

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

***The following form of Contract is intended to be used as an example for discussion purposes only. Actual terms and conditions in a final Contract 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 Contract 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 a formal Contract has been signed by authorized signatories of both parties and the necessary internal approvals of USTDA have been obtained, notwithstanding any oral or other statements to the contrary.***

**FORM OF CONTRACT FOR FEASIBILITY STUDY**

This contract for feasibility study (this “Contract”) is made and entered into by and between [*full legal name of Client*] (the “Client”) and [*full legal name of Contractor*], a United States firm organized under the laws of the State of [*state*] (the “Contractor”). The Client and the Contractor are each referred to herein as a “Contract Party”, and collectively as the “Contract Parties”.

WHEREAS, the Client has requested that the Contractor prepare a feasibility study (the “Activity”) related to the proposed [*project description*] (the “Project”) located in [*official name of country*] (the “Host Country”), and the Contractor has agreed to perform the Activity in accordance with the terms and conditions set forth in this Contract;

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

1. Appointment

The Contractor shall perform the Activity in accordance with the terms and conditions set forth in this Contract and the following annexes (which are hereby incorporated by reference into this Contract):

- Annex I: Terms of Reference (the “Terms of Reference”)
- Annex II: USTDA Mandatory Contract Clauses (the “Mandatory Contract Clauses”)
- Annex III: List of Personnel and Curricula Vitae

2. Effective Date of the Contract

Subject to Clauses B(1) and G(1) of the Mandatory Contract Clauses, this Contract shall be effective upon signature by both Contract Parties (the “Effective Date”). The Contract Parties acknowledge that the estimated completion date for the Activity is set forth in Clause K of the Mandatory Contract Clauses.

3. Payment Schedule; Use of Grant Funds

The U.S. Trade and Development Agency (“USTDA”) has made a grant of [*amount of the grant spelled out in words*] United States Dollars (US\$ [*dollar amount of grant*]) available to the Client for the Activity (the “Grant Funds”) pursuant to the Grant Agreement between USTDA and the Client, dated as of [*effective date of the Grant Agreement*] (the “Grant Agreement”). In consideration for the Contractor’s performance of the Activity, and subject to the Contractor’s performance of the Activity in accordance with the terms and conditions of this Contract (including the Terms of Reference and the Mandatory Contract Clauses), the Client shall arrange for the Grant Funds to be disbursed by USTDA directly to the Contractor in accordance with the following performance milestones:

- (a) US\$ [*dollar amount of payment*], as a mobilization payment, upon signature of this Contract and approval by USTDA.
- (b) US\$ [*dollar amount of payment*] upon completion of [*Specify Task(s) from Terms of Reference in Annex I.*].
- (c) US\$ [*dollar amount of payment*] upon completion of [*Specify Task(s) from Terms of Reference in Annex I.*].
- (d) US\$ [*dollar amount of payment*] upon receipt and approval by USTDA of the Final Report (as defined in the Terms of Reference) in accordance with the requirements set forth in the Mandatory Contract Clauses. In addition, a financial officer of the Contractor must provide to USTDA either (i) the Certified Statement of Expenditures (as defined in Clause T of the Mandatory Contract Clauses), or (ii) the cost share certification, as applicable, in accordance with Clause T of the Mandatory Contract Clauses.

The Contract Parties understand and agree that (i) the Contract Parties shall not under any circumstances, whether directly or indirectly, use the Grant Funds, or cause or allow the Grant Funds to be used, in either case, for any purpose whatsoever other than performance of the Activity in accordance with the Terms of Reference and other terms and conditions of this Contract (including the Mandatory Contract Clauses), (ii) any breach or failure by either Contract Party to use the Grant Funds in compliance with the foregoing subclause (i) of this paragraph may result in a refund to USTDA, pursuant to Clause B(2)(a) of the Mandatory Contract Clauses, of any Grant Funds disbursed to the Contractor, and (iii) in no event will the amounts contributed by USTDA in respect of the Activity exceed the amount of the Grant Funds.

4. Invoices

In accordance with the payment schedule set forth in Clause 3 above, the Contractor shall submit Invoices to the Client for review and approval in accordance with Clause G of the Mandatory Contract Clauses. After the Client approves an Invoice and the Invoice is received and approved by USTDA, USTDA will disburse the Grant Funds directly to the Contractor in the United States. The Client shall approve or disapprove each such Invoice (including any resubmitted Invoice) within fifteen (15) days following Client’s receipt of such Invoice. If the Client disapproves an

Invoice, the Client shall so inform the Contractor in writing, specifying the reasons for disapproval in order to enable the Contractor to take appropriate corrective measures. If the Client (a) does not approve or disapprove an Invoice within thirty (30) days following receipt of such Invoice by the Client, or (b) disapproves an Invoice for a second time after the Contractor has taken corrective measures and resubmitted the Invoice to the Client, in either case, the Contractor shall so notify USTDA.

5. Supply of Contractor and Subcontractor Personnel

The Activity shall be carried out by the Contractor and Subcontractor (as defined in the Mandatory Contract Clauses) personnel specified in Annex III. A curriculum vitae for each such person listed shall be attached to Annex III. The Contractor hereby represents that the list of personnel included in Annex III is the complete, correct and exclusive list of all personnel of the Contractor and each Subcontractor who will be utilized to perform the Activity. Any changes in the list of Contractor and Subcontractor personnel must be made in accordance with Clause 6 below.

6. Modifications to the List of Contractor and Subcontractor Personnel

(a) No changes may be made in the personnel specified in Annex III without the express prior written approval of both the Client and USTDA. If the Contractor seeks to replace or add any Contractor or Subcontractor personnel under this Clause 6, the Contractor shall provide USTDA with (i) a written explanation for such proposed replacement or addition, and (ii) a curriculum vitae for any person proposed as a replacement or addition. If the Contractor seeks to replace any Contractor or Subcontractor personnel specified in Annex III, the Contractor shall, or in the case of Subcontractor personnel, shall cause the applicable Subcontractor to, provide a replacement of equivalent or superior qualifications. If the Contractor seeks to replace or add any Subcontractor, the Contractor shall provide USTDA with (A) a written explanation for such proposed replacement or addition, and (B) any due diligence documentation required by USTDA in respect of the Subcontractor proposed as a replacement or addition.

(b) If any person specified in Annex III is found by the Client to be unsuitable or incompetent in discharging such person's assigned responsibilities, then upon the written request of the Client, the Contractor shall, or in the case of Subcontractor personnel, shall cause the applicable Subcontractor to, provide a replacement in accordance with this Clause 6 within a reasonable period of time.

(c) Any additional costs incurred by reason of any such replacement and/or addition of Contractor or Subcontractor personnel or Subcontractors pursuant to this Clause 6 will be at the expense of the Contractor.

7. Client Support

The Client 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, and (b) unless otherwise expressly agreed with the Contractor, provide

reasonable support for the Contractor, such as local transportation, office space and secretarial support. The Client shall facilitate the timely granting to the Contractor, its authorized Subcontractors and affiliates (and where applicable, their respective dependents) of visas, licenses, permits and customs clearance for entry and exit, and the privilege of bringing into the Host Country reasonable amounts of foreign currency for the purpose of carrying out this Contract.

8. Force Majeure

If either of the Contract Parties is prevented from performing any of its obligations under this Contract by an event of force majeure, such as war, fire, flood, earthquake or any other reasonably unforeseeable event that is beyond the reasonable control of such Contract Party, the time period for performance of such obligations shall be extended by a period equal to the period of delay caused by such event, and the Contract Parties shall conduct friendly negotiations as soon as practicable to find a mutually satisfactory solution to the problems caused by any such events; provided, however, that any extensions, amendments, changes or other modifications of or to this Contract resulting from an event of force majeure will be subject to written USTDA approval as set forth in Clause J of the Mandatory Contract Clauses.

9. Suspension and Termination of the Contract

(a) Suspension of the Contract

If any of the following events has occurred and is continuing, either Contract Party may, by written notice to the other Contract Party and USTDA, suspend in whole or in part the performance of its obligations under this Contract:

- (i) USTDA suspends disbursements of Grant Funds pursuant to Clause B(2)(a) of the Mandatory Contract Clauses; or
- (ii) A material default occurs in the performance of any obligation of the other Contract Party under this Contract.

(b) Termination of the Contract

Subject to Clause H of the Mandatory Contract Clauses:

- (i) Either Contract Party may terminate this Contract at any time, for any reason or for no reason, upon written notice to the other Contract Party and USTDA, and such termination shall be effective thirty (30) days following the date of such notice;
- (ii) This Contract will terminate immediately upon written notice to the Contractor of the termination of the Grant Agreement;
- (iii) If any suspension by a Contract Party pursuant to Clause 9(a)(ii) above has occurred and continues for a period of thirty (30) days following commencement

of such suspension, then the non-defaulting Contract Party may terminate this Contract by written notice to the other Contract Party and USTDA, which termination will be effective immediately;

(iv) If either Contract Party commences or consents to the commencement of any proceeding under Title 11 of the United States Code or any similar debtor relief laws of the United States or other applicable jurisdictions affecting the rights of creditors generally, this Contract will terminate immediately without need for further action or notice on the part of any person; provided, however, that such Contract Party shall notify USTDA and the other Contract Party in writing within three (3) business days following the commencement of any such proceeding; and

(v) Notwithstanding any other provision herein, if the U.S. Office of Foreign Assets Control determines that either Contract Party 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 Contract will terminate five (5) business days following such determination without the need for any further action or notice on the part of any person unless USTDA delivers written notice prior to the expiration of such five (5) business day period to the Contract Parties that this Contract will remain in full force and effect; if either Contract Party becomes aware of any such violation or determination, such Contract Party shall notify USTDA and the other Contract Party in writing within one (1) business day thereafter.

(c) Termination Procedures

Upon delivery or receipt (as applicable) of any written notice regarding the termination of this Contract, the Contractor shall (i) take immediate steps to terminate its performance of the Activity in a prompt and orderly manner, and to mitigate damages and keep further expenditures to a minimum, and (ii) comply with the additional termination provisions set forth in Clause H of the Mandatory Contract Clauses.

(d) Survival

For purposes of Clause H(2) of the Mandatory Contract Clauses, the term “Surviving Clauses” means Clauses 11(b), 12, 13, 14, 15 and 18 of this Contract.

10. Standards of Conduct; Warranty

(a) The Contractor shall exercise all reasonable skill, care, and diligence in the performance of the Activity under this Contract and shall carry out its responsibilities in accordance with recognized professional standards. Each Contract Party and each of its employees, agents, and Subcontractors, if any, shall comply in all material respects with (i) the terms and provisions of this Contract, including the Terms of Reference and the Mandatory Contract Clauses, and (ii) all applicable laws and regulations of both the United States and the Host Country.

(b) The Contractor warrants to the Client and to USTDA that (i) the Contractor will, and will cause each of its employees, agents and Subcontractors to, perform the Activity in conformity with the standards set forth in Clause 10(a) above, and (ii) except as otherwise specifically disclosed to the Client and USTDA in writing, all work performed under the Terms of Reference is original work prepared, developed and executed exclusively in connection with the Activity, and any such work is not based on or derived from any other work performed by the Contractor. The Contractor shall promptly remedy any breach of the foregoing warranty arising within two (2) years following the date on which USTDA accepts the Final Report (the “Warranty Period”), and in respect of which the Client or USTDA provides written notice to the Contractor, at no additional cost to the Client or to USTDA. If the Contractor remedies any such breach of warranty, (A) the Contractor shall provide the Client and USTDA with an updated version of the Final Report and any other documents that incorporate any remedial changes required under this Clause 10, and (B) the Warranty Period in respect of the subject matter of such breach shall be extended until the later of (I) the expiration of the original Warranty Period, and (II) the date that is six (6) months following the completion of such remedial work; provided, however, that in no event shall the Warranty Period continue for a duration of more than thirty (30) months.

11. Liability

Each Contract Party shall be liable to the other Contract Party and/or USTDA, as applicable, for any loss or damage suffered by such other Contract Party and/or USTDA, as applicable, as a result of a default by such Contract Party in connection with the performance of the Activity under this Contract, subject to the following limitations:

(a) neither Contract Party, nor any of its officers, directors, agents, employees, or affiliates, will be liable to the other Contract Party or any of its subsidiaries, affiliates, officers, directors, agents, employees, successors or assignees for claims for incidental, indirect or consequential damages of, or in any nature connected with or resulting from, the performance of the Activity under this Contract, including, without limitation, claims for loss of profit or revenue, loss of use of equipment, and cost of capital or return on capital, irrespective of whether such claims are based upon warranty, negligence, strict liability, contract, operation of law or otherwise; and

(b) except as otherwise specifically set forth herein, the Contractor’s aggregate liability to the Client and/or USTDA, as applicable, from any and all causes, whether based on contract, tort (including negligence), strict liability or any other cause of action, shall in no event exceed the total aggregate amount of the Grant Funds; provided, however, that the foregoing limitation shall not apply to (i) any liabilities arising out of or resulting from gross negligence, willful misconduct or fraud on the part of the Contractor, or (ii) the Contractor’s warranty obligations under Clause 10(b) above.

12. Confidential Information

(a) The term “Confidential Information” includes, without limitation, any technical, scientific, trade, research, manufacturing, marketing, supplier or other information, financing plans, business plans, financial data, customer lists, projects, economic information, systems, plans, procedures, operations, techniques, Intellectual Property, trade secrets, know-how, inventions, technical data or specifications, testing methods, research and development activities and marketing strategies, regardless of whether such information is in written, oral, electronic or other form. Notwithstanding the foregoing definition, (i) Confidential Information does not include any information that (A) is or becomes available in the public domain through no fault of, or act or failure to act on the part of the receiving Contract Party, (B) is rightfully in the receiving Contract Party’s possession at the time of disclosure by the disclosing Contract Party, as evidenced by the receiving Contract Party’s written records maintained in the ordinary course of business, (C) is obtained, after the Effective Date, by the receiving Contract Party from any third party that is lawfully in possession of such Confidential Information and not in violation of any contractual or legal obligation with respect to such Confidential Information, or (D) is developed independently by the receiving Contract Party, without reference to or use of any Confidential Information, and (ii) the receiving Contract Party may release Confidential Information to the extent such release is required by a governmental authority or by order of a court of competent jurisdiction; provided, however, that in such event, the receiving Contract Party shall give the disclosing Contract Party prompt written notice of such required release and the receiving Contract Party shall take all reasonable and lawful actions to avoid or minimize the degree of such required release; provided, further, that the receiving Contract Party shall cooperate reasonably with the disclosing Contract Party in any efforts to seek a protective order limiting such disclosure.

(b) Each Contract Party acknowledges that it may be necessary for such Contract Party to disclose certain Confidential Information to the other Contract Party, in order for the receiving Contract Party to perform the Activity pursuant to this Contract. All such Confidential Information is and will remain the sole property of the disclosing Contract Party. Except as otherwise expressly set forth in this Contract (including, without limitation, Clause I of the Mandatory Contract Clauses), each Contract Party shall (i) hold in confidence all Confidential Information, and not disclose to third parties any Confidential Information without the prior written consent of the disclosing Contract Party, (ii) use Confidential Information solely in connection with performing the Activity, (iii) protect Confidential Information from unauthorized disclosure with the same degree of care as it exercises with its own proprietary information (but with no less than reasonable care), (iv) reproduce Confidential Information solely to the extent necessary to perform the Activity, with all such reproductions being considered Confidential Information, and (v) notify the disclosing Contract Party of any unauthorized disclosure of Confidential Information promptly upon becoming aware of such unauthorized disclosure.

13. Intellectual Property

(a) The term “Intellectual Property” includes, without limitation, all inventions (irrespective of whether any such invention is patentable or unpatentable or not reduced to practice), technological innovations, discoveries, improvements, designs, formulas, know-how, processes, business methods, patents (including applications), trademarks (including registrations and applications), service marks, service names, copyrights, trade secrets, computer software, ideas (whether or not patentable or copyrightable or constituting trade secrets), creations, writings, lectures, illustrations, photographs, video motion pictures, scientific and mathematical models or other similar property rights, improvements to all of the foregoing such property, and all recorded material defining, describing or illustrating all such property, whether in hard copy or electronic form.

(b) The Client will retain ownership of any and all of its Intellectual Property owned by (or licensed to) the Client prior to the Effective Date and provided to the Contractor in connection with the Activity (“Pre-Existing Client IP”). The Client hereby grants to the Contractor a fully paid-up, irrevocable, perpetual, non-transferrable, worldwide, royalty-free, non-exclusive license to use any Pre-Existing Client IP that is necessary for the Contractor to perform the Activity. No right, title or interest in any Pre-Existing Client IP is transferred, assigned, licensed or conveyed by this Contract to any person other than the limited license granted pursuant to this Clause 13(b).

(c) The Client acknowledges and agrees that in connection with performance of the Activity, the Contractor may utilize and deliver Intellectual Property owned by (or licensed to) the Contractor prior to the Effective Date (the “Pre-Existing Contractor IP”). To the extent that any Pre-Existing Contractor IP is delivered for the limited purposes of the Client’s implementation and use in connection with the Activity, the Contractor hereby grants to the Client a fully paid-up, irrevocable, perpetual, transferrable, worldwide, royalty-free, non-exclusive license to use such Pre-Existing Contractor IP. No right, title or interest in any Pre-Existing Contractor IP is transferred, assigned, licensed or conveyed by this Contract to any person other than the limited license granted pursuant to this Clause 13(c).

(d) Subject to the provisions of Clause 13(b) and 13(c) above, any new Intellectual Property developed, invented or created by the Contractor in connection with the performance of the Activity, including, without limitation, the Final Report and all Deliverables and other work product associated with the Activity (collectively, “Developed IP”), will be delivered to and be the property of the Client. The Contractor hereby assigns to the Client all such Developed IP and applications therefore, in the United States and elsewhere.

(e) The Client hereby grants to the Contractor a fully paid-up, irrevocable, perpetual, transferrable, worldwide, royalty-free, non-exclusive license to use, distribute, execute, reproduce, translate, modify and utilize the Developed IP.



14. Amendments

All amendments, assignments of 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 expressly approved in writing by USTDA.

15. Waiver

No obligation, condition or other provision of this Contract may be modified, waived or discharged unless such modification, waiver or discharge (collectively, a “Waiver”) is (a) agreed to in writing and signed by the person entitled to enforce such obligation, condition or other provision (whether a Contract Party or USTDA), and (b) expressly approved in writing by USTDA, in the event of any Waiver signed by a Contract Party. Any such Waiver will be effective only to the extent expressly specified therein. No Waiver by either Contract Party of any breach of, or of compliance with, any condition or provision of this Contract by the other Contract Party will be considered a Waiver of any other condition or provision or a Waiver of the same condition or provision at another time. The rights and remedies of the Contract Parties to this Contract are (i) not limited to the rights and remedies expressly set forth in this Contract and are in addition to all other rights and remedies available to the Contract Parties under applicable law, and (ii) not exclusive and may be exercised without precluding the future exercise by a Contract Party of any other such rights and remedies. Neither the failure nor any delay by any Contract Party in exercising any right, power or privilege under this Contract will operate as a Waiver of such right, power or privilege.

16. Governing Law; Dispute Resolution

(a) This Contract is governed by, and construed in accordance with, the applicable laws of [*jurisdiction*], without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of another jurisdiction.

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

(c) The arbitration will take place in [*city and country*] and will be conducted by [*name of arbitral organization, followed by the defined term in quotation marks within parentheses*] in accordance with the procedural rules of [*defined term for arbitral organization*]. The arbitration will be conducted in the [*language*] language, and the substantive law of [*jurisdiction*] will be applied. The decision of the arbitrators will be final and binding upon both Contract Parties. Each Contract Party consents to the exclusive jurisdiction and venue of the [*defined term for arbitral organization*] for the arbitration of any dispute hereunder.

(d) The Contract Parties shall give USTDA advance written notice of any such arbitration proceeding.

(e) Pursuant to Clause R of the Mandatory Contract Clauses, the provisions in this Clause 16 do not affect the rights or obligations of USTDA.

17. Binding Effect

This Agreement will be binding upon and inure to the benefit of the Contract Parties and their respective successors and permitted assigns.

18. Addresses of Record

Any notice, request, document or other communication submitted by either Contract Party to the other Contract Party under this Contract shall be in writing or through a wire or electronic means of communication which produces a tangible record of the transmission, such as an email, and will be deemed duly given or sent when delivered to such Contract Party as set forth below:

(a) For the Client:

Name: [Name]  
Title: [Title]  
Address: [Address]  
Phone: [Phone]  
Email: [Email address]

(b) For the Contractor:

Name: [Name]  
Title: [Title]  
Address: [Address]  
Phone: [Phone]  
Email: [Email address]

All such notices, requests, documents or other communications between the Contract Parties must be in the [language] language. Any such notices, requests, documents or other communications between either of the Contract Parties and USTDA (including any Invoices and Final Reports, as such terms are defined in the Mandatory Contract Clauses) must be in the English language.

If anyone designated by a Contract Party as a contact person in this Clause 18 ceases service as a contact person at any point during the ten (10) year period following the Effective Date, the Contract Party that had designated such contact person shall provide USTDA and the other Contract Party with the name and contact information of a replacement contact person.

19. Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. This Contract may be executed in two or more languages, but in the event of any conflict or

inconsistency between the English language version of this Contract and any other version, the English language version of this Contract will control.

20. Entire Agreement

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

21. Counterparts

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

22. Grant Agreement and USTDA Mandatory Contract Clauses Controlling

In the event of any inconsistency or conflict between the terms and provisions of the Grant Agreement (subject to Article 2, Article 5(E) and Article 9 therein) and those of this Contract or any Subcontract hereunder, the Grant Agreement will control. In the event of any inconsistency between the terms and provisions of the Mandatory Contract Clauses in Annex II and any other terms and provisions of this Contract or any Subcontract hereunder, the Mandatory Contract Clauses will control.

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**FOR DISCUSSION PURPOSES ONLY – FINAL TERMS AND CONDITIONS MAY VARY**

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

For *[full legal name of Client]*:

For *[full legal name of Contractor]*:

\_\_\_\_\_

\_\_\_\_\_

By: *[Name]*

By: *[Name]*

Title: *[Title]*

Title: *[Title]*

Date: *[Date]*

Date: *[Date]*

**Annex III**

**List of Personnel and Curricula Vitae**

<b>Name</b>	<b>Title &amp; Role</b>	<b>Citizenship<sup>1</sup></b>	<b>Full Legal Name of Employer<sup>2</sup></b>	<b>Country of Organization of Employer</b>	<b>Contractor Affiliate<sup>3</sup></b>
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<sup>1</sup> If applicable, the person’s work authorization status in the U.S. and/or the Host Country may be listed here as well.

<sup>2</sup> The name listed in this column should be the name of the legal entity that compensates the individual in question.

<sup>3</sup> In the case of Subcontractors listed on this chart, a “Yes” in this column indicates that the applicable Subcontractor is an affiliate of the Contractor.