

Effective Date: 12 April 2019

THE BANK OF NEW YORK MELLON, HONG KONG BRANCH
AND
THE BANK OF NEW YORK MELLON, SINGAPORE BRANCH

INTERMEDIARY TERMS OF BUSINESS FOR FX TRANSACTIONS

1 Scope and Application

- 1.1** These Intermediary Terms of Business as may be amended and/or supplemented from time to time (these “**Terms**”) set out the terms of business of The Bank of New York Mellon, Hong Kong Branch (“**BNYM HK**”) and The Bank of New York Mellon, Singapore Branch (“**BNYM SG**” and, together with BNYM HK, “**BNYM HK/SG**” for the purpose of these Terms) (a) where The Bank of New York Mellon SA/NV has delegated the provision of Services or activities ancillary to the provision of the Services to BNYM HK/SG in accordance with the Terms of Business for FX Transactions between you and The Bank of New York Mellon SA/NV (the “**EB Terms**”); and (b) which shall govern each FX Transaction in relation to any of the Services provided to you by BNYM HK/SG.
- 1.2** Each representative of BNYM HK and BNYM SG acts solely on behalf of BNYM HK and BNYM SG, respectively, and not on behalf of The Bank of New York Mellon SA/NV. BNYM HK/SG are independent contractors in the performance of each and every part of the delegated activities and nothing contained herein or in any other document shall be construed to be inconsistent with this status.
- 1.3** Under these Terms BNYM HK/SG act solely as intermediaries in the provision of the Services, and any Orders executed under these Terms will in all cases be booked into The Bank of New York Mellon SA/NV which acts as principal to such trades.
- 1.4** These Terms constitute a legally binding contract which you are deemed to have read and accepted for yourself and on behalf of any Underlying Principal(s) on whose behalf you are acting as agent by giving BNYM HK/SG instructions to enter into any FX Transactions or accepting Services from BNYM HK/SG in relation to an FX Transaction. The Terms are available at <https://www.bnymellon.com/us/en/disclaimers/foreign-exchange-disclosures.jsp> (or a successor website).
- 1.5** For all purposes of these Terms, any reference to “**BNYM HK/SG**” shall, as the context requires, mean:
- (a) in respect of any Services provided to you by The Bank of New York Mellon, Hong Kong Branch, The Bank of New York Mellon, Hong Kong Branch; and
 - (b) in respect of any Services provided to you by The Bank of New York Mellon, Singapore Branch, The Bank of New York Mellon, Singapore Branch.
- 1.6** For all purposes of these Terms:
- (a) any references to “**you**” and “**your**” under these Terms are to you alone except as provided in Clauses 1.6(b) and (c) below or as expressly provided otherwise in a specific context under these Terms;
 - (b) any reference to “**you**” or “**your**” in Clause 3.1 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; and
 - (c) any references to “**you**” or “**your**” in Clauses 4.1, 4.4 and 5 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.

- 1.7** In these Terms, “**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 HK/SG 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 BNYM HK, a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong, and in respect of BNYM SG, a day (other than a Saturday or Sunday) on which banks are open for general business in Singapore; “**Data Protection Laws**” means the GDPR and all member state laws, rules, regulations, regulatory guidance and regulatory requirements supplementing the GDPR; “**Electronic Services**” means certain electronic services that The Bank of New York Mellon SA/NV 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; “**Exchange**” means any exchange, multilateral trading facility, market, automated trading system, organised trading facility or platform or association of dealers in any part of the world on or through which securities, commodities or currencies or assets underlying, derived from or otherwise related directly or indirectly to the same are bought and sold; “**GDPR**” means the General Data Protection Regulation (EU) 2016/679; “**Order**” means any instructions received by BNYM HK/SG from or on your behalf in relation to an FX Transaction; and “**Personal Data**” shall have the same meaning given to it in the Data Protection Laws. Capitalised terms used but not defined in these Terms shall have the meaning given to them in the EB Terms.

2 Handling and execution of Orders

- 2.1** BNYM HK/SG reserves the right, in its absolute discretion, to refuse to accept and/or execute an Order at any time or to partially accept and/or partially execute an Order at any time. If BNYM HK/SG declines to accept and/or execute an Order or only partially accepts and/or executes an Order, it shall notify you accordingly.
- 2.2** The way BNYM HK/SG accepts instructions from you may vary depending on the specific Service required and on the specific means agreed in the Supplemental Terms. BNYM HK/SG may accept instructions from you in writing, via Electronic Services, via any other electronic communication, by telephone or via specific online portals or proprietary BNYM HK/SG websites. Any instruction is transmitted at your and any Underlying Principal's own risk and BNYM HK/SG shall not be liable for any Losses suffered on account of any instruction not being received by it. You authorise BNYM HK/SG to act on any instruction received (by whatever means transmitted, whether or not in writing) which purports, and which BNYM HK/SG believes in good faith, to come from you or to have been given on your behalf regardless of whether you have provided BNYM HK/SG with notice of a list of persons authorised to act on your behalf. If BNYM HK/SG enters into any FX Transaction upon any such instruction, BNYM HK/SG 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.

- 2.3** You accept that BNYM HK/SG bears no responsibility for any unauthorised access to any information, including information regarding your trading activity, whilst such information is being transmitted to BNYM HK/SG through an Electronic Service.

3 Pricing methodology

- 3.1** The relevant pricing methodology applicable to your FX Transaction together with details of how BNYM HK/SG quotes for each FX Transaction will largely depend on the Service to which the relevant FX Transaction relates and will be subject to the Order Execution Policy.
- 3.2** BNYM HK/SG 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.
- 3.3** If BNYM HK/SG 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 communicated to you in writing. BNYM HK/SG 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 HK/SG.
- 3.4** Always subject to BNYM HK/SG's discretion, if BNYM HK/SG becomes aware that any of the factors set out in Clause 3.5 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 HK/SG reserves the right to reject your offer at the level quoted. If BNYM HK/SG has, nevertheless, already entered into, amended or closed an FX Transaction prior to becoming aware that a condition set out in Clause 3.5 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 HK/SG 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 3.5 were not satisfied. Where BNYM HK/SG refuses to act on any instruction, BNYM HK/SG may notify you of BNYM HK/SG's refusal but BNYM HK/SG will not be under any obligation to do so or to give a reason for a refusal to act.
- 3.5** BNYM HK/SG's quote will be subject to the following factors:
- 3.5.1** the quote must be obtained from BNYM HK/SG as set out in Clause 3.3;
 - 3.5.2** if you obtain the quote by telephone, it must be given by a person who is a representative of BNYM HK/SG 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 representative of BNYM HK/SG 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;
 - 3.5.3** if you obtain the quote electronically via an Electronic Service, your offer to enter into or close an FX Transaction, and BNYM HK/SG's acceptance of your offer, must be given while the quote is still valid;
 - 3.5.4** the quote must not be manifestly erroneous;
 - 3.5.5** a Force Majeure Event must not have occurred;

- 3.5.6 when you offer to enter into an FX Transaction an Event of Default under the EB Terms must not have occurred in respect of you, nor must you have acted in such a way as to trigger an Event of Default under the EB Terms;
- 3.5.7 the telephone or electronic communication in which you offer to enter into or close an FX Transaction must not be terminated before BNYM HK/SG has received and accepted your offer; and
- 3.5.8 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.

4 Representations

4.1 On a continuing basis, you represent and warrant to BNYM HK/SG 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 BNYM HK/SG 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 HK/SG 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) no Event of Default with respect to you under the EB Terms 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;
- (h) you confirm that any information given to BNYM HK/SG by you or on your behalf in connection with these Terms, FX Transactions and Services, is complete, accurate and not misleading;
- (i) upon request from BNYM HK/SG, you will provide BNYM HK/SG with such information as is necessary for it to perform its obligations under Applicable Regulations; and

- (j) where Services are provided to you by BNYM HK, you are a “professional investor” as defined in paragraphs (a) to (i) of the definition of “professional investor” in the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong).

4.2 If you are acting as agent on behalf of any of your Underlying Principal(s) then, on a continuing basis you additionally represent, warrant and undertake to BNYM HK/SG 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;
- (b) you are expressly authorised by your Underlying Principal or each of your Underlying Principals to instruct BNYM HK/SG 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;
- (c) you have carried out all due diligence required under Applicable 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;
- (d) 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;
- (e) 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 the EB Terms; and
- (f) each Underlying Principal is able to, and hereby does, make the representations in this Clause 4 as if all references to “you” in this Clause 4 are references to each Underlying Principal, and you have carried out the requisite due diligence to satisfy yourself of this.

4.3 You will notify BNYM HK/SG in writing if any of the representations, warranties and undertakings contained in this Clause 4 ceases to be true to a material extent.

4.4 You acknowledge and agree that, in entering into these Terms, you have not and are not relying upon any statements, representations, promises or undertakings whatsoever by BNYM HK/SG or its employees, directors, officers or agents other than those contained in these Terms and the EB Terms and you shall not rely upon BNYM HK/SG for the provision of investment, tax or legal advice in connection with the Services provided to you. However, nothing in these Terms limits or excludes liability for representations made fraudulently.

5 Liability and indemnity

5.1 Subject to Clause 5.2, BNYM HK/SG will only be liable for Losses you suffer and only to the extent arising directly from any act or omission by BNYM HK/SG hereunder that constitutes gross negligence, wilful default or fraud.

5.2 BNYM HK/SG will not be liable, under or in connection with these Terms, for:

- (a) any Loss (whether direct or indirect) of business profits, revenue or data; or
- (b) any indirect, consequential or incidental Losses;
- (c) any refusal to accept and/or execute any instructions received by BNYM HK/SG from or on your behalf in relation to an FX Transaction;
- (d) provided BNYM HK/SG has acted reasonably, any Losses incurred by you (or any person on whose behalf you are acting) if BNYM HK/SG is unable to action an Order, or if the execution or transmission of an Order fails or is delayed;
- (e) any adverse tax, deductions, accounting or other implications of any FX Transaction whatsoever;
- (f) any delay or change in market conditions before any particular FX Transaction is effected;
- (g) any act or omission of yours, including any error, negligence or misconduct of yours;
- (h) BNYM HK/SG's reasonable reliance on any instructions, notices, or communications that it believes to be from a person authorised by you to give the same; and
- (i) any action taken by BNYM HK/SG, any other executing broker, clearing house, clearing broker, any Exchange or any other third party, to comply with their respective obligations under Applicable Regulations;

in each case, regardless of whether the possibility of such Loss was disclosed to, or could reasonably have been foreseen by, BNYM HK/SG, and whether arising in contract, in tort or otherwise. BNYM HK/SG shall not be responsible for Losses incurred directly or indirectly by reason of any act or omission by you.

5.3 You will indemnify BNYM HK/SG and/or each Affiliate and each of their respective directors, officers or employees against any Losses which may be suffered or incurred by BNYM HK/SG 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 under the EB Terms), unless caused by the gross negligence, wilful default or fraud of the person claiming indemnity under this Clause 5.3.

5.4 In no event shall BNYM HK/SG or any of its directors, officers or employees be liable to you for any consequential, indirect, punitive, special or incidental Losses howsoever caused.

5.5 You will reimburse, indemnify and hold BNYM HK/SG harmless for any and all Losses arising out of any act or omission on your part.

6 Material interests and conflicts of interest

6.1 When BNYM HK/SG provides Services to you (whether you act for yourself or on behalf of an Underlying Principal), BNYM HK/SG, an Affiliate or some other person connected with BNYM HK/SG, may have an interest, relationship or arrangement that is material in relation to the transactions concerned.

- 6.2** BNYM HK/SG is not under any obligation to account to you for any profit, commission or remuneration made or received from or by reason of circumstances in which BNYM HK/SG or any of its Affiliates has a material interest.
- 6.3** You agree and acknowledge that BNYM HK/SG may receive from third parties (including Affiliates) fees, commissions or other benefits. The amount or basis of any fee, commission or other benefit received by BNYM HK/SG from such a third party, will be disclosed to you to the extent required by Applicable Regulations, and such disclosure may be in summary form only. Further details will be available upon request.

7 Personal data

- 7.1** Where there is a transfer of Personal Data from the European Economic Area (“**EEA**”) to a third country which is not permitted pursuant to Article 45 of the General Data Protection Regulation (EU) 2016/679, then the parties shall comply with the Standard Contractual Clauses as approved by the EU Commission Decision 2001/497 EC (which may be amended or restated from time to time and as set out in the Appendix to these Terms).

8 Termination

- 8.1** Upon the occurrence of an Event of Default or a termination event under the EB Terms, BNYM HK/SG may terminate these Terms with immediate effect. In the event that the EB Terms are terminated for any reason, these Terms shall automatically terminate with immediate effect.
- 8.2** BNYM HK/SG may, by sending you a notice in writing under these Terms, terminate these Terms at any time.
- 8.3** Any notice of termination given by BNYM HK/SG may take effect immediately or on such later date as the notice may specify.
- 8.4** 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 HK/SG receives such notice.
- 8.5** Where under these Terms you are acting as agent on behalf of more than one Underlying Principal, BNYM HK/SG may (at its discretion) terminate these Terms in relation to any such Underlying Principal pursuant to this Clause 8 without affecting the continuation of these Terms in relation to you and any other Underlying Principal.
- 8.6** 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 and the EB Terms, or any provision of these Terms intended to survive termination, including, without limitation, Clauses 5, 6, 10 and 12.

9 Notices

- 9.1** Notices and other communications may be sent by BNYM HK/SG to you from time to time by e-mail. You acknowledge that your use of the electronic medium is at your own risk and that it is your responsibility to take precautions to ensure that all e-mail messages are free from viruses and other items of a destructive nature. You consent to BNYM HK/SG delivering such notices and other communications to you by electronic transmission and you acknowledge and accept the associated risks.

9.2 Unless otherwise agreed between BNYM HK/SG and you in writing, any notice to or demand on and all correspondence from BNYM HK/SG to you shall be treated as having been received by you if served on or delivered to you personally, or sent by post or e-mail to you at the last address or e-mail address you provided to BNYM HK/SG. Any such notice, demand or correspondence sent by BNYM HK/SG to you by post, shall be deemed received by you [two Business Days] after the date of post-mark and e-mail shall be deemed received by you at the time of sending.

9.3 All notices by either party hereunder shall be sent by electronic delivery or by post, 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.

(a) Notices shall be sent to BNYM HK or BNYM SG (as the case may be) at:

The Bank of New York Mellon

Level 24, Three Pacific Place, 1 Queen's Road East, Hong Kong

Attention: Head of Compliance (Markets)

or

The Bank of New York Mellon

1 Temasek Avenue #02-01, Millenia Tower, Singapore 039192

Attention: Head of Compliance (Markets)

(b) Notices shall be sent to you at your address as communicated to BNYM HK/SG.

10 Order recording

10.1 You agree that BNYM HK/SG may record telephone conversations and monitor e-mails between it and you for the purpose of evidencing your instructions, monitoring quality of service, for compliance and security purposes, otherwise for our internal records or where required by Applicable Regulations.

11 Miscellaneous

11.1 These Terms are in English, your preferred language.

11.2 BNYM HK operates in Hong Kong, the Special Administrative Region of the People's Republic of China at Level 24, Three Pacific Place, 1 Queen's Road East, Hong Kong and is registered with the Hong Kong Securities and Futures Commission to carry on Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities under the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong). BNYM HK's Central Entity number is AIG365.

11.3 BNYM SG operates in Singapore at 1 Temasek Avenue #02-01, Millenia Tower, Singapore 039192, and is licensed by the Monetary Authority of Singapore as a wholesale bank. BNYM SG's Unique Entity Number is S74FC2426B.

- 11.4** BNYM HK/SG will notify you in writing in the event of any material change to its name, address, registration status, the nature of services provided or available to you under these Terms.
- 11.5** BNYM HK/SG is not obliged to do or not do anything which it believes would violate any Applicable Regulations. BNYM HK/SG may take such action as it determines is required to ensure compliance with any Applicable Regulations.
- 11.6** BNYM HK/SG may amend these Terms at any time by giving at least 30 days written notice (by e-mail or by posting a notice on BNYM HK/SG's website) to you and any such amendment shall become effective on the date specified in the notice. Notwithstanding the foregoing, where reasonably considered by BNYM HK/SG to be necessary or desirable for compliance with Applicable Regulations, BNYM HK/SG may also amend these Terms with such amendments to be effective immediately on notice to you. By continuing to accept Services from or placing an Order with BNYM HK/SG after receipt of any notice of amendment, you agree to such amendments. If you do not accept any such amendments, you must cease submitting Orders and notify BNYM HK/SG in writing. You cannot amend these Terms except by written agreement signed by you and BNYM HK/SG.
- 11.7** You agree that once these Terms become effective between you and BNYM HK/SG pursuant to Clause 1.4, BNYM HK/SG may refrain from providing any of the Services until all of our internal procedures have been completed and the necessary internal approvals have been obtained.
- 11.8** If you have a complaint about BNYM HK/SG, you should raise it by contacting your BNYM HK/SG Relationship Manager in the first instance.

12 Governing law and jurisdiction

- 12.1** These Terms (excluding the Appendix) 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 (excluding the Appendix), and any issue as to the existence, validity or termination of these Terms (excluding the Appendix) 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.
- 12.2** Nothing contained in Clause 12.1, however, shall limit the right of BNYM HK/SG 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.
- 12.3** 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 HK/SG to serve process in another manner permitted by law.
- 12.4** A person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999.

Appendix

Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)

Definitions

For the purposes of the clauses:

- (a) “personal data”, “special categories of data/sensitive data”, “process/processing”, “controller”, “processor”, “data subject” and “supervisory authority/authority” shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby “the authority” shall mean the competent data protection authority in the territory in which the data exporter is established);
- (b) “the data exporter” shall mean the controller who transfers the personal data;
- (c) “the data importer” shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country’s system ensuring adequate protection;
- (d) “clauses” shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

I. Obligations of the data exporter

The data exporter warrants and undertakes that:

- (a) The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.
- (b) It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- (c) It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- (d) It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond¹. Responses will be made within a reasonable time.
- (e) It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide

¹ The parties agree that the exception in Clause I. lit. d) allowing the parties to have the data importer respond to enquiries from data subjects shall not apply with regard to employee data from a German data exporter. That is, the German data exporter shall respond to enquiries from its employees.

by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

II. Obligations of the data importer

The data importer warrants and undertakes that:

- (a) It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- (b) It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- (c) It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- (d) It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- (e) It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).
- (f) At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- (g) Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- (h) It will process the personal data, at its option, in accordance with the data processing principles set forth in Annex A.

- (i) It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
 - (i) the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
 - (ii) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
 - (iii) data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
 - (iv) with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

III. Liability and third party rights

- (a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- (b) The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).
- (c) With respect to the transfer of employee data from a data exporter located in Germany, the data exporter (employer) provides the following guarantee towards its employees who are concerned by the data transfers from the data exporter to the data importer: Employees shall be entitled to exercise their data subject rights granted under Clause III b) directly against the data exporter (employer) even if and insofar such rights are related to the processing of employee data by the data importer. The data importer shall assist the data exporter with the fulfillment of the employees' data subject rights, in particular the data importer shall make available to the data exporter all information necessary and assist the data exporter by appropriate technical and organisational measures.
- (d) Without prejudice to any rights of the data subject under the Clauses the parties agree that their liability to each other under the Clauses shall be determined by, and subject to, the

provisions allocating, limiting and/or excluding liability set forth in these Terms, with all references to You and BNYM HK/SG in these Terms being replaced by the terms “data exporter” and “data importer” respectively for purposes thereof.

IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

V. Resolution of disputes with data subjects or the authority

- (a) In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- (b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- (c) Each party shall abide by a decision of a competent court of the data exporter’s country of establishment or of the authority which is final and against which no further appeal is possible.

VI. Termination

- (a) In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- (b) In the event that:
 - (i) the transfer of personal data to the data importer has been temporarily suspended by the data exporter for longer than one month pursuant to paragraph (a);
 - (ii) compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
 - (iii) the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
 - (iv) a final decision against which no further appeal is possible of a competent court of the data exporter’s country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
 - (v) a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs

then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.

- (c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- (d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

ANNEX A

DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to “opt-out” from having his data used for such purposes.

8. Automated decisions: For purposes hereof “automated decision” shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
- (a)
 - i. such decisions are made by the data importer in entering into or performing a contract with the data subject, and
 - ii. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties, or
 - (b) where otherwise provided by the law of the data exporter.

ANNEX B

DESCRIPTION OF THE TRANSFER

Data Subjects

- The personal data transferred concern the following categories of data subjects:
- Representative of an institutional client.
- Client of an institutional client
- Counterparties

Purposes of the Transfer

The transfer is made for the following purposes:

- Client onboarding
- Client management
- Marketing
- Relationship management and sales
- Operations
- Change and regulatory projects
- Regulatory reporting (where BNYM has agreed to provide this service)

Categories of data

The personal data transferred concern the following categories of data:

- Government identifiers
- Individual client data
- Business contact information

Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients:

- Other BNY Mellon companies
- Third parties who provide services to us
- Fraud and financial crime prevention agencies and organizations
- Financial services regulators
- Tax authorities

Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

- N/A

Data protection registration information of data exporter (where applicable)

As notified by data exporter when requested by data importer from time to time.

Additional useful information (storage limits and other relevant information)

N/A

Contact points for data protection enquiries

Data importer	Data exporter
By email: trmglobalprivacy@bnymellon.com By post: The Data Protection Officer BNY Mellon 160 Queen Victoria Street London EC4V 4LA	details as set out in the data exporter's privacy policy