

**\*\*\*IMPORTANT NOTE\*\*\***

*The following form of Grant Agreement is intended to be used as an example for discussion purposes only. Actual terms and conditions in a final Grant Agreement may vary significantly from the terms and conditions in this document. All provisions contained in this document are expressly non-binding, and nothing in this document will be construed as an offer to enter into a Grant Agreement subject to acceptance by any party. There is no legal or other commitment by any party as to any of the provisions in this document unless and until the necessary internal approvals of USTDA have been obtained and a formal Grant Agreement has been signed by authorized signatories of both parties, notwithstanding any oral or other statements to the contrary.*



**FORM OF GRANT AGREEMENT**

This Grant Agreement is entered into between the Government of the United States of America, acting through the U.S. Trade and Development Agency (“USTDA”), and [full legal name of the Grantee] (the “Grantee”). USTDA and the Grantee are each referred to herein as a “Party”, and collectively as the “Parties”. USTDA agrees to provide the Grantee, subject to the terms and conditions of this Grant Agreement, [amount of the grant spelled out in words] United States Dollars (US\$ [dollar amount of grant]) (“Grant Funds”) to partially fund the cost of services required in connection with the preparation of a feasibility study (the “Study”) related to the proposed [project description] (the “Project”) in [country] (the “Host Country”). USTDA approves the selection by the Grantee of [full legal name of the Contractor] as the contractor (the “Contractor”) to perform the Study.

**1. USTDA Grant Funding**

The Grant Funds to be provided by USTDA under this Grant Agreement shall be used to fund the costs of a contract between the Grantee and the Contractor (the “Contract”), under which the Contractor will perform the Study. In no event will the amounts contributed by USTDA for the Study exceed the amount of the Grant Funds. Payment to the Contractor will be made directly by USTDA on behalf of the Grantee with the Grant Funds provided under this Grant Agreement.

**2. Terms of Reference**

The terms of reference for the Study (the “Terms of Reference”) are attached as Annex I to this Grant Agreement. The Study will involve [Include an overview of the relevant topics.]. The Grantee shall include these Terms of Reference for the Study as Annex I to the Contract.

The Grantee acknowledges and understands that the Contractor's performance of the Study must comply with the entirety of the Terms of Reference, and any modification of the Terms of Reference set forth in Annex I to the Contract or deviation from their terms must be approved in writing by USTDA in accordance with the procedures for amendments or other modifications under the Contract. The Grantee acknowledges and understands that any performance by the Contractor of work not included in, or not in compliance with, the Terms of Reference, or any failure by the Contractor to perform any work set forth under the Terms of Reference (in compliance with those terms), will be ineligible for approval or payment, absent an amendment or other modification in accordance with such procedures. Consequently, the Grantee shall not approve any Contractor work performed under the Contract that does not comply with or that otherwise is not in accordance with the Terms of Reference. The Grantee acknowledges and understands that any failure to obtain prior written approval for any modifications or deviations from the Terms of Reference may result in forfeiture by the Contractor of payment for work performed that is not in compliance with the Terms of Reference and/or a significant delay in payment of the final invoice.

### **3. Standards of Conduct**

USTDA and the Grantee recognize the existence of standards of conduct for public officials and commercial entities in their respective countries. Therefore, USTDA and the Grantee shall fully comply with all United States and Host Country laws relating to corruption or bribery, and shall not directly or indirectly provide, offer or promise to provide money or anything of value to any public official in violation of any United States or Host Country laws relating to corruption or bribery.

### **4. Grantee Responsibilities and Contractor Support**

(A) The Grantee shall use its best efforts to (a) promptly reply to notices and other communications, requests for information and requests for approvals of Invoices or other documents submitted to it by the Contractor or USTDA, (b) provide reasonable support for the Contractor, such as local transportation, office space and secretarial support, and (c) promptly notify USTDA in the event that the Grantee (i) no longer seeks to pursue the Project or complete the Study and/or (ii) would like to terminate this Grant Agreement.

(B) In addition to and separate from the Grant Funds provided by USTDA under this Grant Agreement, the Grantee acknowledges that the Contractor has agreed to be responsible for covering at least US\$[*dollar amount*] of costs to complete the full Terms of Reference (the "Contractor Cost Share"), subject to and in accordance with the terms of Clause T of the Mandatory Contract Clauses (as defined below).

### **5. Contract Matters and USTDA's Rights as Financier**

(A) USTDA's Right to Approve Contract Between Grantee and Contractor

(1) Contract

The Grantee shall use commercially reasonable efforts to negotiate a Contract with the Contractor for the performance of the Study. USTDA will provide to the Grantee an electronic copy of USTDA's standard contract form, and the Grantee shall, in conjunction with the Contractor, utilize this standard contract form as the basis for drafting the Contract. Once the Contract has been negotiated between the Grantee and the Contractor, the Grantee shall transmit to USTDA (or shall request that the Contractor transmit to USTDA on the Grantee's behalf) a final negotiated draft version of the Contract in an editable electronic format for USTDA review at the email address set forth in Article 15 below. USTDA shall advise the Grantee and the Contractor as to whether the draft Contract is ready for execution, on the understanding that USTDA's approval may be contingent upon certain modifications being made to the Contract.

(2) Amendments and Assignments of the Contract

The Grantee understands and acknowledges that no amendment or other modification to the Contract (or any annex to the Contract) shall be valid unless formally agreed upon in a written instrument signed by the Grantee and the Contractor and approved by USTDA in a signed approval letter. The Grantee or the Contractor may submit any proposed amendment or other modification to the Contract, including any proposed amendment or other modification to any Contract annex, or any proposed assignment of the Contract, to USTDA for review and comment at the address set forth in Article 15 below.

(B) USTDA Not a Party to the Contract

The Parties understand and agree that USTDA as a financing entity reserves to itself certain rights under the Contract, including, but not limited to: (i) the right to approve the terms of the Contract and any amendments to the Contract, including assignments, the selection of the Contractor and all Subcontractors, the Terms of Reference, the Final Report, and any and all documents related to the Contract or any Subcontract funded under this Grant Agreement, (ii) the right to require the parties to the Contract to suspend performance of the Terms of Reference upon reasonable prior written notice to such parties, and upon Contractor's receipt of such written notice, any further work performed in connection with the Terms of Reference will be at the Contractor's risk, (iii) the right to suspend disbursements of Grant Funds under Clause 3 of the Contract upon reasonable prior written notice to the parties to the Contract, and (iv) the right to demand, upon written notice to the Contractor, a refund from the Contractor of an appropriate amount of any Grant Funds that have been previously disbursed to the Contractor under Clause 3 of the Contract in the event that (a) the Contractor or any Subcontractor fails to comply in all material respects with the Terms of Reference or the terms and conditions of the Contract (including the Mandatory Contract Clauses attached to the Contract), or (b) the Contract and/or the Study is terminated, and the amount of Grant Funds disbursed to the Contractor prior to such termination exceeds the value of the work performed under the Contract in accordance with its terms.

The Parties further understand and agree that USTDA, in reserving any or all of the foregoing rights, has acted solely as a financing entity to ensure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these rights will be made as a financier in the course of funding the Study and will not be construed as making USTDA a party to the Contract. The Parties understand and agree that USTDA may, from time to time,

exercise the foregoing rights, or discuss matters related to these rights and the Project with the parties to the Contract or to any Subcontract, jointly or separately, without thereby incurring any responsibility or liability to such parties. Any approval or failure to approve by USTDA will not bar the Grantee or USTDA from asserting any right that it might have against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Grantee or USTDA.

(C) Grant Agreement Controlling

Regardless of USTDA approval, the rights and obligations of any party to the Contract or any Subcontract thereunder must be consistent with this Grant Agreement (including Annex I and Annex II). In the event of any inconsistency between this Grant Agreement and the Contract or any Subcontract funded by this Grant Agreement, this Grant Agreement shall control.

(D) Subcontractors and Subcontracts

For purposes of this Grant Agreement, (a) the term “Subcontractor” means an individual, corporation, partnership or other legal entity having a contract, purchase order or other agreement with the Contractor or with any other Subcontractor for performance of any part of the Study, and (b) the term “Subcontract” means any such contract, purchase order or other agreement with a Subcontractor.

## **6. Disbursement Procedures**

(A) USTDA Approval of Contract Required

USTDA will make disbursements of Grant Funds directly to the Contractor only after USTDA approves the Grantee’s Contract with the Contractor.

(B) Contractor Invoice Requirements

For purposes of this Grant Agreement, the term “Invoice” means any invoice submitted (or to be submitted) to USTDA by either the Grantee or the Contractor for payment of Grant Funds. The Grantee shall not approve any Invoice submitted to it by the Contractor unless such Invoice, and all work performed by the Contractor (or any Subcontractor) in connection with such Invoice, complies with the Terms of Reference and the Mandatory Contract Clauses. Following review and approval by the Grantee of any Invoices submitted by the Contractor under the Contract, the Grantee may request disbursement of funds by USTDA to the Contractor for performance of the Study by submitting such approved Invoices in accordance with the procedures set forth in the Mandatory Contract Clauses.

## **7. Effective Date**

The effective date of this Grant Agreement (the “Effective Date”) shall be the date of signature by both Parties or, if the Parties sign on different dates, the date of the last signature. In the event that only one signature is dated, such date shall constitute the Effective Date.

## **8. Study Schedule**

### **(A) Study Completion Date**

The Parties' estimated completion date for the Study is set forth in Clause K(1) of the Mandatory Contract Clauses.

### **(B) Time Limitation on Disbursement of USTDA Grant Funds**

Except as USTDA may otherwise agree, (i) no Grant Funds may be disbursed under this Grant Agreement for goods and services which are provided prior to the Effective Date, and (ii) no Grant Funds may be disbursed other than during the period set forth in Clause K(2) of the Mandatory Contract Clauses.

## **9. USTDA Mandatory Contract Clauses**

The Contract to be funded under this Grant Agreement shall include the USTDA Mandatory Contract Clauses set forth in Annex II to this Grant Agreement (the "Mandatory Contract Clauses"). The Grantee shall use commercially reasonable efforts to ensure that the Contractor complies with the Mandatory Contract Clauses in all material respects and shall promptly notify USTDA of any breach of the Mandatory Contract Clauses on the part of the Contractor of which the Grantee becomes aware.

## **10. Nationality, Source and Origin**

For purposes of this Grant Agreement, the term "U.S. Firm" means:

- (i) a privately owned firm or partnership that is formed, incorporated or organized in the U.S., with its principal place of business in the U.S., and which is:
  - (a) more than fifty percent (50%) owned by U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States; or
  - (b) satisfies each of the following criteria:
    - (I) has been incorporated or organized in the U.S. for more than three (3) years prior to the issuance date of the request for proposals;
    - (II) has performed similar services in the U.S. for that three (3) year period;
    - (III) employs U.S. citizens in more than half of its permanent full-time positions in the U.S.; and
    - (IV) has the existing capability in the U.S. to perform the work in question; or
- (ii) a nonprofit organization that is incorporated in the U.S. and managed by a governing body, a majority of whose members are U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States.

In addition, the term “Source” means the country from which a shipment is made, and the term “Origin” means (x) the place of production of a good, whether through manufacturing, assembly or otherwise, or (y) the place from which delivery of a service is administered, as applicable.

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and professional services funded by Grant Funds under this Grant Agreement:

- (A) the Contractor and all Subcontractors that are legal entities must be U.S. Firms;
- (B) all natural persons who perform any part of the Study as the Contractor, as a Subcontractor, or as an employee of the Contractor or any Subcontractor, in each case, must be (i) U.S. citizens, (ii) non-U.S. citizens lawfully admitted for permanent residence in the United States, or (iii) non-U.S. citizens lawfully admitted to work in the United States;
- (C) notwithstanding the provisions of Articles 10(A) and 10(B), up to twenty percent (20%) of the Grant Funds may be used to pay for work performed in connection with the Study by (i) Subcontractors that are organized as legal entities under the laws of the Host Country, and/or (ii) natural persons working as a Subcontractor, or as employees of the Contractor or any Subcontractor, in each case, who are citizens of the Host Country;
- (D) a Host Country Subcontractor may only be used for specific services from the Terms of Reference identified in the Subcontract;
- (E) no part of the Grant Funds disbursed in connection with the performance of the Study may be used to pay (i) any legal entity that is incorporated or organized under the laws of a jurisdiction other than one of the United States or the Host Country, or (ii) a natural person who is a citizen of a country other than the United States (except as expressly provided in Article 10(B)) or the Host Country; and
- (F) goods purchased for the performance of the Study and associated delivery services (*e.g.*, international transportation and insurance) must have their nationality, Source and Origin in the United States; provided, however, that goods and services incidental to Study support (*e.g.*, local lodging, food and transportation) in the Host Country are not subject to the foregoing restrictions.

## **11. Taxes**

Grant Funds provided under this Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in the Host Country, except for taxes of a *de minimis* nature imposed on local lodging, food, transportation or airport arrivals or departures. The Grantee may not seek reimbursement from USTDA for any such taxes, tariffs, duties, fees or other levies.

## **12. USTDA Project Evaluation**

The Parties shall cooperate to ensure that the purposes of this Grant Agreement are accomplished. For five (5) years following receipt by USTDA of the Final Report (the “Evaluation Period”), the Grantee agrees to respond to any reasonable inquiries from USTDA about the status of the Project. Inquiries will include, but will not be limited to, (a) whether the Final Report recommendations have been or will be used to implement the Project, (b) the anticipated Project implementation timeline, (c) the likely sources of financing for the Project, and (d) the sources of procurements supporting implementation of the Project. In addition, the Grantee agrees to notify USTDA any time the Grantee selects a new primary contact person for the Project during the Evaluation Period.

### **13. Grantee Recordkeeping and Audit**

The Grantee agrees to maintain books, records and other documents relating to the Study, the Contract and this Grant Agreement adequate to demonstrate implementation of its responsibilities under this Grant Agreement and the Contract, including the selection of the Contractor and Subcontractors, receipt and approval of Contract deliverables and approval or disapproval of Invoices for payment by USTDA. Such books, records and other documents shall be separately maintained for a period of three (3) years after the date of the final disbursement by USTDA. The Grantee shall afford USTDA or its authorized representatives the opportunity at reasonable times to review such books, records and other documents relating to the Study, the Contract and this Grant Agreement.

### **14. Representation of Parties**

For all purposes relevant to this Grant Agreement, the Government of the United States of America will be represented by the U.S. Ambassador to the Host Country or USTDA, and the Grantee will be represented by its [title] at the address of record set forth in Article 15 below. The Parties may, by written notice to the other Party, designate additional representatives for all purposes under this Grant Agreement.

### **15. Addresses of Record for Parties**

Any notice, request, document or other communication submitted by either Party to the other under this Grant Agreement shall be in writing or sent through an electronic medium that produces a tangible record of the transmission, such as a facsimile or email message, and will be deemed duly given or sent when delivered to such Party at the following address of record, as applicable:

(A) For the Grantee:

To:  
Title:  
Address:  
Phone:  
Fax:  
Email:

(B) For USTDA:

To: U.S. Trade and Development Agency  
Address: 1101 Wilson Boulevard, Suite 1100  
Arlington, VA 22209-2275  
USA  
Phone: (703) 875-4357  
Fax: (703) 997-2392  
Email: *[Regional team email address.]*

All such communications shall be in the English language, unless the Parties otherwise agree in writing. In addition, the Grantee shall provide the Commercial or Economic Section of the U.S. Embassy in the Host Country with a copy of each notice, request, document or other communication sent to USTDA.

Any communication relating to this Grant Agreement shall include the following fiscal data:

Appropriation No.:  
Activity No.:  
Reservation No.:  
Grant No.:

## **16. Implementation Letters**

To assist the Grantee and the Contractor in the implementation of the Study, USTDA may, from time to time, issue implementation letters that will provide additional information about matters covered by this Grant Agreement or correct immaterial errors. Without limiting the generality of the foregoing, USTDA may issue implementation letters, among other reasons, to: (a) extend the estimated completion date set forth in Clause K(1) in Annex II, (b) extend the availability period of Grant Funds set forth in Clause K(2) in Annex II, (c) change the fiscal data set forth in Article 15, (d) change a Party's address of record or point of contact, (e) make immaterial changes to the Terms of Reference, and (f) correct scrivener's errors. The Parties may also use jointly agreed upon implementation letters to confirm, clarify and/or record their mutual understanding of matters covered by this Grant Agreement.

## **17. Amendments and Assignments of this Grant Agreement**

Either Party may submit to the other Party at any time a proposed amendment to this Grant Agreement (including Annex I and Annex II). Any proposed amendment to this Grant Agreement will be effective only if it has been signed by both Parties. Any proposed assignment of this Grant Agreement must be approved by both Parties in writing in order to be effective.

## **18. Termination**

(A) Termination Events



Either Party may terminate this Grant Agreement at any time by giving the other Party prior written notice thereof. Notwithstanding the foregoing provision, if the U.S. Office of Foreign Assets Control determines that either of the Grantee or the government of the Host Country has acted in violation of any sanctions laws or executive orders established by the United States Government, this Grant Agreement will terminate immediately without need for further action or notice on the part of either Party.

**(B) Effect of Termination**

The termination of this Grant Agreement will end any obligations of the Parties to provide financial or other resources for the Study (including, without limitation, any obligation of USTDA to provide the Grant Funds), except for payments that may be made by USTDA to the Contractor pursuant to Clause H of the Mandatory Contract Clauses set forth in Annex II to this Grant Agreement. This Article and Articles 5, 11, 12, 13, and 20 of this Grant Agreement shall survive termination of this Grant Agreement.

**19. Waiver**

No provision of this Grant Agreement may be modified, waived or discharged unless such modification, waiver or discharge is agreed to in writing and signed by each Party. No waiver by either Party of any breach of, or of compliance with, any condition or provision of this Grant Agreement by the other Party will be considered a waiver of any other condition or provision or a waiver of the same condition or provision at another time. No delay in exercising any right or remedy accruing to either Party in connection with this Grant Agreement shall be construed as a waiver of such right or remedy.

**20. U.S. Technology and Equipment**

By funding the Study, USTDA seeks to promote the Project objectives of the Host Country through the use of U.S. technology, goods and services. In recognition of this purpose, the Grantee agrees that it will allow U.S. suppliers to compete in the procurement of technology, goods and services needed for Project implementation.

**21. Governing Law**

This Grant Agreement is governed by, and construed in accordance with, the applicable laws of the United States of America. In the absence of applicable federal law, the laws of the State of New York shall apply.

**22. Counterparts; Language**

This Grant Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Grant Agreement. Counterparts may be delivered via email or other transmission method and any counterpart so delivered shall be deemed to be valid and effective for all purposes. This Grant Agreement may be executed in two or more languages, but in the event of any conflict or inconsistency between the English language

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version of this Grant Agreement and any other version, the English language version of this Grant Agreement will control.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

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IN WITNESS WHEREOF, by signing below, each of the signatories hereby certifies that it is a duly authorized representative of the applicable Party, and the Parties, each acting through its duly authorized representative, have caused this Grant Agreement to be signed in their names and delivered as of the date written below.

For the Government of the United States  
of America:

For [*Grantee*]:

\_\_\_\_\_

\_\_\_\_\_

By: [*Name*]

By: [*Name*]

Date: [*Date*]

Date: [*Date*]

[Witness Signature:]

[Witness Signature:]

[\_\_\_\_\_]

[\_\_\_\_\_]

[By: [*Name*]]

[By: [*Name*]]

Annex I – Terms of Reference

Annex II – USTDA Mandatory Contract Clauses

## Annex I

### **Terms of Reference**

These terms of reference (“Terms of Reference”) in this Annex I set forth the terms, conditions, provisions and specifications for the performance of the feasibility study (“Study”) for the benefit of [full legal name of the Client] (the “Client”). [full legal name of the Contractor] (the “Contractor”) shall perform the Study in accordance with these Terms of Reference pursuant to this Contract between the Contractor and the Client, of which Contract this Annex I is a part.

The Contractor’s performance of the Study must comply with the entirety of these Terms of Reference, and any modification of or deviation from these Terms of Reference must be approved in writing by USTDA in accordance with the procedures for amendments or other modifications under this Contract. The Contractor acknowledges and agrees that (i) any performance by the Contractor of work not included in, or not in compliance with, these Terms of Reference, or any failure by the Contractor to perform any work set forth under these Terms of Reference (in compliance with those terms), will be ineligible for approval or payment, absent an amendment or other modification in accordance with such procedures, and (ii) failure to obtain prior written approval from USTDA for any modifications or deviations from these Terms of Reference may result in forfeiture of payment for work performed that is not in compliance with these Terms of Reference and/or a significant delay in payment of the final invoice.

[Include other tasks here.]

Task [ ] Final Report

The Contractor shall prepare and deliver to the Client and USTDA a substantive and comprehensive final report of all work performed under these Terms of Reference (the “Final Report”), which must conform to the requirements under Clause I of the Mandatory Contract Clauses (as defined in Annex II). The Contractor shall organize the Final Report into chapters and sections with clear labels corresponding to each of the above tasks and sub-tasks of these Terms of Reference, and the Contractor shall include in the Final Report all deliverables and documents that have been provided to the Client under these Terms of Reference. The Contractor shall incorporate into the Final Report (i) all of the findings, recommendations and conclusions of the Study under these Terms of Reference, and (ii) all other documents and/or reports provided pursuant to the tasks noted above, in each case clearly organized and labeled according to each task and sub-task under these Terms of Reference. The Contractor shall also include an executive summary to the Final Report as a whole, and provide a summary for each task under the Terms of Reference.

Before completing and delivering the Final Report to the Client or USTDA, the Contractor shall (a) prepare a draft Final Report in accordance with the instructions in the above paragraph, (b) present the complete findings of the Study to the Client, and (c) provide the draft Final Report to the Client for review and discussion.

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Once the Client has provided comments and revisions to the draft Final Report, the Contractor shall make the necessary changes and modifications to the draft Final Report, it being understood that the Contractor shall not make any changes or modifications that are inconsistent with any of these Terms of Reference.

## **Annex II**

### **USTDA Mandatory Contract Clauses**

#### **A. Grant Agreement; Subcontracts; USTDA Mandatory Contract Clauses Controlling**

The Contract Parties acknowledge that this Contract is funded in whole or in part by the U.S. Trade and Development Agency (“USTDA”) under the Grant Agreement between the Government of the United States of America, acting through USTDA, and [full legal name of Client] (the “Client”), dated as of \_\_\_\_\_ (the “Grant Agreement”). Terms used but not defined in this Contract shall have the meanings as set forth in the Grant Agreement. The Client has selected [full legal name of Contractor] (the “Contractor”) to perform the feasibility study (the “Study”) related to the proposed [project description] (the “Project”) in [country] (the “Host Country”). Each of the Client and the Contractor is referred to herein as a “Contract Party”, and collectively as the “Contract Parties”.

All work performed under this Contract must be performed either by the Contractor or otherwise pursuant to a written Subcontract. All Subcontracts entered into by the Contractor that are funded or partially funded with Grant Funds shall include these USTDA Mandatory Contract Clauses (these “Mandatory Contract Clauses”), except for Clauses B(1), G, H, I and S. The Contractor shall provide USTDA with a copy of each Subcontract that it enters into, along with an English translation of any such Subcontract that is executed in a language other than English, which translation must be certified by the Contractor as being complete and accurate. For purposes of this Contract, (a) the term “Subcontractor” means an individual, corporation, partnership or other legal entity having a contract, purchase order or other written agreement with the Contractor or with any other Subcontractor for performance of any part of the Study, and (b) the term “Subcontract” means any such contract, purchase order or other written agreement with a Subcontractor.

In addition, (i) in the event of any inconsistency between the terms and provisions of the Grant Agreement and those of this Contract or any Subcontract hereunder, the Grant Agreement shall be controlling, and (ii) in the event of any inconsistency between the terms and provisions of these Mandatory Contract Clauses and any other terms and provisions of this Contract or any Subcontract hereunder, these Mandatory Contract Clauses shall be controlling.

#### **B. USTDA as Financier**

##### **(1) USTDA Approval of Contract**

USTDA will not authorize the disbursement of Grant Funds until this Contract conforms to modifications required by USTDA during the Contract review process and this Contract has been formally approved by USTDA. To perform this review in a timely fashion, USTDA must receive from either the Client or the Contractor an English language version of a final negotiated draft version of the Contract (in an editable electronic format) sent to the email address listed in Clause M below, or to such other email address as specified by USTDA.

(2) USTDA Not a Party to This Contract

The Contract Parties understand and agree that USTDA as a financing entity reserves to itself certain rights under this Contract, including, but not limited to: (a) the right to approve the terms of this Contract and amendments to this Contract, including assignments, the selection of the Contractor and all Subcontractors, the Terms of Reference, the Final Report, and any and all documents related to this Contract or any Subcontract funded under the Grant Agreement, (b) the right to require the Contract Parties to suspend performance of the Terms of Reference upon reasonable prior written notice to the Contract Parties, and any further work performed in connection with the Terms of Reference following the Contractor's receipt of such written notice will be at the Contractor's risk, (c) the right to suspend disbursements of Grant Funds under Clause 3 for cause upon reasonable prior written notice to the Contract Parties, and (d) the right to demand, upon written notice to the Contractor, a refund from the Contractor of an appropriate amount of any Grant Funds that have been previously disbursed to the Contractor under Clause 3 of this Contract in the event that (i) the Contractor or any Subcontractor fails to comply in all material respects with the Terms of Reference or the terms and conditions of this Contract (including these Mandatory Contract Clauses), or (ii) this Contract and/or the Study is terminated, and the amount of Grant Funds disbursed to the Contractor prior to such termination exceeds the value of the work performed under this Contract in accordance with its terms. The Contract Parties shall comply with all written notices, instructions and requests issued by USTDA in connection with USTDA's exercise of its rights under this Clause B(2).

The Contract Parties further understand and agree that USTDA, in reserving any or all of the foregoing rights, has acted solely as a financing entity to ensure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these rights will be made as a financier in the course of funding the Study and will not be construed as making USTDA a party to this Contract. The Contract Parties understand and agree that USTDA may, from time to time, exercise the foregoing rights, or discuss matters related to these rights and the Project with the Contract Parties or the parties to any Subcontract, jointly or separately, and in consideration of USTDA's role as financier, the Contract Parties further agree that USTDA's rights may be exercised without thereby incurring any responsibility or liability, in contract, tort or otherwise, to the Contract Parties or the parties to any Subcontract. Any approval or failure to approve by USTDA will not bar the Client or USTDA from asserting any right that it might have against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Client or USTDA.

(3) Implementation Letters

To assist the Client and the Contractor in the implementation of the Study, USTDA may, from time to time, issue implementation letters that will provide additional information about matters covered by this Contract or correct immaterial errors. Without limiting the generality of the foregoing, USTDA may issue implementation letters, among other reasons, to: (a) extend the estimated completion date set forth in Clause K(1), (b) extend the availability period of Grant Funds set forth in Clause K(2), (c) change the fiscal data set forth in Clause M, (d) change a Party's address of record or point of contact, (e) make immaterial changes to the Terms of Reference, and

(f) correct scrivener's errors. Subject to the provisions of Clause J, the Contract Parties and USTDA may also use jointly agreed upon implementation letters to confirm, clarify and/or record their mutual understanding of matters covered by this Contract, including without limitation, modifications to the personnel specified in Annex III of this Contract.

### **C. Nationality, Source and Origin**

For purposes of this Grant Agreement, the term "U.S. Firm" means:

- (i) a privately owned firm or partnership that is formed, incorporated or organized in the U.S., with its principal place of business in the U.S., and which is:
  - (a) more than fifty percent (50%) owned by U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States; or
  - (b) satisfies each of the following criteria:
    - (I) has been incorporated or organized in the U.S. for more than three (3) years prior to the issuance date of the request for proposals;
    - (II) has performed similar services in the U.S. for that three (3) year period;
    - (III) employs U.S. citizens in more than half of its permanent full-time positions in the U.S.; and
    - (IV) has the existing capability in the U.S. to perform the work in question; or
- (ii) a nonprofit organization that is incorporated in the U.S. and managed by a governing body, a majority of whose members are U.S. citizens and/or non-U.S. citizens lawfully admitted for permanent residence in the United States.

In addition, the term "Source" means the country from which a shipment is made, and the term "Origin" means (x) the place of production of a good, whether through manufacturing, assembly or otherwise, or (y) the place from which delivery of a service is administered, as applicable.

Except as USTDA may otherwise agree, the following provisions shall govern the delivery of goods and professional services funded by Grant Funds under the Grant Agreement:

- (1) the Contractor and all Subcontractors that are legal entities must be U.S. Firms;
- (2) all natural persons who perform any part of the Study as the Contractor, as a Subcontractor, or as an employee of the Contractor or any Subcontractor, in each case, must be (a) U.S. citizens, (b) non-U.S. citizens lawfully admitted for permanent residence in the United States, or (c) non-U.S. citizens lawfully admitted to work in the United States;
- (3) notwithstanding the provisions of Clauses C(1) and C(2), up to twenty percent (20%) of the Grant Funds may be used to pay for work performed in connection with the Study by (a) Subcontractors that are organized as legal entities under the laws of the Host Country, and/or (b)



natural persons working as a Subcontractor, or as employees of the Contractor or any Subcontractor, in each case, who are citizens of the Host Country;

(4) a Host Country Subcontractor may only be used for specific services from the Terms of Reference identified in the Subcontract;

(5) no part of the Grant Funds disbursed in connection with the performance of the Study may be used to pay (a) any legal entity that is incorporated or organized under the laws of a jurisdiction other than one of the United States or the Host Country, or (b) a natural person who is a citizen of a country other than the United States (except as expressly provided in Clause C(2)) or the Host Country; and

(6) goods purchased for the performance of the Study and associated delivery services (*e.g.*, international transportation and insurance) must have their nationality, Source and Origin in the United States; provided, however, that goods and services incidental to Study support (*e.g.*, local lodging, food and transportation) in the Host Country are not subject to the foregoing restrictions.

#### **D. Contractor Recordkeeping and Audit**

The Contractor and Subcontractors funded under the Grant Agreement shall maintain, in accordance with generally accepted accounting procedures, books, records and other documents (including without limitation all bank statements, and receipts or proofs of purchase for all goods and services acquired in connection with the Study) sufficient in form, content and level of detail to reflect properly all transactions under or in connection with this Contract. These books, records and other documents shall clearly identify and track the use and expenditure of Grant Funds separately from other funding sources. Such books, records and documents must be maintained during the period of performance of work commencing on the Effective Date, and continuing until the date that is three (3) years following the final disbursement of Grant Funds by USTDA. The Contractor and its Subcontractors shall (i) afford USTDA or its authorized representatives the opportunity at reasonable times for inspection and audit of such books, records and other documentation, and (ii) in the event of an audit of such books, records and other documentation, reasonably cooperate with, and promptly respond to information requests from, any USTDA-appointed auditors.

#### **E. U.S. Carriers**

(1) Air

Transportation by air of persons or property funded under the Grant Agreement shall be on U.S. flag carriers in accordance with the Fly America Act, 49 U.S.C. § 40118, to the extent service by such carriers is available, as provided under applicable U.S. Government regulations.

(2) Marine

Transportation by sea of property funded under the Grant Agreement shall be on U.S. carriers in accordance with U.S. cargo preference laws, including (without limitation) the Cargo Preference Act of 1954, 46 U.S.C. § 55305.

#### **F. Workman’s Compensation Insurance**

The Contractor shall provide adequate workman’s compensation insurance coverage for work performed under this Contract.

#### **G. Disbursement Procedures**

##### **(1) USTDA Approval of Contract**

Disbursement of Grant Funds will be made only after USTDA approval of this Contract. Any work performed by the Contractor or any Subcontractor in connection with the Study prior to USTDA’s approval of the Contract will be at the Contractor’s risk.

##### **(2) Payment Schedule Requirements**

A payment schedule for disbursement of Grant Funds to the Contractor is included in this Contract under Clause 3. Such payment schedule must conform to the following USTDA requirements: (a) no more than twenty percent (20%) of the total Grant Funds amount may be used as a mobilization payment; (b) all other payments, with the exception of the final payment, must be based upon completion of one or more tasks under the Terms of Reference as set forth in Clause 3; and (c) the final payment must be no less than fifteen percent (15%) of the total Grant Funds amount, payable upon approval by USTDA of a Final Report that has been (i) prepared and submitted in accordance with the requirements set forth in Clause I below, and (ii) approved in writing by the Client in the manner provided for by Clause G(4)(b)(iii) below.

##### **(3) Invoice Approval Procedures**

The Contractor shall submit Invoices meeting the requirements set forth in Clause G(4) to the Client for approval. The Client shall not approve any Invoice submitted to it by the Contractor unless such Invoice, and all work performed by the Contractor (or any Subcontractor) in connection with such Invoice, complies with the Terms of Reference and these Mandatory Contract Clauses.

##### **(4) Invoice Requirements**

For purposes of this Contract, the term “Invoice” means any invoice submitted (or to be submitted) to USTDA by either the Client or the Contractor for payment of Grant Funds. USTDA will make all disbursements of Grant Funds directly to the Contractor. The Contractor must provide USTDA with an ACH Vendor Enrollment Form (available from USTDA) with the first Invoice. Either the Client or the Contractor may request disbursement of Grant Funds by USTDA to the Contractor for performance of the Terms of Reference by submitting the following to USTDA:

(a) Contractor's Invoice

The Invoice from the Contractor shall include reference to the applicable performance milestone listed in the Contract payment schedule, the requested payment amount, and an appropriate certification to USTDA by the Contractor, as follows:

(i) For a mobilization payment (if any):

“As a condition for this mobilization payment, the Contractor certifies to USTDA that it will perform all work in accordance with the terms of its Contract with the Client. To the extent that the Contractor does not comply with the terms and conditions of the Contract, including the USTDA Mandatory Contract Clauses contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA.”

(ii) For Contract performance milestone payments:

“The Contractor certifies to USTDA that it has performed the work described in this invoice in accordance with the terms of its Contract with the Client and is entitled to payment thereunder. To the extent the Contractor has not complied with the terms and conditions of the Contract, including the USTDA Mandatory Contract Clauses contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA.”

(iii) For final payment:

“The Contractor certifies to USTDA that it has performed the work described in this invoice in accordance with the terms of its Contract with the Client and is entitled to payment thereunder. Specifically, the Contractor has submitted the Final Report to the Client, as required by the Contract, and received the Client's approval of the Final Report. To the extent the Contractor has not complied with the terms and conditions of the Contract, including the USTDA Mandatory Contract Clauses contained therein, it will, upon USTDA's request, make an appropriate refund to USTDA.”

(b) Client's Approval of the Contractor's Invoice

(i) The Invoice for a mobilization payment must be approved in writing by the Client on the Invoice or separately.

(ii) For Contract performance milestone payments, the following certification to USTDA by the Client must be provided on the Invoice or separately:

“The Client certifies to USTDA that the services for which disbursement is requested by the Contractor have been performed satisfactorily, in

accordance with applicable Contract provisions, including the USTDA Mandatory Contract Clauses contained therein, and the terms and conditions of the USTDA Grant Agreement.”

(iii) For final payment, the following certification to USTDA by the Client must be provided on the Invoice or separately:

“The Client certifies to USTDA that the services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions, including the USTDA Mandatory Contract Clauses contained therein, and the terms and conditions of the USTDA Grant Agreement. The Final Report submitted by the Contractor has been reviewed and approved by the Client.”

(c) USTDA Address for Invoices

Invoices shall be submitted to the attention of the Finance Department by email to [invoices@ustda.gov](mailto:invoices@ustda.gov).

(5) Payment Disclaimer

The Contract Parties understand and agree that payment by USTDA of an Invoice does not constitute (a) acceptance or approval by USTDA, whether express or implied, of (i) any materials, documents, reports or other deliverables prepared or delivered by the Contractor or any Subcontractor, or (ii) any work performed under the Terms of Reference or otherwise by the Contractor or any Subcontractor, in each case, in connection with the Study, or (b) confirmation or agreement by USTDA, whether express or implied, as to whether any work performed by the Contractor or any Subcontractor in connection with the Study has been performed in accordance with the terms and conditions of this Contract, including the Terms of Reference or these Mandatory Contract Clauses.

## **H. Termination**

(1) Effect of Termination

In the event that this Contract and/or the Study is terminated prior to completion of all tasks under the Terms of Reference, the Contractor will be eligible for payment for the value of the work performed pursuant to the terms of this Contract; provided, however, that such eligibility is subject to (a) compliance by the Contractor with the terms and conditions of this Contract (including the Terms of Reference and these Mandatory Contract Clauses), and (b) USTDA approval. Likewise, in the event of such termination, USTDA may be entitled to receive a refund of Grant Funds from the Contractor pursuant to Clause B(2)(d)(ii).

(2) Survivability

Clauses A, B, D, G, H, N, Q, R, S and T of these Mandatory Contract Clauses shall survive the termination of this Contract.

## **I. USTDA Final Report**

### (1) Definition

“Final Report” shall mean the Final Report described in the attached Annex I Terms of Reference or, if no such “Final Report” is described therein, “Final Report” shall mean a substantive and comprehensive report of all work performed by the Contractor and any Subcontractors in accordance with the attached Annex I Terms of Reference, including any documents delivered to the Client.

### (2) Final Report Submission Requirements

The Contractor shall provide the following documents and materials to USTDA collectively as one single submission:

(a) One (1) CD-ROM containing a complete electronic copy of the Final Report for USTDA’s records. This version of the Final Report shall have been approved by the Client in writing and must be in the English language. It is the responsibility of the Contractor to ensure that confidential information, if any, contained in this version of the Final Report be clearly marked. USTDA will maintain the confidentiality of such information in accordance with applicable law. The electronic files on the CD-ROM shall be submitted in a commonly accessible read-only format (such as .pdf format), and the CD-ROM shall be clearly labeled in accordance with the requirements of Clause I(3)(c) below.

(b) One (1) CD-ROM containing an electronic copy of the Final Report suitable for public distribution (the “Public Version”). The Public Version shall have been approved by the Client in writing and must be in the English language. As the Public Version will be available for public distribution, it must not contain any confidential information. It is the responsibility of the Contractor to ensure that no confidential information is contained on the Public Version of the CD-ROM. If the report in Clause I(2)(a) above contains no confidential information, it may be used as the Public Version. In any event, the Public Version must be informative and contain sufficient Project detail to be useful to prospective U.S. equipment and service providers. The electronic files on the CD-ROM shall be submitted in a commonly accessible read-only format (such as .pdf format), and the CD-ROM shall be clearly labeled in accordance with the requirements of Clause I(3)(c) below.

(c) A cross-walk document (the “Cross-walk”), delivered separately from the Final Report, that references the evidence of the completion of each requirement under each task and each sub-task in the Terms of Reference within the Final Report, presented in a table format. The Cross-walk must be organized chronologically by task and sub-task from the Terms of Reference, and for each such task the Cross-walk must provide (i) the language of the requirement set forth in the Terms of Reference (in sentence, bullet or subtask form), and (ii) the associated page number(s) on which

the evidence establishing the completion of such requirement is included within the version of the Final Report delivered to USTDA under Clause I(2)(a).

(d) The Certified Statement of Expenditures (as defined in the Success Fee and Cost Share Agreement).

and

(e) The Contractor's final Invoice, prepared and submitted in accordance with Clause G.

(3) Final Report Presentation

All Final Reports submitted to USTDA must be paginated and include the following:

(a) The front cover of every Final Report shall contain the name of the Client, the name of the Contractor who prepared the report, a report title, USTDA's logo, and USTDA's address. If the complete version of the Final Report contains confidential information, the Contractor shall be responsible for labeling the front cover of that version of the Final Report with the term "Confidential Version". The Contractor shall be responsible for labeling the front cover of the Public Version of the Final Report with the term "Public Version". The front cover of every Final Report shall also contain the following disclaimer:

"This report was funded by the U.S. Trade and Development Agency (USTDA), an agency of the U.S. Government. The opinions, findings, conclusions or recommendations expressed in this document are those of the author(s) and do not necessarily represent the official position or policies of USTDA. USTDA makes no representation about, nor does it accept responsibility for, the accuracy or completeness of the information contained in this report."

(b) The inside front cover of every Final Report shall contain (i) USTDA's logo, USTDA's address, and USTDA's mission statement, and (ii) a written statement from the Contractor affirming that the Client, USTDA, and the Commercial and/or Economic Section(s) of the U.S. Embassy in the Host Country shall have irrevocable, perpetual, transferrable, worldwide, royalty-free, non-exclusive rights to use and distribute the Final Report.

(c) The Contractor shall affix to the top side of each CD-ROM containing any version of the Final Report a label identifying the Host Country, the USTDA Activity Number set forth among the fiscal data in Clause M, the name of the Client, the name of the Contractor who prepared the Final Report and a report title. In the case of each CD-ROM containing a confidential or non-public version of the Final Report, the Contractor shall include the term "Confidential Version" on such label. In the case of each CD-ROM containing the Public Version of the Final Report, the Contractor shall include the term "Public Version" on such label, along with the following language:

“The Contractor certifies to USTDA that this CD-ROM contains the Public Version of the Final Report and that all contents are suitable for public distribution.”

(d) The Contractor and any Subcontractors that perform work pursuant to the Grant Agreement must be clearly identified in the Final Report. Business name, point of contact, address, telephone and email address shall be included for the Contractor and each Subcontractor.

(e) The Final Report, while aiming at optimum specifications and characteristics for the Project, shall identify the availability of prospective U.S. sources of supply. Business name, point of contact, address, telephone and email address shall be included for each prospective commercial source.

(f) The Final Report shall be accompanied by a letter or other notation by the Client which states that the Client approves the Final Report. A certification to USTDA by the Client to this effect provided on or with the Invoice for final payment will meet this requirement.

#### (4) Final Report Disclaimer

The Contract Parties understand and agree that acceptance by USTDA of the Final Report does not constitute (a) approval, validation or endorsement by USTDA, whether express or implied, of (i) the Final Report or any of its contents, or (ii) the quality, characteristics or nature of any work performed under the Terms of Reference or otherwise by the Contractor or any Subcontractor in connection with the Study, or (b) confirmation or agreement by USTDA, whether express or implied, as to whether any work performed by the Contractor or any Subcontractor in connection with the Study has been performed in accordance with the terms and conditions of this Contract, including the Terms of Reference and these Mandatory Contract Clauses.

### **J. Modifications**

All changes, amendments, assignments or other modifications to this Contract, including the Annexes to this Contract, will be made effective only by written instrument signed by the Contract Parties and approved in writing by USTDA. Either Contract Party may submit to USTDA, as the address set forth in Clause M, a final negotiated draft version (in an editable electronic format) of any proposed change, amendment, assignment or other modification to this Contract for USTDA review. USTDA will advise the Contract Parties as to whether the draft Contract is ready for execution, on the understanding that USTDA’s approval may be contingent upon certain modifications being made to such draft.

### **K. Study Schedule**

#### (1) Study Completion Date

The Contract Parties’ estimated completion date for the Study is *[date]*.

#### (2) Time Limitation on Disbursement of USTDA Grant Funds

Except as USTDA may otherwise agree, (a) no Grant Funds may be disbursed under this Contract for goods and services which are provided prior to the Effective Date of the Grant Agreement, and (b) no Grant Funds may be disbursed more than four (4) years after the Effective Date of the Grant Agreement.

**L. Business Practices; Conflicts of Interest**

(1) Business Practices

The Contract Parties recognize the existence of standards of conduct for public officials and commercial entities in their respective countries. Therefore, the Contract Parties shall fully comply with all United States and Host Country laws relating to corruption or bribery, and shall not directly or indirectly provide, offer or promise to provide money or anything of value to any public official in violation of any United States or 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 Contract Party agrees that it shall require that any Subcontractor, agent or representative hired to represent it in connection with the Study will comply with this Clause L and all laws which apply to activities and obligations of that Contract Party, including, but not limited to, those laws and obligations referenced above.

(2) Conflicts of Interest

(a) Except as otherwise agreed in writing by USTDA, no Contract Party, or any employee, executive, director, officer or other staff member of a Contract Party, may either directly or indirectly engage in any activity or maintain any relationship (any such activity or relationship, a “Conflict of Interest”) which might adversely affect the Study or the rights of USTDA, including but not limited to (i) ownership of a material interest in the other Contract Party, any supplier, contractor, distributor, Subcontractor, customer or other entity involved in the performance of the Study, (ii) acceptance of any material payment, service, loan, gift, trip, entertainment, or other favor from the other Contract Party, a supplier, contractor, distributor, Subcontractor, customer or other entity involved in the performance of the Study, (iii) any employee, executive, director, officer or other staff member of one Contract Party holding a position as an employee, executive, director, officer or other staff member of the other Contract Party or any supplier, contractor, distributor, Subcontractor, customer or other entity involved in the performance of the Study, and (iv) any condition or circumstance that would reasonably be expected to (A) cause one or more of the Contract Parties to be unable or potentially unable to render impartial assistance or advice, (B) impair the objectivity of the Contractor or any Subcontractor in performing the Study, or (C) create an unfair competitive advantage for any entity wherein either Contract Party has a material interest.

(b) Neither the Client nor the employees, executives, directors, officers or other staff members of the Client may receive payment from the Grant Funds.

(c) Any Contract Party shall promptly notify USTDA of any Conflict of Interest of which it becomes aware.



### **M. USTDA Address and Fiscal Data**

Any communication with USTDA regarding this Contract shall be sent to the following contact information and include the fiscal data listed below:

To: U.S. Trade and Development Agency  
Address: 1101 Wilson Boulevard, Suite 1100  
Arlington, VA 22209-2275  
USA  
Phone: (703) 875-4357  
Fax: (703) 997-2392  
Email: [Regional team email address.]

Fiscal Data:  
Appropriation No.:  
Activity No.:  
Reservation No.:  
Grant No.:

### **N. Taxes**

Grant Funds provided under the Grant Agreement shall not be used to pay any taxes, tariffs, duties, fees or other levies imposed under laws in effect in the Host Country, except for taxes of a *de minimis* nature imposed on local lodging, food, transportation or airport arrivals or departures. Neither the Client nor the Contractor may seek reimbursement from USTDA for any such taxes, tariffs, duties, fees or other levies, other than such taxes of a *de minimis* nature referenced above to the extent that the amounts of such *de minimis* taxes are included on expense receipts maintained by the Contractor in accordance with Clause D.

### **O. Export Licensing**

The Contractor and all Subcontractors are responsible for compliance with U.S. export licensing requirements, if applicable, in the performance of all work in connection with the Terms of Reference.

### **P. Change of Control**

Each Contract Party shall provide USTDA with written notice of any anticipated change of control or ownership of such Contract Party, whether direct or indirect, prior to the effective date of such change, which notice must identify (i) the persons or legal entities that are gaining control or ownership over such Contract Party, and (ii) the persons or legal entities that are losing control or ownership over such Contract Party.

### **Q. Liability**

This Contract may include a clause that limits the liability of the Contract Parties, provided that such a clause does not (i) disclaim liability for damages that are natural, probable and reasonably foreseeable as a result of a breach of this Contract, or (ii) limit the total amount of damages recoverable to an amount less than the total amount disbursed to the Contractor pursuant to this Contract. If any clause set forth in this Contract is inconsistent with either or both of these limitations, such clause will be invalid and unenforceable to the extent of the inconsistency.

## **R. Arbitration**

If the Contract Parties submit any dispute arising under this Contract for arbitration, the scope of any such arbitration shall be limited to the Contract Parties' rights and/or obligations under this Contract and may not extend to any right or obligation of USTDA. The arbitrator(s) shall not arbitrate issues directly affecting the rights or obligations of USTDA.

## **S. Reporting Requirements**

The Contractor shall advise USTDA as to the status of the Project at least one (1) time per year for a period of two (2) years after completion of the Study. In addition, if at any time the Contractor receives follow-on work from the Client, the Contractor shall so notify USTDA and shall designate the Contractor's point of contact related to such follow-on work, including such person's name, title, address, telephone number and email address. Since this information may be made publicly available by USTDA, any information which is confidential must be designated as such by the Contractor and provided separately to USTDA. USTDA will maintain the confidentiality of such information in accordance with applicable law.

## **T. Cost Share**

The Contractor agrees that, in addition to the Grant Funds, it shall be responsible for ensuring that it and/or its Subcontractors cover at least [*amount of the cost share spelled out in words*] United States Dollars (US\$ [*dollar amount of cost share*]) of costs to complete the full Terms of Reference (the "Contractor Cost Share"), subject to and in accordance with the Success Fee and Cost Share Agreement, dated [*date of agreement*] (the "Success Fee and Cost Share Agreement"), by and between USTDA and the Contractor; provided, however, that in the event that the Contractor does not complete the full Terms of Reference prior to termination of this Contract, then the actual funding contributed by each of USTDA and the Contractor will remain proportionate to the ratio of (a) the amount of the Grant Funds, to (b) the amount of the Contractor Cost Share, taking into account the value of the Contractor Cost Share that is due to be paid or contributed by the Contractor.

In order to receive final payment of Grant Funds, a financial officer of the Contractor must provide a final Invoice to USTDA accompanied by a cost share certification to USTDA and a detailed breakdown of direct labor and/or other direct costs. If such certification and breakdown are not provided or are inaccurate, USTDA shall be entitled to a refund from the Contractor of the total amount of the Grant Funds that have been previously disbursed to the Contractor under Clause 3 of this Contract.