



U.S. TRADE AND DEVELOPMENT AGENCY

MODEL CONTRACT FOR USTDA-FUNDED TECHNICAL ASSISTANCE

This is a model contract, designed only to facilitate the drafting of a Contract between the Grantee and the U. S. Contractor with respect to the performance of a USTDA-funded technical assistance. It is important to note that USTDA is not a party to the contract. All contracts for USTDA-funded studies must contain the following:

- 1) USTDA Mandatory Clauses, which are set forth as Annex II to the Grant Agreement that funds this technical assistance;*
- 2) Terms of Reference for the technical assistance, which is set forth in Annex I to the Grant Agreement (The Contract's Terms of Reference must be identical to the Grant Agreement's or a separate written explanation must be provided to USTDA for approval by the Client and the Contractor at the time of Contract review);*
- 3) Payment provisions that conform with the requirements set forth in USTDA Mandatory Clause I (Clauses 3 and 4 of this model contract may be used as an example); and*
- 4) In the event that the contract is executed in two languages, a contract provision which states that English must be the controlling language.*

Otherwise, the Grantee and the Contractor are free to use all, some, or none of this model as the basis of their negotiations and final agreement. The information in italics is intended to provide guidance and should not be included in the text of the final contract.

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

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

CONTRACT FOR _____ [TECHNICAL ASSISTANCE TITLE]

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

WHEREAS, the Client has requested the Contractor to provide technical assistance for the _____ project (the "TA"), and the Contractor has agreed to prepare the TA in accordance with the terms and conditions set forth in this Contract;

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

1. Appointment

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

- | | |
|------------------|--|
| Annex I: | Terms of Reference <i>[must be identical to the Grant Agreement Terms of Reference or a separate written explanation must be provided to USTDA for approval by the Client and the Contractor at the time of Contract review]</i> |
| Annex II: | USTDA Mandatory Clauses |
| Annex III: | Personnel |
| <i>[Annex IV</i> | <i>Schedule of Events]</i> |
| <i>[Annex V:</i> | <i>Counterpart Client Personnel, Assigned Specialists, Equipment, and Facilities to be Provided by the Client]</i> |

2. Effective Date of the Contract

This Contract shall be effective upon signature by both parties.

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

3. Payment Schedule

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

(1) US\$ _____, a mobilization (advance) payment, upon signature of the contract and approval by USTDA *[not to exceed 20 % of the total Grant Funds]*.

(2) US\$ _____ upon completion of _____. *[milestone]*

(3) US\$ _____ upon completion of _____. *[milestone]*

(4) US\$ _____ *[this amount should not be less than 15% of the total USTDA Grant Funds]* upon receipt by USTDA of the Final Report in accordance with the specifications and quantities set forth in the USTDA Mandatory Clauses. *[If the Contractor is making a Cost Share contribution to this TA, add the following additional sentence.]* In addition, a financial officer of the Contractor must provide the Cost Share certification contained the USTDA Mandatory Clauses.

[The above payment schedule should be based upon completion of performance milestones rather than automatic chronological installments. For example, these milestones could be based upon completion of tasks set out in the Annex I Terms of Reference or in the Annex IV Schedule of Events.]

4. Method of Payment

In accordance with the payment schedule set forth in Clause 3 above, the Contractor shall submit invoices, containing the certification set forth in Clause [I] of the USTDA Mandatory Clauses, to the Client for approval. The Client shall approve, in accordance with the disbursement procedures in Clause [I] of the USTDA Mandatory Clauses, or disapprove each invoice within ___ *[15]* ___ days of its receipt. If the Client disapproves an invoice, the Client shall so inform the Contractor in writing, setting out the reasons for disapproval in order to enable the Contractor to take appropriate corrective measures. After the Client approves an invoice and the invoice is received by USTDA, USTDA shall make its respective disbursement of the Grant Funds directly to the Contractor in the United States.

5. Supply of Personnel

The TA shall be carried out by the personnel specified in Annex III for the respective periods of time covered by this Contract. Curriculum Vitae should be attached to this Annex for each person listed and must be signed by the individual assuring their availability to the Contractor and their commitment to the TA. The Contractor hereby agrees that the personnel listed in this Annex will be utilized to perform the TA.

6. Procedures for Substitution of Personnel

Except as the Client may otherwise agree, no changes shall be made in the personnel specified in Annex III. If, for any reason beyond the reasonable control of the Contractor, it becomes necessary to replace any person specified in Annex III, the Contractor shall provide a replacement of equivalent or superior qualifications. Any additional costs incurred by reason of such substitution shall be at the expense of the Contractor. In the event any person specified in Annex III is found by the Client to be unsuitable or incompetent in discharging his assigned responsibilities, the Client may request the Contractor to provide a replacement within a reasonable period of time. Any additional costs incurred by reason of such replacement shall be at the expense of the Contractor.

7. Permits and Approvals

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

8. Force Majeure

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

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

9. Suspension and Termination of the Contract

(a) Suspension of the Contract

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

(1) USTDA shall have suspended disbursements from the Grant Agreement covering this contract; or

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

(b) Termination of the Contract

If any of the following events shall have happened and be continuing, either party may, by written notice to the other party, terminate the Contract:

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

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

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

(c) Termination Procedures

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

10. Business Practices

Each party, including any other participants in the TA, agrees not to pay, promise to pay, or authorize the payment of any money or anything of value, directly or indirectly, to any person (whether a governmental official or private individual) for the purposes of illegally or improperly inducing anyone to take any action favorable to any party in connection with the TA. Each party agrees that it will require that any agent or representative of the party hired to represent such party in connection with the TA will comply with this paragraph and all laws which apply to activities and obligations of each party under this Contract, including but not limited to those laws and obligations dealing with improper payments as described above.

11. Standards of Conduct

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

12. Liability

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

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

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

13. Amendment Procedures

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

14. Dispute Resolution

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

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

15. Succession

This Contract is binding upon the Parties' successors.

16. Addresses of Record

Any notice, request, document, or other communication submitted by either party to the other under this Contract shall be in writing or through a wire or electronic medium which produces a tangible record of the transmission, such as a telegram, cable or facsimile, and will be deemed duly given or sent when delivered to such party at the following address:

(a) For the Client: _____

(b) For the Contractor: _____

[It may be useful to also list the title of the person responsible for the day-to-day management of the Contract]

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

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

17. Language

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

18. Entire Agreement

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

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

For [CLIENT]

For [CONTRACTOR]

By: _____
[name and title]

By: _____
[name and title]

Date: _____

Date: _____

Annex I -- Terms of Reference

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

[Other Annexes listed]

[Please remember to attach all Annexes]

Draft date: 6/03