

**IPFGB
Terms of Business
Sub-contractor**

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

These Terms are effective from **25-May-18**

Whereas

[1] In the absence of an overriding document between the contracting agents, these terms of business set out the basis on which sub-contracted agents shall conduct all matters undertaken between them as (1) instructing agents, and (2) subcontracted agents, and shall be read in accordance with any covering communication.

[2] The subcontracted agent undertakes to carry out a Conflict of Interest assessment and to only accept where none exists.

It is agreed as follows:

1. Definitions and interpretations:

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

“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 the sub-contracted agent formally accepts 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 the sub-contractor;

“Term” means the term of this Agreement

“GDPR” means The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)

“Late Payment” means payment in excess of a 30 day period from invoice delivery, unless otherwise agreed.

1.2. Unless the context otherwise requires, each reference in these terms to:

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- 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 the 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. Provision of Services:**
- 2.1. With effect from the Commencement Date, the sub-contracted agent shall, throughout the course of the instructions, provide the Services to the instructing agent as agreed within the instructing agent's original instruction.
 - 2.2. The sub-contracted agent 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.
 - 2.3. The sub-contracted agent shall act in accordance with all reasonable instructions given to us by the instructing agent provided that such instructions are lawful.
 - 2.4. The sub-contracted agent shall be responsible for ensuring that the services comply with all statutes, regulations, bylaws, standards, codes of conduct and any other rules relevant to their provision.
 - 2.5. The sub-contracted agent may, in relation to certain specified matters relating to the Services, act on the Instructing agent'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.
 - 2.6. The sub-contracted agent reserves the right to amend or supplement any terms herein contained generally or specific to any matter by providing notice in writing.

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3. Instructing agent's Obligations Pertaining to Services:

- 3.1. The Instructing agent shall use all reasonable endeavours to provide all pertinent information in their lawful instruction to the sub-contracted agent that is necessary for the sub-contracted agent to provide the Services.
- 3.2. The Instructing agent may, from time to time, issue reasonable lawful instructions to the sub-contracted agent in relation to the sub-contracted agent's provision of the Services, only insofar as they meet the specifications of the service offered by the sub-contracted agent.
- 3.3. In the event that the sub-contracted agent requires the decision, approval, consent or any other communication from the Instructing agent in order to continue with the provision of the Services or any part thereof at any time, the Instructing agent shall provide the same in a reasonable and timely manner.
- 3.4. 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 Instructing agent's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof) unless otherwise specifically agreed.
- 3.5. If the nature of the Services requires that the sub-contracted agent have access to the Instructing agent's premises or any other location, access to which is lawfully controlled by the Instructing agent, the Instructing agent shall ensure the sub-contracted agent has access to the same at the times to be agreed between the sub-contracted agent and the Instructing agent as required.
- 3.6. Any delay in the provision of the Services resulting from the Instructing agent's failure or delay in complying with any of the provisions of this Clause 6 shall not be the sub-contracted agent's responsibility or fault.

4. Fees, Payments and Records:

- 4.1. The cost of the Services shall be indicative of the type of work undertaken and it is normal procedure for the sub-contracted agent to provide an estimate or quotation in each instance along with details of our payment terms, headed appropriately as such. If there are any changes in the Instructing agent's instructions or in the circumstances of the matter at any time these shall be reflected, as the sub-contracted agent deems fit, in an amended estimate or quotation which shall be provided to the Instructing agent at the earliest opportunity. In the event that the sub-contracted agent is unable to provide an estimate, the sub-contracted agent shall keep the Instructing agent

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informed of the work in progress on a periodic basis or upon the Instructing agent's request.

- 4.2. The subcontracted agent may ask for funds on account to cover for initial fees and disbursements.
- 4.3. An invoice, or receipted invoice, will be rendered at the conclusion of a matter. The subcontracted agent reserves the right to render interim invoices during the course of the services provided. Any particular billing requirements of the Instructing agent should be given to the subcontracted agent prior to the services commencing.
- 4.4. Bills are payable in accordance with the Payment Terms of the subcontracted agent which shall be outlined in accordance with Clause 7.1 and the subcontracted agent reserves the right to charge interest at 8% above the underlying base rate and other charges in relation to late payment and/or debt recovery.

5. Confidentiality:

- 5.1. 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:
 - 5.1.1. keep confidential all Confidential information;
 - 5.1.2. 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;
 - 5.1.3. not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement and
 - 5.1.4. ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Part, would be a breach of the provisions of sub-Clauses 5.1.1 to 5.1.3 above.
- 5.2. The provisions of this Clause 5 shall continue in force in accordance with its terms indefinitely, notwithstanding the termination of this Agreement for any reason.

6. Documentation/Personal Data:

- 6.1. The subcontracted agent 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

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competent court in the jurisdiction in which the Services were provided and shall dispose, destroy or delete any information which is deemed to be extraneous.

- 6.2. During such retention period personal data processed by the subcontracted agent on the Instructing agent's behalf will be kept securely and where transferred to the Instructing agent or a sub-processor or this party instructed by the Instructing agent, 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).
- 6.3. The subcontracted agent will, if so instructed, offer to the Instructing agent and/or his client or the data subject, without charge, assistance should data subject formally serve upon the Instructing agent or his client a Subject Access Request (SAR) or other obligation under chapter III GDPR. Any Subject Access Request served on the subcontracted agent directly will be referred to the Instructing agent immediately upon receipt.
- 6.4. In the event of a data breach during the processing of personal data under the terms of this contract the Instructing agent shall be notified immediately, and the subcontracted agent will provide assistance to the Instructing agent in order to comply with Article 28(f) of GDPR.
- 6.5. The subcontracted agent shall upon request submit audits and undertake to inspect and provide the Instructing agent and/or his client with requisite information to ensure compliance with its Article 28 obligations. The subcontracted agent will inform the Instructing agent immediately if there is a danger of GDPR infringement or other data protection law of the United Kingdom, EU or a member state.
- 6.6. Where the subcontracted agent has appointed a Data Protection Officer, they shall be named on the subcontracted agent's website.
- 6.7. For the avoidance of doubt, instructions are accepted on the basis that the subcontracted agent's services are conducted under the direction of the Instructing agent and as such the subcontracted agent shall be deemed to be the Data Sub-Processor and the Instructing agent's client and/or the principal shall be deemed the Data Controller, unless the subcontracted agent determines the manner and the purpose of the processing, in which case, the subcontracted agent shall be Data Controller or Joint Data Controller. The handling of personal data will be in accordance with the Instructing agent's instructions and direction.

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- 6.8. 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 instruction will be conducted in breach thereof.
- 6.9. The subcontracted agent 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 safeguard against modern slavery or human trafficking are carried out with due diligence procedures.

7. Limitation of Liability:

- 7.1. This Clause 7 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 Instructing agent 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 connections with this Agreement.
- 7.2. 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.
- 7.3. 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.

8. Force Majeure:

- 8.1. 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.
- 8.2. 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

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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.

9. Term and Termination:

- 9.1. This Agreement shall remain in force from the commencement date of this Agreement and shall continue to the termination of this Agreement.
- 9.2. The subcontracted agent will treat as confidential all information concerning the Instructing agent's business 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 Instructing agents 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.
- 9.3. The subcontracted agent, in the provision of the services, may be required to outsource all or part of the services to a subcontractor/sub-processor. It is unequivocally agreed that this is solely within the subcontracted agent's discretion and that the Instructing agent acknowledges that the Instructing agent specifically agrees to the subcontracted agent doing so. Wherever possible, any subcontractor/sub-processor will be a Member of the Association of British Investigators and you can find details of their membership on the website at www.abi.org.uk. In some instances, the subcontracted agent will use subcontractors/sub-processors who are not members of the Association of British Investigators, but that meet our requirements as specialists. In the event that the subcontracted agent does so, they will notify the Instructing agent of their details. If the Instructing agent does not give permission for the subcontracted agent to instruct subcontractors/sub-processors at their sole discretion, the Instructing agent must notify the subcontracted agent in writing in the initial instruction or as soon as reasonably practical thereafter and in any event before they commence the services, and they we will then seek further permission if necessary. It is acknowledged that all subcontractors/sub-processors will be bound by all of the conditions contained within these terms.
- 9.4. The subcontracted agent reserves the right to conduct due diligence prior to the commencement of the Services of the Instructing agent and their

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instructions. This may require proof of the Instructing agent's identity and or compliance with the Money Laundering Regulations in the jurisdiction in which the Services are to be provided.

- 9.5. The subcontracted agent reserves the right to terminate the provision of our services to the Instructing agent by providing written notice delivered to the Instructing agent's address or by email. The Instructing agent may also terminate their instructions to the subcontracted agent on any matter at any time by providing the subcontracted agent with written notification. Notwithstanding any termination by either party, the Instructing agent agrees to pay any outstanding fees and costs incurred up to the date of termination or the fixed fee agreed.
- 9.6. In accordance with clause 9.3 above, in the unlikely event that the subcontracted agent ceases trading, or the Instructing agent or his client are unable to contact the subcontractor, any subcontractor/sub-processor instructed by the subcontracted agent, will, by default, become joint data controller with the Instructing agent. In this event, and if the Instructing agent is unaware of whom the subcontractor/sub-processor is, the Instructing should contact the Secretariat at the Association of British Investigators who will be able to locate the information. Once the Instructing agent is in contact with that agent the agent shall cease to be joint data controller, and shall, in accordance with clause 9.3 which binds them to these terms, revert to the position of processor/sub-processor.

10. Effects of Termination:

- 10.1. Upon the termination of this Agreement for any reason:
- 10.1.1. any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;
- 10.1.2. 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;
- 10.1.3. 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.

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10.1.4. subject as proved in this Clause 10 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

10.2. Each Party shall (except to the extent referred to in Clause 5) 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 recorded any Confidential Information upon request of the other Party.

11. No Waiver:

11.1. 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.

12. Further Assurance:

12.1. 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.

12.2. The subcontracted agent reserves the right to act on behalf of other individuals/companies who operate in the same locality as the Instructing agent or any related subject area, subject to our obligations of confidentiality and Conflict of Interest as contained herein.

12.3. In the event that the Instructing agent is not satisfied with the Service provided, a written complaint should be made to the subcontracted agent 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 Instructing agent remains dissatisfied, and where a Member of the Association conducted the Services, the Instructing agent 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 bylaws have been breached.

13. Severance:

13.1. In the event that one or more of the provision of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that those provision(s) shall be

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deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

14. Law and Jurisdiction:

14.1. 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.

15. Agreement to these Terms:

15.1. The Instructing agent shall agree to be bound by these Terms, by instruction or continuing to instruct the subcontracted agent and upon condition that the subcontracted agent accepts or indicate or imply acceptance by commencing the Service.