



# HIBISCUS

## Terms of Business for an Individual Hibiscus (IOM) Limited

## 1. Definitions

In these Terms of Business, the following words and phrases shall (unless the context otherwise requires) have the meanings set out beside them:

**“Account”** means an entry that we make in our systems to register you as our client and to keep a record of your cryptocurrency or fiat currency.

**“Force Majeure”** means circumstances beyond our reasonable control, including (without limitation), acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labour disputes; acts of civil or military authority; governmental actions; or inability to obtain labour, material, equipment or transportation.

**“Intellectual Property”** means all trademarks, service marks and trade names as well as images, graphics, text, copyright, database rights, moral rights, author’s rights, design rights (whether capable of being registered or otherwise), concepts or methodologies found on the Website, your Account and the material contained therein, also hereinafter referred to as ‘Content’, which are the exclusive property of the Company. You may retrieve and display Content from the Website on a computer screen, strictly for your own personal, non-commercial use. All other usage is precluded unless Company’s prior written consent is obtained.

**“Prohibited Jurisdictions”** means any jurisdiction sanctioned by law or regulation or which we determine falls outside our risk appetite.

**“Relevant Age”** means 18 years old.

**“Website”** means our website at [www.hibiscus.com](http://www.hibiscus.com).

## 2. Introduction and description of services

2.1 These Terms of Business govern the relationship between Hibiscus (IOM) Limited (a company incorporated in the Isle of Man with company number 135067C and having its registered office at PO Box 227, Clinch’s House, Lord Street, Douglas, Isle of Man IM99 1RZ (referred to throughout as “us”; “we” or “our” where appropriate) and the person who enters into this agreement (referred to throughout as “you” or “your” where appropriate).

2.2 By opening an Account with us via the Website, via an App or any other mobile application or other means that we may provide from time to time, you hereby agree that you have read, understood, acknowledged and agreed these Terms of Business and will be bound by them at all times. If you do not agree to these Terms of Business, you should not proceed further with us and you should not use our services. By opening an Account with us you also agree to our fee structure. You will not be provided with an online ‘account’ as such, and we do not provide a client portal or similar client log-in facility. All contact between you and us will be either by email or by telephone.

- 2.3 It is your responsibility to ensure that the personal information that you provide to us is kept current and up-to-date. You should notify us of any changes to the information we hold on you in writing. We will only contact you using the details provided and we will not have any liability to you for any non-receipt or non-delivery of communications as a result of the details being incorrect.
- 2.4 We offer a cryptocurrency exchange service. For example, upon agreement, you can send us cryptocurrency which we will convert into fiat currency using approved third-party liquidity providers and then remit the proceeds to an account nominated by you. We do not offer a deposit or custody service for either cryptocurrency or fiat currency.
- 2.5 We will not set up a separate bank account in your own name. Any fiat currency that you send to us or is due to you from the proceeds of any exchange will be held in our own name prior to being remitted to your recorded nominated account or exchanged into crypto currency. We will own the keys to any wallet we set up in your name to hold your cryptocurrency prior to exchange. We may transfer your cryptocurrency into a wallet in our name prior to exchange.
- 2.6 All personal data shall be processed in accordance with our privacy notice, a copy of which forms part of these Terms of Business and can also be accessed on our Website by following this link: [www.hibiscus.com](http://www.hibiscus.com).

### **3. Risk warning**

You should be aware that carrying out transactions in digital or cryptocurrencies or fiat currencies carries a certain level of risk and that the value of cryptocurrencies or fiat currency can go up or down, sometimes with a significant degree of volatility. By opening an Account with us, you represent and warrant that you are aware of these risks and you acknowledge and accept that under no circumstances will we be liable to you for fluctuations in the value of cryptocurrencies or fiat currency or any losses that you may incur as a result of such.

### **4. Amendments to these Terms of Business**

We reserve the right, in our absolute discretion, to amend these Terms of Business at any time. If we do so, we will make reasonable efforts to notify you of any significant, non-clerical changes by emailing you at the email address you have registered with us. It is however your responsibility to review these Terms of Business from time to time. Your continued use of our services will constitute your acceptance of any amendments that we may make to these Terms of Business from time to time. If you do not accept the amendments, you should not continue to use our services.

### **5. Opening an Account with us**

- 5.1 You will be required to complete a client take on form which will require you to supply details of your personal circumstances in order that we can identify and verify you. As part of this process you will be required to provide facial recognition used to verify your identity.
- 5.2 To open an Account with us as an individual, you must be at least the Relevant Age and you must not be resident in a Prohibited Jurisdiction. In addition, the transfer or remittance of cryptocurrency or fiat currency must not be illegal in your jurisdiction of residence. If we are unable to confirm that you are of the Relevant Age, that you are not resident in a Prohibited Jurisdiction or that your jurisdiction of residence allows for the

transfer or remittance of cryptocurrency or fiat currency, then we may suspend your Account until such time that we are able to confirm such matters. If you are subsequently proven to be under the Relevant Age or operate from a Prohibited Jurisdiction, we will close your Account.

- 5.3 You represent and warrant that:
- 5.3.1 you are aged 18 or over;
  - 5.3.2 you are not acting on behalf of any other person;
  - 5.3.3 you are not legally incapacitated from entering into a binding contract with us;
  - 5.3.4 you will not send us cryptocurrency from a wallet which is owned or controlled by a sanctioned individual/entity;
  - 5.3.5 no cryptocurrency or fiat currency that you send to us is derived from or related to any unlawful activities, including but not limited to money laundering or terrorist financing; and
  - 5.3.6 you will provide us with accurate and complete information at all times.
- 5.4 If we have reasonable grounds for believing that you have breached any of the representations and warranties set out in clause 5.3, we reserve the right to terminate your Account without notice to you.
- 5.5 Upon submission of your application, we will review it and activate your Account if your application meets our requirements. We reserve the right in our absolute discretion to refuse to activate your Account (including if you have provided us with false or incorrect information) and we are not obliged to give you a reason for this.
- 5.6 By agreeing to these Terms of Business, you authorise us to undertake any such verification checks from time to time as we may be required to perform by law or regulation to confirm the facts that you have provided to us. You agree that from time to time, upon our request, you may be required to provide additional details in respect of any information you have provided to us.
- 5.7 In certain circumstances we may have to contact you and ask you to provide further information to use directly in order to comply with our legal and regulatory requirements. For this purpose, we will be entitled, at our sole discretion, to require that you provide us with documentation certified or notarised in accordance with the applicable law of your jurisdiction of residence. Such documentation may include photographic proof of identity such as passport or national identity card; proof of address; utility bills; bank details, bank statements and bank references. Until such information has been supplied to our satisfaction, we may prevent any activity to be undertaken by you in relation to your Account. You may also be required to answer one or more security questions. You may also be required to update the information or data or to provide additional items as part of ongoing efforts to prevent fraudulent activities.
- 5.8 We will make every effort to maintain the highest possible standards of compliance with all of our anti-money laundering, anti-terrorist financing and other applicable regulatory requirements. In order to prevent money laundering, we reserve the right to monitor and examine all and any of your transactions (in this regard we reserve the right to request the necessary/additional documents as explained in clause 5.6 above), including which at our sole discretion are particularly likely, by their nature, to be related to money laundering or the funding of terrorism. You may not use our services in any way directly or indirectly related to money laundering. By opening an Account with us, you agree to abide with all rules and regulations relating to anti-money laundering. If we suspect, at our sole discretion, that a particular transaction may be related to money laundering and/or the funding of terrorism, we shall not process such transaction/payment and shall have the

right to disable or terminate your Account. Please note that if this is the case, we may be required to disclose your personal data and details of such transaction to the relevant authorities as may be applicable.

## **6. Maintaining your Account and Account security**

6.1 You are responsible for:

6.1.1 maintaining the confidentiality of your communications with us; and

6.1.2 the security of the device(s) used to access our services.

6.2 You agree to only establish one Account with us (we reserve the right to close any duplicate accounts).

6.3 We reserve the right to suspend business with you if we become aware (or have reasonable grounds for suspecting) that an unauthorised third party is communicating with us rather than you.

## **7. Funding your Account**

7.1 You may fund your Account by sending us cryptocurrency or fiat currency, details of which will be provided to you in writing. Once we have received your cryptocurrency or fiat currency, we will provide you with confirmation by email.

7.2 We reserve the right to reject the cryptocurrency or fiat currency that you send to us if we are required to do this for legal or regulatory reasons. If this happens, we will notify you by email that we have rejected your cryptocurrency or fiat currency. We may not confirm why such action has occurred.

7.3 Once we have accepted your cryptocurrency or fiat currency into our Account, such acceptance is irrevocable once any transaction has been undertaken. If you ask us to return your cryptocurrency or fiat currency prior to us carrying out a transaction for you, we will return the cryptocurrency or fiat currency to you, net of our handling fee of 0.1% of the total value of the currency in question.

7.4 By accepting these Terms of Business, you warrant that you are the rightful owner of the cryptocurrency or fiat currency that you send to us.

7.5 By sending cryptocurrency or fiat currency to us, you direct us to (and we agree to) use the cryptocurrency or fiat currency for the specific purposes of:

7.5.1 arranging for the cryptocurrency to be converted into fiat currency or vice versa;

7.5.2 remitting the converted fiat currency to your nominated account or cryptocurrency to your wallet in the case of arranging for the fiat currency to be converted into cryptocurrency; and

7.5.3 settling any fees or charges that you incur as a result of using our services.

7.6 We do not offer credit. Any transaction that you wish to make must be fully supported by sufficient cryptocurrency or fiat currency in your Account.

## **8. Suspension and closure of your Account**

8.1 We shall be entitled to suspend your Account in the circumstances expressly set out in these Terms of Business or at our sole and absolute discretion as the circumstances may reasonably warrant. Upon the suspension of your Account:

8.1.1 no activity shall be permitted until the date upon which we re-activate your Account; and

8.1.2 we shall address the issue that has given rise to your Account suspension with a view to resolving it as soon as reasonably practicable so that your Account can, as appropriate, either be re-activated or closed.

8.2 We reserve the right, at our sole and absolute discretion, to close your Account and terminate these Terms of Business with us (notwithstanding any other provisions contained in these Terms of Business) on written notice (or attempted written notice) to you using your contact details. In the event of such termination by us, provided that we are not prohibited from doing so by law or regulation, we shall refund any of the balance on your Account to the account or wallet from which you originally sent the account balance to us].

8.3 You acknowledge that your failure to comply with these Terms of Business may result in the suspension and/or termination of your Account, forfeiture of cryptocurrency or fiat currency and/or legal action against you.

8.4 You may choose to close your Account by contacting us by email. If there is a balance of funds on your Account (whether cryptocurrency or fiat currency) we will return such funds to you, by sending them to the account or wallet from which you originally sent the account balance to us.

8.5 We will treat your Account as 'dormant' if there is no activity on your Account (either by way of you sending cryptocurrency to us, or us sending fiat currency to your nominated Account or vice versa) for a period of 12 months from the most recent transaction on your Account. Our default policy is to close all dormant Accounts, and we will notify you by email if we intend to close your Account due to inactivity. If you ask us to keep your Account open, we will consider your request and notify you of our decision.

## **9. How we make transactions on your behalf**

9.1 Once you have sent us cryptocurrency and we have credited them into your Account, we will arrange to convert the cryptocurrency to fiat currency and will hold the fiat currency in a bank account with our third-party banking provider. Such account will be held in our name.

9.2 The fiat currency will be paid into your nominated account (net of our fees and charges) details of which we hold on file.

9.3 Once you have sent us fiat currency and we have credited your Account, we will arrange to convert the fiat currency to the relevant cryptocurrency and will hold the cryptocurrency in a wallet with our third-party custodian. Such wallet will be held in our name to which we will have keys.

- 9.4 The cryptocurrency will be paid into your wallet details of which we hold on file.
- 9.5 We do not guarantee the timeframe in which your cryptocurrency will be converted to fiat currency or vice versa and we will not be held liable for any delays in the process resulting from circumstances outside of our control (including, without limitation, delays caused by or suffered by our liquidity providers or our bankers).
- 9.6 In accordance with our internal policies, we reserve the right to refuse to carry out any transaction which we, in our sole discretion, deem to be suspicious.
- 9.7 Once the exchange request for your cryptocurrency or fiat currency has been executed, such transaction cannot be terminated or reversed, and we will send you the converted fiat currency or cryptocurrency dependent upon the exchange undertaken.

## **10. Security measures that we take**

We cannot guarantee that our service will be available at all times, but we will take all reasonable steps to avoid technical malfunctions, downtime etc. on our servers. We do not give any warranty or representation (express or implied) that the Website will always be available or that your use of the same will always be uninterrupted, secure or free of errors or viruses. You should ensure that the device on which you access our services has appropriate security protections installed on it. We reserve the right to suspend access to the Website at any time and we will not be liable to you in any circumstances if you are unable to access the Website or if it is unavailable for any reason.

## **11. Fees**

We will confirm our fees with you in writing by separate agreement.

## **12. Complaints procedure**

We aim to provide you with a fully satisfactory service at all times. If, at any time, you are dissatisfied with our service, we would ask you to contact us via email, details of which can be found on our website. We undertake to look into complaints promptly and to do what we can to resolve the position.

## **13. Indemnification and limitation of liability**

- 13.1 You agree to fully indemnify, defend and hold us, and our officers, directors, employees, consultants, advisors, agents and suppliers harmless, immediately upon demand, from and against all claims, liabilities, damages, losses, costs and expenses, including legal fees, (regardless of theory of law) arising out of your breach of any of these Terms of Business or the misuse of the Website by you or any other person accessing the Website using your details or any other person purporting to be you when communicating with us.
- 13.2 No employee, officer, consultant or director of Hibiscus (IOM) Limited shall be liable in their personal capacity for any claim whatsoever arising from or in connection with the services provided to you. Any such claim (whether arising in contract, tort or otherwise) shall be enforceable only against Hibiscus (IOM) Limited and may be satisfied only from the assets of Hibiscus (IOM) Limited (and not from the personal estates of any individual referred to above).
- 13.3 In no event shall our total liability to you for all damages, losses and causes of action exceed the maximum amount that you have transferred to us in the 12 month period immediately before the cause of action arose.

- 13.4 Neither your cryptocurrency or fiat currency nor any converted funds form part of any Isle of Man Government compensation scheme. Neither your cryptocurrency or fiat currency nor your converted funds are backed by or guaranteed by any Governmental or regulatory authority in the Isle of Man.
- 13.5 We do not accept any liability to you for any damages of any kind (including, without limitation, for any special, direct, indirect, incidental, exemplary, economic, punitive or consequential damages) which may be caused to you directly or indirectly by:
- 13.5.1 the interception, misuse, failure or delay of any information transmitted over the internet (unless the same is caused by our wilful default or fraud);
- 13.5.2 damage to your computer, hardware, computer software or other equipment or technology including, without limitation, damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line or network failure or any other technical or other malfunction (unless the same is caused by our wilful default or fraud);
- 13.5.3 you providing incorrect details to us for the purpose of establishing, maintaining or closing your Account;
- 13.5.4 mistake, misprint, misinterpretation, mishearing, misreading, mistranslation, spelling mistake, fault in reading, transaction error, technical failure, technical hazard, registration error, manifest error, or Force Majeure and/or any other similar event;
- 13.5.5 you breaching these Terms of Business;
- 13.5.6 your performance of illegal activities; or
- 13.5.7 financial risk and loss, including but not limited to variances in exchange rates.
- 13.6 The limitations set forth in this clause 13 will not limit or exclude our liability for fraud or wilful misconduct.

## **14. Intellectual Property**

- 14.1 You acknowledge and agree that all right, title and interest in the Intellectual Property is and remains at all times our property. Any use of the Intellectual Property without our prior written consent is not permitted. You agree not to (and agree not to assist or facilitate any third party to) copy, reproduce, transmit, publish, display, distribute, commercially exploit, or tamper with our Intellectual Property in any manner whatsoever.
- 14.2 You acknowledge and agree that the material and content contained within the Website is made available for your personal, non-commercial use only. Any other use of such material and content is strictly prohibited.
- 14.3 We hereby grant you a licence to use our Intellectual Property strictly and only in order to make use of our services, subject to these Terms of Business. All rights in the Intellectual Property are reserved, and you may use the Intellectual Property only as licensed to you in accordance with these Terms of Business.

## **15. Communications**

- 15.1 Unless we agree otherwise with you, our main form of communication with you will be by electronic means, either sent to you via e-mail or posted on the Website (as applicable). All such communications will be considered "in writing" and will be considered received by you within 24 hours from the time in which the notice was sent to you by email or posted on the website.
- 15.2 We are hereby authorised, but are not obliged, to rely upon or to act in accordance with any instruction which may from time to time be or purport to be given by you in writing or orally (including by email or other electronic means) without enquiry on our part as to the authority or identity of the person giving or purporting to give such instruction.

## **16. Third party rights**

No person other than a party to these Terms of Business, their successors and permitted transferees or assigns, shall have any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 2001 unless we expressly agree in writing to such third party rights.

## **17. Regulatory status**

We are registered with the Isle of Man Financial Services Authority pursuant to the Designated Businesses (Registration and Oversight) Act 2015 which means that we are able to issue, transmit, transfer, provide safe custody or storage of, administer, manage, lend, buy, sell, exchange or otherwise trade or intermediate convertible virtual currencies, including crypto-currencies, virtual assets or similar concepts where the concept is accepted by persons as a means of payment of goods or services, a unit of account, a store of value or a commodity. Please note however that we do not provide a custody service.

## **18. Entire agreement**

These Terms of Business constitute the entire agreement and understanding between us and you.

## **19. Assignment**

These Terms of Business are personal to you, and are not assignable, transferable or sub-licensable by you except with our prior written consent. We reserve the right to assign, transfer or delegate any of our rights and obligations hereunder to any third party. If we do so, we shall provide notice of this to you in writing.

## **20. Governing Law, Jurisdiction and Dispute Resolution.**

- 20.1 These Terms of Business and any dispute or claim arising out of, or in connection with, their subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with the laws of the Isle of Man.
- 20.2 Any dispute arising out of or in connection with these Terms of Business or our provision of services to you, including any question regarding the existence, validity or termination of these Terms of Business, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one and the seat, or legal place, of the arbitration shall be in the Isle of Man. The language to be used in the arbitral proceedings shall be English.

### **Data Privacy Notice**

This Privacy Notice (the "Notice") explains what Personal Data the Hibiscus group of companies ("Hibiscus", "we", "us") will collect from you and how we will use that personal information. We are committed to being transparent with you regarding our use of your personal information and encourage you to contact us on our contact details provided below, should you have any concerns.

Your Personal Data is collected, retained and processed to and in accordance with the requirements of the General Data Protection Regulation ("DP Laws"). Depending on the services provided, Hibiscus (IOM) Limited or Hibiscus Group Limited will be the Controller for the purposes of DP Laws, this will be clear from our terms of business.

Hibiscus (IOM) Limited, is incorporated in the Isle of Man with registered office address 3<sup>rd</sup> Floor, Peveril Buildings, Peveril Square, Douglas, Isle of Man IM99 1RZ. Hibiscus (IOM) Limited is registered with the Isle of Man Information Commissioner under registration number R003413.

Hibiscus Group Limited, is incorporated in the United Kingdom with registered office address 5 Market Yard Mews, 194-204 Bermondsey Street, London, United Kingdom SE1 3TQ. Hibiscus Group Limited is registered with the Information Commissioner's Office under registration number ZA448481.

### **Why we Collect Personal Data**

We will obtain and process your Personal Data to:

- Comply with our regulatory and legal obligations including "know your customer" due diligence requirements and risk assessments;
- Provide currency exchange facilities;
- Assist us in developing new and improved products
- Dealing with your inquiries and requests;
- For market research, analysis and creating statistics;
- Provide you with information regarding our products and services that you request or we feel may interest you, where you have consented to be contacted for such purpose;
- Report any crime, or suspected crime, including money laundering or fraud;
- To fulfil any client obligations that may arise as part of this agreement.

### **Lawful Basis for Processing**

For each of the abovementioned purposes Hibiscus processes your personal data on the following legal grounds:

- To carry out our obligations arising from any contracts entered into between you and us; and
- To comply with general legal and compliance obligations.

### **Security**

Hibiscus is committed to ensuring that Data Subjects information is secure. Any data collected is stored in a secure and protected environment and is correct as it is provided.

We protect your data by:

- Offering you a secure transmission method to send us personal or company information; and
- Implementing security policies and technical measures to protect data from unauthorised or improper access, use or disclosure.

All relevant staff undergo applicable data protection training and are aware of their obligations under the GDPR.

### **Accuracy of Data**

We take appropriate measures to ensure that any information collected from you is kept only for so long as is necessary for the purpose for which such information is used. Records are usually amended as soon as possible and within 7 days of receipt of any update. Should you note a discrepancy in the information that we hold on you, please contact Hibiscus.

### **Disclosing to Third Parties**

In accordance with this Notice and data protection law, you understand and agree that we may disclose your personal information for the following purposes:

We share your Personal Data to our wider group of companies who are also required to comply with the DP Laws.

We may further disclose your personal information to third parties:

- In the event that we sell or buy any business, in which case we may disclose your personal data to the prospective seller or buyer of such business or asset; or
- If we or substantially all of our assets are acquired by a third party, in which case personal data held about our customers will be one of the transferred assets; or
- If we are under a duty to disclose or share your personal data in order to comply with any legal obligation including but not limited to, verifying information you have provided to us; or
- In order to enforce or apply the terms of this Notice or any other agreements; or
- To protect the rights, property or safety of us, our customers or others; or
- Where we have received your permission for us to do so.

### **International Transfers of Personal Data**

It may in certain circumstance be illegal to transfer any personal data outside the EEA or approved adequate jurisdictions. When we transfer any part of your personal data outside the EEA or adequate jurisdictions we will take reasonable steps to ensure that it is treated as securely as it is within the EEA or adequate jurisdictions. These steps include but are not limited to the following levels of protection:

- Binding corporate rules;
- Model contracts; or
- Any other method deemed appropriate by the Isle of Man Data Protection legislation, or the European GDPR.

For the avoidance of doubt we only transfer your personal data within our wider group of companies who are subjected to the DP Laws. Any further international transfers will not be undertaken unless we have procured your express consent.

### **Data Retention and Destruction**

We take appropriate measures to ensure that any information collected from you is kept only for so long as is necessary for the purpose for which such information is used. In determining data retention periods, Hibiscus takes into consideration local laws, contractual obligations, and the expectations of our customer. Any information destroyed is done so in a safe and secure manner. For further information on your data retention and destruction, please contact the Compliance Team using the details below.

## Your Rights

You have the right to access information held about you. If you wish to exercise such right, please submit a request to us in writing, in the form of a Subject Access Request, to the Hibiscus Compliance Team:

E-mail: [compliance@hibiscus.com](mailto:compliance@hibiscus.com)

Any access request shall be subject to your providing acceptable proof of identification.

Your rights also include:

- The right to be informed;
- The right to rectification;
- The right to erasure (subject to local law);
- The right to restrict processing;
- The right to data portability; and
- The right to object.

Where relevant, you can also exercise your right at any time by contacting us using the aforementioned details.

## Changes to this Privacy Notice

We may change this Privacy Notice from time to time by updating this page. You should check this page regularly to ensure that you are happy with any changes.

## Complaints

If you are not satisfied with any complaints, disputes or information provided by Hibiscus to you regarding the handling of your data, you have the right to make a complaint to the supervisory authority.

The supervisory authority for Hibiscus (IOM) Limited is the Isle of Man Information Commissioner's Office who can be contacted via the following link:

<https://www.inforights.im/complaint-handling/how-to-make-a-complaint-to-the-information-commissioner/data-protection-complaints/>

The supervisory authority for Hibiscus Group Limited is the Information Commissioner's Office who can be contacted via the following link:

<https://ico.org.uk/make-a-complaint/>

We would, however, appreciate the chance to deal with your concerns before you approach the supervisory authority, so please contact us in the first instance.