

Jenner & Block London LLP  
25 Old Broad Street  
Level 17  
London  
EC2N 1HQ

Our ref: DN428089  
Date: 11/09/2019

Dear [REDACTED]

**Award of Agreement: Investment Expert Level Training Services**

This letter (Award Letter) and Agreement set out the terms of the Agreement between The Department for International Trade as the Customer and Jenner & Block London LLP as the Contractor for the provision of Investment Expert Level Training Services. Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of the Agreement. In the event of any conflict between this Award Letter and the Agreement, this Award Letter shall prevail. Please do not attach any Contractor's terms and conditions to this Award Letter as they will not be accepted by the Customer and may delay conclusion of the Agreement.

For the purposes of the Agreement, the Customer and the Contractor agree as follows:

- 1) The charges for the Services shall be as set out in Appendix 2 of the Agreement
- 2) The Specification of the Services to be supplied as set out in Appendix 1 of the Agreement.
- 3) The Term shall have deemed to commence on 11<sup>th</sup> September 2019 and the Expiry Date shall be 14<sup>th</sup> September 2019.
- 4) The address for notices of the Parties are:

**Customer**

Department for International  
Trade  
3 Whitehall Place  
London  
SW1A 2AW  
Attention: [REDACTED]

**Contractor**

Jenner & Block London LLP  
25 Old Broad Street  
Level 17  
London  
EC2N 1HQ  
Attention: [REDACTED]

Email: [REDACTED]

Email: [REDACTED]

- 5) The following persons are Key Personnel for the purposes of the Agreement:

[REDACTED]

Jenner & Block London  
LLP

- 6) The Customer may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a "**Relevant Conviction**"), or is found by Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
- 7) In light of the nature of the services to be provided under this Contract, the Contractor will not be receiving any Confidential Information or personal data, and the Customer agrees that it will not provide any Confidential Information or personal data to Contractor. This is not a contract for legal services, and neither the Contractor nor anyone providing services under this Contract will be acting for the Customer as its lawyer.

#### **Payment**

All invoices should be sent, quoting a valid purchase order number (PO Number), to UK SBS, Queensway House, West Precinct, Billingham TS23 2NF. Within ten (10) Working Days of receipt of your acceptance of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment. If you have a query regarding an outstanding payment please contact our Accounts Payable section either by email to [REDACTED] or by telephone [REDACTED] between 08:30-17:00 Monday to Friday.

#### **Liaison**

For general liaison your contact will continue to be [REDACTED]

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this Agreement by signing and returning the enclosed copy of this letter to [REDACTED] at the address shown below within seven (7) days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this Agreement.

Yours sincerely

[REDACTED]  
[REDACTED]  
[REDACTED] Finance and Corporate Services  
Department for International Trade  
Windsor House  
50 Victoria Street  
London SW1H 0TL

E-mail: [REDACTED]

We accept the terms set out in this letter and Agreement

**Signed for and on behalf of Jenner & Block London LLP**

Name: [REDACTED]  
Job Title: [REDACTED]  
Signature: [REDACTED]  
Date: [REDACTED]

**Signed for and on behalf of the Department for International Trade**

Name: [REDACTED]  
Job Title: [REDACTED]  
Signature: [REDACTED]  
Date: [REDACTED]



Department for  
International Trade

---

## **Short Form Contract**

**Contract for the delivery of Investment Expert  
Level Training Services by Jenner & Block  
London LLP to the Department for  
International Trade**

**DN428089**

# 1. Interpretation

1.1 In these terms and conditions:

Term	Description
"Agreement"	means the contract between (i) the Customer acting as part of the Crown and (ii) the Contractor constituted by the Contractor's acceptance of the Award Letter;
"Award Letter"	means the letter from the Customer to the Contractor printed above these terms and conditions;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:  Government Department;  Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);  Non-Ministerial Department; or  Executive Agency;
"Charges"	means the charges for the Services as specified in the Award Letter;

"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contractor"	means the person named as Contractor in the Award Letter;
"Controller"	take the meaning given in the GDPR
"Customer"	means the person identified in the letterhead of the Award Letter;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act (DPA) 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Officer"	take the meaning given in the GDPR;

"Data Subject"	take the meaning given in the GDPR;
"Data Subject Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"FOIA"	means the Freedom of Information Act 2000;
"GDPR"	the General Data Protection Regulation ( <i>Regulation (EU) 2016/679</i> );
"Information"	has the meaning given under section 84 of the FOIA;
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of processing;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
"LED"	Law Enforcement Directive ( <i>Directive (EU) 2016/680</i> );
"Party"	the Contractor or the Customer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	take the meaning given in the GDPR;

<b>"Personal Data Breach"</b>	take the meaning given in the GDPR;
<b>"Processor"</b>	take the meaning given in the GDPR;
<b>"Processor Personnel"</b>	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
<b>"Protective Measures"</b>	appropriate and reasonable technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 1 (Security);
<b>"Purchase Order Number"</b>	means the Customer's unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;
<b>"Request for Information"</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
<b>"Services"</b>	Means the services to be supplied by the Contractor to the Customer under the Agreement;
<b>"Specification"</b>	means the specification for the Services to be supplied by the Contractor to the Customer as specified in the Award Letter;
<b>"Staff"</b>	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor who participate in the performance of the Contractor's obligations under the Agreement;
<b>"Staff Vetting Procedures"</b>	means vetting procedures that accord with good industry practice and the Customer's procedures.

"Sub-processor"	any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement;
"Term"	Means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 In these terms and conditions, unless the context otherwise requires:
- 1.3 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.4 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.5 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.6 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.7 the word 'including' shall be understood as meaning 'including without limitation'.

## **2. Basis of Agreement**

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of a copy of the Award Letter countersigned by the Contractor within seven (7) days of the date of the Award Letter.

### **3. Supply of Services**

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Contractor shall co-operate with the Customer in all matters relating to the supply of the Services and comply with all the Customer's instructions.
- 3.3 The Contractor shall supply the Services in accordance with the Specification.
- 3.4 The Contractor shall perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade; use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement; and provide all equipment, tools and vehicles and other items as are required to provide the Services.

### **4. Term**

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to six (6) months by giving not less than ten (10) Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

### **5. Charges, Payment and Recovery of Sums Due**

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the

accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.

- 5.4 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than thirty (30) days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.9 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
- 5.10 a provision requiring the counterparty to that sub-contract to include in any subcontract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
- 5.11 In this clause 5.8, "sub-contract" means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.12 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

## **6. Premises and equipment**

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Contractor or the Staff shall be at the Contractor's risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer's premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days.

## **7. Staff and Key Personnel**

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake

work in respect of the Agreement, it may, by giving written notice to the Contractor:

- a. refuse admission to the relevant person(s) to the Customer's premises;
- b. direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
- c. require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- d. and the Contractor shall comply with any such notice.

7.2 The Contractor shall:

- a. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- b. if requested, provide the Customer with a list of the names and contact information (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- c. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **8. Assignment and sub-contracting**

8.1 The Contractor shall not without the written consent of the Customer assign, subcontract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent provides for additional terms and conditions relating to such assignment, subcontract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts, and omissions were its own.

8.2 Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

## **9. Intellectual Property Rights**

9.1 The All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, nonexclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.

9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

9.3 The Contractor hereby grants the Customer:

9.4 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sublicense) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

9.5 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sublicense) to use:

9.6 any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and

9.7 any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

9.8 including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

9.9 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

## **10. Governance and Records**

10.1 The Contractor shall:

- a. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- b. submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2 The Contractor shall keep and maintain until six (6) years after the end of the Agreement, or as long a period as may be agreed between the Parties, records of the Agreement and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

## **11. Confidentiality, Transparency and Publicity**

11.1 Subject to clause b, each Party shall:

- a. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- b. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- a. where disclosure is required by applicable law or by a court of competent jurisdiction;
- b. to its auditors or for the purposes of regulatory requirements;

- c. on a confidential basis, to its professional advisers;
- d. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- e. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause shall observe the Contractor's confidentiality obligations under the Agreement; and

**11.3 where the receiving Party is the Customer:**

- a. on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- b. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- c. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d. in accordance with clause 02.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms agreed as reasonable and appropriate under the circumstances.

**11.4 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether**

any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

**11.5 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer. The Customer agrees that, after the End Date, it will review language to be proposed by the Contractor describing the work performed under the Contract for use in**

biographies, CVs and similar materials, and the Authority will not unreasonably withhold consent for the use of such language.

## **12. Freedom of Information**

12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Goods is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

## **13. Data Protection**

13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is a Controller and the Contractor also acts a Controller. Contractor's use of Personal Data as a Controller shall be in accordance with the Data Protection Notice provided by Contractor to Customer, receipt of which is acknowledged by Customer. To the extent that either Party is deemed to be a Processor in any regard

with respect to Personal Data provided under this Agreement, then the following provisions apply to that same extent. All personal data processed under this contract shall be set out in full in Schedule 1.

13.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

13.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with this Agreement, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement;

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Processor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

(i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

(e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

13.5 Subject to clause 13.6, the Processor shall notify the Controller immediately if it:

(a) receives a Data Subject Request (or purported Data Subject Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

13.6 The Processor's obligation to notify under clause 13.5 shall include the provision of further information to the Controller in phases, as details become available.

13.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (a) the Controller with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Controller following any Data Loss Event;
- (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

13.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (d) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

13.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

13.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

13.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

13.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.

13.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **14. Liability**

14.1 Neither party shall be responsible for any injury, loss, damage, cost or expense suffered by the other party if and to the extent that it is caused by the negligence or wilful misconduct of such party or by breach by such party of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

- 14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory

duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and

14.2.2 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Charges paid or payable to the Contractor; and except in the case of claims arising against the Contractor under clauses 9.4 and 18.3, in no event shall either party be liable to the other for any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited

## **15. Force Majeure**

The Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

The Customer shall not accept that EU exit is either a force majeure event or a frustration event, as the likely consequences of this process have been widely aired in public for some time, all suppliers have had ample time to plan for continuation of service and performance of contracts will still be possible in most cases.

## **16. Termination**

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is

less than three (3) months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or

16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.

16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9,

10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Agreement, the Contractor shall:

16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and

16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## **17. Compliance**

17.1 Without The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement. 17.2 The Contractor shall:

17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and

17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.

17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.6 the Official Secrets Acts 1911 to 1989; and

17.7 section 182 of the Finance Act 1989

## **18. Prevention of Fraud and Corruption**

18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for

showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:

18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

## **19. Dispute Resolution**

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "Mediator") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **20. General**

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and

perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21. Notices**

21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22. Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## **Appendix 1: Specification of Requirement**

### **1. About the Department for International Trade**

1.1 The Department of International Trade (DIT) has overall responsibility for developing, coordinating and delivering new trade and investment policy for the UK, including preparing for and then negotiating Free Trade Agreements and market access deals with non-EU countries, and working side by side with the new Department for Exiting the European Union, which will negotiate the UK's new relationship with the EU in tandem.

### **2. Background to the Requirement**

2.1 Jenner & Block London LLP ("the Contractor") is to provide an expert-level, tailored investment policy training programme for the Department for International Trade's (DIT) Investment and Digital Trade Team. The need for the training requirement is directly related to the UK's future responsibilities for leading trade and investment

following exit from the European Union. The need to build a world-class trade function is a priority for UK Government. This proposal seeks to address the need for high-level trade training in the specialist trade investment area.

- 2.2 The team to which the training will be delivered comprises representatives from policy, legal and analytical disciplines.

### **3. The Requirement**

- 3.1 Services in this contract will be delivered as the **second and final part** of a phased approach. Phase 1 training was delivered in June 2018.
- 3.2 The Training will be delivered in London at a venue to be designated by the Authority.
- 3.3 Phase 2 training will be provided over 4 working days in September 2019.
- 3.4 Jenner & Block have previously prepared a pack of training materials for Phase 1. The training materials will form the basis of Phase 2 training. DIT will ensure staff have completed pre-training preparation to understand key concepts contained in the course prior to the start of Phase 2 training.
- 3.5 Phase 2 will to provide a specific training programme at expert level. The Contractor will supply the Customer with credentials of all personnel involved in delivering this training.
- 3.6 The training is classroom-based, using case studies, seminar style discussions and negotiation simulations as teaching tools where appropriate. It will cover investment treaties in general and focus specifically on the following topics:
- Substantive provisions: including but not limited to Regulatory issues, states' responsibility, right to regulate, definitions of investor and investment, performance requirements and capital transfers, expropriation, standards of treatment (Fair and Equitable Treatment (FET), Minimum Standard of Treatment (MST) and nondiscrimination)), umbrella clauses, subrogation treaty and forum

shopping, denial of benefits and interaction between services and investment.

- Procedural issues: including but not limited to managing disputes (Investor State Dispute Settlement) (ISDS) and State to State Dispute Settlement (SSDS)), preliminary objections, bifurcation, selecting arbitrators, document requests and production, transparency and damages.

- 3.7 Training will be delivered to: approximately fifteen (15) Policy and treaty design leads, negotiators and legal advisers based in DiT. There will be a range of knowledge amongst the attendees, including about 50% who have attended the Phase 1 training.
- 3.8 Additional training materials will be provided, subject to the Contractor's discretion, on the need to update the materials provided in Phase 1, in line with the course requirements.
- 3.9 The effectiveness of the training will be judged on the following learning outcomes, which will be formally evaluated following completion of the course:
- The understanding and ability to use a range of approaches available in international trade policy organisations to deliver UK objectives.
  - Understanding of difference approaches to modern investment treaties, including in FTAs.
  - Better understanding of how to interpret and draft the treaty language.
- 3.10 The Contractor's key personnel must have experience in:
- Identifying and explaining the differences between the different approaches taken by capital exporting and capital importing parties in treaty negotiations.
  - Participation in negotiations or drafting treaty text.

3.11 The core objectives of Phase 2 training are to:

- Equip attendees with a deep, broad and detailed policy understanding of key investment (substantive and procedural) issues to better navigate the increasingly complex investment protection environment whether in international investment agreements or in investment chapters in free trade agreements.
- Provide attendees with a better understanding of customary international law as relevant to international investment law
- Help develop a basis for understanding Bilateral Investment Treaty (BIT) jurisprudence and impact on treaty negotiations and the detailed intricacies of drafting investment protection provisions in a way that maintains an open investment environment whilst minimising the risks of investor claims.
- Provide investment team (policy, legal and analysts) with a deep, broad and detailed policy understanding of key investment (substantive and procedural) issues to better navigate the increasingly complex investment protection environment.

## Appendix 2 – Contract Charges and Payment

Payment of the below charges will be made in full, following completion of the services to be provided under this agreement, within thirty (30) days of the Contractor providing the Customer with a valid invoice.

Requirement	Total Charges (£)
Total Price for providing the Services set out in the Specification	Nil cost
Return Economy airfare for travel from Washington DC to London	£2200.00
Fee for service and instruction	£15000.00

<b>Meals and subsistence for 6 days at £35 per day</b>	<b>£210.00</b>
<b>Hotel Accommodation for 5 nights in London at 175 GBP per night</b>	<b>£1050</b>
<b>Total</b>	<b>£18460</b>

### **Schedule 1– Schedule of Processing, Personal Data and Data Subjects**

**This Schedule is not in use – no personal data will be processed under this contract.**

