

Thomas Miller Law Firm Relationship Terms

1. APPLICATION

- 1.1 This Agreement is made between the Law Firm and Thomas Miller & Co. Limited, a company incorporated in England and Wales under registered no. 1898192, whose registered office is at International House, 26-28 Creechurch Lane, London EC3A 5BA, England (as from 3rd August 2008 - 90 Fenchurch Street, London EC3M 4ST) ("**Thomas Miller**"). The Law Firm and (subject to Clause 1.8.1) Thomas Miller are referred together as "**the Parties**" and individually as a "**Party**".
- 1.2 This Agreement shall apply to any matter on which the Law Firm accepts instructions from one or more of the following ("**Client**"):
- 1.2.1 Thomas Miller and any of its Affiliates;
- 1.2.2 any person whose business is managed by Thomas Miller or any of its Affiliates, to which it has been agreed by the Parties that this Agreement shall apply ("**Club**");
- 1.2.3 any client or member ("**Member**") of any Club, or an insurance broker acting on behalf of such a Member, insofar as the matter is or may be insured by the Club;
- 1.2.4 any other insurer on whose behalf a Club acts, for example as leader on a risk.
- 1.3 If as part of its arrangement with Thomas Miller a Law Firm has agreed to supply other services to Members (not being insured services) at preferential or discounted rates, those services shall be provided in accordance with the Law Firm's own terms and conditions which shall incorporate the agreed preferential or discounted rates.
- 1.4 The expressions "**Club**" and "**Member**" also include any person for whose business, whether or not an insurance business, Thomas Miller provides services and the clients of that business. If such a business is not an insurance business, it shall only be included under this Agreement by specific agreement in writing.
- 1.5 For the purposes of this Agreement the expression "**Law Firm**" shall include all its offices and those persons whose businesses are owned by or formally associated with the Law Firm.
- 1.6 This Agreement comprises:
- 1.6.1 these TM Law Firm Relationship Terms (version July 2008) ("**Relationship Terms**");
- 1.6.2 the Value for Money Guidelines and the Billing Guidelines for UK Lawyers, as may be issued from time to time in accordance with this Agreement ("**Guidelines**"); and
- 1.6.3 subject to Clause 1.9, the Law Firm's terms and conditions for supply of the Services
- all of which are collectively referred to as "**this Agreement**"
- 1.7.1 This Agreement shall commence on any date agreed by the Parties or, if none, seven days after receipt of these Relationship Terms by the Law Firm.
- 1.7.2 If the Law Firm, however, has not previously received instructions from any Client, then this Agreement shall commence from the date of the Law Firm's receipt of its first instructions from a Client.
- 1.8 Thomas Miller enters into this Agreement for itself and as agent for each Client from whom the Law Firm accepts instructions within the scope of this Agreement, and accordingly:-
- 1.8.1 Each reference to "**the Parties**" includes, in the case of Thomas Miller, the relevant Client and "**Party**" has a corresponding meaning.
- 1.8.2 Subject to, as between the Client and the Club, the applicable Club Rules, any consent, instruction or notification required to be given by the Client under this Agreement may be given by Thomas Miller on behalf of the Client.
- 1.8.3 Where the Services are provided to a Member, any consent, instruction or notification required to be given to the Client under this Agreement may be given to Thomas Miller, but a copy of any such notice should also wherever possible be sent to the Member.
- 1.8.4 In all cases where the Law Firm is a law firm established in the United Kingdom, this Agreement establishes a solicitor-client relationship (or the equivalent in any other jurisdiction) between the Law Firm and the Client.

1.8.5 In the event of a conflict of interest arising between a Member and a Club in relation to any matter within the scope of this Agreement, the Law Firm may (where it is reasonable to do so and with the consent of the Member and the Club) cease to act on behalf of the Club and continue to act on behalf of the Member, in which case:

- (a) The Club will pay to the Law Firm any Fees payable by it in respect of the matter up to the date on which the Law Firm ceased to act on behalf of the Club in relation to the matter..
- (b) The Club will waive all interest, including solicitor-client privilege, in respect of any information and materials obtained by the Law Firm during the course of the instructions.

1.9 In the event of any conflict or inconsistency between any provision of these Relationship Terms and any other terms or conditions subject to which any offer to provide the Services is made by the Law Firm or any request for the Law Firm to provide the Services is purported to be accepted by the Law Firm (including in particular any term or condition which purports to impose a greater obligation on the Client or to exclude any liability of the Law Firm to a greater extent than under this Agreement), these Relationship Terms shall override such other terms or conditions to the extent of the conflict or inconsistency.

2. INTERPRETATION

2.1 In these Relationship Terms (in addition to the expressions defined in Clause 1) the following expressions have the meaning given opposite:

Affiliate	any company which controls, is controlled by or is under common control with another company;
Applicable Laws	all laws, rules, regulations, recommendations, guidelines and codes which impose legal, regulatory or other requirements in respect of all or any of the activities which the Law Firm undertakes as part of the Services;
Fees	the fees (calculated as agreed for each Year during the term of this Agreement), together with any disbursements that may be incurred on behalf of the Client;
Services	all legal services provided by the Law Firm to any Client.
Year	each period of 12 months starting from the Commencement Date or any other agreed period.

2.2 In these Relationship Terms:

2.2.1 **'writing'**, and any cognate expression, includes e-mail or fax but not text messages or other forms of electronic communication;

2.2.2 where an expression is qualified by one or more examples preceded by the word **'including'**, it shall not limit the general scope of that expression.

2.3 Any variation to these Relationship Terms shall be agreed in writing between the Parties.

3. PROVISION OF THE SERVICES

3.1 The Law Firm shall provide the Services to the Client in accordance with this Agreement.

3.2 As consideration for the provision of the Services, the Client shall pay to the Law Firm the Fees, in each case subject to receipt of a proper invoice and supporting documentation in such format and submitted by such means as the Client may reasonably require.

3.3 The Law Firm shall provide the Services:

3.3.1 in accordance with the Guidelines;

3.3.2 with reasonable skill, care and diligence; and

3.3.3 in compliance with all Applicable Laws.

- 3.4 Thomas Miller may at any time during the term of this Agreement amend the Guidelines or change the Services by giving the Law Firm 30 days' notice, in which case:
- 3.4.1 The Law Firm may give its comments during that period.
- 3.4.2 Thomas Miller shall consider those comments and may in the light of them further amend the Guidelines or further change the Services (or not), in its own discretion in which case it will notify the Law Firm.
- 3.4.3 If the amended Guidelines or the changed Services remain unacceptable to the Law Firm, it may terminate this Agreement in accordance with Clause 4.1.1.
- 3.5 The copyright in all documents and records, in any form, made in the course of the provision of the Services shall belong to the Client, except to the extent that such documents or records are created using precedents or similar materials where the copyright belongs to the Law Firm or a third party.

4. TERMINATION OF SERVICES

- 4.1 This Agreement shall continue indefinitely subject to the following:
- 4.1.1 It may be terminated by Thomas Miller or the Law Firm by giving not less than three months' notice.
- 4.1.2 If one of the Parties is in breach of this Agreement, the other Party may (subject to Clause 4.2) give 30 days' notice of termination during which the Party in breach shall seek to remedy the breach, but if it fails to do so this Agreement shall terminate.
- 4.1.3 In the event of termination of this Agreement, the Parties shall agree an orderly transfer of each matter to another supplier and shall follow the procedures set out in Clause 4.5.
- 4.2 In the event of non-payment of Fees or other breach of this Agreement by a Member in respect of an individual matter on which the Law Firm is instructed, the Law Firm may terminate the provision of the Services to the Member or the Club, as appropriate, in respect of such matter and exercise such remedies as it may have against the Member or the Club, as appropriate, in accordance with its own terms and conditions but otherwise this Agreement shall continue in force.
- 4.3 Where, for example in a case of conflict of interest as referred to in Clause 1.8.5, a Club terminates the Services in relation to a particular matter but the Law Firm continues to act on behalf of the Member alone, this Agreement shall cease to apply to such matter and the Law Firm must make a new contract with the Member.
- 4.4 In exceptional circumstances (including a conflict of interest), either Party may terminate the provision of the Services to any Client in respect of any individual matter, but in any such case the Law Firm shall endeavour to give Thomas Miller and the Client reasonable notice in writing, and in any event not less than 7 days' notice, of its intention to terminate the provision of the Services to the Client and shall co-operate with Thomas Miller and the Client in respect of any reasonable request that Thomas Miller or the Client may make.
- 4.5 The Law Firm shall upon termination of the Services in respect of any matter:
- 4.5.1 except where the Law Firm is obliged by law or is permitted by law (for example, in exercise of any lien that it may have) to retain such information or data, return to the Client or erase all confidential information and personal data obtained or produced in the course of providing the Services, and supply the Client with copies of all records relating to the provision of the Services;
- 4.5.2 assist and co-operate with Thomas Miller and the Client to ensure an orderly transition of the Services to any replacement supplier of similar services appointed by the Client and/or the completion of any work in progress, and seek to comply with any reasonable request that Thomas Miller or the Client may make; and
- 4.5.3 promptly provide all information concerning the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or any new supplier of similar services to take over the handling of the matter.
- 4.6 Termination of this Agreement or the provision of the Services in respect of any individual matter shall not affect any accrued right or liability of either Party in respect of this Agreement or the matter in question.
- 4.7 The Parties have entered into this Agreement on the understanding that no employee of Thomas Miller or the Client will as a result of this Agreement being entered into transfer to the Law Firm pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), and no employee of the Law Firm will on the termination of this Agreement transfer to Thomas Miller or the Client or to a new service provider of Thomas Miller or the Client pursuant to TUPE. Each Party shall accordingly indemnify the other for all costs, expenses, losses and other liabilities (including wages, salaries and other benefits, the cost of all holiday entitlements, holiday remuneration and bonus entitlements, and all taxes and contributions) in respect of any of its employees arising out of:

- 4.7.1 any act or omission by that Party in relation to the employment of the individual in question;
- 4.7.2 the application or effect of TUPE in relation to that individual; or
- 4.7.3 the breach by that Party of any of its obligations under TUPE.

5. LIABILITY

- 5.1 The Law Firm's liability in respect of the provision of the Services shall be limited in respect of any one event or series of connected events to the sum set out in the Law Firm's terms and conditions, but if there is no such limit or such sum is less than £3 million, then the limit shall be £3 million.
- 5.2 Thomas Miller shall have no liability to the Law Firm in respect of any Fees payable by the Client except where the Client is Thomas Miller itself or one of its Affiliates.
- 5.3 In any case where the Law Firm receives instructions on a matter where negligent performance could result in potential liability greater than the Law Firm's limit of liability as defined by Clause 5.1, the Law Firm shall notify the Thomas Miller claims executive handling the matter, and, if applicable, the Member, with a copy to the Thomas Miller Director of Professional Law Firms, as soon as possible after receiving the instructions, or as soon as the Law Firm becomes aware that such exposure might arise, whichever is earlier. Thomas Miller will then agree with the Law Firm the appropriate action (if any) that should be taken. In the event that the Law Firm agrees to increase the limit of its liability as defined by Clause 5.1, in respect of an individual matter, it must ensure that the limit of its insurance(s) is sufficient to cover such increased limit of liability.

6. INSURANCE

- 6.1 The Law Firm shall pay for and maintain one or more policies of insurance in respect of Professional Negligence / Errors & Omissions insurance with a policy limit, in respect of any one event or series of connected events, of not less than its limit of liability as defined by Clause 5.1. The insurers of such policies must either be approved by the Law Firm's professional body or have a Standard & Poors rating of not less than BBB or an AMBest rating of not less than B+.
- 6.2 All of the Law Firm's offices providing Services under this Agreement shall be covered by such policies.
- 6.3 The Law Firm shall:
- 6.4 ensure that all such policies comply with any statutory requirements as well as those (if any) of any professional body of which the Law Firm is a member;
- 6.5 produce to Thomas Miller on request a certificate of insurance for, or other evidence of, that insurance and evidence of the payment of the premium; and
 - 6.5.1 immediately notify Thomas Miller if any policy is cancelled, if the coverage or the terms are significantly restricted or if the Law Firm is unable to obtain coverage in accordance with the terms of this Agreement.
- 6.6 The Law Firm is responsible for purchasing at its own expense Public Liability insurance with sufficient limits of liability to take account of the fact that its staff may visit Members' / Clients' facilities and ships.
- 6.7 The Law Firm is responsible for purchasing at its own expense policies relating to the travelling of its staff, including health insurance and, if appropriate, kidnap and ransom insurance.
- 6.8 The Law Firm shall have a Business Continuity Plan in respect of all its offices, which:
 - 6.8.1 takes account of complete loss of the Law Firm's premises and provides for a viable alternative;
 - 6.8.2 provides for recovery and operation of its data systems within 12 hours of an incident taking place;
 - 6.8.3 provides a plan for the replacement / recovery of documents in the event of the originals being destroyed;
 - 6.8.4 is fully tested once a year to ensure that the plan is feasible.
- 6.9 On request the Law Firm will produce to Thomas Miller a copy of the plan and a report on the last test of the plan or part of it.
- 6.10 If Thomas Miller is not satisfied with the plan or a test, it may:
 - 6.10.1 demand a retest;
 - 6.10.2 request reasonable improvements to the plan; or
 - 6.10.3 if reasonable improvements to the plan are not made to the satisfaction of Thomas Miller within a reasonable time, terminate this Agreement.

7. APPLICABLE LAW, JURISDICTION AND DISPUTES

- 7.1 English law shall apply to the whole of this Agreement.
- 7.2 In the event of a dispute arising under or in connection with this Agreement (other than one relating solely to an individual matter with a Member, which shall be dealt with in accordance with the Law Firm's terms and conditions) and prior to initiating any legal proceedings, the Parties shall follow the following dispute resolution process:
- 7.2.1 in the first instance, the Parties shall ensure that the Law Firm Relationship Manager and the Thomas Miller Director of Professional Suppliers endeavour to resolve the dispute by negotiation;
- 7.2.2 if the dispute is not resolved within 45 days of it being referred to the Law Firm Relationship Manager and the Thomas Miller Director of Professional Suppliers, it shall be referred to a partner / director of each of the Parties for resolution; and
- 7.2.3 if the dispute is not resolved within 45 days of the commencement of the process referred to in Clause 7.2.2, the Parties shall attempt to settle it by mediation in accordance with the current (at the time of the dispute) Model Mediation Procedure of the Centre for Effective Dispute Resolution ("**CEDR**" – http://www.cedr.co.uk/index.php?location=/library/model_documents.htm). The mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("**ADR notice**") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.
- 7.3 If the Parties have not settled the dispute by mediation within 60 days after the date of the ADR notice, the dispute shall be referred to and finally and exclusively resolved by the English courts, although the mediation may continue notwithstanding the commencement of proceedings. Each Party agrees to submit to the jurisdiction of the English courts for this purpose.
- 7.4 The existence of a dispute and all negotiations connected with such dispute shall at all times be and remain confidential. Nothing in this Clause 7 shall restrict the right of either Party to seek urgent or injunctive relief from a court.
- 7.5 Except as required by law or the rules of a recognised investment exchange on which either Party's shares are listed, neither Party shall make or procure or permit any other person to make any press or other public announcement concerning any aspect of this Agreement without first obtaining the agreement of the other Party to the text of that announcement.