

**THIS DOCUMENT IS A MODEL TEMPLATE OF THE USTDA SUCCESS FEE AND COST SHARE AGREEMENT AND SHOULD BE USED AS REFERENCE ONLY.**

***Standard Fixed Years (2013-2020) Measurement Period  
("Hybrid Finance/Revenue-Based Success")***

[date]

[Addressee  
Title  
U.S. Firm Name-Full Official Name  
Address]

Re: \_\_\_\_\_ [Country: Feasibility Study or Technical Assistance Title]  
Success Fee and Cost Share Agreement  
USTDA Activity No. \_\_\_\_\_

Dear \_\_\_\_\_:

We are pleased that \_\_\_\_\_ ("Grantee") has selected \_\_\_\_\_ ("Contractor") to perform a feasibility study *or technical assistance* ("Study" or "TA") on the \_\_\_\_\_ project ("Project") with funds to be partially provided by the U.S. Trade and Development Agency ("USTDA"). We expect that the Grant Agreement between USTDA and the Grantee ("Grant Agreement") will be signed in the near future and that the Grantee will negotiate a contract with Contractor to perform the Study ("Contract"). We are hopeful that the completion of the Study will lead to further business opportunities for Contractor and other U.S. firms.

The Terms of Reference for the Study ("Terms of Reference") and the budget estimate ("Budget Estimate") are based upon the proposal submitted to USTDA by Contractor and USTDA's review of the proposal. The Budget Estimate has been established at US\$\_\_\_\_\_. USTDA has approved a grant to the Grantee of US\$\_\_\_\_\_ ("Grant") to partially fund the Study.

USTDA has conditionally approved the selection by the Grantee of Contractor as the contractor for the Study. USTDA final approval of this selection will be effective when Contractor agrees with the "Success Fee" and "Cost Share" provisions described below.

## A. Success Fee

(1) Success Fee Basis. USTDA and the Contractor anticipate that the Contractor may have the opportunity to successfully participate in the implementation of the Project. As such, the Contractor shall refund to USTDA the “Success Fee” as follows:

(a) Finance-Based. The Contractor shall refund to USTDA the total amount of the USTDA- disbursed Grant funds if, in connection with the initial financial closing (debt and/or equity) with respect to the Project or any related project based substantially upon the Study (“Financial Closing”), the Contractor or any of its parent(s), subsidiary(s), or affiliate(s):

- (i) takes an equity position in such project , or
- (ii) commits its own financial resources (as evidenced by an outlay of implementation funds) for such project, or
- (iii) whether or not such party is a principal or equity holder in such project, the party receives proceeds from a drawdown of funds from a public or private financial institution, or other person or entity acting as a financier.

Refund by Contractor of the total amount of USTDA-disbursed Grant funds must be made regardless of the amount of equity, outlay, or drawdown.

Alternatively, if none of the above events take place but the Contractor earns revenue in connection with the Project or the Study, then the “Success Fee” in (b) below shall apply:

(b) Revenue-Based. The Contractor shall refund to USTDA an amount equal to \_\_\_% of the total gross revenue earned by the Contractor, including its parent(s), subsidiary(s), and affiliate(s), which are related to the Project and any project based substantially upon the Study (“Revenue”), not to exceed in aggregate the total amount of USTDA-disbursed Grant funds.

(c) Measurement Period. The Success Fees in (a) and (b) above will be measured from the time this Success Fee and Cost Share Agreement is signed by both parties until December 31, 2020 (“Measurement Period”). The Success Fee repayment requirement does not apply to those events set forth in (a) and (b) above which take place before or after the Measurement Period.

(2) Success Fee Reporting.

(a) First Success Fee Report Contractor shall provide to USTDA, by March 1, 2014, a brief statement (“Success Fee Report”) indicating whether any of the events in (1) above has taken place during the period from the signature date of this Success Fee and Cost Share Agreement through December 31, 2013.

- (b) Subsequent Success Fee Reports. Contractor shall provide to USTDA, by March 1 of each of the subsequent seven years following the first Success Fee Report (2015, 2016, 2017, 2018, 2019, 2020, and 2021), a Success Fee Report indicating whether any of the events in (1) above has taken place during each respective preceding calendar year (2014, 2015, 2016, 2017, 2018, 2019, and 2020).
- (c) Format. All Success Fee Reports shall follow the format set forth in Annex I hereto, unless USTDA otherwise authorizes.
- (d) Confidentiality. It is the responsibility of Contractor to ensure that any confidential information pertaining to these Success Fee Reports, or any other aspect of this Success Fee and Cost Share Agreement, be clearly marked as such and be provided separately from a version which is suitable for public distribution. USTDA will maintain the confidentiality of such information in accordance with applicable law.
- (e) Repayment in Full. In the event that the USTDA Grant funds disbursed in connection with the Project have been repaid in full, no further Success Fee Reports shall be required.

(3) Refund Date.

- (a) If any of the events in A(1)(a) above occurs, the Contractor shall submit, within 30 days of Financial Closing, a Success Fee Report accompanied by a refund of the total amount of USTDA-disbursed Grant funds.
- (b) If Revenue, as defined in A(1)(b) above, is earned, the Contractor shall submit a refund of the Success Fee with its next Success Fee Report required pursuant to A(2) above.

(4) Timeliness of Reporting and Refund. If Contractor does not provide the Success Fee Reports and refunds in accordance with the schedule in A(2) and A(3) above, or if the information or amounts contained therein are inaccurate, USTDA shall be entitled to a refund from Contractor of the total amount of USTDA-disbursed Grant funds, less Success Fee refunds already made to USTDA. USTDA shall first provide written notice to Contractor of such deficiency and shall allow Contractor thirty (30) days to correct the matter before the full amount becomes due.

**B. Cost Share**

- (1) Budget Estimate. The Budget Estimate for the Terms of Reference is set forth in Annex II hereto. The Budget Estimate represents Contractor's best estimate of the cost of the goods and services to be provided, broken down by labor rates and other direct costs. **No fee or profit is allowed.** The Budget Estimate provides the basis for establishing the cost share ratio between USTDA and the Contractor.

- (2) Cost Share Amount. In addition to the USTDA Grant funds provided, Contractor shall ensure that Contractor and/or its subcontractors cover at least US\$\_\_\_\_\_ of costs to complete the full Terms of Reference (“Cost Share”).
- (3) Statement of Expenditures.
- (a) Before USTDA will make the final disbursement of Grant funds, a financial officer of Contractor must certify that Contractor has complied with the Cost Share requirement (“Certified Statement of Expenditures”). The Certified Statement of Expenditures must either accompany the final invoice or be separately submitted by Contractor. In either case, it must contain a detailed breakdown of costs incurred to complete the full Terms of Reference and must follow the format set forth in Annex III hereto. The Contractor must submit an accompanying written explanation of any substantial change between the Budget Estimate and the Certified Statement of Expenditures. “Substantial change” means any variation of 30% in any line item such as direct labor costs per task, international air travel, or per diem.
- (b) If the Certified Statement of Expenditures is not provided, or is inaccurate, USTDA shall be entitled to a refund from Contractor of the total amount of the USTDA-disbursed Grant funds, less any Success Fee refunds already made to USTDA. USTDA shall first provide written notice to Contractor of such deficiency and shall allow Contractor thirty (30) days to correct the matter before the full amount becomes due.
- (c) Notwithstanding its approval of the final invoice for payment, USTDA may later audit the costs listed in the Certified Statement of Expenditures and receive a refund from Contractor to the extent that the Certified Statement of Expenditures is not accurate or the costs shown are not reasonable and documented to explain the composition of costs, rates and basis of allocation.
- (4) Study Cost Adjustments.
- (a) The maximum USTDA contribution to the Study is the Grant amount. The actual Study funding contributions by USTDA and Contractor must remain proportionate to that set forth in this Success Fee and Cost Share Agreement (USTDA US\$\_\_\_\_\_ : Contractor US\$\_\_\_\_\_ ).
- (b) If the total cost of the Study is less than the Budget Estimate, Contractor shall so indicate and either reduce the amount of the final invoice accordingly or refund to USTDA a proportionate amount of the Grant funds already disbursed.
- (5) Pre-Grant Agreement Costs. Study-related costs that are incurred by Contractor and/or its subcontractors prior to the signature of the Grant Agreement may not be charged to the USTDA Grant, unless otherwise agreed by USTDA in writing. These costs may be included as part of the Cost Share, however, provided they are for tasks included within

the Terms of Reference. No costs incurred in preparing the proposal for USTDA funding (including the contracting for a consultant to represent the Contractor at USTDA) may be charged to the USTDA Grant or to the Cost Share.

**C. Books and Records**

Contractor and its subcontractors funded under the Grant Agreement shall maintain, in accordance with generally accepted accounting procedures, books, records, and other documents, sufficient to reflect properly all transactions under or in connection with this Success Fee and Cost Share Agreement. These books, records, and other documents shall clearly identify and track the Success Fee events in A above (for Contractor) and the total cost of the Study including the Cost Share (for Contractor and its subcontractors) as described in B above.

Such books, records, and documents shall be maintained during, and for a period of two (2) years after, the Measurement Period. Contractor and its subcontractors shall afford USTDA, or its authorized representatives, the opportunity at reasonable times for inspection and audit of such books, records, and other documentation. Contractor shall also ensure that adequate records are kept by the entities referred to in A(1) above (parent(s), subsidiary(s), and affiliate(s)) to identify and track the Success Fee events described therein and that such records may be made available through the Contractor for review.

**D. Contact**

The following person shall be the point of contact for all reporting and payment matters under this Success Fee and Cost Share Agreement:

*[Name  
Title  
Name of Firm-Full Official Name  
Address  
Telephone No.  
Fax No.  
E-Mail address]*

If, for any reason, it becomes necessary for the Contractor to change the point of contact specified above, the Contractor shall promptly notify USTDA and provide USTDA with updated contact information.

**E. Collection**

In the event that Contractor fails to make Success Fee and/or Cost Share refunds to USTDA that are properly due and owing under this Success Fee and Cost Share Agreement, USTDA may refer the matter to appropriate collection services, including the U.S. Department of the Treasury or other Government departments or agencies.

**F. Effectiveness**

This Success Fee and Cost Share Agreement will become effective upon:

- (1) Signature of the Grant Agreement;
- (2) Signature of the Contract; and
- (3) Written approval by USTDA of the Contract.

**G. Successors and Assigns**

This Success Fee and Cost Share Agreement shall be binding upon the Contractor and its successors and assigns, provided, however, that this Success Fee and Cost Share Agreement shall not be assigned or assumed without the prior written approval of USTDA.

**[The Balance of this Page is Intentionally Left Blank]**

If you are in agreement with the foregoing, please so indicate by signing below and returning one signed original to me. We look forward to supporting your efforts to perform this Study in furtherance of the objectives of the USTDA program.

Accepted and Agreed:  
\_\_\_\_\_ *[U.S. Firm-Full Official Name]*

Sincerely,

By: \_\_\_\_\_

Leocadia I. Zak  
Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Annex I  
**UNITED STATES TRADE AND DEVELOPMENT AGENCY**  
**SUCCESS FEE PROGRAM – SUCCESS FEE REPORT**

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**PROJECT INFORMATION:**

Country:\_\_\_\_\_ Activity No.:\_\_\_\_\_

Project Name:\_\_\_\_\_

**U.S. FIRM CONTACT INFORMATION:**

Name of U.S. Firm:\_\_\_\_\_

Current Contact Person (and Title) for Success Fee Program:\_\_\_\_\_

Phone:\_\_\_\_\_ Fax:\_\_\_\_\_ E-mail:\_\_\_\_\_

Address:\_\_\_\_\_

**U.S. FIRM'S HOST COUNTRY (CLIENT) CONTACT INFORMATION:**

Name of Host Country Client:\_\_\_\_\_

Current Contact Person (and Title):\_\_\_\_\_

Phone:\_\_\_\_\_ Fax:\_\_\_\_\_ E-mail:\_\_\_\_\_

Address:\_\_\_\_\_

**SUCCESS FEE REPORTING:** (Please provide this information on separate sheets.)

**A. Formula**

*Specify Success Fee Criteria as stated in your Success Fee Agreement with USTDA.*

**B. Measurement**

*(1) Describe success of this Project or any related project for U.S. Firm based upon the above formula as of the date of this report.*

*(2) Describe success of this Project or any related project based upon the above formula applicable to all parent(s), subsidiary(s), and affiliate(s) of U.S. Firm as of the date of this report.*

*(3) Provide a detailed narrative description, applicable statistics or financial reports, and the period or term of their measurement.*

**C. Calculation and Refund of Success Fee Due**

*(1) Calculate the Success Fee due to USTDA with this report based upon the above measurement.*

*(2) If Success Fee is due, please attach refund check, payable to the United States Trade and Development Agency.*

*(3) If no Success Fee is currently due to USTDA, please attach a detailed explanation.*

**D. Projections for Next Year's Success**

*Estimate the likely success of this Project and any related project that will be achieved in the next 12 months.*

**CERTIFICATION:**

I hereby certify that I am a duly authorized representative of \_\_\_\_\_ (U.S. Firm) and that all information contained in this Success Fee Report is accurate, complete, and in compliance with the terms of the Success Fee Agreement between \_\_\_\_\_ (U.S. Firm) and the United States Trade and Development Agency.

By (signature):\_\_\_\_\_ Date:\_\_\_\_\_

Typed Name and Title\_\_\_\_\_

*(Format date: 10/3/05)*

**Annex II**

**Budget Estimate**

**Annex III**  
**Certified Statement of Expenditures**

“As detailed below, Contractor and/or its subcontractors has covered at least US\$\_\_\_\_ [*Cost Share amount*] of costs to complete the full Terms of Reference as set forth in Annex I to the Grant Agreement and the Contract between the Grantee and Contractor.”

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Financial Officer of \_\_\_\_ [*Contractor – Full Official Name*]

**DIRECT LABOR COSTS:**

<b><u>TOR Task</u></b>	<b><u>TOR Task Name</u></b>		<b><u>Primary Contractor (Employee) Labor</u></b>		
			<b><u>Total Person Days x</u></b>	<b><u>Daily Rate*</u></b>	<b><u>=</u></b>
					<b><u>TOTAL COST</u></b>
I	Task _____	(Position A)	_____	_____	_____
		(Position B)	_____	_____	_____
		<b>TOTALS:</b>	_____	_____	_____

<b><u>TOR Task</u></b>	<b><u>TOR Task Name</u></b>		<b><u>Non-Employee Labor</u></b>		
			<b><u>Total Person Days x</u></b>	<b><u>Daily Rate**</u></b>	<b><u>=</u></b>
					<b><u>TOTAL COST</u></b>
I	Task _____	(Position A)	_____	_____	_____
		(Position B)	_____	_____	_____
		<b>TOTALS:</b>	_____	_____	_____

**TOTAL DIRECT LABOR COSTS:** \_\_\_\_\_

**OTHER DIRECT COSTS:**

<b><u>Purchased Services/Contracts***</u></b>	<b><u>Tasks</u></b>	<b><u>TOTAL COST</u></b>
_____	_____	_____
_____	_____	_____

<b><u>Travel</u></b>	<b><u>Trips</u></b>	<b><u>Trip Cost</u></b>	<b><u>TOTAL COST</u></b>
International Air Travel	_____	_____	_____
In-Country Air Travel	_____	_____	_____
Ground Transportation	_____	_____	_____

	<b><u>Trip Days</u></b>	<b><u>Per Diem Rate</u></b>	<b><u>TOTAL COST</u></b>
Per Diem	_____	_____	_____
Other (local travel, etc.)	_____	_____	_____
Interpreters	_____	_____	_____

<b><u>Other</u></b>	<b><u>TOTAL COST</u></b>
Reproduction and Binding	_____
Courier Services	_____
Visa Services	_____
Communication	_____

**TOTAL OTHER DIRECT COSTS:** \_\_\_\_\_

**TOTAL COSTS (DIRECT LABOR COSTS + OTHER DIRECT COSTS):** \_\_\_\_\_

**TOTAL U.S. COMPANY COST SHARE:** \_\_\_\_\_

**USTDA GRANT:** \_\_\_\_\_

\* Primary Contractor (Employee) Labor Costs = Salary + Overhead + Benefits (no fee or profit).  
 \*\* Non-Employee Labor Cost = Salary + Overhead + Benefits + Reasonable Fee or Profit.  
 \*\*\* Purchased Services/ Contracts may include engineering drawings, lab work, surveys, translation, etc., which would not be included in Non-Employee Labor Cost above.  
 Note: Pursuant to Article B(3)(a), the Contractor must submit an accompanying written explanation of any substantial change between the Budget Estimate and the Certified Statement of Expenditures. “Substantial change” means any variation of 30% in any line item such as direct labor costs per task, international air travel, or per diem.