FARRINGTON LEGAL SERVICES: TERMS OF BUSINESS

Farrington Legal Services

Investigators
Process Servers
Litigation Support
Enquiry Agents

These Terms are for the Provision of Investigative, Surveillance Activities and Litigation Support Services.

THESE TERMS ARE EFFECTIVE FROM 25TH May 2018

WHEREAS:

(1) These terms of business set out the basis on which we shall conduct all matters undertaken for you and shall be read in accordance with any covering communication. Any differences arising in respect of individual matters shall be notified to you in writing.

(2) We confirm having carried out a Conflict of Interest assessment and none exists to prevent us from accepting your instructions set out in our Proposal.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"I", "we", "our", "us"	means the party instructed to carry out the Services;
"Client", "you"	means the person who accepts a quotation or offer for the provision of Services to be provided by us;
"Business Day"	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the UK;
"Commencement Date"	Means the date in which we formally accept your instructions in writing;
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Services"	means the Services to be provided by us;
"Term"	means the term of this Agreement;
"GDPR"	means The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)

1.2 Unless the context otherwise requires, each reference in this Agreement to:

1.2.1 "writing", and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "this Agreement" is a reference to these Terms as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of this Agreement.

1.2.5 a "Party" or the "Parties" refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. **Communication**

2.1 We shall communicate with such of your officers, staff and other advisers as appears to us to be appropriate. If, however you have any specific security requirements relating to the communication of information to you or your company (as the case may be) then please advise us.

2.2 Instructions given by the Client to us shall be in writing or, if given orally, shall be confirmed by the Client in writing not more than two business days after the order is given.

3. **Liability**

The Services we provide to you, which shall include any information or advice given to you, is based solely on the information you have given to us and does not constitute advice to any third party to whom you may communicate it.

4. **Rights of Third Parties**

4.1 Our duties are owed only to the individual/company whose instructions we are acting upon and we disclaim any liability to any other persons regardless of whether the Client instructs us on behalf of another.

4.2 The terms on which we are acting on the Clients matter (contained herein or otherwise) are intended to be

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enforceable solely by the contracting parties herein.

4.3 We do not accept any liability for services or information provided by any third parties instructed by us on the Clients behalf in respect of the relevant Services unless there is prior agreement in writing by the third party.

5. **Provision of Services**

5.1 With effect from the Commencement Date, we shall, throughout the course of the instructions, provide the Services to the Client as agreed within the Clients original instruction.

5.2 We shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the litigation support, data processing and professional investigation sector in the Jurisdiction in which our Head Office is based.

5.3 We shall act in accordance with all reasonable instructions given to us by the Client provided that such instructions are lawful.

5.4 We shall be responsible for ensuring that the services comply with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to their provision.

5.5 We may, in relation to certain specified matters relating to the Services, act on the Client's behalf. Such matters shall not be set out in this Agreement but shall be agreed between the Parties (any such agreement to be confirmed in writing) as they arise from time to time.

5.6 We reserve the right to amend or supplement any terms herein contained generally or specific to any matter by providing notice in writing.

6. **Client's Obligations Pertaining to Services**

6.1 The Client shall use all reasonable endeavours to provide all pertinent information in their lawful instruction to us that is necessary for us to provide the Services.

6.2 The Client may, from time to time, issue reasonable lawful instructions to us in relation to our provision of the Services, only insofar as they meet the specifications of the service offered by us.

6.3 In the event that we require the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

6.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities, regulatory bodies or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof) unless otherwise specifically agreed.

6.5 If the nature of the Services requires that we have access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure we have access to the same at the times to be agreed between us and the Client as required.

6.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of this Clause 6 shall not be our responsibility or fault.

7. **Fees, Payments and Records**

7.1 The cost of the Services shall be indicative of the type of work undertaken and it is normal procedure for us to provide an estimate or quotation in each instance. If there are any changes in the Clients instructions or in the circumstances of the matter at any time these shall be reflected, as the Client deems fit, in an amended estimate or quotation which shall be provided to the Client at the earliest opportunity. In the event that we are unable to provide an estimate, or we shall keep the Client informed of the work in progress on a periodic basis or upon the Clients request.

7.2 Where it is necessary to instruct a third party on behalf of the Client, including but not limited to external investigations, we will do so as the Client's agent and the Client shall be responsible for payment of the third parties fees.

7.3 We may ask for funds on account to cover for initial fees and disbursements and settlement of third parties' fees. Any request for any such monies shall not be an estimate or a cap on any fee and unless payment was made for a specified purpose, may be used to meet fees when invoiced to the Client.

7.4 An Invoice, or receipted invoice, will be rendered at the conclusion of a matter. We reserve the right to render interim invoices during the course of the Services provided. Any particular billing requirements of the Client should be given to us prior to the Services commencing.

7.5 Bills/invoices are payable before the end of the month following month of invoice and we reserve the right to charge interest at 8% above the underlying base rate and other charges in relation to late payment and/or debt recovery.

8. **Confidentiality**

8.1 Each Party undertakes that, except as provided by sub-Clause 9.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and in perpetuity after its termination:

8.1.1 keep confidential all Confidential Information;

8.1.2 not disclose any Confidential Information to any other party unless agreed in advance or as required by law, or in response to an order of a Court of competent jurisdiction;

8.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

8.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

8.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 8.1.1 to 8.1.4 above.

8.2 The provisions of this Clause 8 shall continue in force in accordance with its terms indefinitely, notwithstanding the termination of this Agreement for any reason.

9. **Documentation/Personal Data**

9.1 We shall, during, and following completion of the Services, retain any documentation or information, that may be foreseen to be required in the future, but in any event for no longer than a period defined within any Act referring to a Limitation period for bringing a legal action in a competent court in the jurisdiction in which the Services were provided and shall dispose, destroy or delete any

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information which is deemed to be extraneous.

9.2 During such retention period personal data processed by us on the Clients behalf will be kept securely and where transferred to the Client or a sub-processor or third party instructed by the client, it shall be encrypted with a unique password communicated to the recipient separately and compliant with the requirements under Article 32 of the General Data Protection Regulations (GDPR).

9.3 We will, if so instructed, offer to the Client or data subject, without charge, assistance should a data subject formally serve upon the Client a Subject Access Request or other obligation under chapter III GDPR. Any Subject Access Request served on us directly will be referred to the Client immediately upon receipt.

9.4 In the event of a data breach during the processing of personal data under the terms of this contract the Client shall be notified immediately, and we will provide assistance to the Client in order to comply with Article 28(f) of GDPR.

9.5 We shall upon request submit audits and undertake to inspect and provide the Client with requisite information to ensure compliance with its Article 28 obligations. We will inform the Client immediately if there is a danger of something infringing the GDPR or other data protection law of the United Kingdom, EU or a member state.

9.6 Where we have appointed a Data Protection Officer, they shall be named on our website.

9.7 For the avoidance of doubt instructions are accepted on the basis that our services are conducted under the direction of the Client and as such we shall be deemed to be the Data Processor and the Client, and/or the principal shall be deemed the Data Controller, unless we determine the manner and the purpose of the processing, in which case, we shall be Data Controller or Joint Data Controller. The handling of personal data will be in accordance with the Clients instructions and direction.

9.8 All instructions are carried out with due consideration given to the provisions and requirements of the Bribery Act 2010 and accordingly no part of the instructions will be conducted in breach thereof.

9.9 We shall meet the responsibilities to ensure all staff, internal, external or contracted and its supply chain workers are not victims of modern slavery or human trafficking. The safeguards against modern slavery or human trafficking are carried out with due diligence procedures.

10. **Limitation of Liability**

10.1 This Clause 10 sets out the entire financial liability of the Parties (including that for the acts or omissions of their employees, agents or subcontractors) to each other for any breach of this Agreement; any use made by the Client of Services; and any representation, statement or tortious act or omission (including, but not limited to, negligence and breach of statutory duty) arising out of or in connection with this Agreement.

10.2 Neither Party shall be liable to the other, whether in contract, tort (including negligence), restitution, or for breach of statutory duty or misrepresentation for any loss of profit, loss of goodwill, loss of business opportunity, loss of anticipated saving, loss or corruption of any data or information, or any special, indirect or consequential damage or loss that may be suffered by the other Party that arises out of or in connection with this Agreement.

10.3 Without prejudice to Clause 10, our total liability arising out of or in connection with this Agreement (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation or otherwise) shall be limited to the value of the services in respect of any and all other acts or omissions.

11. **Force Majeure**

11.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

11.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 4 weeks, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for any and all Goods delivered and/or any and all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

12. **Term and Termination**

12.1 This Agreement shall remain in force from the commencement date of this Agreement and shall continue to the termination of this Agreement.

12.2 We will treat as confidential all information concerning the Clients business affairs received as a result of instructions received and not disclose the information to any third party save to those persons whom we deem necessary and solely for the purpose of the carrying out the Clients instructions unless such information (a) is or becomes generally available to the public or (b) is required to be disclosed in any jurisdiction by a law.

12.3 We, in the provision of the services, may be required to outsource all or part of the services to a sub-contractor/sub-processor. It is unequivocally agreed that this is solely within our discretion and that you acknowledge that you specifically agree to us doing so. Wherever possible, any sub-contractor/sub-processor will be a Member of the Association of British Investigators, and you can find details of their members on their website at www.abi.org.uk. In some instances, we will use sub-contractors/sub-processors who are not members of the Association of British Investigators, but that meet our requirements as specialists. Upon your request we will notify you of their identity. If you do not give permission for us to instruct sub-contractors/sub-processors at our sole discretion, you must notify us in writing in the initial instruction or as soon as reasonably practical thereafter and in any event before we commence the services, and we will then seek your further permissions if necessary. It is acknowledged that all sub-contractors/sub-processors will be bound by all of the conditions contained within these terms.

12.4 For the purpose of law enforcement and/or fraud awareness/prevention or enforcement it is agreed that non-personal data acquired by us may be shared at our discretion. Personal data however will remain confidential.

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12.5 We reserve the right to conduct due diligence prior to the commencement of the Services of the client and their instructions. This may require proof of the Clients identity and or compliance with the Money Laundering Regulations in the jurisdiction in which the Services are to be provided.

12.6 We reserve the right to terminate the provision of our services to the Client by providing written notice delivered to the Clients address or by email. The Client may also terminate their instructions to us on any matter at any time by providing us with written notification. Notwithstanding any termination by either party, the Client agrees to pay any outstanding fees and costs incurred up to the date of termination or the fixed fee agreed.

12.7 In accordance with clause 12.3 above, in the unlikely event that we cease trading, or you are unable to contact us for a period of not less than 4 weeks, any sub-contractor/sub-processor instructed by us, will, by default, become joint data controller with you. In this event, and if you are unaware of whom the sub-contractor/sub-processor is, you should contact the Secretariat at the Association of British Investigators who may be able to locate the information for you. Once you are in contact with that Member, the Member, shall cease to be joint data controller, and shall, in accordance with clause 12.3 which binds them to these terms, revert to the position of processor/sub-processor.

13. **Effects of Termination**

Upon the termination of this Agreement for any reason:

13.1 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;

13.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain In full force and effect;

13.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

13.4 subject as provided in this Clause 13 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

13.5 each Party shall (except to the extent referred to in Clause 8) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information upon request of the other Party.

14. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15. **Further Assurance**

15.1 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

15.2 From time to time we may wish to issue publicity about our Services which may include details of previous cases or case scenarios we shall make no specific references to the Clients matter which may reveal or otherwise lead to be revealed any information which shall be subject to Clause 8 herein.

15.3 We reserve the right to act on behalf of other individuals/companies who operate in the same locality as the Client or any related subject area subject to our obligations of confidentiality and Conflict of Interest as contained herein.

15.4 In the event that the Client is not satisfied with the Service provided, a written complaint should be made to us in the first instance. All complaints will be handled in an efficient manner and all attempts will be made to solve them quickly. In the event that the Client remains dissatisfied, and where a Member of the Association conducted the Services, the Client should then refer to the disciplinary procedures available against individual members through the Association of British Investigators, (www.TheABI.org.uk), which in the first instance will advise on whether any of its code or ethics or byelaws have been breached.

16. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

17. **Law and Jurisdiction**

These terms of business are governed by and shall be construed in accordance with the laws of the jurisdiction applicable to our head office (principal place of business) and you agree to submit to the exclusive jurisdiction of the Courts therein.

18. **Agreement to these Terms**

The Client shall agree to be bound by these Terms, by instructing or continuing to instruct us and upon condition that we accept or indicate or imply acceptance by commencing the Service.

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