

# TERMS AND CONDITIONS OF SERVICE 2011

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*Tailored Solutions for Corporate Services*

THORNTON SMITH CORPORATE SERVICES LIMITED  
Capitol Chambers  
P.O. Box 3534  
Road Town, Tortola  
British Virgin Islands

The following document (the “**Terms and Conditions of Service**”) sets out the terms upon which a relationship will exist between THORNTON SMITH CORPORATE SERVICES LIMITED and its clients effective from **1 September 2011**. These Terms and Conditions of Service should be read in conjunction with the Standard Schedule of Fees and Charges issued by THORNTON SMITH CORPORATE SERVICES LIMITED from time to time. THORNTON SMITH CORPORATE SERVICES LIMITED reserves the right to amend, alter, revoke or suspend any statement made in these Terms and Conditions of Service at anytime and without notice. However, in the normal course of events, THORNTON SMITH CORPORATE SERVICES LIMITED will issue revised Terms and Conditions of Service to replace these Terms and Conditions of Service in whole or in part, stating the effective date of the new Terms and Conditions of Service not being less than 30 days from the date of issue.

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BRITISH VIRGIN ISLANDS

These Terms govern the provision of registered agent and other corporate services by THORNTON SMITH CORPORATE SERVICES LIMITED, a company registered and regulated under the laws of the British Virgin Islands and its subsidiaries and nominee companies ("**TSCSL**") to the Client, but does not apply to any relationship a company may have with THORNTON SMITH TRUST CORPORATION or the law firm of THORNTON SMITH. Subject to their express acceptance by TSCSL and by the Client, these Terms, in conjunction with any Client Questionnaires, requests and instructions, as issued by the Client to TSCSL, shall constitute a valid and binding agreement between the Client and TSCSL.

## **DEFINITIONS**

**"Act"** means the BVI Business Companies Act, 2004 (No. 16 of 2004) as amended from time to time.

**"Client"** means the beneficial owner(s) of the Company and/or the individual(s) who requested TSCSL to provide the Services and any successors of such individual(s), as well as any such individual(s) whom the Client may ultimately represent and any such individual(s) whom the Client may have authorized to represent himself; in case of more than one person all such persons jointly and severally.

**"Company"** means any BVI company beneficially owned by the Client, to which Services are provided by TSCSL.

**"Corporate Resolutions"** means minutes of meetings and/or resolutions of members and of classes of members of a BVI company required to be maintained in accordance with section 97(1)(a) of the Act as well as minutes of meetings and/or resolutions of directors and committees of directors of a BVI company required to be maintained in accordance with section 97(1)(b) of the Act.

**"Client Questionnaires"** means any BVI Business Company Incorporation Request Form and any Due Diligence Questionnaire as available on the website [www.thorntonsmith.com](http://www.thorntonsmith.com) or the same Client Questionnaires in any other electronic or written format, as submitted by the Client to TSCSL before or at the time of commencement of the Services.

**"Communication"** means any communication in English (unless otherwise agreed) between THORNTON SMITH and Client by any of the following methods: (a) email, message or form posted through the internet, including messages by any instant messenger systems; (b) fax; and (c) courier or mail delivery, addressed to the last known or notified address of the recipient, shall be governed by all applicable laws including the Electronic Transactions Act, 2001, which may be monitored in accordance with THORNTON SMITH's e-Mail, Fax and Internet Policy, a copy of which can be provided upon request.

**"Register"** means the register of companies established under section 230(1)(a) of the Act or the register of foreign companies established under section 230(1)(b) of the Act.

**"Registrar"** means the Registrar of Corporate Affairs appointed under the section 229(1)(a) of the Act.

**"Services"** includes any of the following:

**(i) Company Formation**

A Company may be registered the same day that all instructions and relevant documents are received by filing an electronic application using TSCSL's Standard Memorandum and Articles of Association.

**(ii) Serving as Registered Agent**

All companies registered in the British Virgin Islands require a registered agent in the British Virgin Islands. TSCSL is a duly licensed corporate services provider with the BVI Financial Services Commission for the purposes of acting as registered agent and may act as the registered agent for a Company.

**(iii) Provision of Registered Office**

All companies registered in the British Virgin Islands require a registered office and the offices of TSCSL at Capitol Chambers, P.O. Box 3534, Road Town, Tortola VG1110, British Virgin Islands may be used as the registered office of a Company.

**(iv) Maintenance of Corporate Records**

Where TSCSL is the registered agent of a Company, TSCSL will keep the following documents in electronic form (unless otherwise agreed) at its offices:

- (a) the current memorandum and articles of association of the Company;
- (b) the register of relevant charges once any are created by the Company;
- (c) an imprint of the seal of the Company;
- (d) copies of all documents filed on behalf of the Company with the Registrar in the previous 10 years and thereafter will be destroyed in accordance with TSCSL's Records Destruction Guidelines, a copy of which can be provided upon request;

Where TSCSL is the registered agent of a Company, TSCSL will only keep a copy of the following documents in electronic form (unless otherwise agreed) at its offices once the BVI company has elected to maintain the original documents elsewhere:

- (a) a register of members;
- (b) a register of directors;
- (c) Corporate Resolutions;

**(v) Filing Corporate Documents**

Upon receipt of relevant documents, resolutions, information, payment and instructions, TSCSL will make any filings with the Registrar required or permitted under the Act.

**(vi) Annual Fees**

Subject to these Terms, TSCSL will pay on the Client's behalf the annual fees due and payable to the Registrar in accordance with the Act.

**(vii) Company Secretary**

A company secretary or company secretaries may be provided to the Client by TSCSL for the sole purpose of certifying copies of corporate documents maintained at the offices of TSCSL.

**(viii) Dissolution/Solvent Liquidation of Company**

Where TSCSL is the registered agent of a Company, TSCSL will facilitate the dissolution or liquidation of a solvent Company.

**(ix) Mail, Fax and Message Forwarding & Re-Mailing**

All mail and other communications received by TSCSL for the Client will be forwarded to the Client by such method as it considers appropriate in the context of the relevant communication.

**(x) Opening and Operating of BVI Bank Accounts**

Where TSCSL is the registered agent of a Company, TSCSL will facilitate the opening and operating of a bank account with a bank in the British Virgin Islands.

**"Terms"** means these Terms and Conditions of Service as may be amended from time to time and published as different versions or annual editions.

## **INSTRUCTIONS**

1. The Client may, before or after completing the appropriate Due Diligence Questionnaire, instruct TSCSL to perform the Services or any of them, for and on behalf of the Company, by any means of Communications. In performing the Services TSCSL shall always act solely on instructions from the Client and never in its own discretion, except for special circumstances as described further in these Terms.
2. Unless TSCSL received instructions from the board of directors of the Company, TSCSL will continue to perform the Services and receive instructions in relation to the Company from the Client. Except in accordance with applicable laws, TSCSL will not take any action or disclose any information to any person without the confirmation of the Client unless such information is already in the public domain.
3. If several private individuals act jointly as the Client in relation to the same Company, unless they have expressly instructed otherwise, TSCSL shall only act on instructions which are given jointly by all of the Client-individuals concerned.
4. The Client shall be bound by, and authorizes TSCSL to act on all instructions, requests and representations issued by, or purporting to be issued by the Client or his authorized representative, or by any person TSCSL reasonably believes to be duly authorized by the Client. Such instructions, requests and representations may be communicated by the Client to the Agent by any means of Communication, but the Agent shall not be bound to act on any instructions, requests and representations made to him by any other method.
5. TSCSL may refrain from acting on any instruction issued by the Client, if in TSCSL's reasonable opinion such instruction or its execution would contravene any applicable law or regulation.

## **STANDARD FEES**

6. TSCSL has no direct or beneficial interest in the Company or in its business whatsoever, but maintains a professional and advisory relationship with the Company for the provision of the Services for which TSCG's Standard Schedule of Fees and Charges shall apply unless otherwise agreed.
7. TSCSL's Standard Schedule of Fees and Charges shall be provided upon request but prior to the performance of the Services, and TSCSL reserves the right to revise and update its Standard Schedule of Fees and Charges from time to time and shall communicate any such revision to the Client, and when TSCSL provides the Standard Schedule of Fees and Charges or any revision thereof it shall constitute an offer for services which shall be

accepted upon providing instructions or continuing to provide instructions unless otherwise agreed.

## **BILLING**

8. TSCSL will issue a numbered invoice that will be the basis for payment of any fees. Price quotations are given with the expectation that the client will prepare payment upon providing clear instructions for TSCSL to provide the Services.
9. Invoices will be issued by TSCSL before the provision of the Services.
10. Invoices will be sent by TSCSL and deemed to have been received by the Client if sent by any means of Communication, but shall be sent by e-mail in the first instance unless otherwise agreed.
11. The Invoice will include any specific terms of payment.
12. TSCSL is not bound to provide the Services before the invoiced fees are paid in full by the Client.
13. The Client acknowledges that late payment of certain fees, in particular annually recurring fees, may involve substantial late penalties or surcharges, to be payable by the Client before any further Services may be provided. The Client also acknowledges that the failure to pay such fees on time may result in the Company being dissolved, wound-up or struck off the Register or the resignation of TSCSL as the registered agent.
14. Once the Client fails to settle invoices within the payment period stated in the invoice, TSCSL may deduct such outstanding fees from any account or funds of the Client or the Company as may be available to TSCSL and otherwise avail itself of any remedies available to TSCSL at law or in equity.

## **USE OF REGISTERED ADDRESS**

15. The address of the registered agent or the registered office of the Company remains the address of TSCSL and not the Client. The Client shall not make or permit any reference to the address of TSCSL in any advertisement, promotion or public announcement, which has the effect of representing the address of TSCSL as the actual business location of the Company, unless specifically agreed in writing by TSCSL. In particular, the Client shall not indicate the address of TSCSL in any internet website as the actual location of operations. Any reference to the address of TSCSL in any advertisement, website or other public sources must clearly indicate that it is the address for service of process only.
16. In the event of TSCSL's relocation involving the change of the address of TSCSL, thirty days notice of the change shall be provided to the Client.

TSCSL will not be responsible for any associated costs incurred by the Client as a result of such change of address of TSCSL.

## **INSPECTION OF DOCUMENTS AT OFFICES OF TSCG**

- 17.** Directors of a Company will be permitted by TSCSL to inspect all documents and records held by it without charge and on reasonable notice during normal business hours in the British Virgin Islands. Members of a Company will be permitted by TSCSL to inspect all documents and records held by it without charge and on reasonable notice during normal business hours in the British Virgin Islands unless there is filed at its office: (i) a resolution of directors stating that this would be contrary to the interests of the company and identifying those parts of the records of the company to which the resolution relates; and (ii) evidence that the relevant member or members have been notified of the restriction.
- 18.** TSCSL is a separate legal entity from THORNTON SMITH and nothing in the relationship between TSCSL and the Company is to be taken as implying that lawyers at THORNTON SMITH will not act in a way which may be detrimental to the Company. If the Client wishes THORNTON SMITH to act as lawyers for the Company in any way that relationship must be subject to an explicit retainer between the Company and THORNTON SMITH. However, THORNTON SMITH will not accept instructions to wind up a Company unless this is on a consensual basis.
- 19.** The professional staff of THORNTON SMITH are deemed to at all times have no more access to information on Companies than do any other third party, including other registered agents in the British Virgin Islands and THORNTON SMITH will proceed in exactly the same way if requested to provide information as if the enquiry were from an entirely unrelated entity.
- 20.** To facilitate any lawful inspection of documents at the offices of TSCG, where the Services provided by TSCSL only require TSCSL to keep a copy of certain documents at its offices where the Company has elected to maintain the original documents elsewhere the Company must inform TSCSL in writing of the physical address of the place or places where those registers are kept and will immediately inform TSCSL in writing of any changes to those registers or the places where they are kept as well as any changes of directors or members. Failure to comply with this requirement may render the Company liable to criminal sanctions.

## **GUARANTEES AND WARRANTIES**

- 21.** The Client confirms and guarantees that any asset introduced to the Company is not derived from or connected to any illegal activity; that the Client has full authority to transfer same to the Company, and the transfer of such asset does not constitute a fraud on the Clients' creditors.



22. The Client confirms and guarantees that the Company will not be used for any unlawful purpose and will not be involved directly or indirectly in any illegal or immoral transaction, including, but not limited to fraud, embezzlement, extortion, dealing in prohibited substances, terrorism, money laundering. If TSCSL learns that the Company or the Client is involved in any such illegal transactions or activities, TSCSL may immediately cease to provide any Services and do anything it considers appropriate in order to protect the interests of the general public and TSCSL itself.
23. The Client confirms and guarantees that no instructions given to TSCSL will require or involve any unlawful act or contain any falsehood and that all information given, including the information given in any Due Diligence Questionnaire, is and will be accurate and that the Client will keep TSCSL adequately informed of any changes in such information and will keep TSCSL informed as to all business to be transacted in the name of the Company.

## **DISCLAIMER**

24. The Client acknowledges that TSCSL has not provided any legal, financial or tax advice to the Client, nor has TSCSL made any assurances or guarantees that any type of company or corporate structure would achieve any particular aims of the Client.

## **ANTI-MONEY LAUNDERING/COUNTER-TERRORISM**

25. As and when requested by TSCSL, the Client shall provide to TSCSL proofs of identity and sufficient identifying documentation for the Client and for all individuals and entities directly involved in the Company as shareholders, directors, account signatories, attorneys-in-fact or in any other similar capacity, unless such individuals or entities are already known to TSCSL. Such due diligence documents may include a certified copy of passport, a recent original utility bill or other proof of address, a bank reference and/or other documents, as the case may be. The exact scope and form of such documents shall be in accordance with TSCSL's Due Diligence Questionnaire and in accordance with the respective financial services regulations in force in the British Virgin Islands. The Client shall provide TSCSL with any further written information TSCSL may reasonably request about the background of the Client and the activities of the Company. TSCSL may refuse to provide any or all of the Services before the Due Diligence documents and information, as described herein, are furnished by the Client.

## **INDEMNITY**

26. The Client will indemnify and keep indemnified TSCSL and its affiliated law firm, companies and organizations as well as their respective employees, directors, trustees, partners and officers against all liabilities, costs and expenses incurred (otherwise than those which arise in the ordinary course of their business) in providing the Services except where such liabilities,

costs and expenses arise through the fraud, wilful default or negligence of any of TSCSL and its affiliated law firm, companies or organizations as well as any of their respective employees, directors, trustees, partners and officers.

## **TERMINATION OF SERVICES**

- 27.** TSCSL may at anytime and for any reason cease to provide any or all of the Services to the Client, by giving 90 days written notice of its intention to resign as registered agent or otherwise resign from providing any of the Services to the Client and a director of the Company which will be accompanied by a list of registered agents licensed by the Financial Services Commission in the British Virgin Islands. In such case TSCSL shall do all that is legally necessary in order to enable the transfer of the Company to another agent or service provider in the British Virgin Islands as long as all outstanding fees due to it have been paid.
- 28.** The Client may at anytime and for any reason require TSCSL to cease the provision of any or all of the Services to the Client, but a Corporate Resolution is necessary along with a notice in the form approved under the Act. In such case TSCSL shall do all that is legally necessary in order to enable the transfer of the Company to another agent or service provider in the British Virgin Islands as long as all outstanding fees due to it have been paid.

## **NON-EXCLUSIVITY OF SERVICES**

- 29.** TSCSL may provide the Services to those who the Client might regard as competitors or otherwise having interests adverse to the Company.

## **GOVERNING LAW AND JURISDICTION**

- 30.** These Terms shall be governed by the laws of the British Virgin Islands and TSCSL, the Client and the Company accept the exclusive jurisdiction of the courts of the British Virgin Islands in relation to any question or issue arising from the relationship between TSCSL and the Client or the Company.