

# Business Internet Banking Terms and Conditions

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# Business Internet Banking Terms and Conditions

This Agreement governs use of Business Internet Banking and Business Internet Banking Services. By signing the Business Internet Banking Application Form and returning it to the Bank, the Customer agrees to be bound by this Agreement as amended from time to time. If the Customer does not agree with each provision of this Agreement as amended, it should not use Business Internet Banking. This Agreement should be read in conjunction with the Website User Agreement.

## 1. Introduction

- 1.1 The Customer wishes to use Business Internet Banking Services provided by the Bank and the Bank is willing to make Business Internet Banking Services available to the Customer.
- 1.2 The Customer and the Bank agree that Business Internet Banking Services will be supplied to the Customer subject to the terms and conditions contained or referred to in this Agreement.
- 1.3 The Customer will, acting through one or more Customer Delegates, access Business Internet Banking Services through the Website.

## 2. Definitions

**“Account”** means each account the Customer holds with the Bank from time to time.

**“Agreement”** means this agreement and any supplementary terms for the provision of Business Internet Banking published and amended by the Bank from time to time.

**“Application Form”** means a properly completed and duly signed application form (in the form prescribed by the Bank) submitted by the Customer to the Bank for the purpose of applying for access to Business Internet Banking, as amended from time to time by the Customer in accordance with this Agreement.

**“Bank”** means HSBC Bank (Cayman) Limited, its subsidiaries and affiliates.

**“Business Day”** means any day except Saturday or Sunday on which banks in the Cayman Islands are open for business.

**“Business Internet Banking”** means HSBC Group’s Business Internet Banking system available through the Website, and includes online access to Account information, transferring funds between Accounts, bill payments, general information relating to rates and access to other electronic and financial products and services authorised and/or provided by the Bank.

**“Business Internet Banking Information”** means all information (including electronic messages) accessible through Business Internet Banking regarding the Customer’s Accounts, Customer’s Instructions, and use of Business Internet Banking and Business Internet Banking Services.

**“Business Internet Banking Services”** means any banking product or service provided by the Bank to the Customer using Business Internet Banking, including Internet Banking Support.

**“Change Form”** means a properly completed and duly signed change form (in the form prescribed by the Bank) submitted by the Customer to the Bank for the purpose of amending the Customer’s Application Form or terminating the Customer’s use of Business Internet Banking.

**“Customer”** means the organisation named on the Application Form including all employees, directors, officers, representatives, agents or assigns. If there is more than one organisation named, the term “Customer” shall be deemed to be a reference to each of the organisations or all organisations collectively, as the context requires.

**“Customer Delegate”** means any individual appointed by the Customer from time to time in accordance with this Agreement with authority and responsibility for the Customer’s installation, administration, maintenance, and ongoing use of Business Internet Banking.

**“Customer Instruction”** means any request or instruction from a Customer Delegate that is received by the Bank through Business Internet Banking or Internet Banking Support in accordance with this Agreement.

**“Electronic Means”** includes communications sent by email, facsimile, computer or by the use of scanned or digital signatures or any other electronic means.

**“HSBC Group”** means all entities which HSBC Holdings plc holds, directly or indirectly, a controlling interest.

**“Information”** means any identifiable information about the Customer.

**“Institution”** means any member of the HSBC Group (other than the Bank) and any other financial institution that the Customer has instructed the Bank should be treated as an Institution for the purposes of this Agreement.

**“Internet Banking Support”** means the Internet banking, telephone and online support service available to provide support in connection with Business Internet Banking Services, which may be contacted at the telephone numbers indicated on the Website.

**“Password”** means any confidential password, phrase, code or number, memorable data, or any other identification whether issued to the Customer or a Customer Delegate by the Bank or adopted by the Customer or a Customer Delegate, which may be used to access the Website and/or Business Internet Banking and/or Business Internet Banking Services and/or to effect Customer Instructions.

**“Person”** means an individual, corporation, partnership, society, trust, unincorporated organisation or association, or any other legal entity.

**“Security Device”** means any electronic security device, token or certificate, and all electronic files related thereto or created thereby, that is used by any Customer Delegate to access and use Business Internet Banking or give Customer Instructions.

**“Website”** means the Bank website located at [www.hsbc.ky](http://www.hsbc.ky) or any other website through which the Customer gains access to Business Internet Banking from time to time.

Words in this Agreement that are in the singular include the plural and vice versa, unless the context requires otherwise.

### 3. The Services and the Customer Accounts

- 3.1 The Customer and its Customer Delegates may use Business Internet Banking to access certain Business Internet Banking Services and Business Internet Banking Information for lawful commercial banking purposes only and only in accordance with this Agreement. The Customer may not use Business Internet Banking for any business or purpose inconsistent with generally accepted community standards of conduct or propriety, including products, services or businesses that are engaged in or associated with illegal activities.
- 3.2 The Customer authorises the Bank to make available through Business Internet Banking all of the Customer's eligible Accounts existing as of the date the Customer submits its Application Form and opened afterward which has the account numbers indicated in the Application Form or as requested by the Customer from time to time.

### 4. Other Agreements

This Agreement is in addition to and supplements any written agreements that the Customer has with the Bank (now or in the future) or any other mandates given by the Customer at any time concerning its dealings with the Bank generally and the Customer Accounts, including without limitation any Business Account Agreement. Except as expressly provided in this Agreement, all of the Customer's Accounts remain subject to all other written agreements and mandates otherwise applicable to them now or in the future. If there is any inconsistency or conflict between the provisions of this Agreement and the provisions of any other written agreements that the Customer has with the Bank (now or in the future) or any other mandates given by the Customer at any time concerning its dealings with the Bank generally and the Customer Accounts, the provisions of this Agreement will govern regarding the Customer's use of Business Internet Banking and Business Internet Banking Services. For all other matters, the written agreements and mandates concerning the Accounts generally (such as the Business Account Operating Agreement) will prevail. Without limiting the generality of the foregoing and unless the Bank otherwise advises the Customer in writing, Customer Instructions are "Instructions" within the meaning of any Business Account Operating Agreement that the Customer has with the Bank now or in the future.

### 5. Registration and Customer Delegates

- 5.1 By submitting an Application Form, the Customer represents and warrants that:
- 5.1.1 it has duly appointed, authorised and vested each Customer Delegate with full authority to give Customer Instructions regarding the Accounts or any matters relating to Business Internet Banking;
- 5.1.2 none of the authorities or powers granted to Customer Delegates to use Business Internet Banking conflict with its constitutional documents,

articles of association (or equivalent) or any other obligations to third parties or other commitments of the Customer; and

- 5.1.3 it will do all things necessary to ensure that all Customer Delegates will be and remain properly authorised for all Customer Instructions and to ensure compliance with the terms of this Agreement.
- 5.2 The Customer also agrees that it is solely responsible and liable to ensure ongoing compliance with this section and for all acts or omissions by the Customer or its Customer Delegates including with respect to the use of passwords and any Security Devices issued to or used by the Customer or its Customer Delegates. The Bank will have no liability to the Customer for any actions of any kind taken by Customer Delegates or any person who purports to be a Customer Delegate.
- 5.3 The Customer agrees that it is solely responsible to advise the Bank immediately, in writing, of all changes in Customer Delegates or any other information stated in the Application Form. In the event that a Customer Delegate should lack the authority or is otherwise prevented from giving valid Customer Instructions, the Customer agrees that it remains responsible for all unauthorised or invalid Customer Instructions acted upon by the Bank. If a Customer Delegate must be changed, or at any time other information in the Application Form becomes inaccurate, the Customer must notify the Bank immediately by submitting a Change Form to the Bank. The change requested will only be effective after the Change Form is processed and approved by the Bank. The Bank will not be responsible for any unauthorised transactions completed prior to the processing and approval of a change form.
- 5.4 The Customer requests and authorises the Bank to allow its Customer Delegates to access and use Business Internet Banking, including viewing Account-related information and giving Customer Instructions, in accordance with the rights and limits (if any) assigned to the Customer Delegates from time to time in accordance with this Agreement. The Bank will have no duty to confirm the identity of Customer Delegates or parties purporting to be Customer Delegates of the Customer.
- 5.5 The Bank may, in its absolute discretion and without any liability to the Customer or any other person, refuse permission to register any individual as a Customer Delegate or suspend or terminate the registration or access rights of any Customer Delegate.
- 5.6 The Customer will ensure that all of its Customer Delegates comply with the terms of this Agreement. The Customer is fully and solely responsible and liable for all acts or omissions by its Customer Delegates including all use of Passwords or Security Devices issued to or used by the Customer or its Customer Delegates.

### 6. Customer Instructions

- 6.1 The Customer requests and authorises the Bank to accept, rely upon and act upon all apparently valid Customer Instructions received by the Bank in accordance with this

Agreement as instructions properly authorised by the Customer, even if they conflict with the terms of any other mandates given by the Customer at any time concerning its Accounts or dealings with the Bank generally, without inquiry regarding the authenticity of any Customer Instructions or the identity or authority of the persons giving them.

- 6.2 The Customer and its Customer Delegates are solely responsible and liable for ensuring the truth, accuracy and completeness of all Customer Instructions and other information provided to the Bank in connection with Business Internet Banking and for ensuring that Customer Instructions will achieve the intended purpose. The Bank will rely upon Customer Instructions and other information provided to it regarding Business Internet Banking. The Bank may in its absolute discretion, require that certain Customer Instructions be communicated or confirmed by signed paper documents delivered as specified by the Bank or accept certain Customer Instructions by telephone or other communication.
- 6.3 The Bank is not liable for any loss, damage, delay or costs where the content of a Customer Instruction or other information is false, inaccurate, unauthorised or incomplete or where the Business Internet Banking Service is used by a party who purports to be a Customer Delegate but is not so authorised by the Customer. The Customer will be solely responsible and liable for any and all loss, damage, delay and costs that the Customer, the Bank, or any other person may incur as a result of any false, inaccurate, unauthorised or incomplete Customer Instructions or other information provided to the Bank, or the use of the Business Internet Banking Service by an unauthorised person.
- 6.4 The Customer directs and authorises the Bank to rely and act upon any Customer Instruction or other document delivered or communicated to the Bank in accordance with this Agreement.
- 6.5 The Customer will ensure that it and its Customer Delegates notify Internet Banking Support immediately by telephone if the Customer or the Customer Delegates make an error regarding a Customer Instruction.
- 6.6 Requests to cancel or modify any previous Customer Instruction may be acted upon in the Bank's absolute discretion provided they are received before that Customer Instruction is implemented. The Bank will have no liability of any kind to the Customer for entities regarding Customer Instructions or for not modifying or cancelling any previous Customer Instruction.
- 6.7 The Bank may, in its absolute discretion and without any notice or liability to the Customer or any other person, refuse to act on or delay acting on a Customer Instruction (including a request to cancel or modify a previous Customer Instruction) or reverse any action taken on a Customer Instruction for any reason, including without limitation:
- 6.7.1 the Customer Instruction is not in accordance with this Agreement or any other agreement between the Customer and the Bank;
  - 6.7.2 the Bank knows or suspects that the Customer Instruction may not be authorised by the Customer or involves funds subject to a hold, dispute, restriction, trust or third party obligation or legal process the Bank reasonably believes prevents their withdrawal;
  - 6.7.3 the Customer Instruction may violate any Bank policies, procedures or practices, any applicable law or regulation, or any applicable risk control program, rule, standard, or guideline of any governmental authority;
  - 6.7.4 the effect of the Customer Instruction would exceed a limit imposed by the Bank upon the Customer generally or upon the Customer Delegate that gave the Customer Instruction or Business Internet Banking;
  - 6.7.5 the Bank knows of or suspects a breach of security in respect of or in connection with the operation of one or more of the Accounts or Business Internet Banking generally;
  - 6.7.6 the Bank is unable to process a Customer Instruction;
  - 6.7.7 there was an operational failure or malfunction in connection with the transmission of a Customer Instruction; or
  - 6.7.8 this Agreement has been terminated pursuant to section 19.
- 6.8 The Bank is not responsible or liable to the Customer or any other party if the Bank does not immediately process or implement Customer Instructions or immediately execute transactions. Some Customer Instructions and transactions or portions thereof may take time to process, implement, and execute, and certain Customer Instructions and transactions or portions thereof may only be processed, implemented or executed during normal banking hours even though Business Internet Banking is online and may be accessible outside such hours. Forward-dated transactions or portions thereof may be processed on the first Business Day prior to the stipulated transaction date.
- 6.9 The Customer acknowledges that the processing of some transactions such as bill payments or transfers of funds to third parties may require 2 (two) or more Business Days for completion.
- 6.10 The Customer will ensure that it and its Customer Delegates access Business Internet Banking to verify that Customer Instructions (including those for forward-dated transactions) have been correctly and timely executed.

## 7. Foreign Currency Transactions

For any instructions relating to a foreign currency, the Bank will convert the funds on Account to the appropriate currency at the standard applicable exchange rate set by the Bank at the time it completes the transaction and the Customer's Account will be charged or credited, as applicable, for the converted amount in the currency of that Account, plus applicable fees and taxes.

## 8. Other Institutions

- 8.1 The Customer appoints the Bank as the Customer's agent on its behalf to request and receive from any Institution information about the Customer and its Accounts at that Institution and to use Business Internet Banking and other communications methods to instruct an Institution to give effect to Customer Instructions.
- 8.2 If the Bank communicates Customer Instructions to an Institution on the Customer's behalf, the Bank is not responsible or liable to the Customer or any other person for any delay or failure by the Institution in executing the Customer Instructions. Once a Customer Instruction has been communicated to an Institution, the Bank has no obligation to confirm that the Instruction has been acted upon.
- 8.3 The Bank makes no representation, warranty or condition regarding the accuracy or sufficiency of any Business Internet Banking Information based upon information supplied to it by an Institution.
- 8.4 In order that an Institution may give effect to a Customer Instruction, the Bank may, as the Customer's agent, agree with any Institution that where applicable, the terms of this Agreement or substantially similar terms will apply between the Customer and that Institution.
- 8.5 If a Customer Instruction requires that the Bank deals with an Institution but the Customer Instruction does not identify the Institution, the Bank may in its absolute discretion select the Institution and deal with the Institution for the purposes of the Customer Instruction without any notice or liability to the Customer or any other person.
- 8.6 The Bank may, in its absolute discretion, appoint other persons (including Institutions) from time to time to provide some or all of Business Internet Banking Services and/or some or all of the elements of Business Internet Banking under this Agreement, including without limitation the issuance of Security Devices (which may be carried out by HSBC Group or such other person as the Bank may use from time to time). Without affecting the liability of such persons to the Bank, all responsibility and liability to the Customer or any other person with respect to Business Internet Banking Services being provided under this Agreement (including those being indirectly provided by any such persons) will be the responsibility and liability of the Bank and not such persons.

## 9. Confidentiality

- 9.1 The Bank and any other members of the HSBC Group, may disclose information relating to the Customer and its Accounts to other members of the HSBC Group where the Bank considers this to be necessary for the effective provision of Business Internet Banking or Business Internet Banking Services, or so that services may be processed for the Bank or any other member of the HSBC Group in any country or jurisdiction.
- 9.2 The Bank may disclose to other Institutions information regarding the Customer and its Accounts as may be

necessary to give effect to Customer Instructions. Where the Bank discloses information regarding the Customer and its Accounts to an Institution, the Bank is not responsible or liable for that Institution's collection, use and further disclosure of that information.

- 9.3 The Customer represents and warrants that all employees and other persons whose personal or other data is transmitted, processed or otherwise handled in connection with Business Internet Banking have consented to such transmission, processing or other handling or will do so prior to any such transmission, processing or other handling. The Customer will remain solely liable to any employee or other person whose personal data is transmitted, processed or otherwise handled in connection with this Agreement or Business Internet Banking Services and the Bank will have no liability of any kind whatsoever to any such employee or any other person who has not provided such consent.
- 9.4 The Customer agrees that the Bank, the HSBC Group and its service providers may, where permitted by law, collect the Customer's Information, including credit reports and other financially-related information, from and disclose such Information to each other and to third parties such as credit reporting agencies, and credit bureaus, and those income sources and personal references that the Customer advises to the Bank or as may be required by law. The Bank may collect and update the Information during the course of the relationship. The Bank may disclose the Customer's Information to companies within the HSBC Group and to promote the products and services of select third parties.
- 9.5 To prevent crime, verify the Customer's identity, recover debt and to meet the Bank's legal obligations, the Bank may exchange information (both within the Cayman Islands and, where appropriate, overseas) with other members of the HSBC Group and where appropriate, with fraud prevention, law enforcement, debt recovery agencies and other organisations including other lenders.
- 9.6 If the Customer or any Customer Delegate gives the Bank false or inaccurate information and fraud is identified, details will be passed to fraud prevention agencies to prevent fraud and money laundering.
- 9.7 The HSBC Group may use and share relevant information about the Customer, its transactions and its relationships with the HSBC Group for credit assessment, customer service, market research, insurance, audit and administrative purposes. This may include information provided by the Customer, a Customer's Delegate, or someone acting on its behalf. Where appropriate (for example if the Customer has relationships with other HSBC Group companies in other countries), this information may be shared with HSBC Group companies outside the Cayman Islands.
- 9.8 The Bank may use other HSBC Group companies and/or third parties to provide services on its behalf which may include the processing of information about the Customer. Whether it is processed in the Cayman Islands or overseas, the Customer's information will be protected, by a strict code of secrecy and security which all members of the HSBC Group, their staff and any third parties are subject to.

- 9.9 Information may also be processed for the purposes of complying with applicable laws, including anti-money laundering and anti-terrorism laws and regulations and fighting crime and terrorism. This may require the disclosure of information to a Cayman Island or overseas governmental or regulatory authorities or to any other person the Bank reasonably thinks necessary for these purposes.
- 9.10 For more information about the principles of privacy observed by the Bank, the Customer will consult the Bank's Privacy Statement, available at the Bank's nearest branches or [www.hsbc.ky](http://www.hsbc.ky).

## 10. Security

- 10.1 In addition to these terms, the Customer agrees to comply with any other reasonable instructions or recommendations the Bank may issue regarding Business Internet Banking security, including without limitation the security recommendations contained on the Website and in the Website User Agreement. The Customer is solely responsible and liable for setting-up, maintaining and regularly reviewing its internal security arrangements concerning access to, and use of, Business Internet Banking Services, and information stored on its computing and communications systems, and in particular, control of Passwords and Security Devices.
- 10.2 The Customer confirms that it has assessed the security features of Business Internet Banking and has determined that those features, in combination with its own security measures, are adequate to protect the Customer's interests and those of the Customer Delegates.
- 10.3 The Customer will ensure that its Customer Delegates comply with the terms of this Agreement and any reasonable instructions or recommendations the Bank may issue regarding Business Internet Banking security, including without limitation the security recommendations contained on the Website and in the Website User Agreement.
- 10.4 The Customer will ensure that neither it nor any of its Customer Delegates, employees, agents or representatives does anything that will compromise the security of Business Internet Banking or the systems or security of any other Business Internet Banking customers.
- 10.5 The Customer may only access Business Internet Banking via the Website.
- 10.6 The Customer is solely responsible and liable for the security of all of its and its Customer Delegates' Passwords and Security Devices. The Customer will ensure that the Customer Delegates keep Passwords secure and secret at all times and take steps to prevent unauthorised use of Passwords or Security Devices. Without limiting the generality of the foregoing, the Customer will ensure that its Customer Delegates:

10.6.1 never write or otherwise record Passwords in a way that can be understood by any other person except where it is required by the Bank for the registration of a Customer;

10.6.2 never reveal Passwords to any other person, including the Bank's staff;

10.6.3 never share or allow any other person to use Passwords or Security Devices;

10.6.4 never access Business Internet Banking from a publicly accessible or shared Internet access device;

10.6.5 create only Passwords that are non-obvious and hard to guess, and no Passwords used in connection with other Banking services or services provided by other persons;

10.6.6 immediately give notice to Internet Banking Support by telephone if they believe that any other person may have seen, had access to or used Passwords;

10.6.7 never record Passwords in any software which retains it automatically (for example, any computer screen prompts or 'save password' feature or the like on their Internet browser);

10.6.8 ensure that they are not watched by any other person or monitored by closed circuit TV, and avoid allowing any other person to identify the keys they are pressing, while logging onto Business Internet Banking;

10.6.9 change Passwords (except Security Devices) on a regular basis and not alternate between Passwords; and

10.6.10 program their Internet browser to require the input of a Password before providing access to or allowing use of Security Devices (where applicable).

- 10.7 The Customer will ensure that once a Customer Delegate has logged onto Business Internet Banking or the Website, the Customer Delegate will not leave (for any amount of time) the Internet terminal from which they have accessed Business Internet Banking or the Website or let any other person use the Internet terminal until it has logged off Business Internet Banking and the Website and closed its Internet browser.
- 10.8 If the Customer or any of its Customer Delegates know of or suspect any unauthorised access to Business Internet Banking or the Website, or any unauthorised or fraudulent transaction or Customer Instructions, the Customer will notify Internet Banking Support immediately by telephone and immediately change all Passwords.
- 10.9 The Customer will comply immediately with all reasonable requests from the Bank to assist in recovering any losses or identifying actual or potential breaches of security or other wrongful conduct. The Bank may disclose information about its Customer or its Accounts or the use of Business Internet Banking by the Customer or the Customer Delegates to a government institution that has asserted its lawful authority to obtain the information or to other persons where the Bank believes the information could be useful in the investigation of unlawful activity or may help prevent or recover losses or potential breaches of security or other wrongful conduct.

- 10.10 If the Customer knows of or suspects any wrongful conduct by a Customer Delegate in connection with Business Internet Banking or Business Internet Banking Services or the Customer Delegate is no longer authorised to use Business Internet Banking Services on the Customer's behalf or leaves the Customer's employment or is otherwise no longer connected with the Customer or its business, the Customer will notify Internet Banking Support immediately by telephone and immediately take all steps available to ensure that such Customer Delegate is unable to access Business Internet Banking Services.
- 10.11 The Customer is solely responsible and liable for the performance and protection of any Internet browser used in connection with Business Internet Banking, including:
- 10.11.1 any equipment, software or associated user documentation or any services that any third party produces or supplies at any time for use in connection with access to or use of Business Internet Banking; and
  - 10.11.2 promptly implementing all security patches and other security measures issued or recommended from time to time by the suppliers of such Internet browsers.
- 10.12 The Customer is solely responsible and liable for any loss, damage, expenses, fees, liabilities, penalties of any kind suffered by the Customer, Customer Delegate, any Institution, the HSBC Group, or any other party arising from or in connection with the Customer's use of Business Internet Banking in violation of any of the obligations of this Agreement.
- 10.13 The Customer will be solely responsible and liable for the actions of its Customer Delegates or their failure to comply with the terms of the Agreement and all other agreements relating to the Customer's use of the Business Internet Banking Service.

## 11. Internet Banking Support

- 11.1 The Bank may in its absolute discretion accept and act on, or refuse to accept and act on, Customer Instructions provided to Internet Banking Support by telephone, including without limitation Customer Instructions regarding the resetting or termination of Passwords, Security Devices, the suspension or removal of Customer Delegates.
- 11.2 The Bank will use procedures as it determines appropriate in its absolute discretion to verify the identity of persons calling Internet Banking Support as a Customer Delegate. The Bank may in its absolute discretion rely upon any information or representation by the person calling, and the Bank is not obliged to verify the identity of any person calling as a Customer Delegate with the Customer or any other Customer Delegate. If the Bank determines in its absolute discretion that a person calling Internet Banking Support is a Customer Delegate, the Bank may rely upon and act on their instructions as if they were provided using a

Password or Security Devices and are otherwise authorised Customer Instructions.

- 11.3 The Bank may in its absolute discretion require that Customer Instructions provided by telephone be confirmed in writing signed by or on behalf of the Customer in accordance with the then applicable Bank mandate or resolution and delivered to us at such address and by such delivery means as the Bank may direct in our absolute discretion before the Customer Instructions are processed or implemented or resulting transactions executed.

## 12. Business Internet Banking Information and Correspondence

- 12.1 The Customer will ensure that Customer Delegates access all messages available through Business Internet Banking on no less than a daily basis and immediately report to Internet Banking Support by telephone any error, omission, or irregularity (including any fraudulent or unauthorised Customer Instruction or Account activity) or other objection the Customer has to Business Internet Banking Information.
- 12.2 The Customer will be deemed to have received, examined, had notice of and been aware of Business Internet Banking Information on the date on which the Business Internet Banking Information was first made accessible to the Customer or any of its Customer Delegates through Business Internet Banking. The Bank's records will be conclusive proof of the date on which Business Internet Banking Information was first made accessible to the Customer or any of its Customer Delegates through Business Internet Banking.
- 12.3 Due to the nature of Business Internet Banking and Business Internet Banking Services and circumstances beyond the Bank's reasonable control, the Bank makes no representation, warranty or condition regarding the accuracy, completeness, or timeliness of Business Internet Banking Information. The Bank may in its absolute discretion change Business Internet Banking Information at any time and from time to time without any notice or liability to the Customer or any other person. Some Business Internet Banking Information may be subject to a disclaimer or other provisions. If the Customer relies on such Business Internet Banking Information, the Customer does so subject to the disclaimer or other provisions.
- 12.4 Unless the Bank in its absolute discretion advises the Customer otherwise, if there is any discrepancy between Business Internet Banking Information and information contained in any paper records of the Bank, including any Account statement or an originally signed copy of this Agreement, the information contained in the paper record or Account statement will be deemed to be correct and the Business Internet Banking Information will be deemed to be amended accordingly.
- 12.5 The Bank may in its absolute discretion send correspondence regarding Business Internet Banking, including Business Internet Banking welcome packages, to the attention of one or more Customer Delegates, and all

such correspondence will be deemed to be received by the Customer and each of the Customer Delegates.

### 13. Security Devices

- 13.1 The Bank hereby grants to the Customer a non-exclusive, non-transferable, limited, revocable licence to use Security Devices issued by the Bank solely for the purpose of Business Internet Banking Services and related communications with members of the HSBC Group as they may allow from time to time. Except for the specific, limited rights granted to the Customer by this license, all right, title and interest in and to all Security Devices belong to the Bank, and neither the Customer nor any Customer Delegates will acquire any rights whatsoever to the Security Devices.
- 13.2 The Customer will ensure that it and its Customer Delegates immediately give notice to Internet Banking Support by telephone if the Customer or its Customer Delegates know or suspect that any Security Devices may not function correctly.
- 13.3 To the fullest extent permitted by law, the Bank disclaims any and all representations, warranties and conditions of any kind (whether express, implied, statutory or otherwise) regarding Security Devices, including without limitation representations, warranties or conditions of quality, merchantability, fitness for a particular purpose, performance, and durability.

### 14. Fees and Charges, Changes to this Agreement, the Site, and Business Internet Banking Services

- 14.1 The Customer agrees to pay all applicable fees and charges (if any) for Business Internet Banking Services as may be applicable from time to time. The Bank may, in its absolute discretion, change from time to time its Business Internet Banking fees and charges and the frequency and dates of payment on giving the Customer not less than 30 (thirty) days prior notice. In addition, the Customer agrees to pay any fees and charges applicable to particular banking or other services the Bank might provide in response to Customer Instructions, including courier charges. Details of current fees and charges are available upon request.
- 14.2 The Customer is liable for any telephone fees and charges and any fees and charges by its Internet service provider arising from, connected with, or relating to the Customer's use of Business Internet Banking Services.
- 14.3 The Bank may, in its absolute discretion, change, discontinue, supplement or amend all or any part of Business Internet Banking, Business Internet Banking Services, or the Website from time to time without any prior notice or liability to the Customer or any other person.
- 14.4 The Bank can change this Agreement periodically without prior notice to the Customer and will notify the Customer of a change by, at the Bank's option:

14.4.1 displaying the notice at its branches, or automated teller machines or other locations designated by the Bank for a period of 10 (ten) days prior to its effective date;

14.4.2 mailing the Customer a copy of the revised Agreement to its last known address;

14.4.3 providing written notice of the revised Agreement on the Customer's statement of account or sending it notice by electronic mail, or other Electronic Means;

14.4.4 posting a copy of the revised Agreement on the Website for a period of 10 (ten) days prior to its effective date.

- 14.5 If the Customer wishes, it can also obtain a copy of the revised Agreement at any of the Bank's branches.
- 14.6 If the Customer conducts any transaction after the effective date of a change to this Agreement, it will mean that it agrees to the terms of the revised Agreement for all transactions thereafter.
- 14.7 The Customer may not change, supplement or amend this Agreement in any manner except in writing signed by the Bank.

### 15. Bank's Liability

- 15.1 The Bank's liability to the Customer regarding the Customer's dealings with the Bank generally and/or the Customer's Accounts is subject to the written agreements that the Customer has with the Bank (now or in the future) concerning those matters, such as the Business Account Operating Agreement. This Section applies only to liabilities arising from, connected with, or relating to Business Internet Banking and Business Internet Banking Services.
- 15.2 Except as expressly set forth in this Agreement, Business Internet Banking and Business Internet Banking Services are provided on an "as is" and "as available" basis, and without any representations, warranties or conditions of any kind (whether express, implied, statutory or otherwise), and including without limitation implied representations, warranties or conditions of title, non-infringement, merchantability, fitness for a particular purpose, performance, durability, availability, timeliness, accuracy or completeness, all of which are hereby disclaimed by the Bank to the fullest extent permitted by law. Without limiting the generality of the foregoing, the Bank will have no liability of any kind whatsoever to the Customer in the event of a computer or information failure or loss of Internet service.
- 15.3 The Customer is solely responsible and liable for:
- 15.3.1 obtaining, configuring and maintaining all computer hardware, software, telephone services, and other equipment and services necessary for the Customer to access and use Business Internet Banking;

- 15.3.2 scanning for and preventing the receipt and transmission of viruses, trojan horses, worms or other destructive or disruptive components; and
- 15.3.3 maintaining a complete and current backup of all of the information contained on the Customer's computer system prior to accessing or using Business Internet Banking.
- 15.4 The Customer is solely responsible and liable for any loss or damage arising from, connected with, or relating to the use by it or its Customer Delegates of a prohibited or unsupported Internet browser or Internet browser/operating system combination.
- 15.5 Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, the Bank will not under any circumstances be liable to the Customer or any other person for any consequential, indirect, or incidental loss or damage of any nature or kind whatsoever, including without limitation loss of use, loss of production, loss of data, loss of income or profits (anticipated or otherwise), loss of markets, or economic loss, or any special, exemplary or punitive damages of any nature or kind whatsoever, whether in contract, tort, negligence, strict liability, or under any other theory of law or equity, arising from, connected with, or relating to the access to and use of Business Internet Banking or Business Internet Banking Services by the Customer or any other person, and regardless of any breach of contract, negligence or other fault or wrongdoing by the Bank or any person for whom the Bank may be responsible, and notwithstanding that the Bank may have been advised of the possibility of such loss or damages being incurred by the Customer or any other person.
- 15.6 Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, and without limiting the generality of the foregoing, the Bank will not be responsible or liable to the Customer or any other person for any loss or damage suffered by the Customer or any other person arising from, connected with, or relating to:
- 15.6.1 the Bank acting upon or giving effect to any Customer Instruction (regardless of whether it is authentic, authorised, unauthorised, or fraudulent or provided electronically with Passwords, Security Devices or by telephone);
  - 15.6.2 the Bank's failure or refusal to act upon or give effect to any Customer Instruction;
  - 15.6.3 any failure or delay by the Bank in receiving, accessing, processing, accepting, acting upon or giving effect to any Customer Instruction;
  - 15.6.4 any errors, omissions, or irregularities in Business Internet Banking Information;
  - 15.6.5 defective or malfunctioning Security Devices;
  - 15.6.6 the use by the Customer or its Customer Delegates of any Internet browser or operating system that is either prohibited or not supported by Business Internet Banking; or
  - 15.6.6.1 the operational failure, malfunction, interruption, change, amendment or withdrawal of Business Internet Banking or Business Internet Banking Services; or
  - 15.6.6.2 any Customer Instructions that violate any trust provisions which may govern an Account whether or not the Bank has any notice of the trust or any provisions governing same.
- 15.7 Notwithstanding any other provision of this Agreement and without limiting the generality of the foregoing, the Bank is not liable or responsible for any loss or damage suffered by the Customer or any other person as arising from, connected with, or relating to any wrongful act or omission by an Institution or the Bank's appointment of an Institution or any third party in connection with this Agreement.
- 15.8 Notwithstanding any other provision of this Agreement and without limiting the foregoing, unless the Bank has specifically agreed in writing with the Customer otherwise, the Bank is not liable or responsible for:
- 15.8.1 any equipment, software or associated user documentation that any person other than the Bank produces or supplies at any time for use in connection with Business Internet Banking or Business Internet Banking Services; or
  - 15.8.2 any services through which the Customer accesses Business Internet Banking or Business Internet Banking Services that are not controlled by the Bank.
- 15.9 Notwithstanding any other provision of this Agreement and without limiting the generality of the foregoing, in no event will the Bank's total aggregate liability to the Customer or any other person for any and all claims, proceedings, liabilities, obligations, damages, losses, and costs, whether in contract, tort, negligence, strict liability, or under any other theory of law or equity, arising out of, related to, or connected with the use of Business Internet Banking or Business Internet Banking Services (collectively "Claims"), and regardless of any breach of contract, negligence or other fault or wrongdoing by the Bank or any person for whom the Bank may be responsible, exceed 3 (three) times the standard fees for the use of Business Internet Banking Services by the Customer during the 12 (twelve) month period before the date on which the Claim (or the first in a series of Claims) arose, regardless of whether such fees have been paid by the Customer or waived by the Bank. The Bank will have no liability of any kind whatsoever for any claims for matters which should have been discovered by a review of the general information or Account information provided on the Website or through the Business Banking Internet Information or any information that would have been disclosed and on any account statements supplied pursuant to any agreement otherwise governing the Accounts.
- 15.10 Advice and information provided by or on behalf of the Bank, whether oral or written, will not create any representation, warranty or condition or vary or amend this Agreement, including without limitation this Section, and

the Customer may not rely upon any such advice or information.

15.11 In this Section 15, references to the Bank include the Bank and the HSBC Group and all of their respective partners, members, agents, directors, officers, employees, information providers, service providers, suppliers, sub-contractors, licensors and licensees, and all other related, associated, or connected persons.

## 16. Indemnity and Waiver

16.1 The Customer will indemnify, defend and hold the Bank harmless from and against any and all first party and third party losses, damages, claims, demands, actions, proceedings, liabilities, expenses, and costs (including without limitation reasonable legal fees and expenses) of any nature and kind whatsoever which the Bank, Institution, or any other person may suffer or incur arising out of, related to, or connected with:

16.1.1 the Customer's use of Business Internet Banking or Business Internet Banking Services;

16.1.2 the Bank acting on any Customer Instruction in accordance with this Agreement;

16.1.3 the Customer's breach of this Agreement;

16.1.4 its Customer Delegates' failure to comply with this Agreement;

16.1.5 any wrongful act or omissions by any of its Customer Delegates;

16.1.6 the Bank's acting upon or giving effect to, or the Bank's failure or refusal to act upon or give effect to, any Customer Instruction (regardless of whether or not the Customer Instruction is authentic, authorised, unauthorised, fraudulent or subject to a trust). The Customer will assist and co-operate as fully as reasonably required by the Bank in the defence of any third party claims, demands, actions, and proceedings.

16.2 In this section 16, references to the Bank include the Bank and the HSBC Group and all of their respective partners, members, agents, directors, officers, employees, information providers, service providers, suppliers, sub-contractors, licensors and licensees, and all other related, associated, or connected persons.

16.3 The Customer hereby waives any action it has or may hereafter have against the Bank, and/or releases the Bank from any Claims it has, may have or had, may have or may hereafter have against the Bank in connection with the provision of the Business Internet Banking Services. Without limiting the generality of the foregoing, the Customer specifically and absolutely waives any Claim that it may have and releases the Bank from any Claims it has, had had, or may have from and after such time as the Customer should have reviewed any information on the Website, any Business Internet Banking Information or any account statements or notifications. The Customer specifically acknowledges that its attention has been drawn to this section and further acknowledges and agrees that its obligations under this section are onerous and has

agreed to accept these obligations and to perform all of the obligations under this Agreement.

## 17. Electronic Advertising

From time to time the Bank may advertise its own products or services and those of other companies in the HSBC Group and also those of third parties on Business Internet Banking or Business Internet Banking Services.

## 18. Encryption

Business Internet Banking uses levels of encryption that may be unlawful in jurisdictions outside of the Cayman Islands. It is the Customer's responsibility to ensure that, if outside of the Cayman Islands, local laws allow the Customer and the Customer Delegates to use Business Internet Banking. The Bank will not be responsible or liable for any loss or damage suffered by the Customer or any other person as a result of the Customer or its Customer Delegates not being able to use Business Internet Banking in jurisdictions outside of the Cayman Islands.

## 19. Termination of Business Internet Banking or Customer Access

19.1 Notwithstanding any other provision of this Agreement, the Bank may in its absolute discretion change, suspend, restrict or terminate Business Internet Banking or some or all Business Internet Banking Services immediately and without any notice or liability to the Customer or any other person.

19.2 Notwithstanding any other provision of this Agreement, the Bank may in its absolute discretion, immediately terminate this Agreement, or restrict, suspend, or terminate the ability of the Customer or any or all of the Customer Delegates to access and use all or any part of Business Internet Banking or Business Internet Banking Services at any time without any notice or liability to the Customer or any other person.

19.3 The Customer may terminate this Agreement by submitting to the Bank a written termination notice duly signed by the Customer or its duly authorised signatories in accordance with the then applicable bank mandate or resolution. Any such termination notice will not be effective unless and until it is received and processed by the Bank. The Customer must deliver a termination notice by postal mail, courier or hand delivery to the Bank.

19.4 Either party may terminate this Agreement with immediate effect by notice to the other party, if the other party:

19.4.1 commits a material breach of this Agreement;

19.4.2 becomes bankrupt or a petition of bankruptcy is filed against them;

19.4.3 takes any step or proceeding available to it for the benefit of insolvent debtors;

19.4.4 becomes insolvent or unable to discharge its liabilities as they become due; or

19.4.5 takes any step or proceeding for its liquidation, dissolution or winding up.

- 19.5 If the Customer breaches any provision of this Agreement, the Customer may not use Business Internet Banking.
- 19.6 If this Agreement is terminated, it will nevertheless continue to apply and be binding upon the Customer in respect of the Customer's prior use of Business Internet Banking and anything arising out of, related to, or connected with the Customer's prior use of Business Internet Banking. Termination of this Agreement will not affect the rights and remedies of either party accrued to the date of termination. Without limiting the generality of the foregoing, and notwithstanding any other provision of this Agreement, the following provisions of this Agreement and all other provisions necessary for their interpretation or enforcement will survive indefinitely after the termination of this Agreement and remain in full force and effect and be binding upon the parties as applicable: sections 4 – Other Agreements, 9 – Confidentiality, 15 – Bank's Liability, 16 – Indemnity, 18 – Encryption, 20 – Force Majeure, and 22 – Governing Law and Jurisdiction, and paragraphs 5.5, 5.6, 6.3, 6.6, 10.9, 12.2, 12.4, 19.6, 19.7, 21.2, 21.5, 21.6, 21.7 and 21.9.
- 19.7 Upon termination of this Agreement, the Bank may in its absolute discretion and without any notice or liability to the Customer or any other person cancel or process and implement Customer Instructions that have not yet been processed or implemented, including forward-dated transactions.
- 19.8 If the Customer is a partnership, this Agreement may be terminated in accordance with this Section 19 by any one partner, notwithstanding any change of name of the partnership, admission of new partner(s) or any partner ceasing to be a member of the partnership by reason of death or otherwise.

## 20. Force Majeure

The Bank will not be liable for any delay in performing or failure to perform any of its obligations under this Agreement as a result of any circumstances or events beyond its reasonable control, including without limitation the failure, malfunction or unavailability of power, telecommunications, data communications, computer systems or software and related services, act of God, war, terrorism, riot, civil unrest or commotion, fire, flood, wind storms, hurricanes, government action, strikes, lock-outs, labour disruption or other industrial action or trade dispute (whether involving the Bank's employees or those of any other person). Any delay or failure of this kind will not be deemed to be a breach of this Agreement and the time for performance of the affected obligation will be extended by a period that is reasonable in the circumstances.

## 21. Miscellaneous

- 21.1 This Agreement, together with any agreements referred to or covered by section 4 hereof, constitutes the entire agreement between the parties concerning the use of Business Internet Banking and Business Internet Banking Services. It supersedes all previous agreements,

communications, representations or discussions (written, oral or otherwise) between the Customer and the Bank relating to Business Internet Banking and Business Internet Banking Services.

- 21.2 If the Customer at any time is made up of more than one type of business organisation, the obligations of such organisations, pursuant to this Agreement, are joint and several. If the Customer, or any organisation that is part of the Customer, is a partnership, the obligations of each partner hereunder, are joint and several.
- 21.3 Except as expressly set forth in this Agreement or requested by the Bank, all notices required to be given under this Agreement will be in writing and communicated by courier or hand delivery or through Business Internet Banking. In addition to the foregoing, the Bank may provide any notice to the Customer concerning Customer Instructions by telephone or in any other manner appropriate for the circumstances, and when the Customer receives such notice, such notice shall be deemed to meet any notice obligation on the Bank. If the notice is given through Business Internet Banking:
- 21.3.1 a notice to the Customer will be deemed to have been received by the Customer when it is accessible by the Customer or any of the Customer Delegates through Business Internet Banking; and
- 21.3.2 a notice to the Bank will be deemed to have been received by the Bank when it is actually processed by Business Internet Banking or an individual Bank representative.
- 21.4 If any provision of this Agreement is determined to be unenforceable or invalid for any reason, that unenforceable or invalid provision will not affect the enforceability or validity of the remaining provisions of this Agreement, which will remain in full force and effect, and any unenforceable or invalid provisions will be severable from the remainder of this Agreement.
- 21.5 The Bank's records regarding access to and use of Business Internet Banking and Business Internet Banking Services by the Customer or the Customer Delegates (including any Customer Instructions or other communications) are, unless proven to be wrong, conclusive evidence of the access to and use of Business Internet Banking by the Customer and the Customer Delegates. The Customer will not object to the admission of the Bank's records (including without limitation computer and other electronic records and data) as evidence in legal proceedings on the grounds that such records are not originals, are not in writing, are hearsay, or are documents containing information extracted from a computer.
- 21.6 Without limiting the generality of section 21.6, the Customer agrees that it will review statements or other notifications (whether by Electronic Means or otherwise) with respect to the Services and related Accounts in a timely manner, and with any event within 30 (thirty) days of receipt. The Bank will have no liability of any kind whatsoever for any costs, expenses, charges, debts, liabilities, damages, demands, obligations, fees, duties, levies, penalties, actions, proceedings, causes, actions or claims of any other kind

whatsoever ("Claims and Liabilities") which would or should have been discovered by the Customer had it reviewed the data received in connection with the Services in a timely fashion and in any event within 30 (thirty) days of receipt. The Customer waives all Claims and Liabilities that it has against the Bank and releases the Bank from any liabilities the Bank would have to the Customer arising or contributed to after the time that the data should have been reviewed whether or not any of the Claims or Liabilities resulted from negligence of the Bank.

- 21.7 Copyright in the pages, screens, information (other than information about the Customer's Accounts and financial affairs) and all materials and their arrangement included in Business Internet Banking Services and in the Website (together the "Material") is owned by or licensed to the Bank or the HSBC Group unless otherwise noted. The Customer may print, copy, download, or temporarily store extracts from the Material for its own information or when the Customer uses Business Internet Banking Services. The Customer may not alter or otherwise make any changes to any Material that it prints, copies, downloads or stores, including without limitation removing any identifying marks or legends from such Material. Any other use of the Material is prohibited unless the Customer first requests and obtains the Bank's express written permission. Any rights not expressly granted by this Agreement are reserved to the Bank.
- 21.8 HSBC (Cayman) Limited, HSBC and the Hexagon logo are trademarks of the HSBC Group, and all rights in and to those marks vest in the HSBC Group. Other than as expressly provided in Section 21.6 above, the Customer may not use or reproduce the HSBC trademark, the Hexagon logo or the HSBC brand name.
- 21.9 No consent or waiver by any party to or of any breach by any other party in its performance of its obligations under this Agreement will be deemed or construed to be a consent to or waiver of a continuing breach or any other breach of those or any other obligations of that party. No consent or waiver will be effective unless in writing and signed by all parties.
- 21.10 The provisions of this Agreement will enure to the benefit of and be binding upon the Bank and its successor and assigns, and the Customer and its heirs, executors, administrators, successors, permitted assigns, and personal representatives. The Customer may not assign this Agreement or the rights and obligations under this Agreement without the Bank's prior written consent, which may be withheld in its absolute discretion. The Bank may assign this Agreement and its rights and obligations under this Agreement without the Customer's consent.

## 22. Governing Law and Jurisdiction

- 22.1 Notwithstanding the Customer's country of residence, incorporation, location, registered and records office, or usual place of business, as the case may be, or the location from which the Customer or Customer Delegates access and use Business Internet Banking and Business Internet Banking Services, this Agreement, the Customer's use of Business Internet Banking and Business Internet Banking Services, and all related matters are governed exclusively

by the laws of the Cayman Islands. The Customer hereby irrevocably submits and attorns to the original and exclusive jurisdiction of the courts of the Cayman Islands to the exclusion of the jurisdiction of the courts of any other country. The Customer agrees that the courts of the Cayman Islands are presumed to be the most convenient forum in which to litigate any dispute arising from, connected with, or relating to this Agreement, Business Internet Banking, Business Internet Banking Services, or any related matters.

- 22.2 The Customer agrees to submit to the non-exclusive jurisdiction of the courts of The Cayman Islands.

This Agreement is subject to change without notice.

*THIS VERSION OF THIS AGREEMENT IN EFFECT SINCE 1 APRIL 2008.*

**[www.hsbc.ky](http://www.hsbc.ky)**

**Issued by HSBC Bank (Cayman) Limited**

**We are a member of the HSBC Group, one of the world's  
largest banking and financial services organisations  
with approximately 10,000 offices in 84 countries and territories.**

HSBC House  
68 West Bay Road  
Grand Cayman  
Cayman Islands

April 2008

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