

ATTORNEY CLIENT PRIVILEGED

PROFESSIONAL SERVICES AND RETAINER AGREEMENT

The Virgin Islands Department of Justice ("DOJ") by and through its Department of Property and Procurement, ("Government"), hereby retains counsel, Linda Singer and her firm, Motley Rice LLC, (the "Firm" or "Contractor") to represent the Government in affirmative litigation on an as-needed basis as follows:

WITNESSETH:

WHEREAS, the Government is in need of the services of a Firm to assist the Department of Justice by providing expert and specialized legal representation in connection with the representation of the DOJ in certain legal matters.; and

WHEREAS, pursuant to Title 3 V.I.C. § 114(6), the Attorney General of the Virgin Islands shall appear for and represent the Executive Branch of the Virgin Islands Government in all legal proceedings; and

WHEREAS, in accordance with subsection (5) of Title 3 V.I.C. § 114, the Attorney General may "employ such skilled experts . . . or specially qualified persons as he deems necessary to aid in the preparation or trial of actions or proceedings"; and

WHEREAS, the Firm represents that it is specially qualified and is willing and capable of providing such services, and accepts the Government's appointment as Special Assistant Attorney General pursuant to 3 V.I.C. § 114(5) and the terms of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

ATTORNEY CLIENT PRIVILEGED

1. SERVICES

A. Scope of Representation:

The Government engages the Firm to represent it in complex enforcement investigations and litigation ("Matter or Matters") that: (1) require additional resources and expenses, beyond those available to the Office of the Attorney General ("OAG"), to pursue; (2) are identified or selected by the Government and for which it requests the Firm's assistance. The Firm shall have no obligation to accept these representations, but shall decide promptly on a case-by-case basis whether to accept each Matter. Nothing in this Agreement binds the Government to use the Firm exclusively in such Matters or to request the Firm's assistance in any particular Matter.

All work performed in the Matter will be under the supervision of the OAG and in a manner satisfactory to OAG. If the Attorney General designates a matter to pursue and the Firm accepts, the parties will enter into an engagement letter memorializing the representation and incorporating the terms and conditions of the Professional Services Agreement and Retainer Agreement. The Attorney General and the Firm will discuss, prior to entering into any engagement letter, whether to pay the Firm on a contingent fee or hourly basis.

B. Fee and Expenses for Contingency Matter:

1. The Firm shall perform all work and services on a contingent fee basis. The parties understand and agree that if there is no recovery pursuant to a judgment or settlement in connection with a Matter, no fee shall be due to the Firm.
2. Upon final judgment or settlement (including partial settlements), which shall include any post judgment proceedings and/or appeals, the Firm will be paid on a contingent fee basis equal to:
 - twenty-seven (27) percent of a recovery up to \$100 million; then
 - twenty-two (22) percent of funds recovered between \$100 million and

ATTORNEY CLIENT PRIVILEGED

\$250 million; and then

- eighteen (18) percent of funds recovered in excess of \$250 million.
3. The Government and Firm may agree in writing to revise this fee structure based on the circumstances of any particular Matter.
4. The contingent fee shall be calculated against the net recovery, which is any settlement or judgment amount, not including any award of attorneys' fees and expenses, minus any expenses reimbursed to the Firm.
- In the event that the contingent fee does not cover the Firm's actual attorney fees and expenses, it shall be entitled to its fees and expenses that are awarded by any court or paid by defendants in a Matter. Otherwise, any award or payment of fees will be included as part of the overall recovery, but not separately paid to the Firm.
5. If OAG settles the Matter for an amount that would yield a contingent fee that is less than the Firm's fees and expenses, it may arrange for the Firm to be paid its fees and expenses by the defendant(s), even if this payment would exceed the contingent fee to which it is entitled under paragraph 2.
6. The Firm will advance all reasonable costs and expenses for litigating the Matter. OAG agrees that the Firm will be reimbursed for such expenses out of any recovery before the contingent fee is applied. Reimbursement of expenses is not considered part of the Firm's contingent fee.
7. OAG must approve any expense of \$25, 000 or more in advance.
8. The Firm will have no claim against OAG for its fees or expenses except as otherwise laid out in this Contract, even if there is no recovery or the recovery is not sufficient to cover their fees or expenses.

Hourly Work

ATTORNEY CLIENT PRIVILEGED

9. If the parties agree to proceed on an hourly basis, the Firm shall be paid at the hourly rate of \$300.00 per hour, after the work has been assigned by the OAG and OAG has identified a funding source in accordance with the Virgin Islands Procurement process.

10. Fees Relating to Transfer of Open Matters: The Government terminated its relationship with Cohen Millstein Sellers & Toll, PLLC. when Attorney Linda Singer joined Motley Rice, LLC. Under this new engagement under this Contract, the Government will transfer two open matters (Terminix and Takata) from Cohen Milstein Sellers & Toll, PLLC to Motley Rice, LLC as Linda Singer, the responsible partner, joined Motley Rice, LLC. Any fees and expenses recovered in those matters shall be paid, pursuant to this Retainer Agreement, to Motley Rice. Motley Rice is solely responsible for any disputes between the firms for the allocations of fees and/or expenses in those matters, and shall have no claim against the Government related to the allocation of those payments, and will hold harmless and indemnify the Government pursuant to paragraph 12 of this Professional Services Agreement.

2. TERM

Upon the Effective Date of this Contract, as defined in Section 21 herein, this Contract will be legally binding and in effect for a term commencing on February 6, 2017 (the "Commencement Date") and ending January 31, 2018 or until the designated litigation is settled, completed or terminated. The Contract may be extended by the Government for successive one (1) year terms.

3. SETTLEMENT OR JUDICIAL RESOLUTION

Unless determined by Court Order, a full or partial resolution of the Matter that

ATTORNEY CLIENT PRIVILEGED

result[s] in the payment of a money judgment to the Government, either by court resolution (including resolution of any and all appeals which may be pursued) or by settlement agreed to by the parties, or any other method that settles the issues raised by the legal claims made by the Government, shall result in a disbursement in accordance with the agreement of the Parties herein.

4. AUTHORITY AND RESPONSIBILITIES

- a. The Firm is responsible for providing all legal services, including all associated support services, required in litigating a Matter to a final judgment, including post judgment proceedings and/or appeals.
- b. The Firm is authorized to retain or associate experts, investigators, and technical and legal assistants, and such additional counsel (subject to giving prior notice to OAG) as may be needed to litigate the Matter. The expense related to the employment and utilization of such third parties will be paid by the Firm and not the Government and in the manner set forth above and subject to approval by the OAG per paragraph 8 above.
- c. OAG is responsible for providing access to the personnel, information, and documents required to pursue the Government's claims (including any personnel, information, and documents required by court order or in discovery).
- d. OAG will maintain control of the Matter and will make all key decisions, including which claims to advance and what relief to seek and whether and on what terms to settle. The Firm will provide regular reports to OAG on the first day of each month (or the Monday following any such date) on the Matter and more often if appropriate. The Firm will notify OAG of any or all settlement offers.
- e. OAG will review and approve filings and other key documents. The Firm is

ATTORNEY CLIENT PRIVILEGED

responsible for providing these documents with sufficient advance time to allow for OAG's review and approval, and OAG will make timely decisions, as needed in the Matter. For non-critical matters, the Firm shall be able to file pleadings in the name of the Attorney General without obtaining authorization for each such filing, which authority can be withdrawn at any time for any reason by OAG.

- f. OAG will designate a point of contact who will supervise the Matter and who will be available directly to other parties in the Matter as needed.
- g. OAG will appear as lead counsel in all pleadings and shall retain control over any litigation decisions and settlement of the Territory's claims. The Firm shall have day-to-day responsibility for the prosecution and conduct of the litigation under the direction of the Attorney General.

5. BILLING/PAYMENTS

For the general services billed at an hourly rate, the Firm shall submit bills of the partners, associates, and paralegals on a monthly basis to the Attorney General for review and approval. These bills shall specify the type of service rendered and the time expended. All expenses claimed shall be fully documented with supporting documents or receipts. Both parties agree that billings shall be submitted within fifteen (15) days after the billing period and shall be paid within a reasonable period after receipt by the Government.

6. RECORDS

The Firm, including its employees and subcontractors, shall maintain all books, documents, papers, accounting records and other evidence pertaining to time and/or money incurred under this Contract and shall make such materials available to the Government upon request. The materials described in this Section shall be retained and preserved for a period

ATTORNEY CLIENT PRIVILEGED

of TEN (10) years from the date of expiration or termination of this Contract.

7. PROFESSIONAL STANDARDS

In performing under this Contract, the Firm shall comply with the American Bar Association's Model Rules of Professional Conduct and to the professional standards applicable to its profession, and to attorneys and the practice of law in the United States Virgin Islands.

8. TERMINATION

If OAG is not satisfied with how the Matter is being handled by the Firm, the Government has the right to withdraw by written notice, without specific explanation, from this attorney-client relationship at any time and for any reason. If a settlement is reached after Termination, the Firm's work shall be deemed to have been a full or partial cause of that settlement so that the contingency fee set forth above shall be deemed to have been earned and required to be paid once the settlement is finalized as follows: (1) If within 6 months of Termination, 100% of the contingent amount; (2) if after that date, a reasonable percentage determined by the parties based upon the Firm's contribution to the case or outcome, which is subject to the dispute resolution clause set forth in paragraph 22 below.

The Firm has the right to withdraw by written notice, without specific explanation, from this attorney-client relationship at any time and for any reason, subject to its obligation under the Rules of Professional Conduct though no contingency *fee* will be due if the Firm withdraws as counsel.

9. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, case notes, court filings, memoranda, materials constituting

ATTORNEY CLIENT PRIVILEGED

"Attorney Work Product," whether in written form or stored in another format, relating and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor, or any other person or entity for any purpose other than its representation of the Government except upon the written permission of the Government. Nothing in this paragraph shall affect Contractor's ability to retain copies of its own work product or documents that have been filed publicly.

10. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon Government persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent contractors, or in any other capacity whatsoever, or make the Government liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

11. ASSIGNMENT

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written approval of the Government.

12. INDEMNIFICATION

(a) Contractor agrees to indemnify, defend and hold harmless the Government, its officers, agents, representatives, successors, assigns and other governmental agencies from and against any and all suits, loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which the

ATTORNEY CLIENT PRIVILEGED

Government may incur, sustain or be subjected to, arising out of or connected to the services to be performed by Contractor its officers, agents, subcontractors, servants, employees, or assigns under this Contract and arising from any cause, to the extent cause by Contractor's negligence.

(b) Contractor agrees to maintain its existing insurance policy at all times that it performs services for the Government and to save and hold harmless Government, its officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or property damage arising or growing out of the acts or omissions of Contractor, its officers, agents, servants, or employees under this Contract.

13. INDEPENDENT CONTRACTOR

The Firm shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status. Consistent with said relationship, the Attorney General shall supervise the Firm's work in the performance of the services under the Contract and shall review and approve all work product prepared by the Firm in the course of said performance.

14. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representative, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the

ATTORNEY CLIENT PRIVILEGED

same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writing.

15. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto, and all prior understandings or communications, written or oral, with respect to the subject matter of this Contract, are merged herein.

16. RIGHT TO WITHHOLD

(a) If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as the Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the Government may apply such sums in such manner as the Government may deem proper to secure itself or to satisfy such claims. The Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

(b) No such withholding or application shall be made by the Government if and while Contractor gives satisfactory assurance to the Government that such claims will be paid by the Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

17. INSURANCE

During the term of this Contract, Contractor shall procure and maintain professional liability insurance on a per claim basis in an amount not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) per occurrence. The Contractor will provide the Government with a copy of the certificate of insurance evidencing compliance with this

ATTORNEY CLIENT PRIVILEGED

provision. If requested by the Government, the Contractor will increase its professional liability insurance to such amounts as the Government reasonably deems appropriate to secure its interests under this Contract. Notwithstanding the relationship between the Government and Contractor under this Contract, Contractor shall be fully liable to the Government for malpractice relating to the services to be performed under this Contract.

18. CONDITION PRECEDENT

To the extent that there is a requirement for admission to practice, whether by license or pro hac vice, Contractor shall comply with such legal requirements. This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

19. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, national origin or handicap.

20. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

- (1) Not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether

ATTORNEY CLIENT PRIVILELED

compensation on a salary, fee or contractual basis); or

- (2) a territorial officer or employee only to the extent that Contractor has:
 - (i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
 - (ii) not made, negotiated or influenced this contract, in its official capacity;
 - (iii) no financial interest in the contract as that term is defined in section 1101, (1) of said Code chapter.

21. EFFECTIVE DATE

The effective date of this Contract is upon the signature of the Governor.

22. DISPUTES

All disputes or matters hereunder will be resolved by a certified mediator acceptable to both parties. The parties shall each bear one-half of the fees.

23. NOTICE

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

Government

Commissioner
Department of Property and Procurement
Sub Base, Building No. 1
St. Thomas, Virgin Islands 00802

Attorney General
Virgin Islands Department of Justice
48B-50C Kronprindsens Gade

ATTORNEY CLIENT PRIVILEGED

GERS Building, 2nd Floor
St. Thomas, Virgin Islands 00802

Contractor

Motley Rice LLC
c/o Linda Singer
401 9th Street., NW
Suite 1001
Washington, DC 20004

24. LICENSURE

The Contractor covenants that it has:

- a. obtained all of the applicable licenses or permits, temporary or otherwise, as required by Title 27 of the Virgin Islands Code, if applicable, and
- b. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

25. APPLICABLE LAW

This Agreement shall be construed and governed by the laws of the U.S. Virgin Islands, including any disputes hereunder, with exclusive venue in the Virgin Islands.

26. GENERAL PROVISIONS

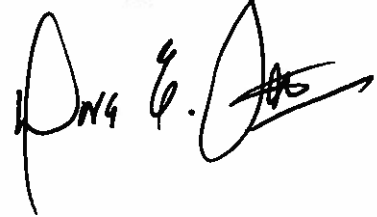
This Agreement sets forth the entire agreed upon terms between the parties. It can only be amended by written agreements hereto, signed by all parties.


27. OTHER PROVISIONS

Addendum I (Scope of Services) and Addendum II (Compensation) attached to this Contract are incorporated into and made a part of this Contract as well as Exhibits A-B.

ATTORNEY CLIENT PRIVILEGED

BY: GOVERNMENT OF THE VIRGIN ISLANDS


WITNESS: 



CLAUDE E. WALKER, Esq.
Attorney General

07/25/17
Dated

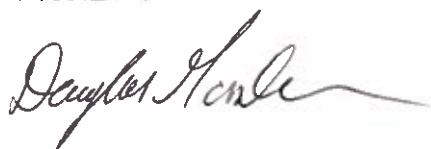
WITNESS: 



LLOYD T. BOUGH, JR.
Commissioner
Department of Property Procurement

11/14/17
Dated

BY: CONTRACTOR


WITNESS: 



LINDA SINGER, Esq.
Member
Motley Rice, LLC

6/21/17
Dated

APPROVED:



Honorable Kenneth E. Mapp
Governor of the U.S. Virgin Islands

12-13-17
Dated

**APPROVED TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE**

By: 
AAG

Date: 11/14/17