

*****IMPORTANT NOTE*****

The following form of Success Fee and Cost Share Agreement is intended to be used as an example for discussion purposes only. Actual terms and conditions in a final Success Fee and Cost Share 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 Success Fee and Cost Share 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 Success Fee and Cost Share Agreement has been signed by authorized signatories of both parties, notwithstanding any oral or other statements to the contrary.

[USTDA Letterhead]

[Date]

[Name]

[Title]

[Full legal name of U.S. entity]

[Address]

Re: [Country]: [Title of USTDA Activity]
Form of Success Fee and Cost Share Agreement
USTDA Activity No. [Activity Number]

Dear [Name]:

We are pleased that [full legal name of Grantee] (the “Grantee”) has selected [full legal name of Contractor] (the “Contractor”) to perform a feasibility study (the “Study”) related to the [project description] (the “Project”), with funds to be partially provided by the U.S. Trade and Development Agency (“USTDA”). USTDA has approved a grant to the Grantee in the amount of US\$ [dollar amount of grant] (the “Grant Funds”) to partially fund the Study. We expect that the Grant Agreement between USTDA and the Grantee (the “Grant Agreement”) in respect of the Grant Funds will be signed in the near future, and that the Grantee will negotiate a contract with the Contractor to perform the Study (the “Contract”). We are hopeful that the completion of the Study will lead to further business opportunities for the Contractor and other U.S. firms.

The Terms of Reference for the Study (the “Terms of Reference”) and the budget estimate (the “Budget Estimate”) are based upon the proposal submitted to USTDA by the Contractor and USTDA’s review of the proposal. The Budget Estimate in effect as of the date hereof has been established at [amount of the Budget Estimate spelled out in words] United States Dollars (US\$ [dollar amount of Budget Estimate]).

USTDA has conditionally approved the selection by the Grantee of the Contractor to perform the Study. USTDA final approval of this selection will be effective when the Contractor agrees with the success fee and cost share provisions described below in this letter agreement (this “Agreement”).

A. Success Fee

(1) Success Fee Basis. USTDA and the Contractor anticipate that the Contractor may have the opportunity to participate in the development and implementation of the Project other than through the Contractor’s involvement with the Study. As such, the Contractor shall refund to USTDA certain amounts of the Grant Funds that have been previously disbursed to the Contractor in connection with the Study (the “Disbursed Grant Funds”) as a success fee (the “Success Fee”) in accordance with the following provisions:

(a) Finance-Based. The Contractor shall refund to USTDA the total amount of the Disbursed Grant Funds if, in connection with the initial financial closing (involving funding in the form of 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(ies) or affiliate(s) (each a “Contractor Party”, and collectively, the “Contractor Parties”):

- (i) takes an equity position in the Project or such related project;
- (ii) commits its own financial resources (as evidenced by an outlay of implementation funds) for the Project or such related project; or
- (iii) whether or not such Contractor Party is a principal or equity holder in the Project or such related project, the Contractor 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 the Contractor of the total amount of Disbursed Grant Funds must be made regardless of the amount or value of any such equity position, outlay of funds or drawdown.

(b) Revenue-Based. If none of the events described in the foregoing Clause A(1)(a) occurs, but the Contractor earns revenue (other than the Grant Funds) in connection with the Project or the Study, then the Contractor shall refund to USTDA an amount equal to [*number in words*] percent ([*number in Arabic numerals*]%) of the total gross revenue earned by any Contractor Party related to the Project and/or any related project based substantially upon the Study (“Revenue”), not to exceed in aggregate the total amount of the Disbursed Grant Funds.

(c) Reporting Period. Subject to Clause A(2)(c) and Clause F, the period during which the Contractor’s obligation to pay a Success Fee to USTDA may arise pursuant to Clauses A(1)(a) or A(1)(b) (the “Reporting Period”) will commence on the date on which this Agreement is signed by both parties (the “Signing Date”) and will continue until the end of the year covered by the final Success Fee Report (as

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defined below) delivered to USTDA pursuant to Clause A(2), as set forth in the middle column in the table in Clause A(2)(b). The Success Fee requirement does not apply to any events described in either of Clauses A(1)(a) that occur before or after the Reporting Period.

(2) Success Fee Reporting.

(a) First Success Fee Report. The Contractor shall provide to USTDA, on or before March 1 of the calendar year following the calendar year during which the Signing Date occurs, a brief statement (a “Success Fee Report”) indicating whether any of the events in Clauses A(1)(a) or A(1)(b) above has occurred during the period commencing on the Signing Date and continuing through the end of the calendar year during which the Signing Date occurs.

(b) Subsequent Success Fee Reports. In accordance with the table in this Clause A(2)(b), the Contractor shall provide to USTDA, on or before March 1 of each of the subsequent seven (7) calendar years following the calendar year when the first Success Fee Report is delivered to USTDA, a subsequent Success Fee Report indicating whether any of the events in Clauses A(1)(a) or A(1)(b) above has occurred during the immediately preceding calendar year.

| Signing Date Occurs During: | 2020 | |
|-----------------------------|---|--|
| Success Fee Report | Period Covered by the Success Fee Report (Reporting Period) | Success Fee Report Due on or before March 1 of |
| First Success Fee Report | From the Signing Date through the end of calendar year 2020 | 2021 |
| Second Success Fee Report | 2021 | 2022 |
| Third Success Fee Report | 2022 | 2023 |
| Fourth Success Fee Report | 2023 | 2024 |
| Fifth Success Fee Report | 2024 | 2025 |
| Sixth Success Fee Report | 2025 | 2026 |
| Seventh Success Fee Report | 2026 | 2027 |
| Final Success Fee Report | 2027 | 2028 |

(c) Delays in the Effective Date. In the event that the Effective Date (as defined below) occurs following the applicable March 1 due date for one or more Success Fee Reports, the Contractor shall deliver to USTDA any such previously undelivered Success Fee Reports together with the Success Fee Report due on or before the March 1 that immediately follows the Effective Date.

(d) Format. All Success Fee Reports shall follow the format set forth in Annex I to this Agreement, unless USTDA otherwise authorizes.

- (e) Confidentiality. It is the responsibility of the Contractor to ensure that any confidential information pertaining to these Success Fee Reports, or any other aspect of this Agreement, is clearly marked as such and is provided separately from a version which is suitable for public distribution. USTDA will maintain the confidentiality of such information in accordance with applicable law.
 - (f) Repayment in Full. In the event that (i) all Grant Funds are disbursed to the Contractor pursuant to the Contract, and (ii) all Disbursed Grant Funds have been repaid in full, no further Success Fee Reports will be required.
- (3) Refund Date.
 - (a) If any of the events described in Clause A(1)(a) above occurs, the Contractor shall submit, within thirty (30) days of Financial Closing, a Success Fee Report accompanied by a refund of the total amount of Disbursed Grant Funds.
 - (b) If any Revenue is earned, the Contractor shall submit a refund of the Success Fee calculated in accordance with Clause A(1)(b) with its next Success Fee Report required pursuant to Clause A(2) above.
- (4) Timeliness of Reporting and Refund. If the Contractor does not provide the Success Fee Reports and refunds in accordance with the deadlines set forth in Clauses A(2) and A(3) above, as applicable, or if the information or amounts contained in such Success Fee Reports are inaccurate, USTDA shall be entitled to a refund from the Contractor of the total amount of Disbursed Grant Funds, less the amount of any Success Fee refunds already paid to USTDA. USTDA shall first provide written notice to the Contractor of such deficiency and shall allow the Contractor thirty (30) days to correct the matter before the amount of such refund of the Disbursed Grant Funds becomes due.

B. Cost Share

- (1) Budget Estimate. The Budget Estimate for the Terms of Reference is set forth in Annex II to this Agreement. The Budget Estimate represents the Contractor's best estimate of the cost of the goods and services to be provided, broken down by the categories of labor costs and other direct costs. No fee or profit is allowed. The Budget Estimate provides the basis for establishing the Cost Share Ratio (as defined below) between USTDA and the Contractor.
- (2) Cost Share Amount. For purposes of this Agreement, 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. Subject to the provisions of Clause B(4), in addition to the USTDA Grant Funds provided, the Contractor shall ensure that the Contractor and/or its Subcontractors fund at least [*amount of the cost share spelled out in words*] United States Dollars (US\$ [*dollar amount of cost share*]) of the costs required

to complete the full Terms of Reference (the “Cost Share”), as set forth in the Budget Estimate.

(3) Certified Statement of Expenditures.

- (a) Before USTDA will make the final disbursement of Grant Funds, a financial officer of the Contractor must certify that the Contractor has complied with the Cost Share requirement (the “Certified Statement of Expenditures”, or “CSE”). The Certified Statement of Expenditures must either accompany the final invoice or be separately submitted by the Contractor to USTDA. In addition, upon written request from USTDA, the Contractor shall prepare and deliver to USTDA a CSE within thirty (30) days following the date of receipt of such written request. In each case, the CSE must contain a detailed breakdown of all costs incurred to complete the full Terms of Reference and must follow the format set forth in Annex III to this Agreement. The CSE must include a written explanation of any Substantial Change between the CSE and the Budget Estimate. “Substantial Change” means any of the following: (i) any variation of twenty percent (20%) or more in any line item in the Budget Estimate such as direct labor costs per task, international air travel or per diem, (ii) any expense line items added to or removed from the CSE, or (iii) any differences in the set of personnel positions listed under the Direct Labor Costs portion of the CSE, in each case, as compared to the Budget Estimate.
- (b) If the CSE is not provided, or is inaccurate, USTDA shall be entitled to a refund from the Contractor of the total amount of the Disbursed Grant Funds, less the amount of any Success Fee refunds already paid to USTDA. USTDA shall first provide written notice to the Contractor of such deficiency and shall allow the Contractor thirty (30) days to correct the matter before the amount of such refund of the Disbursed Grant Funds becomes due.
- (c) Notwithstanding USTDA’s approval of the final invoice for payment, USTDA may later audit the costs listed in the CSE, and USTDA may be entitled to a refund from the Contractor to the extent that the CSE is not accurate or the costs set forth in such CSE are not reasonable and documented in sufficient detail to explain the composition of costs, rates and basis of cost allocation. The Contractor understands and agrees that if USTDA notifies the Contractor that USTDA is commencing an audit, the audit will proceed on the basis of the CSE delivered to USTDA under Clause B(3)(a), and the Contractor will not have an opportunity to submit a revised or corrected CSE following receipt of such notice.
- (d) The Contractor understands and agrees that it will be the responsibility of the Contractor to ensure (i) the completeness and accuracy of the CSE, and (ii) that the Contractor and any Subcontractors comply with the terms and conditions of this Agreement. USTDA will be under no obligation to review draft CSEs.

(4) Study Cost Adjustments.

- (a) The maximum amount of USTDA contribution to the Study is equal to the amount of the Grant Funds. The actual Study funding contributions to be made by each of USTDA and the Contractor must remain proportionate to the ratio (the “Cost Share Ratio”) of (i) the amount of the Grant Funds, to (ii) the amount of the Cost Share contributed by the Contractor, taking into account the value of the Cost Share that is due to be paid or contributed by the Contractor.
 - (b) Notwithstanding the provisions of Clause B(2), (i) if the total cost of the Study upon completion of the full Terms of Reference is less than the Budget Estimate, the Contractor shall so indicate and either reduce the amount of the final invoice accordingly or refund to USTDA the appropriate amount of the Disbursed Grant Funds, and (ii) in the event that the Contractor does not complete the full Terms of Reference prior to termination of this Agreement and/or the Study, then the actual funding contributed by each of USTDA and the Contractor will remain proportionate to the Cost Share Ratio.
- (5) Pre-Grant Agreement Costs. Study-related costs that are incurred by the Contractor and/or its Subcontractors prior to the effective date of the Grant Agreement may not be reimbursed to the Contractor using the Grant Funds. Any such costs may be included as part of the Cost Share; provided, however, that such costs were incurred in respect of tasks that are included within the Terms of Reference. No costs incurred in connection with preparing the proposal for USTDA funding (including any such costs incurred in connection with contracting for a consultant to represent the Contractor at USTDA) may be reimbursed to the Contractor using the Grant Funds or included as part of the Cost Share.

C. Books and Records

The Contractor and its Subcontractors receiving Grant Funds from USTDA shall maintain, in accordance with generally accepted accounting procedures, books, records and other documents, sufficient to reflect properly all transactions and disbursement under or in connection with the Study and this Agreement. Such books, records and other documents shall clearly identify, track and describe the occurrence of any events giving rise to Success Fee obligations on the part of the Contractor under Clauses A(1)(a) or A(1)(b) above and the total cost of the Study, including the Cost Share contributed by the Contractor and/or its Subcontractors as described in Clause B above.

Such books, records and documents shall be maintained for a period of ten (10) years following the Signing Date. 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. In addition, the Contractor shall (a) cause the other applicable Contractor Parties to, maintain adequate records that are sufficient to identify, track and describe the occurrence of any events giving rise to Success Fee obligations on the part of the Contractor under Clauses A(1)(a) or A(1)(b) above, and (b) ensure that such books, records and other documentation may be made available through the Contractor for review by USTDA.

D. Notices

- (1) Methods of Communication. Any notice, request, document or other communication submitted by either party to the other under this Agreement must be in writing, and will be deemed duly given or sent when delivered to such party at the applicable address of record as set forth below:
- (2) Contractor. The following person shall be the point of contact for the Contractor for all reporting and payment matters under this Agreement:

Name:
Title:
Address:
Phone:
Email:

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.

- (3) USTDA.

Name: [Country Manager]
Title: Country Manager
Address: 1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209-2275
USA
Phone: (703) 875-4357
Email: [Regional team email address]

E. Collection

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

F. Effectiveness

Notwithstanding any contrary provision herein, and notwithstanding the occurrence of the Signing Date, the provisions of this Agreement will become effective on the date on which each of the following conditions is satisfied (the “Effective Date”):

- (1) Signature of the Grant Agreement by both the Grantee and USTDA;
- (2) Signature of the Contract by both the Contractor and the Grantee; and

(3) Written approval of the executed Contract by USTDA.

G. Successors and Assigns

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

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If you are in agreement with the foregoing terms and conditions, please so indicate by having a duly authorized representative sign below and returning one signed original to USTDA. We look forward to supporting your efforts to perform the Study in furtherance of the objectives of the USTDA program.

Sincerely,

Accepted and Agreed on behalf of [*full legal name of the Contractor*]:

[*Name of USTDA Director*]

[*Name of Contractor Signatory*]

Title: [Director, U.S. Trade and Development Agency]

Title: [*Title*]

Date: [*Date*]

Date: [*Date*]

[*Optional*]cc: [*full legal name of the Grantee*]

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I hereby certify that I am a duly authorized representative of [*full legal name of Contractor*] (the “Contractor”) and that all information contained in this Success Fee Report is accurate, complete and in compliance with the terms of the Agreement between the Contractor and the United States Trade and Development Agency, dated as of [*date*].

By:

Date:

Name and Title of Signatory:

Annex II

Budget Estimate

Annex III

Certified Statement of Expenditures

[If the Contractor completed all of the tasks under the Terms of Reference, use the certification below:]

“As detailed below, *[full legal name of the Contractor]* and/or its Subcontractors has covered at least US\$ *[dollar amount of cost share]* of costs required to complete the full Terms of Reference as set forth in Annex I to the Contract between *[full legal name of the Grantee]* and *[full legal name of the Contractor]*, dated as of *[date]*.”

[If the Contractor did not complete all of the tasks under the Terms of Reference, use the certification below:]

“As detailed below, *[full legal name of the Contractor]* and/or its Subcontractors has covered at least US\$ *[dollar amount of cost share]* of costs toward partial completion of the Terms of Reference as set forth in Annex I to the Contract between *[full legal name of the Grantee]* and *[full legal name of the Contractor]*, dated as of *[date]*. As per the *[Notice of Termination]* from *[sending party]* to *[receiving party/parties]*, dated *[date]*, all work under the Contract was terminated as of *[date]*. The Contractor certifies that it has fully completed Task(s) *[Task number(s)]* and partially completed Task(s) *[Task number(s)]* under the Terms of Reference.”

By:

Date:

Name and Title of Financial Officer of *[full legal name of the Contractor]*:

DIRECT LABOR COSTS:

| <u>TOR Task</u> | <u>TOR Task Name</u> | <u>Primary Contractor (Employee) Labor Cost</u> | | |
|------------------------------|----------------------|---|--------------------------------|-------------------|
| | | <u>Total Person Days</u> | <u>Daily Rate</u> ¹ | <u>TOTAL COST</u> |
| <i>[Task #]</i> ² | <i>[Task Name]</i> | <i>[Position A]</i> | _____ | _____ |
| | | <i>[Position B]</i> | _____ | _____ |
| TOTALS: | | _____ | _____ | _____ |

| <u>TOR Task</u> | <u>TOR Task Name</u> | <u>Non-Employee Labor Cost</u> | | |
|-----------------|----------------------|--------------------------------|--------------------------------|-------------------|
| | | <u>Total Person Days</u> | <u>Daily Rate</u> ³ | <u>TOTAL COST</u> |
| | | | | |

¹ Primary Contractor (Employee) Labor Costs = salary + overhead + benefits (not to include any fees or profit).

² **[This footnote is included in this form for informational purposes only and should be deleted from the CSE that is submitted to USTDA.]** Note: Include the numbers of subtasks as well, if applicable, here and throughout the rest of the form.

³ Non-Employee Labor Cost = salary + overhead + benefits + reasonable fees or profit.

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| | | | | | |
|----------|-------------|---------------------------|-------|-------|-------|
| [Task #] | [Task Name] | [Position A] ⁴ | _____ | _____ | _____ |
| | | [Position B] | _____ | _____ | _____ |
| | | TOTALS: | _____ | _____ | _____ |

TOTAL DIRECT LABOR COSTS: _____

OTHER DIRECT COSTS:⁵

| | |
|--|--------------------------|
| <u>Purchase Services/Contracts</u> ⁶ | <u>TOTAL COST</u> |
| [Task #] | |
| [Contract #1] | _____ |
| [Contract #2] | _____ |

| | | | |
|--------------------------|---------------------|--------------------------|--------------------------|
| <u>Travel</u> | <u>Trips</u> | <u>Trip Costs</u> | <u>TOTAL COST</u> |
| [Task #] | | | |
| International Air Travel | _____ | _____ | _____ |
| In-Country Air Travel | _____ | _____ | _____ |
| Ground Transportation | _____ | _____ | _____ |

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

| | |
|--------------------------|--------------------------|
| <u>Other</u> | <u>TOTAL COST</u> |
| [Task #] | |
| 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: _____

AMOUNT OF USTDA GRANT FUNDS: _____

Note: USTDA Grant Funds may not be used to fund any equipment-related costs. In addition, pursuant to Clause 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 of the following: (i) any variation of twenty percent (20%) or more in any line item in the Budget Estimate such as direct labor costs per task, international air travel or per diem, (ii) any budget expense line items added to or

⁴ [This footnote is included in this form for informational purposes only and should be deleted from the CSE that is submitted to USTDA.] Note: If more than one Subcontractor has worked on the activity, include the name of the Subcontractor or the person along with the position.

⁵ [This footnote is included in this form for informational purposes only and should be deleted from the CSE that is submitted to USTDA.] Note: Within each of the three Other Direct Costs categories of Purchase Services/Contracts, Travel, and Other, the costs must be listed by Task and subtask (where applicable).

⁶ Purchase Services/Contracts may include engineering drawings, lab work, surveys, translation, etc., which would not be included in the category of Non-Employee Labor Cost above.

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removed from the CSE, or (iii) any differences in the set of personnel positions listed under the Direct Labor Costs portion of the CSE, in each case, as compared to the Budget Estimate.