

# TERMS OF ENGAGEMENT

in force as of 01 January 2022

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ТОРНТОН СМИТ

THORNTON SMITH

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Virgin Islands (British)

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## 1. DEFINITIONS

Unless the context otherwise requires,

**"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.

**"Client's Data"** means any information provided by the Client to THORNTON SMITH and used, or to be used, by THORNTON SMITH directly or indirectly in the performance of the Services.

**"Client Questionnaire"** means any form issued by THORNTON SMITH for the purpose of establishing the Client's identity and should usually be accompanied by a valid form of government issued identification document, address (including postal address) and contact details to be used for the primary purpose of Communication, then completed and signed by the Client.

**"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) facsimile; (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 is available on 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, before or at any time upon or after the commencement of Services.

**"Grievance Procedure"** means the procedures and the Dispute Resolution Rules outlined in THORNTON SMITH's Disciplinary and Grievance Procedures, a copy of which is available on request.

**"Retainer"** means monies paid, whether in part or in full, on account in advance, including any subsequent payments or "top-ups", to cover any anticipated professional fees and disbursements for a proposed transaction.

**"Services"** includes any legal advice or other legal service in relation to British Virgin Islands law only contained in the Engagement Letter or Engagement e-Mail 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 Engagement e-Mail.

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

**"THORNTON SMITH"** means a professional services provider doing business in the British Virgin Islands with a valid license under the Business, Professions and Trade Licenses Act (Cap. 200), whose principal members hold a valid practicing certificate under the Legal Professions Act, 2015 as well as the Commissioners for Oaths and Notaries Public Act, 2007 and any affiliate entity that holds any license or

permit under any financial services legislation in accordance with the Financial Services Act, 2000 or any other law for the time being in force in the British Virgin Islands.

## **2. INSTRUCTIONS**

- 2.1.** 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 Communication. For the avoidance of doubt, the payment of a Retainer, shall be acceptance of the Engagement e-Mail and provisional acceptance of the Engagement Letter.
- 2.2.** On receiving instructions THORNTON SMITH will write to the Client to record and confirm the Client's instructions, which may be initially included in the Engagement Letter or Engagement e-mail, 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 is available on 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 any time before receiving the countersigned Engagement Letter or the acceptance of the Engagement e-Mail, or the payment of the Retainer, 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 file, and no attorney-client relationship will have existed in respect of that matter.
- 2.3.** The Client should respond truthfully and accurately within a reasonable time to all requests for further information, additional instructions or updated or additional information in respect of the Client Questionnaire 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 or has changed. If for any reason the Client refuses, or is otherwise unable, to provide all further information or additional instructions within a reasonable time as requested by THORNTON SMITH, or otherwise fails to provide updated information or documents when those provided are no longer true or accurate, THORNTON SMITH reserves the right to terminate the attorney-client relationship or alternatively to apply a premium rate.
- 2.4.** 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.
- 2.5.** 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.
- 2.6.** While THORNTON SMITH will take precautions to protect the electronic networks, THORNTON SMITH cannot guarantee the security or integrity of such Communications and cannot accept any liability for degradation viruses or other infections.

## **3. PROFESSIONAL FEES**

- 3.1** 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 rate, and unless otherwise agreed, or otherwise provided herein, the standard hourly rate will apply; or
- (c) a hybrid fee based on time incurred charged on an hourly basis capped to a fixed maximum, but unless otherwise agreed, the fee cap will not be at the level of any Retainer; or
- (d) a legal aid schedule of fees, if the Client is referred by the Legal Aid Board; or
- (e) a contingency fee based on 25%, or such higher percentage as may be agreed, of the amount recovered, awarded, or otherwise agreed, including any settlement.

**3.2** Subject to clause 3.1 above, where the Engagement Letter of the Engagement E-Mail does not express the basis for the calculation of professional fees, all professional fees shall be calculated based on an hourly basis. Where professional fees are calculated based on an hourly basis it will be prorated on units of 5 minutes against the hour. The current hourly rates are:

<b>FEE EARNER</b>	<b>STANDARD RATE</b>	<b>PREMIUM RATE</b>
Principal Associate/Partner	\$500.00	\$750.00
Senior Associate	\$400.00	\$600.00
Junior Associate	\$300.00	\$450.00
Newly Qualified Associate	\$200.00	\$300.00
Principal Paralegal	\$150.00	\$250.00
Senior Paralegal	\$100.00	\$300.00
Junior Paralegal	\$75.00	\$150.00

**3.3** In determining the professional fees to be charged, the amount of any fixed fee or the level of fee earner to be assigned to a particular matter, 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 can be adjusted upwards if, for example, the Services are high-value transactions, complex corporate or commercial transactions, or must be provided outside normal business hours and/or on an expedited timescale, in which case a premium rate will apply.

**3.4** Where practical, THORNTON SMITH will provide the Client with an estimate of the cost applicable to the Services 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 Services into stages and give the Client an estimate of costs that is likely to be incurred up 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 or a binding agreement. THORNTON SMITH reserves the right to revise any estimate of professional fees as the Services are delivered.

**3.5** THORNTON SMITH requires a Retainer and will not commence work without having first received monies on account, except on a contingency 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. The Retainer will be applied to the professional fees in any invoice.

**3.6** An initial consultation fee of \$100.00 may be charged separately from the Retainer and payable following the first meeting between the Client and THORNTON SMITH.

- 3.7** If the matter is not concluded THORNTON SMITH will still charge for the time spent on the transaction on an hourly basis, and the Client will be expected to pay the professional fees incurred on a pro rata basis.
- 3.8** If the Retainer is fully expended before the completion of the Services, unless otherwise agreed, THORNTON SMITH will advise the Client of the situation and give the Client at least seven (7) days' notice, which may be extended for an additional seven (7) days, to replenish the Retainer and the amount required to replenish the Retainer, but if the Client fails to comply with the notice and any extension thereof, THORNTON SMITH reserves the right to terminate the attorney-client relationship or alternatively to apply a premium rate.
- 3.9** If the Retainer is not fully expended after the completion of the Services, unless otherwise agreed, THORNTON SMITH will refund the Client of the balance of the Retainer.

#### **4. DISBURSEMENTS**

- 4.1** 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, bailiff fees, expert fees and other expenses and payments payable to third parties 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.
- 4.2** All travel outside the British Virgin Islands for the purpose of the Services will be subject to THORNTON SMITH's Travel and Expense Policy, a copy of which is available on request. The Client shall remain liable for all expenses incurred by THORNTON SMITH for the purpose of such travel.
- 4.3** Charges for office services, which may include photocopying, faxing, phone calls, are included as disbursements in the invoice. A copy of THORNTON SMITH's Photocopying Policy and Telephone Policy are available on request.
- 4.4** THORNTON SMITH requires a Retainer 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 providing the Services. 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 may exceed the Retainer.
- 4.5** If the matter is not concluded THORNTON SMITH will still charge for the disbursements and expenses incurred on behalf of the Client, who will have to pay all expenses in full.
- 4.6** 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.

#### **5. BILLING**

- 5.1** THORNTON SMITH will issue a numbered invoice that will be the basis for payment of any professional fees and disbursements. Price quotations are given with the expectation that the Client will prepare payment upon providing clear instructions for THORNTON SMITH to provide the Services. The invoice will include THORNTON SMITH's reference number contained in either the Engagement Letter or the Engagement E-Mail which would reference the services provided, and it will also itemize all disbursements charged. The professional fees will not be itemized, but where the professional fees are calculated on a time basis, the hourly rate and number of hours

will be included, and otherwise only the total professional fees will be included. For a full itemization of professional fees, the Client may, at any time, request a detailed bill of costs.

- 5.2** Invoices will be issued by THORNTON SMITH at the completion of the matter and where the professional fees are calculated based on time incurred or on a hybrid basis and the matter will take longer than a month, interim invoices will be issued on a periodic basis.
- 5.3** 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.
- 5.4** Payment of invoices issued by THORNTON SMITH, including interim invoices, should be made within fourteen (14) days of receipt unless otherwise agreed.
- 5.5** THORNTON SMITH will not accept cash payments more than \$850.00 in a single month or in excess of \$10,000.00 in a 12-month period. Cheques drawn on a bank account maintained at a regulated financial institution within the British Virgin Islands must be made out to THORNTON SMITH. Payments from outside the British Virgin Islands must be made by bank transfer. If the Client seeks to pay by bank transfer THORNTON SMITH will provide bank transfer instructions with the bank account information.
- 5.6** Once the Client fails to settle invoices within the payment period stated in the invoice, or as otherwise agreed, 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 overdue amount at a rate of 5% per month above the U.S. Prime Rate.
- 5.7** 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 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.
- 5.8** 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. The Client remains liable for all costs incurred in any court proceedings.
- 5.9** All professional fees and disbursements, either quoted or billed, shall be deemed to be expressed in United States Currency (USD or US\$) unless the contrary intention is provided. Where any currency other than the United States Currency is agreed to be used between the Client and THORNTON SMITH the equivalent in United States Currency shall also be included and in the event of any discrepancy, variation or monetary fluctuation, the value expressed in United States Currency shall take precedence. Where any payment is made in a foreign currency, the payment must be converted into United States Currency at the standard rate on the date of payment issued by the Bureau of Fiscal Services of the U.S. Department of the Treasury, and the Client shall be responsible for all conversion charges and fees, including any shortfall and deductions.

## **6. TRUST ACCOUNT**

- 6.1** THORNTON SMITH maintains a separate trust account for all funds which it receives from Clients (except for funds which are for payment of invoices).



- 6.2** While THORNTON SMITH will not hold more than Ten Thousand Dollars (\$10,000.00) 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 account with a licensed bank in the British Virgin Islands, 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.

## **7. DISCLAIMER**

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

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

- 8.1** 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.
- 8.2** 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. 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.
- 8.3** The Client shall provide THORNTON SMITH with any further written information THORNTON SMITH may reasonably request about the background of the Client.
- 8.4** THORNTON SMITH may refuse to provide any or all 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.

- 8.5** 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).
- 8.6** If the Client is a Politically Exposed Person ("PEP") THORNTON SMITH will formally consider whether, in the circumstances, it will accept instructions from the Client or continue to act for the Client. THORNTON SMITH will not act for an overseas PEP, but if THORNTON SMITH decides not to act on behalf of a PEP who is ordinarily resident in the British Virgin Islands, it will issue a Non-Engagement Letter. For this purpose, a PEP is a person who falls within or has been within 12 months prior to the instructions any of the following categories of persons:
- (a) head of state;
  - (b) head of government;
  - (c) minister and deputy or junior minister;
  - (d) member of parliament, or other legislative bodies;
  - (e) judge or other judicial officer whose decision is not subject to further appeal in certain circumstances;
  - (f) member of a court of auditors;
  - (g) member of a board of central bank;
  - (h) ambassador or charge d'affairs;
  - (i) officer in any armed force equivalent to a commissioned officer of OF-1 rank, or higher, in forces of the North Atlantic Treaty Organization;
  - (j) member of an administrative, management or supervisory board of a state-owned enterprise; or
  - (k) spouse, partner, children (and their spouses or partners), parent, close associate such as joint beneficial owner of a legal entity or legal arrangement with whom there is a close business relationship with any category of persons listed above.

## **9. DATA PROTECTION**

- 9.1** The Client's Data shall always remain the property of the Client.
- 9.2** The Client's Data shall be identified, clearly marked, and recorded as such by THORNTON SMITH on all media and in all documentation.
- 9.3** THORNTON SMITH shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Client's Data.
- 9.4** In the event of termination of the Services in accordance with Clause 12.1, THORNTON SMITH shall when directed to do so by the Client, and instruct all its agents and subcontractors to, erase all the Client's Data and all copies of any part of the Client's Data from THORNTON SMITH's systems and magnetic data.
- 9.5** THORNTON SMITH agrees to comply and have adequate measures in place to ensure that its staff always comply with the provisions and obligations contained in the Data Protection Act, 2021 (as amended from time to time).

- 9.6** All the Client's Data shall only be used for the purposes of these Terms and shall not be further processed or disclosed without the consent of the Client.
- 9.7** Nothing in these Terms shall oblige the Client to disclose any information to THORNTON SMITH if it is of the view that to do so would be a breach of the Data Protection Act, 2021.
- 9.8** THORNTON SMITH shall indemnify the Client for any breach of the Data Protection Act, 2021 which renders the Client liable for any costs, fines, claims or expenses howsoever arising.
- 9.9** In fulfilment of its obligations under the Data Protection Act, 2021 THORNTON SMITH will ensure the recruitment and training of staff to ensure awareness of, and compliance with, their obligations under these Terms, as well as maintaining audit and accounting procedures to deal with the requirements of these Terms, as well as maintaining the integrity and security of all the Client's Data, and any other measures and procedures to ensure that THORNTON SMITH's obligations under these Terms are met.
- 9.10** THORNTON SMITH agrees to:
- (a) provide the Client with such information and access to its premises, upon giving reasonable notice, as the Client may reasonably require to satisfy itself that THORNTON SMITH is complying with the obligations referred to in these Terms; and
  - (b) make such application for a change in its notification and take such other steps as may be reasonably practicable to afford the Client access to information which is reasonably required by the Client in connection with or for any purpose connected with its rights and obligations under these Terms.

## **10. CONFIDENTIALITY**

- 10.1** THORNTON SMITH will not disclose to any other person the Client's Data except in accordance with these Terms.
- 10.2** Possession of the Client's Data will not preclude THORNTON SMITH from acting for any other person after the termination of the Services in accordance with Clause 12.1.

## **11. INDEMNITY**

- 11.1** 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.
- 11.2** **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.**

## **12. TERMINATION OF SERVICES**

- 12.1** THORNTON SMITH may at any time 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, which will specify the reason

for the termination, but the notice period may be extended if, and accompanied by a list of other professional services providers in the British Virgin Islands from an independent third-party source.

- 12.2** The Client may at any time 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.
- 12.3** As a result of the termination of the Services, THORNTON SMITH shall enable the transfer of the Client's files to another professional service provider in the British Virgin Islands as long as all outstanding fees due to it have been paid by putting all printed documents in a secure folder, binder or envelope or all electronic documents on a USB flash drive or similar data storage device, including any cloud based data storage service, that is capable of collection at the offices of THORNTON SMITH by the new professional services provider.
- 12.4** As a result of the termination of the Services before the completion of the Services, and unless otherwise agreed before or at the time of termination, the Client shall forfeit to THORNTON SMITH any balance on the Retainer.
- 12.5** After the termination of Services that involve an ongoing matter before any court or tribunal in which THORNTON SMITH, or any agent or employee of THORNTON SMITH, was on record as representing the Client, then the Client shall notify the court or tribunal of the change of legal practitioner in accordance with the appropriate rules of court or of the tribunal. If the Client fails to do so within seven (7) days or such reasonable time thereafter, THORNTON SMITH shall take the appropriate steps to be removed from the record and the Client shall remain liable for all costs, fees and disbursements associated with such actions taken by or on behalf of THORNTON SMITH.
- 12.6** 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 and the balance of any Retainer. Copies of all documents in relation to the Client will be retained, including in electronic form, for a period of five (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 is available on request.
- 12.7** These Terms shall survive for a period of five (5) years after the termination of the Services.

### **13. STANDARD OF SERVICE**

- 13.1** 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.
- 13.2** 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.
- 13.3** If the negotiations fail then the query or concern shall become a complaint or dispute in accordance with Clause 18.1.

### **14. BUSINESS HOURS**

- 14.1** THORNTON SMITH will be open for business on Monday to Friday from 9:00 a.m. to 5:00 p.m.. THORNTON SMITH 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 any time outside normal business hours. However, THORNTON SMITH does not provide Services outside

normal business hours except where there is a prior arrangement with the Client and only at a premium rate in accordance with Clause 3.2.

- 14.2** Where there is an office closure during normal business hours, THORNTON SMITH will notify the Client in advance or as soon as reasonably possible in accordance with THORNTON SMITH's Disaster Recovery Plan, a copy of which is available on request.
- 14.3** If the person assigned to the Client's 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 at least equal competence and skill.
- 14.4** All references to time shall be deemed to be expressed using Coordinated Universal Time (UTC), a time offset from UTC of -04:00 as standard time zone of the British Virgin Islands, unless the contrary intention is provided, and where any reference to time other than UTC-04:00 is agreed to be used between the Client and THORNTON SMITH the equivalent time in UTC-4:00 shall also be included and in the event of any discrepancy, the time expressed in UTC-4:00 shall take precedence.

## **15. GENERAL BUSINESS INFORMATION**

- 15.1** The main office of THORNTON SMITH is located at Capitol Chambers, Parson's Estate, Sea Cow's Bay, Tortola, Virgin Islands (British), but in the event of an emergency a temporary relocation notice may be issued to the Client indicating the location of temporary office premises, and a permanent relocation notice may be issued to the Client indicating the location of any permanent change of location with at least thirty (30) days' notice.
- 15.2** Service of process or the delivery of documents will be accepted at the main office of THORNTON SMITH during normal business hours and proof of acceptance of service will be provided, but any documents received outside any business day will be accepted and processed as though it was served on the next business day. However, any other means of personal service other than service at the main office of THORNTON SMITH must be agreed in advance and will send documents to, or on behalf of, the Client by personal service, including using a courier service, unless otherwise agreed.
- 15.3** The postal address of THORNTON SMITH is P.O. Box 3534, Road Town, Tortola VG1110, Virgin Islands (British). Documents sent to this postal address by registered post from a local address should be expected to be delivered within ten (10) days. THORNTON SMITH does not accept service of process by regular mail and will not send documents to, or on behalf of, the Client by regular mail unless otherwise agreed.
- 15.4** The main business line of THORNTON SMITH is +1 284 494 2518 or 2519 and an alternative business line is +1 284 345 2181, but in the event of an emergency a temporary change of telephone notice may be issued to the Client indicating an alternative telephone line, and a permanent change of telephone notice may be issued to the Client indicating the new telephone line with at least thirty (30) days' notice.
- 15.5** Documents sent by electronic mail should be expected to be delivered within three (3) hours and should always be copied to any alternative electronic mail provided in either the Engagement Letter or Engagement E-Mail.
- 15.6** THORNTON SMITH does not accept service of process by facsimile.
- 15.7** All Client Data or information provided by THORNTON SMITH shall be in the English language, the official language of the British Virgin Islands, unless the contrary intention is provided, and where any reference to a language other than English is agreed to be used between the Client and THORNTON SMITH the equivalent English translation shall also be provided by the Client and in the event of any discrepancy, the English language version shall take precedence. For this purpose, the version of the English language shall be in accordance with the *Oxford Dictionary* or any of its lexicographical heirs using the form and style of the *New Oxford Style*

*Manual*, and all citations shall be in accordance with the *Oxford University Standard for the Citation of Legal Authorities* (4<sup>th</sup> Ed).

**15.8** All references to units of measurement shall be deemed to be expressed using the metric system, unless the contrary intention is provided, and where any reference to units of measurement other than the metric system is agreed to be used between the Client and THORNTON SMITH the equivalent units of measurement in the metric system shall also be included and in the event of any discrepancy, the units of measurement expressed in the metric system shall take precedence.

**15.9** The main website of THORNTON SMITH is [www.thorntonsmith.com](http://www.thorntonsmith.com) and will contain any notice to be issued in accordance with these Terms and any other relevant information.

**15.10** Secondary media services of THORNTON SMITH include our

- (a) Facebook page ([www.facebook.com/thorntonsmithbvi](http://www.facebook.com/thorntonsmithbvi)); and
- (b) LinkedIn page ([www.linkedin.com/company/2355831/](http://www.linkedin.com/company/2355831/)),

where similar notices may be found in accordance with these Terms.

## **16. EQUALITY AND DIVERSITY**

**16.1** THORNTON SMITH has a strong commitment to embracing as well as promoting equality and diversity in its relationships with clients, colleagues and community. THORNTON SMITH's equal opportunities policy is available on request.

**16.2** If the Client employs any employee of THORNTON SMITH during the attorney-client relationship or within two (2) years after the conclusion of the attorney-client relationship, the Client shall pay to THORNTON SMITH as liquidated damages and not as a penalty, an amount equal to the last annual salary of the employee at THORNTON SMITH plus interest at 10% per annum on every unpaid portion after the payment becomes due. However, THORNTON SMITH may waive this fee at the request of the employee if that employee introduced the Client to THORNTON SMITH more than two (2) years before the employee's termination date with THORNTON SMITH.

## **17. CORPORATE SOCIAL RESPONSIBILITY (CSR)**

**17.1** THORNTON SMITH has a strong commitment to engaging in environmental, social and governance matters that affect both financial and economic performance in its relationships with clients, colleagues and community.

**17.2** As part of its CSR programmes it monitors the legislative agenda of the government of the British Virgin Islands as well as policy developments by the Cabinet of the British Virgin Islands as well as regional and international organizations and routinely participate in public discourse on these initiatives. THORNTON SMITH's contributions and position papers are available on request. Unless otherwise agreed as part of the Services, any position that THORNTON SMITH may take with respect to any matter shall not be part of any lobbying effort on behalf of the Client or considered to affect, either directly or indirectly, or either negatively or positively, the performance of the Services.

**17.3** Through its affiliate, *The William Thornton Foundation*, it actively provides charitable work within the British Virgin Islands.

## **18. GOVERNING LAW AND JURISDICTION**

**18.1** These Terms shall be governed by and construed in accordance with 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 exclusively to and finally resolved by arbitration in accordance with the Grievance Procedure.

- 18.2** Notwithstanding anything in the Grievance Procedure, the unsuccessful party shall be liable for all costs, including the arbitrator's fees, of the successful party, or for such costs as shall be proportioned by the arbitrator based on the overall success of each party where neither party was totally successful.

[www.thorntonsmith.com](http://www.thorntonsmith.com)