



U.S. TRADE AND DEVELOPMENT AGENCY

MODEL CONTRACT FOR USTDA-FUNDED FEASIBILITY STUDY

This is a model contract ("Model Contract") designed to facilitate the drafting of a contract ("Contract") between the Grantee and the U. S. Contractor with respect to the performance of a USTDA-funded feasibility study ("Study"). It is important to note that USTDA is not a party to the Contract. All Contracts for USTDA-funded studies must contain the following:

- 1) USTDA Mandatory Contract Clauses, which are set forth as Annex II to the Grant Agreement that funds this Study;*
- 2) Terms of Reference for this Study, which is set forth in Annex I to the Grant Agreement (The Contract's Terms of Reference must be identical to the Grant Agreement's or the Client and the Contractor must provide a separate written explanation to USTDA for approval at the time of Contract review);*
- 3) A list of personnel, who will be utilized to perform the Study, and curricula vitae for all such personnel listed;*
- 4) Payment provisions that conform with the requirements set forth in Clause G of the USTDA Mandatory Contract Clauses (Clauses 3 and 4 of this Model Contract may be used as an example); and*
- 5) In the event that the Contract is executed in two languages, a Contract provision which states that English must be the controlling language.*

The information in italics is intended to provide guidance and should not be included in the text of the final Contract.

Either the Contractor or the Grantee may submit a copy of the signed Contract or a final, negotiated draft version to USTDA for review and approval. The parties are encouraged to submit a final, negotiated, and unsigned draft version of the Contract to USTDA for review and approval. USTDA's approval may be contingent upon certain modifications being made to the Contract if USTDA determines such modifications are required to ensure that the text of the Contract is consistent with the terms and objectives of the Grant Agreement and USTDA policy.

(2)

USTDA Grant funds will not be disbursed until USTDA (i) receives a signed copy of the Contract, containing any required USTDA modifications, and (ii) issues the parties a written approval letter.

CONTRACT FOR [STUDY TITLE]

This contract ("Contract") is made and entered into by and between _____ (hereinafter referred to as the "Client") and _____, a United States firm incorporated in _____ with its principal offices located at _____ in the State of _____ (hereinafter referred to as the "Contractor") (referred to herein individually as a "Party" and collectively, the "Parties").

WHEREAS, the Client has requested the Contractor to prepare a feasibility study on the project (the "Study"), and the Contractor has agreed to prepare the Study in accordance with the terms and conditions set forth in this Contract;

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Contract, the Parties hereto agree as follows:

1. Appointment

The Contractor shall perform the Study in accordance with the terms and conditions set forth in this Contract and the following annexes which are hereby incorporated by reference into this Contract. *[Additional annexes, such as those set forth in Annexes IV and V below, may be added in appropriate cases]*

- | | |
|------------------|--|
| Annex I: | Terms of Reference <i>[must be identical to the Terms of Reference in the Grant Agreement or the Client and the Contractor must provide a separate written explanation to USTDA for approval as soon as possible and no later than at the time of Contract review]</i> |
| Annex II: | USTDA Mandatory Contract Clauses |
| Annex III: | List of Personnel and Curricula Vitae |
| <i>[Annex IV</i> | <i>Schedule of Events]</i> |
| <i>[Annex V:</i> | <i>Counterpart Client Personnel, Assigned Specialists, Equipment, and Facilities to be Provided by the Client]</i> |

2. Effective Date of the Contract

This Contract shall be effective upon signature by both Parties. The Parties acknowledge that the estimated completion date for the Study is set forth in Clause K of the USTDA Mandatory Contract Clauses.

[The Contract's effective date should not precede the effective date of the Grant Agreement. Contracts, and any amendments, including assignments and changes to the Terms of Reference, must be agreed to in writing by USTDA in order to be effective with respect to the expenditure of USTDA Grant funds.]

3. Payment Schedule

The U.S. Trade and Development Agency (“USTDA”) has made a Grant of _____
_____ [spell out amount] United States Dollars (US\$ _____) available to the Client for the Study (“Grant Funds”) pursuant to the Grant Agreement between USTDA and the Client, dated _____ (“Grant Agreement”). In consideration for the Contractor's performance of the Study, the Client shall arrange for the Grant Funds to be disbursed by USTDA directly to the Contractor as follows:

- (a) US\$ _____, a mobilization payment, upon signature of the Contract and approval by USTDA [not to exceed 20% of the total Grant Funds].
- (b) US\$ _____ upon completion of _____. [milestone]
- (c) US\$ _____ upon completion of _____. [milestone]
- (d) US\$ _____ [this amount should not be less than 15% of the total USTDA Grant Funds] upon receipt and approval by USTDA of the Final Report in accordance with the specifications and quantities set forth in the USTDA Mandatory Contract Clauses. [If the Contractor is making a Cost Share contribution to this study, add the following additional sentence.] In addition, a financial officer of the Contractor must provide the Cost Share certification contained in the USTDA Mandatory Contract Clauses.

[The above payment schedule should be based upon completion of performance milestones rather than automatic chronological installments. These milestones should be based upon completion of tasks set out in the Annex I Terms of Reference.]

4. Method of Payment

In accordance with the payment schedule set forth in Clause 3 above, the Contractor shall submit invoices containing the certification set forth in Clause G of the USTDA Mandatory Contract Clauses to the Client for approval. The Client shall approve, in accordance with the disbursement procedures in Clause G of the USTDA Mandatory Contract Clauses, or disapprove each invoice within ___ [15] ___ days of its receipt. If the Contractor does not receive a response regarding the invoice from the Client within ___ [30] ___ days of its receipt, the Contractor shall notify USTDA. If the Client disapproves an invoice, the Client shall so inform the Contractor in writing, setting out the reasons for disapproval in order to enable the Contractor to take appropriate corrective measures. If the Client does not approve or disapprove of an invoice within ___ [15] ___ days after such corrective measures have been made, the Contractor shall notify USTDA. After the Client approves an invoice and the invoice is received by USTDA, USTDA shall make its respective disbursement of the Grant Funds directly to the Contractor in the United States.

5. Supply of Personnel

The Study shall be carried out by the personnel specified in Annex III for the respective periods of time covered by this Contract. A curriculum vitae for each person listed shall be attached to this Annex. The Contractor hereby agrees that the personnel listed in Annex III will be utilized to perform the Study.

6. Procedures for Substitution of Personnel

Except as the Client may otherwise agree, no changes shall be made in the personnel specified in Annex III. If, for any reason beyond the reasonable control of the Contractor, it becomes necessary to replace any person specified in Annex III, the Contractor shall provide a replacement of equivalent or superior qualifications. The Contractor must give USTDA advance written notice of any changes made to the personnel specified in Annex III and must provide USTDA with a curriculum vita for each proposed replacement. Any additional costs incurred by reason of such replacement shall be at the expense of the Contractor. In the event, if any person specified in Annex III is found by the Client to be unsuitable or incompetent in discharging his or her assigned responsibilities, the Client may request the Contractor to provide a replacement within a reasonable period of time. Any additional costs incurred by reason of such replacement shall be at the expense of the Contractor.

7. Permits and Approvals

The Client shall facilitate the timely granting to the Contractor, its authorized subcontractors, and affiliates, and, where applicable, their dependents, of visas, licenses, permits, and customs clearance for entry and exit, and the privilege of bringing into the host country reasonable amounts of foreign currency for the purpose of carrying out the Contract.

8. Force Majeure

If either of the Parties to this Contract is prevented from performing any of its obligations under the Contract by events of Force Majeure, such as war, fire, flood, earthquake, or any other event beyond the reasonable control of such Party, the time period for performance of such obligations shall be extended by a period equal to the delay caused by such event, and the Parties hereto shall conduct friendly negotiations as soon as possible to find a mutually satisfactory solution to the problems caused by such events.

[Please note that any extensions, changes, modifications, etc. resulting from Force Majeure would be subject to written USTDA approval as set forth in the USTDA Mandatory Contract Clauses.]

9. Suspension and Termination of the Contract

(a) Suspension of the Contract

If any of the following events shall have happened and be continuing, either Party may, by written notice to the other Party and USTDA, suspend in whole or in part this Contract:

(i) USTDA shall have suspended disbursements from the Grant Agreement covering this Contract; or

(ii) A default shall have occurred in the performance of any obligation of the other Party under this Contract.

(b) Termination of the Contract

Consistent with Clause H of the USTDA Mandatory Contract Clauses, if any of the following events shall have happened and be continuing, either Party may, by written notice to the other Party, terminate the Contract:

(i) Any of the conditions referred to in paragraph (a) above shall continue for a period of thirty (30) days after the Party shall have given written notice to the other Party of the suspension of the Contract; or

(ii) The Grant Agreement between USTDA and the Client shall have been terminated.

In any event, either Party may terminate the Contract at any time by giving not less than sixty (60) days written notice to the other Party and USTDA.

(c) Termination Procedures

Upon termination of the Contract, the Contractor shall take immediate steps to terminate the performance of the Study in a prompt and orderly manner and to reduce losses and to keep further expenditures to a minimum.

10. Business Practices

The Parties recognize the existence of standards of conduct for public officials and commercial entities in their respective countries. Therefore, the Parties shall fully comply with all United States and host country laws relating to corruption or bribery. For example, the Contractor and its subcontractors shall fully comply with the requirements of the U.S. Foreign Corrupt Practices Act, as amended (15 U.S.C. §§ 78dd-1 et seq.). Each Party agrees that it shall require that any agent or representative hired to represent it in connection with the Study will comply with this paragraph and all laws which apply to

activities and obligations of that Party, including, but not limited to, those laws and obligations referenced above.

11. Standards of Conduct

The Contractor shall exercise all reasonable skill, care, and diligence in the performance of the Study under this Contract and shall carry out its responsibilities in accordance with recognized professional standards. The Contractor and its employees, agents, and subcontractors, if any, shall respect and abide by all applicable laws and regulations of the host country.

12. Liability

The Contractor and any subcontractor shall be liable to the Client for performance of the Study in accordance with the provisions of this Contract and for any loss suffered by the Client as a result of a default of the Contractor in such performance, subject to the following limitations:

(a) the Contractor shall not be liable for any damage or injury caused by or arising out of the act, neglect, default or omission of any persons other than the Contractor, its Subcontractors or the personnel of either of them; and

(b) the Contractor shall not be liable for any loss or damage caused by or arising out of circumstances over which the Contractor had no control.

13. Amendment Procedures

All changes, modifications, and amendments to this Contract, including its annexes, shall be made only by written agreement by the Parties hereto, subject to written USTDA approval.

14. Dispute Resolution

(a) All disputes between the Parties hereto arising in connection with this Contract shall be settled if possible through friendly negotiations between the Parties hereto. In case no settlement can be reached within ninety (90) days after a dispute arises, either Party may request that the dispute be submitted for arbitration.

(b) The arbitration shall take place in _____ and be conducted by _____ *[arbitration organization]* in accordance with the procedural rules of *[arbitral rules, e.g., UNCITRAL]*. The arbitration shall be conducted in the _____ language, and _____ *[state and/or country]* substantive law shall be applied. The decision of the arbitrators shall be final and binding upon both Parties.

(6)

(c) The Parties shall give USTDA advance written notice of any such arbitration proceedings.

(d) Pursuant to Clause R of the USTDA Mandatory Contract Clauses, the provisions in this paragraph do not affect the rights or obligations of USTDA.

15. Succession

This Contract is binding upon the Parties' successors.

16. Addresses of Record

Any notice, request, document, or other communication submitted by either Party to the other Party under this Contract shall be in writing or through a wire or electronic medium which produces a tangible record of the transmission, such as an email or facsimile, and will be deemed duly given or sent when delivered to such Party as set forth below: [*The Client and Contractor should provide contact information for the persons responsible for the day-to-day management of the Contract.*]

(a) For the Client:

Name:
Title:
Address:
Phone:
Fax:
E-Mail:

(b) For the Contractor:

Name:
Title:
Address:
Phone:
Fax:
E-Mail:

All such communications between the Parties shall be in the _____ language.
Any communications between either of the Parties and USTDA shall be in the English language.

[The Contract and all subcontracts, invoices, final reports, and other documents directed to USTDA must be in English]

17. Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

18. Entire Agreement

This Contract, including its annexes, contains all covenants, stipulations and provisions agreed by the Parties hereto. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

19. Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Counterparts may be delivered via electronic mail or other transmission method and any counterpart so delivered shall be deemed to be valid and effective for all purposes.

IN WITNESS WHEREOF, the Parties hereto, each acting through its duly authorized representative, have caused this Contract to be signed.

For [CLIENT]

For [CONTRACTOR]

By: _____
[name and title]

By: _____
[name and title]

Date: _____

Date: _____

Annex I -- Terms of Reference

Annex II -- USTDA Mandatory Contract Clauses *[This Annex must contain the actual text from the corresponding USTDA Grant Agreement, normally found in Annex II thereto]*

Annex III – List of Personnel and Curricula Vitae

[Please remember to attach all annexes]

(10/28/13 version)