



## DEPARTMENT OF THE ARMY

U.S. ARMY CORPS OF ENGINEERS

441 G ST. NW

WASHINGTON DC 20314-1000

REPLY TO  
ATTENTION OF

CECC-G

May 30, 2014

### MEMORANDUM FOR ALL DIVISION, DISTRICT, CENTER, LABORATORY, AND FIELD OPERATING ACTIVITY COUNSELS

SUBJECT: CECC-G Bulletin No. 14-01, Revised Department of Defense Instruction (DODI) 4000.19 for "Support Agreements."

#### 1. References.

- a. DoD Instruction 4000.19, "Support Agreements," April 25, 2013.
- b. DoD Instruction 4000.19, "Interservice and Intragovernmental Support," August 9, 1995 (cancelled).
- c. Federal Acquisition Regulation, Subpart 2.101, November 20, 2012.
- d. Federal Acquisition Regulation, Subpart 17.5, November 20, 2012.
- e. DoD 7000.14-R, "Department of Defense Financial Management Regulations," Volume 11A, Chapter 3, "Economy Act Orders," March 2012.
- f. Engineer Regulation 1140-3-1, "Support to Defense Departments and Agencies," May 15, 1992.
- g. Engineer Regulation 1140-1-211, "Non-Department of Defense Reimbursable Services," August 15, 2011.

2. Background and Purpose. On April 25, 2013, DoD published a revised DoDI 4000.19 entitled "Support Agreements" (Ref. a.), which rescinded the previous DoDI 4000.19 published in 1995 (Ref. b.). The purpose of this memorandum is to provide Corps attorneys with a basic overview of the revised DODI. The revised DODI does not drastically change the requirements for support agreements. However, it does deviate from its predecessor in three primary respects: (1) it has a more limited scope; (2) it includes new/revised procedural requirements (to include a requirement to amend noncompliant existing agreements by April 25, 2016); and (3) it creates ambiguity regarding approval authorities.

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3. Discussion.

a. Both the revised and previous DODI 4000.19 are procedural regulations, meaning they do not confer substantive authority for DoD entities to provide support to, or receive support from, other DoD or non-DoD entities. Thus, in addition to complying with the revised DODI 4000.19, a DoD entity must also ensure it has the appropriate substantive authority to supply and/or receive the support (*e.g.*, the Economy Act), and must also comply with other procedural regulations associated with such substantive authority (*e.g.*, the Federal Acquisition Regulation (FAR), and the DoD Financial Management Regulations (DoD FMR)). A discussion of individual substantive authorities and correlating procedural regulations is beyond the scope of this memorandum. This memorandum will focus solely on the procedural requirements of the revised DODI 4000.19.

b. Scope of the Revised DODI:

i. The revised DODI applies to all “support agreements,” as that term is defined in the DODI. Within the Corps, we generally refer to “support agreements” as specific reimbursable work orders that are executed pursuant to a substantive reimbursable authority such as the Economy Act. However, the revised DODI defines “support agreement” more broadly to include: (1) “intra-agency agreements” (*i.e.*, agreements between DoD Components); (2) “interagency agreements” (*i.e.*, agreements between a DoD Component and a non-DoD federal agency); and “National Guard agreements” (*i.e.*, agreements between a DoD Component and a State or local government that identifies support provided to the National Guard). Ref. a., Glossary, Part II. Additionally, the revised DODI contains provisions that address both reimbursable and non-reimbursable agreements.

ii. Based on this broad definition, and provisions addressing both reimbursable and non-reimbursable agreements, it appears the DODI potentially applies to any type of agreement that the Corps enters into with other DoD Components, non-DoD federal agencies, or the National Guard, including but not limited to, Memorandums of Agreement (MOAs) under the Economy Act, MOAs under authorities other than the Economy Act, and non-binding Memorandums of Understanding (MOUs) that only express general understandings.<sup>1</sup>

iii. However, by its express terms the revised DODI does not apply to thirteen categories of agreements. **Of particular importance for the Corps, the DODI does not apply to:**

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<sup>1</sup> Although not expressly included in the DODI’s definition of “support agreements,” the DODI also suggests that agreements with federally-recognized Indian tribes, and some agreements with State or local Governments may fall within the definition as well. See Ref. a., encl. 3, para. 1.a. When appropriate, we recommend incorporating the requirements of the revised DODI in these agreements as well.

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1) “Interagency assistance acquisitions,” such as agreements where the Corps only awards and/or administers a contract on another agency’s behalf. Ref. a., para. 2.b.(1).

2) International agreements. Ref. a., para. 2.b.(7).

3) Agreements with non-federal entities that operate off an installation. Ref. a., para. 2.b.(11).

4) Cooperative Research and Development Agreements (CRADAs). Ref. a., para. 2.b.(13).

5) Although not expressly listed as an excluded category, agreements *within* a DoD Component (e.g., intra-Army agreements).<sup>2</sup>

c. New/Revised Procedural Requirements:

i. The revised DODI makes only minor changes to the procedural requirements of the previous DODI. Given the minimal impact of these procedural requirements, it may be preferable in many instances to simply incorporate the new/revised procedural requirements into all Corps agreements for the sake of uniformity. These new/revised procedural requirements include:

1) Reviews:

a) The parties must conduct an annual review of each reimbursable support agreement for financial impacts. Ref. a., encl. 3, para. 1.e.(1). The DODI provides no clarification regarding this requirement. Our recommendation is to advise clients to create a memorandum for record or similar document that discusses the continued validity/accuracy of financial information contained in an agreement.

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<sup>2</sup> The DODI’s definition of “support agreement” includes “intra-agency agreements,” which are further defined as “agreement[s] *between DoD Components*.” Although the DODI does not directly define “DoD Component,” paragraph 2 of the DODI, entitled “Applicability,” suggests that the term refers to “the Military Departments” and other major DoD offices. Applying this implied definition of “DoD Component” to the definition of “intra-agency agreements,” it appears that the DODI only applies to agreements BETWEEN “DoD Components” (i.e., Military Components and other high-level DOD entities), and not to agreements WITHIN DoD Components. This conclusion is further supported by a separate provision of the DODI which provides: “[s]upport agreements within a DoD Component (e.g., between Navy Commands) may provide for support in accordance with the Component’s internal procedures.” Ref. a., encl. 3, para. 1.i. We have sought clarification of this point from the Army Office of General Counsel, but to no avail. In the absence of contrary guidance, we believe the appropriate reading is that the DODI does not apply to agreements between the Corps and other Department of the Army (DA) entities. However, Corps organizations must still ensure that such intra-Army support agreements comply with the applicable substantive statutory authorities, and correlating regulations related to the support in question (e.g., the Economy Act, FAR, DoD FMR, etc.).

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b) The parties must triennially review the entirety of all agreements (*i.e.*, reimbursable and non-reimbursable) exceeding three years, “and document each review in accordance with Component procedures.” Ref. a., encl. 3, para. 1.e.(2). We are unaware of Department of the Army (DA) procedures for this triennial review, and our efforts to gain clarification from HQDA have been unsuccessful. Until we receive clarification, our recommendation is to advise clients to review agreements with an emphasis on ensuring the scope, responsibilities, procedures, funding provisions, etc., accurately reflect the needs and understandings of the parties, and to document such review with a memorandum for record or similar document.

2) **Duration – the revised DODI limits the maximum duration of all support agreements to nine (9) years.** Ref. a., encl. 3, para. 1.e.(3). This is a significant change from the previous DODI, which expressly provided that “support agreements should be effective for an ‘indefinite’ period of time . . . unless there is a compelling reason to specify a specific expiration date.” See Ref. b., para. 6.2.2. We are unaware of the rationale for this change. As a general rule within CECC-G, **we typically advise clients to limit agreements to five years** to ensure agreements are periodically updated. However, we are aware of a number of currently existing agreement with much longer or unlimited duration periods. As discussed in paragraph 3.c.i.(6) of this memorandum, the revised DODI requires that certain existing agreements with duration periods lasting longer than nine years be updated and re-executed by April 25, 2016.

3) **Unilateral Termination – for reimbursable support agreements** only, the revised DODI requires a minimum 180-day notice period before a party can unilaterally terminate the agreement. Ref. a., encl. 3, para. 1.f. If an agreement must be unilaterally terminated prior to 180 days, the terminating party may be billed for unavoidable termination costs. *Id.* The previous DODI had a nearly identical although less explicit provision. See Ref. b., para. 4.7. As discussed in paragraph 3.c.i.(6) of this memorandum, the revised DODI requires that existing reimbursable support agreements with unilateral termination periods shorter than 180 days be updated and re-executed by April 25, 2016.

4) **Use of DD Form 1144 – the revised DODI lists instances where a DD Form 1144 MUST and MAY be used to document reimbursable support:**

a) **The DD Form 1144 MUST be used to document ALL “recurring reimbursable support” provided by a DoD entity.** See Ref. a., encl. 3, paras. 2.a.(1) and 3.b.(1). The DODI defines “recurring reimbursable support” as “[s]upport to occur with an expected rate of recurrence over time normally 1 year or longer.” *Id.* at Glossary, Part II.

b) **The DD Form 1144 MAY be used to document non-recurring reimbursable support** (*i.e.*, support that is not expected to recur over time) provided by a DoD entity. Ref. a., encl. 3, paras. 2.a.(1) and 3.b.(1) The DD Form 1144 MAY also be used

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to document non-reimbursable support, if both parties agree to its use. *Id.* However, the use of an MOA or MOU is recommended for non-reimbursable support agreements.

c) The use of the DD Form 1144 for support agreements is not new. The previous DODI also required the use of the form for recurring reimbursable support, and the DoD FMR strongly urges the use of the form for Economy Act orders.<sup>3</sup> Keep in mind, however, that an 1144 rarely serves as the entire agreement between the parties. The 1144 is a fairly “bare-bones” form that is intended to document individual work orders under a broader agreement. For example, in the context of Economy Act agreements, the Corps generally executes “umbrella” agreements in the form of MOAs, which essentially lay out the procedures and responsibilities of the parties in the event they execute individual Economy Act orders. An individual order, or “Support Agreement” as the Corps model MOAs label them, are then executed via a DD Form 1144. Enclosure 1 of this memorandum is an example of an “umbrella” Economy Act MOA that incorporates the use of the DD Form 1144.

5) Model Templates – the revised DODI provides model templates for MOAs and MOUs, and requires that all MOAs and MOUs include the information in those templates. *See* Ref. a., encl. 3, paras. 2.a.(2), 2.a.(3), 3.b.(3), 3.b.(4), and figures 1 and 2. These templates are not drastically different from the Corps existing model templates. Updated Corps templates for “umbrella” Economy Act MOAs, and non-reimbursable MOUs are included as Enclosures 1 and 2 of this memorandum respectively.

6) 3-year Compliance Requirement – the revised DODI contains the following compliance provision:

Existing support agreements documented by DD Form 1144, MOA, or memorandum of understanding (MOU) *in which a DoD Component is the supplier* that are in effect upon the publication of this instruction will be modified to comply with the requirements of this instruction or terminated no later than 3 years from the date of this instruction.

Ref. a., encl. 3, para. 1.h. (emphasis added). Under this provision, the Corps is only required to update and re-execute existing “support agreements” in which the Corps provides supplies or services, or where the Corps receives supplies or services from another “DoD Component.” Or, stated conversely, the Corps is not required to update and re-execute agreements that do not involve the provision of supplies or services, or where a non-DoD federal agency is providing the support (e.g., non-binding MOAs and MOUs, and Economy Act orders where the Corps orders support from a non-DoD Federal agency).

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<sup>3</sup> *See* Ref. b., para. 4.5 (August 9, 1995) (“Recurring interservice and intragovernmental support that requires reimbursement shall be documented on a DD Form 1144 . . .”); Ref. e., para. 030303 (providing that Determinations and Findings for Economy Act orders between DoD activities “are accomplished by signing a . . . DD Form 1144”).

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d. Approval Authority:

i. The revised DODI creates ambiguity regarding the proper approval authority for “support agreements.” The approval authority provisions of the previous DODI basically mirrored the DoD FMR chapter for Economy Act Orders, and designated the approval authority for intra-agency agreements (*i.e.*, intra-DoD agreements) as the “heads” of the ordering and requesting “activities,” and the approval authority for interagency agreements (*i.e.*, agreement with non-DoD federal agencies) as the “head of the major organizational unit ordering the support,” with authority to delegate no lower than the GO/SES level. See Ref. b., paras. 4.3, 4.4, and E2.1.1; Ref. e., paras. 030303 and 030304. Per Engineering Regulations 1140-3-1 and 1140-1-211, it appears USACE has interpreted these approval authorities as being District/Center/Lab Commanders and above (*i.e.*, “heads of activities”) for intra-DoD agreements, and MSC Commanders (*i.e.*, “heads of major organizational units”) for agreements with non-DoD federal agencies, at least when the Corps is providing the support. See Ref. f., para. 6; Ref. g., para. 8.

ii. The revised DoDI potentially alters this previous approval authority framework for both intra-agency and interagency support agreements. Under the revised DODI, the approval authority is the “DoD Component commander, commanding officer, or director,” with authority to “delegate this function in accordance with the concerned Component’s policy.” Ref. a., encl. 3, paras. 2.b.(2) and 3.c.(1). Similarly, the revised DODI sets the comptroller signature authority for DD Form 1144 at the “DoD Component” level, with authority to further delegate. Ref. a., encl. 3, para. 2.b.(3). Based on this language, the approval authority for support agreements under the revised DODI may now be at the HQDA level.

iii. We have made repeated attempts to seek clarification from HQDA on this issue, but we have received no substantive response. We are continuing to work with the HQUSACE Directorate of Contracting to get clarification from the OASA (ALT), and with the HQUSACE Directorate of Resource Management to get clarification from the OASA (FM&C) regarding the comptroller signatory authority. Unfortunately, this means we have no definite guidance to offer our clients in the interim. However, it seems highly illogical that DoD intended to create a backlog of support agreements by retracting the approval authority back up to the DoD Component level. Accordingly, until directed otherwise by the OASA (ALT) and/or the OASA (FM&C), we recommend adhering to the Corps’ current approval authority delegations provided in references f. and g., and as otherwise provided in existing substantive law, regulations, and policy guidance related to the specific work to be performed under an agreement.

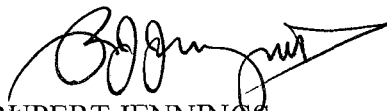
4. Conclusion. The revised DODI does little to alter the substantive requirements for executing support agreements. However, Corps attorneys should become familiar with the procedural requirements of the revised DoDI, and apply them to existing and future agreements as applicable. Corps attorneys should also ensure that their clients are aware of the revised DoDI,

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particularly the requirement to bring existing agreements into compliance by April 25, 2016. CECC-G has initiated this process by contacting the HQUSACE Directorate of Interagency and International Services (IIS). Hopefully that will lead to appropriate vertical communications through the IIS chain. However, attorneys in the field should ensure that their local clients are fully informed as well.

5. The point of contact for this bulletin is Brandon Pitcher, who may be contacted at (202) 761-0025 or [brandon.j.pitcher@usace.army.mil](mailto:brandon.j.pitcher@usace.army.mil).



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Enclosures:

- 1 – Model "Umbrella" Economy Act MOA
- 2 – Model non-reimbursable MOU

## **MODEL “UMBRELLA” ECONOMY ACT MOA**

This Memorandum of Agreement (MOA) template is intended to serve as a generic model for developing “umbrella” MOAs governing Economy Act support for others work to be provided by the Department of the Army to other DoD entities or non-DoD federal agencies.

This generic MOA may be amended to include supplemental provisions necessary to reflect details specific to the parties or projects involved. However, MOAs that fall within the scope of the revised DODI 4000.19 (April 25, 2013) must include the information contained in the sample MOA template provided in that instruction. This model template incorporates the information required by the revised DODI.

All final draft MOAs must be reviewed by the appropriate Office of Counsel prior to execution. Changes made after review by the Office of Counsel, must be submitted to Office of Counsel for review prior to execution.

This model is intended for use with Economy Act agreements. This model may be used as the initial drafting document for Non-Economy Act transactions, but must be tailored to fit the specific authority and follow the DoD FMR provisions for Non-Economy Act transactions, and any other applicable guidance. For agreements under authorities other than the Economy Act, the Office of Counsel should be engaged early and can assist in identifying the requirements for specific Non-Economy Act transactions.



MEMORANDUM OF AGREEMENT  
BETWEEN  
THE [ORDERING ACTIVITY]  
AND  
THE DEPARTMENT OF THE ARMY  
**[U.S. ARMY CORPS OF ENGINEERS may also be appropriate depending on the level of  
approval authority and/or other relevant circumstances]**  
FOR  
[INSERT SUBJECT]  
[INSERT AGREEMENT NUMBER]

ARTICLE I - PURPOSE AND AUTHORITY

This Memorandum of Agreement ("MOA") is entered into by and between the U.S. Department of the Army ("DA") and the [ORDERING ACTIVITY] (collectively "the Parties") for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the provision of DA **[insert general description of the type of DA assistance; e.g. construction management, environmental restoration or design assistance]** goods and services. This MOA is entered into pursuant to the Economy Act (31 U.S.C. § 1535) **[When necessary, also insert specific statutory authority for the ORDERING ACTIVITY to execute the program/work].**

ARTICLE II - SCOPE

Goods and services which the DA may provide under this MOA include **[insert detailed description of scope of DA goods or services, including brief description of Ordering Agency program/work if appropriate]**, and such other related goods or services as may be agreed upon in the future.

Nothing in this MOA shall be construed to require the [ORDERING ACTIVITY] to use the DA or to require the DA to provide any goods or services to the [ORDERING ACTIVITY], except as may be set forth in Support Agreements ("SAs").

ARTICLE III - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the DA and the [ORDERING ACTIVITY], each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on SAs.

ARTICLE IV - SUPPORT AGREEMENTS

In response to requests from the [ORDERING ACTIVITY] for DA assistance under this MOA, the DA and the [ORDERING ACTIVITY] shall conclude mutually agreed upon written SAs. Goods or services shall be provided under this MOA only after an appropriate SA has been

signed by an authorized representative of each Party. SAs will be executed on DD Form 1144. **[For agreements with entities outside of DoD, substitute the previous sentence with: SAs will be executed on either a DD Form 1144 or on any form acceptable to both Parties that contains the same substantive information as a DD Form 1144]** By executing a SA both Parties certify that the following Economy Act requirements have been met:

1. The [ORDERING ACTIVITY] has determined that funds are available;
2. The [ORDERING ACTIVITY] has determined that the order is in the best interest of the United States Government;
3. The DA has determined that it is able to provide or get by contract the ordered goods or services; and
4. The [ORDERING ACTIVITY] has determined that the ordered goods or services cannot be provided by contract as conveniently or economically by a commercial enterprise.

By executing a SA both Parties also certify that any required written Economy Act Determinations and Findings (D&F) have been completed. **[NOTE: For agreements between DoD activities, a signed DD Form 1144 serves as the D&F, and no further written determinations are required. For agreements with entities outside of DoD, a written D&F is ALWAYS required. See DoD FMR Vol. 11A, Ch. 3, and FAR Subpart 17.5 for written D&F requirements (additional agency-specific D&F guidance may also apply)].**

Upon signature by each Party's authorized representative, an SA shall constitute a valid Economy Act order. SAs must include:

- a detailed scope of work statement;
- schedules;
- funding arrangements, including whether payment shall be in advance or by reimbursement;
- the amount of funds required and available to accomplish the scope of work as stated above; and
- the [ORDERING ACTIVITY]'s fund citation and the date upon which the cited funds expire for obligation purposes;

[The following must be addressed in each SA, or in this MOA:

- identification of individual project managers;
- identification of types of contracts to be used (if known);
- types and frequencies of reports;
- identification of which Party is to be responsible for government-furnished equipment; contract administration; records maintenance; rights to data, software, and intellectual property; and contract audits;
- procedures for amending or modifying the SA; and
- such other particulars as are necessary to describe clearly the obligations of the Parties with respect to the requested goods and services.

In the event of a conflict between this MOA and a SA, this MOA shall control.

## ARTICLE V - RESPONSIBILITIES OF THE PARTIES

### A. Responsibilities of the Department of the Army

1. The DA shall provide the [ORDERING ACTIVITY] with goods or services in accordance with the purpose, terms, and conditions of this MOA and with specific requirements set forth in SAs and implementing arrangements.

2. The DA shall identify authorized DA representatives to sign SAs.

3. The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.

4. The DA shall provide detailed periodic progress, financial and other reports to the [ORDERING ACTIVITY] as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

5. The DA shall inform the [ORDERING ACTIVITY] of all contracts entered into under each SA.

### B. Responsibilities of the [ORDERING AGENCY]

1. The [ORDERING ACTIVITY] shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of the Economy Act, and that any required written Economy Act D&F has been completed. **[NOTE: the Corps office involved should obtain a copy of any required written D&F prior to executing a SA.]**

2. The [ORDERING ACTIVITY] shall pay all costs associated with the DA's provisions of goods or services under this MOA and shall certify, at the time of signature of a SA, the availability of funds necessary to accomplish that SA.

3. The [ORDERING ACTIVITY] shall ensure that only authorized [ORDERING ACTIVITY] contracting officers sign SAs.

4. The [ORDERING ACTIVITY] shall develop draft SAs to include scope of work statements.

5. The [ORDERING ACTIVITY] shall obtain for the DA all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each SA.

## ARTICLE VI - FUNDING

**This MOA does not document the obligation of funds between the Parties. Any obligation of funds in support of this MOA will be accomplished by executing a SA in accordance with Article IV and a Military Interdepartmental Purchase Request, DD Form 448 [or equivalent form if with another Federal agency].**

The [ORDERING ACTIVITY] shall pay all costs associated with the DA's provision of goods or services under this MOA. The DA shall bill the [ORDERING ACTIVITY] monthly for costs incurred using Standard Form (SF) 1080, Voucher for Transfers Between Appropriations and/or Funds. The [ORDERING ACTIVITY] will use the Intra-Governmental Payment and Collection System (IPAC) to automatically reimburse DA. Upon request by the DA, the [ORDERING ACTIVITY] shall provide funds in advance of any obligation. Bills rendered will not be subject to audit in advance of payment.

If the DA forecasts its actual costs under a SA to exceed the amount of funds available under that SA, it shall promptly notify the [ORDERING ACTIVITY] of the amount of additional funds necessary to complete the work under that SA. The [ORDERING ACTIVITY] shall either provide the additional funds to the DA, require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under a SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to the [ORDERING ACTIVITY] any funds advanced in excess of the actual costs as then known, or the [ORDERING ACTIVITY] shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit the [ORDERING ACTIVITY]'s duty in accordance with Article X to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

#### ARTICLE VII - APPLICABLE LAWS

This MOA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all contract work undertaken by the DA shall be governed by DA policies and procedures.

#### ARTICLE VIII - CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. § 7101). The Armed Services Board of Contract Appeals (ASBCA) is designated as the appropriate board of contract appeals. In lieu of appealing to the ASBCA or its successor, the contractor may bring an action directly to the United States Court of Federal Claims.

The DA shall be responsible for handling all disputes arising under or relating to the contracts, including litigation involving disputes and appeals, and for coordinating with the

Department of Justice as appropriate. The DA shall notify the [ORDERING ACTIVITY] of any such litigation and afford the [ORDERING ACTIVITY] an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

#### ARTICLE IX - DISPUTE RESOLUTION

The Parties agree that, in the event of a dispute between the Parties, the [ORDERING ACTIVITY] and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. In the event such measures fail to resolve the dispute, the parties shall **[For agreements between DOD activities insert: elevate the issue through their respective chains of command and, if needed, the Parties shall refer the matter to the appropriate Office of the Secretary of Defense for resolution. For agreements with entities outside of DoD insert: elevate the issue through their respective chains of command and, if needed, the Parties shall refer the matter to [insert appropriate entity – such as Office of Budget and Management] for resolution.]**

#### ARTICLE X — RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the [ORDERING ACTIVITY] shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the [ORDERING ACTIVITY] have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, the [ORDERING ACTIVITY] remains responsible for seeking additional funds from Congress for such purposes, subject to OMB approval. Nothing in this MOA shall be construed to imply that Congress will, at a later date, appropriate funds sufficient to meet the deficiencies.

Notwithstanding the above, this MOA does not confer any liability upon the [ORDERING ACTIVITY] for claims payable by the DA under the Federal Torts Claims Act. Provided further that nothing in this MOA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this MOA.

#### ARTICLE XI - PUBLIC INFORMATION

Justification and explanation of the [ORDERING ACTIVITY]'s programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the [ORDERING ACTIVITY]. The DA may provide, upon request, any assistance necessary to support the [ORDERING ACTIVITY]'s justification or explanations of the [ORDERING ACTIVITY]'s programs conducted under this MOA. In general, the [ORDERING ACTIVITY] is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. The [ORDERING ACTIVITY] or the DA shall make its best

efforts to give the other Party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

#### ARTICLE XII - MISCELLANEOUS

A. Other Relationships or Obligations: This MOA shall not affect any pre-existing or independent relationships or obligations between the [ORDERING ACTIVITY] and the DA.

B. Survival: The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

C. Severability: If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Transferability: This MOA is not transferable except with the written consent of the Parties.

#### ARTICLE XIII – REQUIRED REVIEWS

The Parties will review this MOA annually on or around the anniversary of its effective date for financial impacts and triennially in its entirety.

#### ARTICLE XIV - AMENDMENT, MODIFICATION AND TERMINATION

This MOA may be modified or amended only by written, mutual agreement of the Parties. Either Party may unilaterally terminate this MOA by providing at least 180 days written notice to the other Party. In the event of termination, the [ORDERING ACTIVITY] shall continue to be responsible for all costs incurred by the DA under this MOA and for the costs of closing out or transferring any on-going contracts.

#### ARTICLE XV - EFFECTIVE DATE

This MOU takes effect beginning on the day after the last Party signs.

#### ARTICLE XVI – EXPIRATION DATE

This MOA expires on **[insert date, not to exceed 9 years (a period of 5 years or less is recommended)]**.

#### ARTICLE XVII – CANCELATION OF PREVIOUS AGREEMENT **[use only as needed]**

This MOA cancels and supersedes the previously signed agreement between the same Parties with the title **[insert title of the previous Agreement]** executed on **[insert execution date of previous agreement]**.

**AGREED: [Approval authority signatures will never be alone on a blank page]**

For the [ORDERING AGENCY]

For the DEPARTMENT OF THE ARMY

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**MODEL MOU TEMPLATE**

This template is provided for use in preparing a memorandum of understanding (MOU) between USACE and other entities. This generic MOU may be amended to include supplemental provisions necessary to reflect details specific to the parties or understandings involved. However, MOUs that fall within the scope of the revised DODI 4000.19 (April 25, 2013) must include the information contained in the sample MOU template provided in that instruction. This model template incorporates the information/provisions required by the revised DODI. An MOU, as defined in DoDI 4000.19 is “[a] type of intra-agency, interagency, or National Guard agreement between two or more parties, which includes only general understandings between the parties and includes neither a commitment of resources nor binds a party to any specific action.”

All final draft MOUs must be reviewed by the appropriate Office of Counsel prior to execution. Changes made after review by the Office of Counsel, must be submitted to Office of Counsel for review prior to execution.

MOUs which contemplate USACE involvement with a non-federal entity (NFE) must comply with the Department of Defense Joint Ethics Regulation (JER). The general rule is that DoD may not provide unauthorized support to, or endorsement of, NFEs. Fiscal limitations and prohibitions on preferential treatment and official endorsements generally prohibit providing support to non-Federal entities. For additional information see the *Relations with Non-Federal Entities* Ethics Desk book at [http://www.dod.mil/dodgc/defense\\_ethics/resource\\_library/deskbook/](http://www.dod.mil/dodgc/defense_ethics/resource_library/deskbook/).



MEMORANDUM OF UNDERSTANDING BETWEEN  
THE DEPARTMENT OF THE ARMY  
**[U.S. ARMY CORPS OF ENGINEERS may also be appropriate depending on the level of  
approval authority and/or other relevant circumstances]**  
AND  
THE [SECOND PARTY]  
FOR  
[INSERT SUBJECT]  
[INSERT AGREEMENT NUMBER]

ARTICLE I - PURPOSE

This Memorandum of Understanding ("MOU") is entered into by and between the U.S. Department of the Army ("DA") and the [Second Party] (collectively "the Parties") for the purpose of . . . **[Proponents must succinctly state the purpose and objectives of the MOU]**

ARTICLE II – BACKGROUND

**[If there is a need to discuss background, do so here]**

ARTICLE III – AUTHORITY

**[Since a MOU is non-binding, there is generally no need to include authorities]**

ARTICLE IV – UNDERSTANDING OF THE PARTIES

**[Note: Language must not bind the parties. Use phrases like "will strive to" or "make reasonable efforts to" as opposed to the mandatory terms "shall" or "must"]**

A. USACE –

1.[insert as many intentions as desirable]

B. The [second party] –

1.[insert as many intentions as desirable]

ARTICLE V – PERSONNEL

Each Party is responsible for all costs of its personnel, including pay and benefits, support, and travel. Each Party is responsible for supervision and management of its personnel.

ARTICLE VI – GENERAL PROVISIONS

A. **Points of Contact:** The following points of contact will be used by the Parties to communicate in the implementation of this MOU. Each Party may change its point of contact upon notice to the other Party.

1. For USACE –
  1. Primary: [Name and e-mail]
  2. Alternate: [Name and e-mail]
2. For the [second party] –
  3. Primary: [Name and e-mail]
  4. Alternate: [Name and e-mail]

B. **Funds and Manpower:** This MOU does not document nor provide for the exchange of funds or manpower between the Parties nor does it make any commitment of funds or resources. Any exchange of funds or manpower between the Parties must be made by separate agreement and under specific statutory authority; this MOU does not provide such authority. This MOU neither authorizes, nor intends to obligate the Parties to expend, exchange, or reimburse funds, services, or supplies, or transfer or receive anything of value. Further, no provision of this MOU will be interpreted to require obligation or payment of funds in violation of 31 U.S.C. § 1341.

C. **Enforcement:** Nothing in this MOU may be construed to obligate USACE or the United States to any current or future expenditure of resources. Each Party will handle its own activities and use its own resources, including the expenditure of its own funds, in pursuing the objectives enumerated in this MOU. Each Party will carry out its separate activities in a coordinated and mutually beneficial manner, as consistent with any applicable laws, regulations or policies. Nothing in this MOU is intended to alter, limit, or expand the Parties' statutory or regulatory authorities. Nothing in this MOU is intended to create any substantive or procedural right or benefit enforceable at law by any party against the United States, its agencies, its officers, or any person.

D. **Endorsement:** **[Use this subparagraph if the second party is a NFE other than a state or local government]** Nothing in this MOU may be interpreted to imply that the United States or its agencies endorse any of the [second party]'s products, services or policies.

E. **Exclusivity:** This MOU in no way restricts USACE from participating in similar activities or arrangements with other public or private agencies, organizations or individuals. **[Include the following sentence if the second party is a NFE other than a state or local government]** Nothing in this MOU shall be construed as affording the [second party] any preferential treatment, exclusive rights or privileges.

F. **Trademarks and Promotion:** USACE does not permit the use, reproduction, copying or redistribution of its brands, trademarks, and logos without written permission from the Department of the Army. **[If the second party is a NFE, include the following additional sentence (See 15 USC 45(a) and 1125, 10 USC 771, DoDI 1334.1)]** The [second party] will obtain prior approval of all press releases, published advertisements, or other statements intended

for the public that refer to this agreement or to the agencies, or the name or title of any employee of the agencies in connections with this agreement.

G. Modification of MOU: This MOU may only be modified by the written mutual agreement of the Parties, duly signed by their authorized representatives. This MOU will be reviewed annually or on around the anniversary of its effective date.

H. Disputes: Any disputes relating to this MOU will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties or in accordance with DoDI 4000.19 [cite DoDI 4000.19 only as applicable].

I. Termination: This MOU may be terminated in writing at will by either Party.

J. Transferability: This MOU is not transferable except with the written mutual consent of the Parties.

K. Entire Understanding: It is expressly understood and agreed that this MOU embodies the entire understanding between the Parties regarding the MOU's subject matter.

L. Severability: Nothing in this MOU is intended to conflict with current law, regulation, or USACE policies. If a term of this MOU is inconsistent with such authority or policy, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

M. Effective Date: This MOU takes effect beginning on the day after the last Party signs.

N. Expiration Date: This MOU expires on [insert date, not to exceed 9 years (a period of 5 years or less is recommended)].

O. Termination of Previous MOU: This MOU terminates and supersedes the previously signed MOU between the same Parties with the subject \_\_\_\_\_, Agreement # \_\_\_\_\_ and effective date of \_\_\_\_\_. [use this subparagraph only when needed to cancel a previous MOU]

APPROVED: [Approval authority signature will never be alone on a blank page]

For the DEPARTMENT OF THE ARMY

For the [SECOND PARTY]

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_