

**CUSTOMER CONTRACT REQUIREMENTS  
CHINA AVIATION COOPERATION PROGRAM  
USTDA Mandatory Contract Clauses**

**A. USTDA Mandatory Clauses Controlling**

The parties to this Contract 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 Civil Aviation Administration of China ("Client"), dated September 21, 2017 ("Grant Agreement"). The Client has selected the American Chamber of Commerce in China Fund ("Contractor") to perform technical assistance ("TA") for the Civil Aviation Sustainability "Green Routes" Initiative ("Project") in the People's Republic of China ("Host Country"). The Client and the Contractor are the parties to this Contract, and they hereinafter are referred to collectively as the "Contract Parties." Notwithstanding any other provisions of this Contract, the following USTDA Mandatory Contract Clauses shall govern. All subcontracts entered into by Contractor funded or partially funded with USTDA Grant funds shall include these USTDA Mandatory Contract Clauses, except for Clauses B(1), H, I and S. In addition, in the event of any inconsistency between the Grant Agreement and the Contract or any subcontract thereunder, the Grant Agreement shall be controlling.

**B. USTDA as Financier**

- 1. Reserved**
- 2. USTDA Not a Party to the Contract**

It is understood by the Contract Parties that USTDA has reserved certain rights such as, but not limited to, the right to approve the terms of this Contract and amendments thereto, including assignments, the selection of all contractors, the Terms of Reference, the Final Report, and any and all documents related to any contract funded under the Grant Agreement. The Contract Parties hereto further understand and agree that USTDA, in reserving any or all of the foregoing approval rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USTDA to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing the TA and shall not be construed as making USTDA a party to the Contract. The Contract Parties hereto understand and agree that USTDA may, from time to time, exercise the foregoing approval 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 shall not bar the Client or USTDA from asserting any right they might have against the Contractor, or relieve the Contractor of any liability which the Contractor might otherwise have to the Client or USTDA.

**C. Nationality, Source and Origin**

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

- a) the Contractor must be a U.S. firm;
- b) the Contractor may use U.S. subcontractors without limitation;
- c) employees of U.S. Contractor or U.S. subcontractor firms shall be U.S. citizens, non-U.S. citizens lawfully admitted for permanent residence in the United States or non-U.S. citizens lawfully admitted to work in the United States, except as provided pursuant to subpart (d) below;
- d) up to twenty percent (20%) of the USTDA Grant amount may be used to pay for services performed by (i) Host Country subcontractors, and/or (ii) Host Country nationals who are employees of the Contractor;
- e) a Host Country subcontractor may only be used for specific services from the Terms of Reference identified in the subcontract;
- f) subcontractors from countries other than the United States or Host Country may not be used;
- g) goods purchased for performance of the TA and associated delivery services (e.g., international transportation and insurance) must have their nationality, source and origin in the United States; and
- h) goods and services incidental to TA support (e.g., local lodging, food, and transportation) in Host Country are not subject to the above restrictions.

USTDA will make available further details concerning these provisions upon request.

#### **D. 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, sufficient to reflect properly all transactions under or in connection with the Contract. These books, records, and other documents shall clearly identify and track the use and expenditure of USTDA funds, separately from other funding sources. Such books, records, and documents shall be maintained during the period of performance of work provided for by this Contract, and for a period of three (3) years after final disbursement by USTDA. The Contractor and subcontractors shall afford USTDA, or its authorized representatives, the opportunity at reasonable times for inspection and audit of such books, records, and other documentation.

#### **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 law.

**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.

**2. Payment Schedule Requirements**

A payment schedule for disbursement of Grant funds to the Contractor shall be included in this Contract. Such payment schedule must conform to the following USTDA requirements: (1) up to twenty percent (20%) of the total USTDA Grant amount may be used as a mobilization payment; (2) all other payments, with the exception of the final payment, shall be based upon Contract performance milestones; and (3) the final payment may be no less than fifteen percent ( 15%) of the total USTDA Grant 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(3)(b)(iii) below. Invoicing procedures for all payments are described below.

**3. Contractor Invoice Requirements**

USTDA will make all disbursements of USTDA Grant funds directly to the Contractor. The Contractor must provide USTDA with an ACH Vendor Enrollment Form (available from USTDA) with the first invoice. The Client shall request disbursement of funds by USTDA to the Contractor for performance of the Contract by submitting the following to USTDA:

**a) Contractor's Invoice**

The Contractor's invoice shall include reference to an item listed in the Contract payment schedule, the requested payment amount, and an appropriate certification by the Contractor, as follows:

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

"As a condition for this mobilization payment, the Contractor certifies 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 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 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.
- ii. For Contract performance milestone payments, the following certification by the Client must be provided on the invoice or separately:

"The services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions and the terms and conditions of the USTDA Grant Agreement."

- iii. For final payment, the following certification by the Client must be provided on the invoice or separately:

"The services for which disbursement is requested by the Contractor have been performed satisfactorily, in accordance with applicable Contract provisions 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 Disbursement Requests**

Requests for disbursement shall be submitted to the attention of the Finance Department at USTDA's address listed in Clause M below, or by e-mail to [invoices@ustda.gov](mailto:invoices@ustda.gov).

**H. Reserved**

**I. Reserved**

**J. Modifications**

All changes, modifications, assignments or amendments to this Contract, including the appendices, shall be made only by written agreement by the Contract Parties hereto, subject to written USTDA approval.

**K. TA Schedule**

**(1) TA Completion Date**

The completion date for the TA, which is December 30, 2019, is the date by which the Contract Parties estimate that the TA will have been completed.

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

Except as USTDA may otherwise agree, (a) no USTDA 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 USTDA funds may be disbursed more than four (4) years after the Effective Date of the Grant Agreement.

**L. 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. For example, the Contractor and its subcontractors shall fully comply with the requirements of the Foreign Corrupt Practices Act, as amended (15 U.S.C. §§ 78dd-l etc.). Each Contract Party agrees that it shall require that any agent or representative hired to represent it in connection with the TA will comply with this paragraph and all laws which apply to activities and obligations of that Contract Party, including, but not limited to, those laws and obligations referenced above.

**M. USTDA Address and Fiscal Data**

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

U.S. Trade and Development Agency | 1000 Wilson Boulevard, Suite 1600  
Arlington, Virginia 22209-3901 USA  
Phone: (703) 875-4357  
Fax: (703) 875-4009

**Fiscal Data:**

Appropriation No.: II 17/18 1001; 1112/17 1001  
Activity No.: 2017-61023A  
Reservation No.: 2017221  
Grant No.: GH201761221

**N. Taxes**

USTDA 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 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 will seek reimbursement from USTDA for taxes, tariffs, duties, fees or other levies, except for taxes of a de minimis nature referenced above.

**O. Export Licensing**

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

**P. Contact Persons**

The Client designates the following person as the contact person for matters concerning this Contract:

Name: Mr. Liu Yonggang

Title: Deputy Director of Planning and Research Office, Airspace Management Center, ATMB of CAAC

E-Mail: [Liuyonggang@atmb.net.cn](mailto:Liuyonggang@atmb.net.cn)

The Contractor designates the following person as the contact person for matters concerning this Contract:

Mr. Geoff Jackson

Executive Director, U.S.-China Aviation Cooperation Program,  
The Office Park Tower AB, 6th Floor, No. 10 Jintongxi Road, Beijing 100020, PRC  
[gjackson@amchamchina.org](mailto:gjackson@amchamchina.org)

If anyone designated by a Contract Party as a contact person ceases service as a contact person at any point during the ten-year period following the date of signing of this Contract, the Contract Party that had designated that contact person shall provide USTDA and the other Contract Party with the name and contact information of a replacement contact person.

**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 included by the Contract Parties is inconsistent with either or both of these limitations, it shall 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. Reserved**

**T. Cost Share**

The total cost of the Terms of Reference is estimated to be at least US\$3.37million. The Contractor agrees that, in addition to the funding provided by the USTDA Grant

(\$1,557,236), by FAA (\$282,000), and by the Grantee, it shall be responsible for ensuring that it and/or its subcontractors and/or its member entities cover all other expenses needed to complete the full Terms of Reference as set forth in Annex I to the Grant Agreement and this Contract. The Contractor shall provide a certification to this effect.