

# TERMS OF ENGAGEMENT 2014

*Think Solution for Legal Services*

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

The following document (the "**Terms of Engagement**") sets out as clearly as possible the standard of service to be expected from THORNTON SMITH by its clients and the amounts, and how, THORNTON SMITH will charge for its Services effective from **25 March 2014**. These Terms and Conditions of Service should be read in conjunction with the Engagement Letter or Engagement e-Mail issued by THORNTON SMITH in relation to each specific matter and accepted by the Client. THORNTON SMITH reserves the right to amend, alter, revoke or suspend any statement made in these Terms of Engagement at anytime and without notice. However, in the normal course of events, THORNTON SMITH will issue revised Terms of Engagement to replace these Terms of Engagement in whole or in part, stating the effective date of the new Terms of Engagement not being less than 25 days from the date of issue.

This is a confidential document and is the sole property of THORNTON SMITH which is a legal practice in the British Virgin Islands. Any copying or distribution of this document is strictly prohibited without the prior written permission of THORNTON SMITH.

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These Terms, in conjunction with any Engagement Letter or Engagement e-Mail issued by THORNTON SMITH and instructions issued by the Client to THORNTON SMITH, shall constitute a valid and binding agreement between the Client and THORNTON SMITH which gives THORNTON SMITH the right to exercise the usual authority of barristers or solicitors on behalf of the Client, which includes the authority to incur reasonable expenses, engage legal practitioners in other jurisdictions, and engage external barristers or experts.

## DEFINITIONS

**"British Virgin Islands"** means the British Overseas Territory of the Virgin Islands.

**"Client"** means the person(s), whether natural or juridical, who requested THORNTON SMITH to provide the Services, and in case of more than one person all such persons jointly and severally, however, if the Client is under the age of 18 or under a mental disability, these Terms are for the benefit of that Client only and the acceptance of these Terms by the Client is conditional upon the Client's parents or guardians providing a signed Form of Acceptance, or where the Client is a juridical person the acceptance of these Terms by the Client is conditional upon the appropriate consents or resolution provided by the relevant governing body or authority.

**"Communication"** means any correspondence 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; (c) courier or mail delivery, addressed to the last known or notified address of the recipient; and (d) telephone, 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 and THORNTON SMITH's Telephone Policy, a copy of each policy can be provided upon request.

**"Engagement e-Mail"** means any e-mail issued by THORNTON SMITH incorporating these Terms in which the Client is requested to take some action to confirm acceptance and the Client takes the requested action, including the payment of any retainer, before or at the time of commencement of Services.

**"Engagement Letter"** means any letter issued by THORNTON SMITH and countersigned by the Client, or any Client Questionnaire issued by THORNTON SMITH then completed and signed by the Client, before or at the time of commencement of Services.

**"Grievance Procedure"** means the procedures and the Dispute Resolution Rules outlined in THORNTON SMITH's Disciplinary and Grievance Procedures, but for purposes of these Terms, unless the context provides otherwise:

- (a) references to "employee", "agent" or "worker" shall be a reference to the Client;
- (b) references to "immediate supervisor" or a "supervisor" shall be a reference to the person who has overall carriage or supervision of the matter;
- (c) references to "workplace" shall be a reference to the attorney-client relationship;
- (d) references to "personal file" shall be a reference to the Client's matter file; and
- (e) contact the Human Resources Center at [hrcenter@thorntonsmith.com](mailto:hrcenter@thorntonsmith.com).

**"Services"** includes any legal advice or other legal service in relation to British Virgin Islands law only contained in the Engagement Letter or e-Mail Engagement for the purposes of the instructions to which such legal advice or other legal service relates and for the benefit of the person(s) named in the Engagement Letter or e-Mail Engagement.

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

## INSTRUCTIONS

1. The Client may, by countersigning the Engagement Letter or accepting the Engagement e-MAIL, instruct THORNTON SMITH to perform the Services by any means of Communications.
2. On receiving instructions THORNTON SMITH will write to the Client to record and confirm the Client's instructions, and of any substantial variations, which may be made from time to time, which THORNTON SMITH will rely on as truthful and accurate. The attorney-client relationship will begin, and a matter file will be opened subject to THORNTON SMITH's Conflict of Interest Policy, a copy of which may be provided upon request, following the receipt of the Engagement Letter countersigned by the Client or acceptance of the Engagement e-Mail or other agreement to accept these Terms. At anytime before receiving the countersigned Engagement Letter or the acceptance of the Engagement e-Mail, THORNTON SMITH may issue a Non-Engagement Letter or Non-Engagement e-MAIL informing the Client that THORNTON SMITH is unable to act for the Client and is closing its files, and no attorney-client relationship will have existed in respect of that matter.
3. The Client should respond truthfully and accurately within a reasonable time to all requests for further information or instructions made by THORNTON SMITH, and inform THORNTON SMITH immediately if there is reason to believe that any information or document provided to THORNTON SMITH is no longer true or accurate.
4. Unless otherwise agreed in the Engagement Letter or Engagement e-Mail, the supervision of all matters will be the responsibility of THORNTON SMITH's Principal. The names and status of the person(s) who will have the general carriage of, or overall responsibility for, the Services are set out in the Engagement Letter or the person sending the Engagement e-Mail. It will also provide an estimated timescale within which the Services will be performed in the normal course of business. However, if the Client expects these services to be performed on an urgent basis outside the estimated timescale a premium rate will apply.
5. THORNTON SMITH aims to provide a high standard of professional service exercising reasonable skill and care, but if at any time the Client feels that this is not being achieved, a Grievance Procedure is maintained and designed to ensure that a complaint is dealt with promptly and fairly.
6. Any limitation on the extent of the obligations of THORNTON SMITH to the Client or any limitation or exclusion of liability not otherwise contained in these Terms are set in the Engagement Letter or the Engagement e-MAIL, or as from time to time is set out in correspondence to the Client from THORNTON SMITH.

## PROFESSIONAL FEES

7. The professional fees expressed in the Engagement Letter or the Engagement e-Mail may be calculated on:
  - (a) a fixed fee, and unless otherwise agreed, or otherwise provided herein, the internal schedule of fees for any practice area or type of transaction reviewed on or about 15 November each year for the purpose of taking effect on 1 January the following year will apply; or
  - (b) the basis of time incurred charged on an hourly basis, and unless otherwise agreed, or otherwise provided herein, the standard rate will apply; or
  - (c) a hybrid fee based on time incurred charged on an hourly basis capped to a fixed maximum.
8. Where professional fees are charged based on an hourly basis it will be prorated on units of 6 minutes against the hour. The current hourly rates are:

<b>FEE EARNER</b>	<b>STANDARD RATE</b>	<b>PREMIUM RATE</b>
Principal Associate/Partner	\$600.00	\$750.00
Senior Associate	\$500.00	\$650.00
Junior Associate	\$400.00	\$550.00
Newly Qualified Associate	\$300.00	\$450.00
Principal Paralegal	\$250.00	\$350.00
Senior Paralegal	\$200.00	\$300.00
Junior Paralegal	\$150.00	\$250.00

9. In determining the professional fees to be charged, THORNTON SMITH will consider certain discretionary factors, including the value of the transaction, its complexity, the expertise or specialist knowledge required, time constraints and the level of insurable risk. The professional fees may be adjusted upwards if, for example, the Services become more complex than expected or have to be provided outside normal business hours and/or on an expedited timescale, in which case a premium rate on an hourly basis will apply.
10. Where practical, THORNTON SMITH will provide the Client with an estimate of the cost applicable to the matter in advance. This is, however, difficult to do accurately in all cases at an early stage because of unknown factors and unforeseeable circumstances. In appropriate cases THORNTON SMITH will break down the transaction into stages and give the Client an estimate of costs that is likely to be incurred to the end of the next stage. At the end of each stage THORNTON SMITH will work with the Client to produce a cost-benefit analysis in relation to the forthcoming stage. Note, however, that estimates are for guidance only and unless specifically agreed in writing they are not intended to constitute fee caps or fixed fees. THORNTON SMITH reserves the right to revise any estimate of professional fees as a matter progresses.
11. THORNTON SMITH requires monies on account in advance to cover any anticipated professional fees for a proposed transaction and will not commence work without having first received monies on account, including on a conditional or contingent fee basis, i.e., where the professional fees are payable only upon the happening of a particular event, for example, the successful outcome of a trial or negotiation.

## **DISBURSEMENTS**

12. THORNTON SMITH may incur expenses on behalf of the Client from time to time, which may include courier costs, search fees, court fees, company fees, stamp duty, expert fees and other expenses and payments payable to third parties including any accommodation or travel costs and the cost of using the services of other professionals such as counsel, consultants and other agents, which are charged separately from the professional fees and itemized on the invoice.
13. Charges for office services, which may include photocopying, faxing, phone calls, are included as disbursements in the invoice.
14. THORNTON SMITH requires monies on account in advance to cover all disbursements or other external costs and will not undertake any obligation to pay disbursements without having first received monies on account. From time to time THORNTON SMITH will ask for further sums in advance during the course of the matter. Offsetting such payments made in advance will be made against the invoices THORNTON SMITH will send to the Client from time to time and the final invoice. However, the Client should be aware that the total disbursements are likely to exceed the advance payments.
15. If the matter is not concluded THORNTON SMITH will still charge for the time spent and the disbursements and expenses incurred on behalf of the Client, who will have to pay the hourly rate and expenses on a prorated basis.

16. The Client can always set a limit on disbursements and the expenses to be incurred. If the Client sets such a limit, THORNTON SMITH can charge for work carried out and expenses incurred up to the limit without the need to refer to the Client for approval to carry out the work, and the Client must pay the disbursements and the expenses up to the agreed limit. If it appears that the limit is likely to be exceeded, THORNTON SMITH will inform the Client. The limit will not be exceeded without first obtaining approval from the Client.

## **BILLING**

17. THORNTON SMITH 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 THORNTON SMITH to provide the Services.
18. Invoices will be issued by THORNTON SMITH at the completion of the matter and where the matter will take longer than a month interim invoices will be issued on a monthly basis.
19. Invoices will be sent by THORNTON SMITH and deemed to have been received by the Client if sent by any means of Communication, but shall be sent by electronic mail only unless otherwise agreed.
20. Payment of invoices issued by THORNTON SMITH, including interim invoices, should be made within 14 days of receipt.
21. Once the Client fails to settle invoices within the payment period stated in the invoice, THORNTON SMITH may deduct such outstanding fees from any account or funds of the Client as may be available to THORNTON SMITH and otherwise avail itself of any remedies available to THORNTON SMITH at law or in equity, including the right to stop work on any matter and will charge interest on any amount overdue at a rate of 5% per month above the U.S. Prime Rate.
22. The Client remains primarily liable for all professional fees and disbursements as they become due and payable even if some other person agrees to advance payment in relation to any invoice, including where a court orders another party to contribute towards the Client's legal costs and whether or not the Client has legal fees insurance. Payment of invoices cannot ordinarily be postponed on the basis that they are likely to be, or should be, paid by some other person. However, at the Client's request and expense, THORNTON SMITH may assist the Client in recovering the amount payable from that other person as a separate transaction. Courts have a wide discretion to determine who should bear the cost of the proceedings and in what proportion. Although it is usual for the unsuccessful party to be ordered to pay all or part of the successful party's costs, this is no guarantee of payment and the Client may still not recover all costs from the other side. If the Client withdraws an action, or part of an action, absent agreement to the contrary, the other party will be entitled to be paid their costs.

## **TRUST ACCOUNT**

23. THORNTON SMITH maintains separate trust accounts for all funds which it receives from Clients (except for funds which are for payment of invoices).
24. While THORNTON SMITH will not hold significant amounts of money on behalf of any Client in the ordinary course of business, where that becomes necessary in a particular matter, those funds will be placed on an interest earning deposit account with a licensed bank but THORNTON SMITH will not pay interest on any monies kept in trust for Clients, or provide an account of those funds, absent a specific agreement.

## **DISCLAIMER**

25. The Client acknowledges that THORNTON SMITH has not provided any legal advice to the Client based on any other law other than the laws of the British Virgin Islands, nor has THORNTON SMITH made any assurances or guarantees in relation to any legal advice or other

legal service for which it was not expressly asked to provide in accordance with the Engagement Letter or Engagement e-Mail. THORNTON SMITH does not offer, or hold itself out as offering investment business advice or accounting advice. If the Client requires such advice then the services of an independent financial advisor or accountant should be obtained.

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

26. As and when requested by THORNTON SMITH, the Client shall provide to THORNTON SMITH proofs of identity and sufficient identifying documentation for the Client and for all individuals and entities directly involved in the matter for which THORNTON SMITH is expected to act, unless such individuals or entities are already known to THORNTON SMITH or are professional persons, such as lawyers and accountants, who are regulated in member jurisdictions of the FATF's global network with similar anti-money laundering laws as the British Virgin Islands and merely serving as a professional intermediary, in which case THORNTON SMITH will expect that the professional intermediary will have all the necessary information on the ultimate client. 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 THORNTON SMITH's Client Questionnaire and in accordance with the respective financial services regulations and other laws in force in the British Virgin Islands. The Client shall provide THORNTON SMITH with any further written information THORNTON SMITH may reasonably request about the background of the Client. THORNTON SMITH may refuse to provide any or all of the Services before the documents and information, as described herein, are furnished by the Client. In limited circumstances THORNTON SMITH may disclose the Client's information to other persons and organizations. For example, this information may be disclosed:
- (a) to other suppliers of professional services where THORNTON SMITH is acting on behalf of the Client with a third party (the third party may be represented by a lawyer and THORNTON SMITH may need to disclose information about the Client to them in the course of discussions about the transaction);
  - (b) to suppliers of administration, financial/banking and technical services where some of the typing, document preparation and photocopying necessary in dealing with the Client's matter may be handled by an independent contractor and not employees of THORNTON SMITH; or
  - (c) to the courts, governmental and regulatory authorities where THORNTON SMITH is applying for a permit or a license on behalf of the Client, then THORNTON SMITH may need to disclose relevant information about the Client to the organization giving permission or issuing the license, or to comply with any laws or applicable codes of conduct.

On occasion THORNTON SMITH may use the information obtained to send information to the Client which is not connected with the transaction. If the Client would like not to receive such information, please notify the Business Center at [mediacenter@thorntonsmith.com](mailto:mediacenter@thorntonsmith.com).

## **INDEMNITY**

27. The Client will indemnify and keep indemnified THORNTON SMITH and its affiliated entities and their respective employees, agents, directors 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, as well as all costs (as certified in writing by THORNTON SMITH, which certificate shall, absent manifest error, be final) incurred recovering any sums due to THORNTON SMITH from the Client, except where such liabilities, costs and expenses arise through the fraud, wilful default or negligence of any of THORNTON SMITH and its affiliated entities or any of their respective employees, directors and officers.

28. The maximum liability of THORNTON SMITH for loss or damage for breach of contract, breach of trust, negligence or otherwise (other than fraud), and excluding from liability any and all consequential or indirect loss or loss of profits or of contract, is ten (10) times the total amount of the professional fees for any one transaction or series of connected transactions, unless a higher amount is agreed at the commencement of the transaction, up to a maximum amount of \$1 million.

#### TERMINATION OF SERVICES

29. THORNTON SMITH may at anytime and for any reason cease to provide any or all of the Services to the Client by giving seven (7) days written notice of termination and accompanied by a list of other law firms in the British Virgin Islands from the Yellow Pages. In such case THORNTON SMITH shall do all that is legally necessary in order to enable the transfer of the Client's files to another lawyer in the British Virgin Islands as long as all outstanding fees due to it have been paid.
30. The Client may at anytime and for any reason require THORNTON SMITH to cease the provision of any or all of the Services to the Client by giving notice of termination which may be written or oral and may have immediate effect. In such case THORNTON SMITH shall do all that is legally necessary in order to enable the transfer of the Client's files to another lawyer in the British Virgin Islands as long as all outstanding fees due to it have been paid.
31. The Services shall be terminated at the conclusion of the matter and THORNTON SMITH shall send a closing correspondence to the Client confirming that the professional relationship has ended and returning all original documents. Copies of all documents in relation to the Client will be retained, including in electronic form, for a period of 5 years after the closing correspondence is sent to the Client and thereafter will be destroyed in accordance with THORNTON SMITH's Records Destruction Guidelines, a copy of which can be provided upon request.

#### CONFIDENTIALITY

32. THORNTON SMITH will not disclose to any other person any information obtained in the course of providing the Services except to the extent required by law. However, possession of confidential information will not preclude THORNTON SMITH from acting for any other person after the conclusion of the matter.

#### STANDARD OF SERVICE

33. The aim of THORNTON SMITH is to provide a service with which the Client will be satisfied. However, on some occasions the Client's expectations may not be met or the Client may have a query or concern or simply be dissatisfied. If any of these occur, initially the Client should raise them with the person(s) named in the Engagement Letter or Engagement e-Mail. If the query or concern cannot be resolved to the satisfaction of the Client before the completion of the transaction THORNTON SMITH will negotiate a refund of up to 50% of the professional fees but not any disbursements or expenses.

#### BUSINESS HOURS

34. THORNTON SMITH will be open for business on Monday to Friday from 9:00 am to 5:00 pm (UTC-4:00). THORNTON SMITH's Business Center will function 24 hours, 7 days a week to provide any necessary support to its professional staff, who will be available both by Smartphone and remote access at anytime outside normal business hours. However, THORNTON SMITH does not normally provide Services outside normal business hours except where there is a prior arrangement with the Client and at a premium rate. However, where there is an office closure during normal business hours, THORNTON SMITH will notify the Client in advance. If the person dealing with a matter will be unavailable during normal working hours the Client will be notified of the unavailability and expected return, where known, and complete cover will be provided by another person of equal competence and skill.

## **EQUALITY AND DIVERSITY**

- 35.** THORNTON SMITH has a strong commitment to embracing as well as promoting equality and diversity in its relationships with clients, employees and third parties. THORNTON SMITH's equal opportunities policy is available on request.

## **GOVERNING LAW AND JURISDICTION**

- 36.** These Terms shall be governed by the laws of the British Virgin Islands and any complaint, claim or dispute between the Client and THORNTON SMITH or against the other or any agent or employee of the other, whether related to the attorney-client relationship or otherwise, including those created by practice, common law, statute for the time being, including all disputes about the validity of these Terms, shall be referred to and finally resolved by arbitration in accordance with the Grievance Procedure.