FX Service ("**Standing Instruction FX Service Mandate**").

- G. This letter is governed by and construed in accordance with English law.

## Appendix 5 - THE BANK OF NEW YORK MELLON SA/NV, FRANKFURT BRANCH

### A. Scope and Application

- a. The Bank of New York Mellon SA/NV, Asset Servicing, Niederlassung Frankfurt am Main, Germany, (referred to as “**BNYM SA/NV Frankfurt**” in this “**Appendix 5**”) may as a service for you (or, where you are acting for an Underlying Principal, for your Underlying Principal) execute an FX Transaction between you (or, where you are acting for an Underlying Principal, your Underlying Principal) and The Bank of New York Mellon SA/NV head office on or after these Terms come into effect.
- b. Where the General Business Conditions (“*Allgemeine Geschäftsbedingungen*”) govern the business relationship between you (or, where you are acting for an Underlying Principal, your Underlying Principal) and BNYM SA/NV Frankfurt, these Terms as amended by this Appendix 5 constitute Special Conditions (“*Sonderbedingungen*”) in the meaning of the Clause 1 (1) Sentence 2 of the General Business Conditions and will *exclusively* govern the provision of services by BNYM SA/NV Frankfurt in relation to FX Transactions. Where the Terms as amended by this Appendix 5 should conflict with the General Business Conditions, these Terms as amended by this Appendix 5 shall take precedent.
- c. Where the Terms differentiate between The Bank of New York Mellon SA/NV and The Bank of New York Mellon, London branch, the terms for The Bank of New York Mellon SA/NV apply to BNYM SA/NV Frankfurt if not otherwise specified in this Appendix 5 and subject to “**Business Day**” in respect of BNYM SA/NV Frankfurt meaning a day (other than a Saturday or Sunday), on which banks are open for general business in Frankfurt.

### B. Deviating definitions for German domiciled clients

If you are (or, where you are acting for an Underlying Principal, your Underlying Principal is) located or domiciled in Germany, the following defined terms shall - contrary to the definitions set out in Appendix 1 or elsewhere in these Terms - have the following meanings:

“**Conduct of Business Rules**” means the rules set out in the Applicable Regulations implementing MiFID into German law;

“**Investment Manager**” under these Terms means anyone acting as agent (*Stellvertreter*) for an Underlying Principal;

“**MiFID business**” means “investment services and activities” and “ancillary services” as such terms are defined and used in the Applicable Regulations implementing MiFID into German law;

“**MiFID Financial Instrument**” means *Finanzinstrument* as such term is defined and used in the WpHG;

“**Underlying Principal**” means any person on whose behalf you are acting as agent (*Stellvertreter*).

“**WpHG**” means the German Securities Trading Act (*Wertpapierhandelsgesetz*).

## Appendix 6 - **DELETED**

## APPENDIX 7 - ELECTRONIC ACCESS TERMS & CONDITIONS

These Electronic Access Terms and Conditions (the “**Terms and Conditions**”) set forth the terms and conditions under which The Bank of New York Mellon Corporation and/or its subsidiaries or joint ventures (collectively, “**BNY Mellon**”) will provide you (whether acting on your own behalf or on behalf of Underlying Principals) (“**You**” and “**Your**”) with access to and use of BNY Mellon’s electronic information delivery site known as “BNY Mellon Connect” and/or other BNY Mellon-designated access portals (“**Electronic Access**”). Access to and use of Electronic Access by You is contingent upon and is in consideration for Your compliance with the terms and conditions set forth below. Electronic Access includes access to BNY Mellon web sites accessible via BNY Mellon Connect and/or other BNY Mellon designated access portals (“**Sites**”), pursuant to which You are able to access products and services provided by BNY Mellon as well as data regarding Your accounts or Your Underlying Principals’ accounts.

Any particular product or service accessed by You through Electronic Access may be subject to a separate written agreement between You and BNY Mellon with respect to such products and services (each a “**Services Agreement**”). In addition, terms and conditions and restrictions with respect to any particular product or service accessed through Electronic Access (such as privacy and internet security matters), together with any disclaimers related to the specific products or services, may be set forth on the Sites (hereinafter referred to as “**Terms of Use**”).

By any of Your Users accessing the Sites, and the products and services available through Electronic Access, You will be deemed to have agreed to these Terms and Conditions and any Terms of Use and acknowledged and accepted any disclaimers and disclosures included on the Sites and the restrictions concerning the use of proprietary data provided by Information Providers (as defined below) that are posted on the Data Terms Web Site (as defined below).

### 1. Access Administration:

- a. To facilitate access to Electronic Access, You will furnish BNY Mellon with a written list of the names, and the extent of authority or level of access, of those persons You are authorizing to access the Sites, products and services and to use the Electronic Access (“**Authorized Users**”) on a read-only basis. In addition, You may also designate Authorized Users who will have authority to enter transactions and provide instructions to BNY Mellon that cause a change in Your (or Your Underlying Principals’) rights and obligations against BNY Mellon and/or have an impact on assets held by BNY Mellon for Your account or Your Underlying Principals’ accounts (“**Authorized Transactional Users**”). Where appropriate, Authorized Users and Authorized Transactional Users are collectively referred to herein as “**Users**”. If You wish to allow any third party or any employee of a third party (such as an investment manager, consultant or third party service provider) to have access to Your account through Electronic Access and be included as a “User” under these Terms and Conditions, You may: (A) designate that person as an Authorized User or Authorized Transactional User under these Terms and Conditions and any such third party or employee of a third party so designated by You (and, if a third party is so designated, any employee of such third party designated by such third party) will be included within the definition of Authorized User, Authorized Transactional User, and User as appropriate; or (B) permit such third party to designate Authorized Users and Authorized Transactional Users. Whether You so designate a third party under these Terms and Conditions or whether You permit a third party to designate Authorized Users and Authorized Transactional Users under these Terms and Conditions, such third party will be considered Your third party under these Terms and Conditions. You also give authority to Users who will be designated as administrators to designate future Users.
- b. Upon BNY Mellon’s approval of Users (which approval will not be unreasonably withheld), BNY Mellon will send You a user-id, temporary password and, where applicable, a secure identification device for each User. You will be responsible for providing to Users the user-ids, temporary passwords and, where applicable, secure identification devices. You will ensure that any User receiving a secure identification device returns such device immediately following the termination of the User’s authorization to access the products and services for which the secure identification device was provided to such User. You are solely responsible for Users’ access to Electronic Access, and You and Users are solely responsible for the confidentiality of the user-ids and passwords and secure identification devices that are provided to them and will remain responsible for each secure identification device until it is returned to BNY Mellon. You, on behalf of You and Your affiliates, acknowledge and agree that, BNY Mellon will have no duty or obligation to verify or confirm the actual identity of the person who accesses

Electronic Access using a validly issued user-id and password (and, where applicable, security identification device) or that the person who accesses Electronic Access using such validly issued user-id and password (and, where applicable, secure identification device) is, in fact, a User (whether an Authorized User or an Authorized Transactional User).

- c. You shall not, and shall not permit any User or Your third party to, breach or attempt to breach any security measures used in connection with Electronic Access or Proprietary Software. Any attempt to circumvent or penetrate any application, network or other security measures used by BNY Mellon or its suppliers in connection with Electronic Access is strictly prohibited.
- d. You are also solely responsible for ensuring that all Users comply with these Terms and Conditions and any Terms of Use included on the Sites, the Service Agreement for each product or services accessed through the Sites and their associated services and all applicable terms and conditions, restrictions on the use of such products and services and data obtained through the use of Electronic Access. BNY Mellon reserves the right to prohibit access or revoke the access of any User to Electronic Access whom BNY Mellon determines has violated or breached these terms and conditions or any Terms of Use on a Site accessed by the User, including the Data Terms Web Site (as defined below), or whose conduct BNY Mellon reasonably determines may constitute a criminal offense, violate any applicable local, state, national, or international law or constitute a security risk for BNY Mellon, its third party service providers, its clients or any Users of Electronic Access. BNY Mellon may also terminate access to all Users following termination of all Services Agreements.

## 2. Proprietary Software:

- a. Depending upon the products and services You elect to access through Electronic Access, You may be provided software owned by BNY Mellon or licensed to BNY Mellon by a third party (“**Proprietary Software**”). You are granted a limited, non-exclusive, non-transferable license to install the Proprietary Software on Your authorized computer system (including mobile devices registered with BNY Mellon) and to use the Proprietary Software solely for Your own internal purposes in connection with Electronic Access and solely for the purposes for which it is provided to You. You and Your Users may make copies of the Proprietary Software for backup purposes only, provided all copyright and other proprietary information included in the original copy of the Proprietary Software are reproduced in or on such backup copies. Any attempt to circumvent or penetrate the security of Electronic Access is strictly prohibited.
- b. You agree that if You require the Proprietary Software to be installed on a computer system not under Your control: (i) You will notify BNY Mellon in writing prior to such installation; (ii) You will be responsible and liable for the installation and protection of the Proprietary Software on such system in the same manner as though You had installed the Proprietary Software on Your internal computer system; and (iii) BNY Mellon may require the individual or entity that controls such computer system to sign a separate agreement with BNY Mellon.
- c. You agree that You will not (i) except as provided in these Terms and Conditions, make additional copies of Proprietary Software; (ii) disclose Proprietary Software to, or allow Proprietary Software to be used by or for the benefit of, any third party; (iii) alter, decompile, disassemble, reverse engineer, modify, or attempt to determine the source code for, any Proprietary Software and/or merge Proprietary Software with another software program.

## 3. Use of Data:

- a. Electronic Access may include information and data that is proprietary to the providers of such information or data (“**Information Providers**”) or may be used to access Sites that include such information or data from Information Providers. This information and data may be subject to restrictions and requirements which are imposed on BNY Mellon by the Information Providers and which are posted on <http://www.bnymellon.com/products/assetservicing/vendoragreement.pdf> or any successor web site of which You are provided notice from time to time (the “**Data Terms Web Site**”). You will be solely responsible for ensuring that Users comply with the restrictions and requirements concerning the use of proprietary data that are posted on the Data Terms Web Site.
- b. You consent to BNY Mellon, its affiliates, and its third party service providers disclosing to each other and using data received from You and Users and, where applicable, Your third parties in connection with



these Terms and Conditions (including, without limitation, client data and personal data of Users) (1) to the extent necessary for the provision of Electronic Access; (2) in order for BNY Mellon and its affiliates to meet any of their obligations under these Terms and Conditions to provide Electronic Access; or (3) to the extent necessary for Users to access Electronic Access, and You have the necessary consents of Your Users and Your third parties to give effect to this clause.

#### **4. Ownership and Rights:**

- a. Electronic Access, including any database, any software (including for the avoidance of doubt, Proprietary Software) and any proprietary data, processes, scripts, information, training materials, manuals or documentation made available as part of the Electronic Access (collectively, the "**Information**"), are the exclusive and confidential property of BNY Mellon and/or BNY Mellon's suppliers. You may not use or disclose the Information except as expressly authorized by these Terms and Conditions. You will, and will cause Users and Your third parties, to keep the Information confidential by using the same care and discretion that You use with respect to Your own confidential information, but in no event less than reasonable care.
- b. The provisions of this Clause 4 will not affect the copyright status of any of the Information which may be copyrighted and will apply to all Information whether or not copyrighted.
- c. Nothing in these Terms and Conditions will be construed as giving You, Users, or third party users any license or right to use the trade marks, logos and/or service marks of BNY Mellon, its affiliates, its licensors, its Information Providers or its third party service providers.
- d. Any Intellectual Property Rights and any other rights or title not expressly granted to You or Users under these Terms and Conditions are reserved to BNY Mellon, its affiliates, its licensors, its Information Providers and its third party service providers. "**Intellectual Property Rights**" includes all copyright, patents, trademarks and service marks, rights in designs, moral rights, rights in computer software, rights in databases and other protectable lists of information, rights in confidential information, trade secrets, inventions and know-how, trade and business names, domain names (including all extensions, revivals and renewals, where relevant) in each case whether registered or unregistered and applications for any of them and the goodwill attaching to any of them and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world.

#### **5. Fees:**

In consideration for Electronic Access as set out in the Terms and Conditions, You shall pay the fee of £1 to BNY Mellon (the receipt of which is hereby acknowledged by BNY Mellon). All fees are exclusive of applicable value added tax (and other similar taxes) and all such taxes will be payable by You. For the avoidance of doubt, this fee is in addition to and not a substitute for any other fees and charges agreed between You and BNY Mellon for any products and services made available to You through Electronic Access.

#### **6. Confidentiality:**

- a. Electronic Access (including, without limitation, the design, programming techniques, algorithms and codes contained within the Electronic Access), Proprietary Data (as defined in the Data Terms Website) and any other information provided by BNY Mellon or any of its affiliates to You are confidential property of BNY Mellon, its affiliates, its licensors, or third party service providers in relations to the Electronic Access Service under these Terms and Conditions.
- b. You shall not, and shall procure that each User must not, without the prior written consent of BNY Mellon, disclose to any third party or make unauthorized use of the proprietary Information, the Sites and the content of these Terms and Conditions, and will take reasonable care to protect the confidential property in relation to these Terms and Conditions from examination by anyone except for its agents or employees who have a need to know. You shall be responsible for the consequences of any misuse of, or unauthorized use of or access to, the Proprietary Software and for the disclosure of any confidential property or information by You or a User, provided that this Clause 6 shall not restrict any disclosure by You pursuant to any applicable law, or by order of any court or government agency. You will promptly notify BNY Mellon in writing if such disclosure occurs.

- c. Notwithstanding any other provision in these Terms and Conditions, BNY Mellon may at its discretion, retain the records of Your and each User's Commands (as defined below) for any applicable legal or regulatory requirement and, for any other reason, including, without limitation, monitoring the quality of service that You receive, Your compliance with these Terms and Conditions and the security of the Information.

## 7. Reliance:

- a. BNY Mellon will be entitled to rely on, and will be fully protected in acting upon, any actions or instructions associated with a user-id or a secure identification device issued to a User until such time BNY Mellon receives actual notice in writing from You of the change in status of the User and receipt of the secure identification device issued to such User. You acknowledge that all commands, directions and instructions, including commands, directions and instructions for transactions issued by a User, or Your third party are issued at Your sole risk. You agree to accept full and sole responsibility for all such commands, directions and instructions and that BNY Mellon, will have no liability for, and you hereby release BNY Mellon from, any losses, liabilities, damages, costs, expenses, claims, causes of action or judgments (including attorneys' fees and expenses) (collectively "**Losses**") incurred or sustained by You or any other party in connection with or as a result of BNY Mellon's reliance upon or compliance with such commands, directions and instructions.
- b. All commands, directions and instructions ("**Commands**") involving a transaction entered by Authorized Transactional User will be treated as an authorized instruction under the applicable Services Agreement(s) covering accounts, products and services and products provided by BNY Mellon with respect to which Electronic Access is being used whether such Services Agreement is executed prior to or after the effectiveness of these Terms and Conditions.
- c. BNY Mellon shall use reasonable endeavours to comply with any Commands received from User or any requests from You regarding the revocation and cancellation of any such Commands, provided that such a request: (a) is correctly entered by the User; (b) is received by BNY Mellon in sufficient time for BNY Mellon to act upon such a request; and (c) complies with BNY Mellon's security procedures.
- d. You and BNY Mellon each agree that the time at which Commands are deemed to be received by BNY Mellon shall be the time of the sending of the confirmation of receipt by BNY Mellon to the originator of the relevant transaction. BNY Mellon shall have no obligation to act on any Commands unless BNY Mellon have sent (or otherwise made available) the User (from whom the Command originated from) a transaction reference number. BNY Mellon may in their absolute discretion decline to act upon any Commands which are insufficient or incomplete or are not received by BNY Mellon in sufficient time for BNY Mellon to act upon or in accordance with such Commands, or any other circumstances prescribed by the relevant Services Agreement.
- e. To the fullest extent permitted by law, there is no warranty of merchantability, no warranty of fitness for a particular purpose, no warranty of quality and no warranty of title or non-infringement. There is no other warranty of any kind, express or implied, regarding electronic access, the sites, any proprietary software, information, materials or client data.
- f. Notwithstanding the prior paragraph, BNY Mellon or an affiliate designated by it, will defend You and pay any amounts agreed to by BNY Mellon in a settlement and damages finally awarded by a court of competent jurisdiction, in an action or proceeding commenced by a third party against You based on a claim that Electronic Access or the Proprietary Software infringe such third party's patent, copyright, or trade secret, provided that You (i) notify BNY Mellon promptly of any such action or claim (except that the failure to so notify BNY Mellon will not limit BNY Mellon's obligations hereunder except to the extent that such failure prejudices BNY Mellon); (ii) grant BNY Mellon, or its designated affiliate, full and exclusive authority to defend, compromise or settle such claim or action; and (iii) provide BNY Mellon, or its designated affiliate, all assistance reasonably necessary to so defend, compromise or settle. The foregoing obligations will not apply, however, to any claim or action arising from (i) use of the Proprietary Software Information or Electronic Access in a manner not authorized under these Terms and Conditions, the Terms of Use, or the Data Terms Web Site; or (ii) use of the Proprietary Software or Electronic Access in combination with other software or services not supplied by BNY Mellon.

## 8. Disclaimers:

- a. Although BNY Mellon uses reasonable efforts to provide accurate and up-to-date information through Electronic Access, BNY Mellon, its Content Providers and Information Providers make no warranties or representations under these Terms and Conditions as to accuracy, reliability or comprehensiveness of the content, information or data accessed through Electronic Access. Without limiting the foregoing, some of the content on Electronic Access may be provided by third party sources (“**Content Providers**”) and by Information Providers. For that content BNY Mellon is a distributor and not a publisher of such content and has no control over it. Information provided by Information Providers has not been independently verified by BNY Mellon and BNY Mellon makes no representation as to the accuracy or completeness of the content or information provided. Any opinions, advice, statements, services, offers or other information given or provided by Content Providers and Information Providers (including merchants and licensors) are those of the respective authors of such content and not that of BNY Mellon. BNY Mellon will not be liable to You, any of Your Underlying Principals, Users, or Your third party for such content or information in any way nor for any action taken in reliance on such information nor for direct or indirect damages resulting from the use of such information. For purposes of these Terms and Conditions, all information and data, including all proprietary information and materials and all client data, provided to You through Electronic Access are provided on an “AS-IS”, “AS AVAILABLE” basis.
- b. BNY Mellon makes no guarantee and does not warrant that Electronic Access or the information and data provided through the Electronic Access are or will be virus-free or will be free of viruses, worms, Trojan horses or other code with contaminating or destructive properties. BNY Mellon will employ commercially reasonable anti-virus software to its systems to protect its systems against viruses.
- c. Some Sites accessed through the use of Electronic Access may include links to third party websites. BNY Mellon will not be liable to any person for the content found on such third party websites. BNY Mellon will not be responsible for third party websites that collect information from parties who visit their web sites through links on the Sites. BNY Mellon will not be liable or responsible for any loss suffered by any person as a result of their use of any third party web sites that are linked to the BNY Mellon Sites.
- d. BNY Mellon retains complete discretion and authority to add, delete or revise in whole or in part Electronic Access, including its Sites, and to modify from time to time any Proprietary Software provided in conjunction with the use of Electronic Access and/or any of the Sites. To the extent reasonably possible, BNY Mellon will provide notice of such modifications. BNY Mellon may terminate, immediately and without advance notice, and without right of cure, any portion or component of Electronic Access or the Sites.
- e. To the fullest extent permitted by law, there is no warranty of merchantability, no warranty of fitness for a particular purpose, no warranty of quality and no warranty of title or non-infringement. There is no other warranty of any kind, express or implied, regarding electronic access, the sites, any proprietary software, information, materials or client data.
- f. Notwithstanding the prior paragraph, BNY Mellon or an affiliate designated by it, will defend You and pay any amounts agreed to by BNY Mellon in a settlement and damages finally awarded by a court of competent jurisdiction, in an action or proceeding commenced by a third party against You based on a claim that Electronic Access or the Proprietary Software infringe such third party’s patent, copyright, or trade secret, provided that You (i) notify BNY Mellon promptly of any such action or claim (except that the failure to so notify BNY Mellon will not limit BNY Mellon’s obligations hereunder except to the extent that such failure prejudices BNY Mellon); (ii) grant BNY Mellon, or its designated affiliate, full and exclusive authority to defend, compromise or settle such claim or action; and (iii) provide BNY Mellon, or its designated affiliate, all assistance reasonably necessary to so defend, compromise or settle. The foregoing obligations will not apply, however, to any claim or action arising from (i) use of the Proprietary Software Information or Electronic Access in a manner not authorized under these Terms and Conditions, the Terms of Use, or the Data Terms Web Site; or (ii) use of the Proprietary Software or Electronic Access in combination with other software or services not supplied by BNY Mellon.

## **9. Limitation of Liability:**

- a. In no event will BNY Mellon, its licensors, content providers, Information Providers or third party service providers be liable to you or anyone else under these terms and conditions for any losses, liabilities damages, costs or expenses including but not limited to, any direct damages, consequential

damages, reliance damages, exemplary damages, incidental damages, special damages, punitive damages, indirect damages or damages for loss of profits, good will, business interruption, use, data, equipment or other intangible losses (even if we have been advised of the possibility of such damages) that result from (1) these Terms and Conditions; or (2) the use of or inability to use electronic access, Proprietary Software or client data. BNY Mellon will not be liable for any loss, damage or economic injury resulting from voluntary shutdown of the server, electronic access or any of the sites to address technical problems, computer viruses, denial-of-service messages or other similar problems.

- b. You agree that the total liability of BNY Mellon, its licensors, the Information Providers and the third party service providers arising out of any kind of claim, demand, proceedings or action (“**Claim**”), whether in contract, negligence or otherwise, in any way connected with Electronic Access, Information, client data and these Terms and Conditions shall not exceed the greater of the amount of the fees paid by You for Electronic Access over the 12 months immediately preceding the incident or £18,000. A number of Claims arising out of the same event or a series of connected events shall be deemed to be a single Claim for these purposes. Nothing in these Terms and Conditions shall exclude or limit any liability which cannot be excluded or limited by any applicable law.
- c. The limitation of liability set forth in this Limitation of Liability section and in other provisions in these Terms and Conditions is in addition to any limitation of liability provisions contained in any Services Agreements and will not supersede or be superseded by limitation of liability provisions contained in such Services Agreements, whether executed prior to or after the effectiveness of these Terms and Conditions, except to the extent specifically set forth in such other Services Agreements containing a reference to these Terms and Conditions.

#### **10. Indemnification:**

- a. You agree to indemnify, protect and hold BNY Mellon, its affiliates, its licensors, Content Providers and Information Providers harmless from and against all liability, claims damages, costs and expenses, including reasonable attorneys’ fees and expenses, resulting from a claim by a third party that arises out of (i) any breach by You or Users, or any third parties of these Terms and Conditions, the Terms of Use or the Data Terms Web Site; (ii) BNY Mellon’s use of client data in accordance with these Terms and Conditions; and (iii) any person obtaining access to Electronic Access through You, Your Users, Your third parties or through use of any password, user-id or secure identification device issued to one of Users, whether or not You, a User, or Your third party authorized such access. For the avoidance of doubt, and by way of illustration and not by way of limitation, the forgoing indemnity is applicable to disputes between the parties, including the enforcement of these Terms and Conditions. The rights and remedies conferred hereunder will be cumulative and the exercise or waiver of any such right or remedy will not preclude or inhibit the exercise of additional rights or remedies or the subsequent exercise of such right or remedy.
- b. The indemnity provided in herein is in addition to any indemnity and other remedies contained in any Services Agreements and will not supersede or be superseded by such Services Agreements, whether executed prior to or after the effectiveness of these Terms and Conditions, except to the extent specifically set forth in such other Services Agreements and expressly stating an intent to modify this Terms and Conditions. Nothing contained herein will, or be deemed to, alter or modify the rights and remedies of BNY Mellon as set forth in the Services Agreements.

#### **11. Term and Termination:**

- a. BNY Mellon may immediately terminate access through an Authorized User’s user-id and password and may, at its discretion, also terminate access by an Authorized User, without right of cure, in the event of an unauthorized use of an Authorized User’s user-id or password, or where BNY Mellon believes there is a security risk created by such access.
- b. BNY Mellon may terminate, without advance notice, Your access or the access of Users to any portion or component of Electronic Access or the Sites in the event a third party service provider, Content Provider or Information Provider prohibits BNY Mellon from permitting You or Users to have access to their information or services.

- c. Promptly upon receiving or giving notice of termination, You will notify all Users of the effective date of the termination.
- d. Upon termination of Your access to Electronic Access, You shall return all manuals, documentation, workflow descriptions and the like that are in Your possession or under Your control and all security identification devices. The foregoing obligations shall not be construed to require You to return, delete or destroy client or personal data.
- e. The Proprietary Software, Use of Data, Ownership and Rights, Reliance, Disclaimers, Limitation of Liability, Indemnification, Force Majeure, General and Confidentiality provisions of the Terms and Conditions (and other provision of these Terms and Conditions containing disclaimers, limitation of liability and indemnification) shall survive the termination of these Terms and Conditions.

## **12. Force Majeure:**

Notwithstanding anything else in these Terms and Conditions, none of BNY Mellon, its third party service providers, licensors, or Information Providers shall be liable if they are prevented from, or delayed in performing their obligations, or for any loss resulting from a cause that is beyond the control of that entity.

## **13. General**

- a. You may not assign these Terms and Conditions without the prior written consent of BNY Mellon. BNY Mellon may assign these Terms and Conditions to any affiliate or successor in interest without Your prior consent. These Terms and Conditions shall be binding upon and inures to the benefit of You and BNY Mellon and each of your respective successors and assigns.
- b. You and BNY Mellon each acknowledge the intention that these Terms and Conditions do not confer or purport to confer on any third party any benefit or any right to enforce any provisions under these Terms and Conditions, except that: (a) BNY Mellon's affiliates may benefit from and enforce the provisions under these Terms and Conditions; and (b) each Information Provider may benefit from and enforce any right or benefit given to an Information Provider under these Terms and Conditions.

## Appendix 8 - ALGORITHMIC ORDERS

- a. The following additional terms apply to the acceptance of Orders and resulting execution of foreign exchange Spot Transactions by BNYM based on FX algorithms.
- b. BNYM may make available a number of FX algorithms for client's execution. From time to time, you may place Orders with BNYM to execute a Spot Transaction pursuant to such FX algorithms. If such an Order is accepted by BNYM, then, subject to these Terms, the applicable FX algorithm will proceed to seek execution of your Order by means of the methodology applicable to such FX algorithm.
- c. Each FX algorithm that BNYM makes available is designed to meet different investment objectives. You acknowledge that you alone are responsible for ensuring that any FX algorithm that BNYM makes available to you and that you decide to utilize is appropriate to your needs, and you bear all risk that such FX algorithm may not perform as intended. In addition, you agree to carefully review the parameter controls and default settings available on each FX algorithm in advance to ensure it is appropriately set in light of your execution objectives.
- d. You acknowledge and agree that:
  - i. BNYM does not make any representation or warranty of any kind regarding performance of any FX algorithm or the particular results to be obtained from your use of any FX algorithm;
  - ii. BNYM accepts no liability related to your choice to use an FX algorithm or to any price or results derived therefrom;
  - iii. without prejudice to anything in these Terms and for the avoidance of doubt, the availability of any disclosure or descriptions and any parameter controls or default settings are not to be construed as investment advice or any form of recommendation;
  - iv. the input of each parameter control in connection with the use of an FX algorithm constitutes your specific instruction for the purposes of the Order Execution Policy in relation to that part of your Order to which the parameter governs; and
  - v. you have read and understood any FX algorithm descriptions and disclosures that may be made available to you from time to time by BNYM, including through our website at <https://www.bnymellon.com/us/en/disclaimers/foreign-exchange-disclosures.jsp>. To the extent that BNYM makes such disclosure available by such website, you will be responsible for checking for any update to such descriptions and disclosures that are published from time to time.

## Appendix 9 - **THE BANK OF NEW YORK MELLON SA/NV - SPOT FX ORDERS**

- a. You acknowledge and agree that without prejudice to these Terms, where you place an Order (including but not limited to Orders for execution by FX algorithm) with The Bank of New York Mellon SA/NV for a Spot Transaction then The Bank of New York Mellon SA/NV will execute such Order by giving an order on the same terms to The Bank of New York Mellon to execute (each resulting executed transactions being a “Back to Back Transaction”). To the extent that a Back to Back Transaction is executed, the Bank of New York Mellon SA/NV will act as a riskless principal such that you and The Bank of New York Mellon SA/NV will have executed a Spot Transaction in an amount equal to the amount executed with respect to the relevant Back to Back Transaction at the price that The Bank of New York Mellon applies to the Back to Back Transaction (prior to the application of any fee charged by The Bank of New York Mellon to The Bank of New York Mellon SA/NV) plus any fee agreed between you and the Bank of New York Mellon SA/NV with respect to such Order.
- b. You further acknowledge and agree that the execution of your Order shall be contingent on the execution of the Back to Back Transaction which shall be subject to such terms as agreed between The Bank of New York Mellon SA/NV and The Bank of New York Mellon. Accordingly there can be no assurance that any Back to Back Transaction will be executed in whole or in part. Further The Bank of New York Mellon may have access to different pools of liquidity than the The Bank of New York Mellon SA/NV which may result in different outcomes (including but not limited to outcomes related to likelihood of execution, price and timing of executions) from those that would have existed if The Bank of New York Mellon SA/NV had executed the Order itself.