

MEMORANDUM OF AGREEMENT
BETWEEN
THE
THE U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION
AND
THE U.S. DEPARTMENT OF DEFENSE

This is a Memorandum of Agreement (“MOA”) between the U.S. International Development Finance Corporation (DFC) and the U.S. Department of Defense (DoD) (individually a Party, together the Parties).

1. **BACKGROUND:** The originating, underwriting, and portfolio management of COVID-19-related loans is being undertaken to assist the private sector finance the unprecedented rapid expansion of goods and services to meet the needs during the current pandemic. Although DoD is authorized under Title III of the Defense Production Act (DPA) to issue loans, DoD currently lacks the expertise to do so and in accordance with Executive Order (E.O.) 13922, is entering into this MOA to leverage DFC’s financial expertise.

2. **AUTHORITIES:**
 - A. Executive Order (E.O.) 13922 (85 FR 30583), Delegating Authority Under the Defense Production Act to the Chief Executive Officer of the United States International Development Finance Corporation to Respond to the COVID-19 Outbreak (May 14, 2020)
 - B. E.O. 13603, National Defense Resources Preparedness (March 16, 2012)
 - C. Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*)
 - D. The Economy Act, as amended (31 U.S.C 1535)
 - E. DoD Directive 5101.1, “DoD Executive Agent,” May 9, 2003
 - F. Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak
 - G. 31 U.S.C. 3711, Collection and Compromise

3. **PURPOSE:** The purpose of this MOA is to set forth the responsibilities of the Parties to the MOA with respect to originating, underwriting, and portfolio management of COVID-19-related loans, in accordance with E.O.13922 on Delegating Authority Under the Defense Production Act to the Chief Executive Office of the United States International Development Finance Corporation to Respond to the COVID-19 Outbreak (May 14, 2020), as outlined in this MOA, including any appendices.

4. RESPONSIBILITIES OF THE PARTIES:

4.1 The U.S. International Development Finance Corporation (DFC) will:

4.1.1 Create and coordinate with DoD a detailed process document, Finance Process – Direct Loans for DPA Title III, for the execution of direct loans under DPA Title III. This document will serve as the authoritative process document outlining the detailed requirements including governance, processes, reporting, deliverables, forms, documentation, systems, roles and responsibilities, delinquency procedures, etc. This document will outline the process and detailed requirements that both parties will agree to follow.

4.1.1.1 Prior to making any material changes to this document, coordinate any such modifications with DoD.

4.1.2 Provide loan services and management support pursuant to the execution of E.O. 13922, including:

4.1.2.1 Loan Origination: assisting loan applicants with requesting federal Government assistance, application process, collection of required financial disclosures, documentation thereto, and with separate departments for large business, and small- and medium-sized business, applicants;

4.1.2.1.1 Providing an application that requests information necessary to assess whether applicant meets minimum applicable loan condition requirements as outlined in Section 4532 of Title 50, United States Code (e.g., “financial assistance may be extended only to the extent that it is not otherwise available from private sources on reasonable terms.”)

4.1.2.2 Project Screening: initial technical evaluation of a proposed action to determine whether the proposed investment is feasible and warrants further due diligence review. Following an applicant’s submission of an application, DFC will decide whether the proposed project meets minimum eligibility requirements for loan support. During the screening process, DFC may request additional information from the applicant to help determine the viability of the proposed project.

4.1.2.2.1.1 Project screening includes an assessment as to whether the applicant meets the statutory requirements outlined in Section 4532 of Title 50, United States Code;

4.1.2.2.1.2 Consult with DoD during the project screening process as necessary; and

4.1.2.2.1.3 Deny applications from potential borrowers with a to-be-specified level and condition of investment or

ownership by nationals of countries that are non-democratically elected, non-market economies, or are sanctioned by U.S. Government or multilateral sanction regimes. Threshold levels and conditions will be determined in coordination with DoD and incorporated into project screening criteria.

4.1.2.3 DoD Consultation: Upon determining eligibility and viability of a project, DFC will consult and coordinate with DoD regarding those projects that clear the DFC project screening process before moving forward to due diligence. Disagreement between DoD and DFC will be quickly escalated for resolution.

4.1.2.4 Due Diligence Review: Following screening, the proposed project will undergo environmental, credit, and legal due diligence, including compliance with relevant Bank Secrecy Act (31 U.S.C. 5411 *et seq.*) requirements. DFC may request the applicant to retain outside consulting services to assess relevant aspects of the project. Those costs may be included in the project costs listed in the financial plan, but the costs will be the responsibility of the applicant. During the due diligence, the project will also be reviewed by the DPA Credit Committee (CC) for approval. DFC will coordinate with DoD regarding those applicants that clear due diligence review for final approval. The following conditions outlined in Section 4532 of Title 50, United States Code, must be addressed and validated in the due diligence process and included in the report to the CC:

4.1.2.4.1 The loan creates, maintains, protects, expands, or restores domestic industrial base capabilities, including supply chains within the United States and its territories, needed to respond to the COVID-19 outbreak;

4.1.2.4.2 Loans may only be extended if financial assistance is not otherwise available from a private source on reasonable terms;

4.1.2.4.3 The loan supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;

4.1.2.4.4 Without the loan, the U.S. industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner;

- 4.1.2.4.5 The loan is the most cost-effective, expedient, and practical alternative method for meeting the need;
 - 4.1.2.4.6 The prospective earning power of the loan applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan; and
 - 4.1.2.4.7 The loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.
- 4.1.2.5 Coordinate with DoD regarding those applicants that clear due diligence review for final approval.
- 4.1.2.6 Coordinate with borrowers to generate loan disbursement requests.
- 4.1.2.7 DPA Credit Committee (CC): The CC must review for compliance with the applicable underwriting standards and statutory requirements of any DPA proposed transaction. The CC is composed of six voting members (or their designees): (1) Under Secretary of Defense for Acquisition and Sustainment (OUSD (A&S)); (2) the DFC Senior Vice President, Office of Strategic Initiatives; (3) the DFC Vice President, Office of Resiliency; (4) the DFC Chief Operating Officer; (5) the DFC Managing Director, Credit Policy (MDCP) who will serve as Chair; and (6) at least one of the DFC Managing Directors for Portfolio Monitoring, Financial Institutions, or Risk Management. Four members constitute a quorum.
- 4.1.2.8 Development of a Subsidy Estimation Model: creation, maintenance, and iterative development of workbook that details subsidy calculations to aid with the origination of loan amounts and formatting appropriate data for the Credit Subsidy Calculator (CSC3) (see below). Consult with DoD as required.
- 4.1.2.9 Commitment Procedures: generation of letters of commitment, calculation of a final subsidy amount using the Credit Subsidy Calculator (CSC3) as developed by the Office of Management and Budget (OMB), and execution of final loan and guaranty documentation. Consult with DoD, including OUSD (A&S) and the Office of the Under Secretary of Defense (Comptroller), and provide opportunity for DoD to review final loan and guarantee documentation prior to any obligation of funding by DoD.

- 4.1.2.10 Perform associated Budgeting and Accounting support services: miscellaneous budgeting, accounting, and audit services incidental to carrying out the above tasks.
- 4.1.2.11 Loan Monitoring: monitoring the loan, borrower performance with loan covenants, terms, payments, and reporting. This includes inspection of the assets and engagement with the borrower.
 - 4.1.2.11.1 Incorporate DoD on project loan monitoring teams and coordinate with DoD to participate in the loan monitoring process, meetings, reporting, etc. Coordinate with borrower if delinquencies occur and pursue in accordance with Debt Collection Improvement Act (Public Law 104-134).
- 4.1.3 Provide to DoD all necessary reporting and information to satisfy DoD Agency Head requirements as DPA Fund Manager outlined in Section 4534 of Title 50, United States Code, and E.O. 13603.
- 4.1.4 Provide DoD access to loan origination records, loan disbursement information and associated documentation, and develop internal control processes necessary to support development of financial obligations relied upon to support obligations and loan disbursements recorded by Defense Finance Accounting Service (DFAS). Support audit requirements as related to testing of internal controls and sampling of supporting documentation related to transactions. Provide access as necessary to records and systems as required to support audit by internal or external stakeholders.
- 4.1.5 Create a Defense Production Re-estimate Model and submit the DPA RE-estimate Model to the OMB for its approval. Prepare annual re-estimated cash flow files and submit to DFAS to be run through the CSC3 calculator before year-end and provide the results of the re-estimate cash flow calculations to OUSD (A&S) and DFAS.
- 4.1.6 Upon recognition of a delinquency, engage the borrower to develop a mitigation plan that ensures repayment. DFC will inform OUSD (A&S) if the loan quality has degraded to such a point requiring recovery, and DFC will coordinate with OUSD (A&S) prior to DFC initiating any recovery procedures or transferring the loan to a third-party collection service to recover monies owed. Prior to the initiation of recovery procedures, DFC will obtain any administrative determinations of indebtedness as may be necessary. Once DFC or the collection service has developed a Recovery Plan, the recovery process may begin, including seizure of assets, as allowed

by law and the applicable agreement between the Government and the borrower. The entire amount collected is applied to the public accounts receivable, and any write-off shall comport with applicable provisions in OMB Circular A-129. Any suspension, compromise, or termination of outstanding indebtedness shall be pursuant to Section 3711 of Title 31, United States Code and applicable Federal Claims Collections Standards (31 C.F.R. 900 – 904).

4.2 The Department of Defense will:

- 4.2.1 Reimburse DFC for the documented direct and indirect costs of its services with the intent that the DFC will not sustain any costs to its appropriation, risks to its budgetary balances, or exercise any of its authorities pursuant to the Better Utilization of Investments Leading to Development (BUILD) Act of 2018 (Public Law 115-254).
- 4.2.2 Coordinate with the DFC for the preparation of financial, budgetary, legal documentation, and all other documents facing borrowers and non-federal entities (e.g., borrowers and parties in respect of a transaction).
- 4.2.3 Upon receipt of a signed Loan Disbursement Request and appropriate supporting documents and instructions, review for approval an action memo directing disbursement by DFAS of funds to the borrower.
- 4.2.4 Provide written assurance (fund certification) from responsible DoD fiscal authority that adequate DPA funds are available for obligation by execution of direct loan agreements.
- 4.2.5 Record obligations and associated loan disbursements as well as amortization. Receive payments from borrowers and collections against associated Treasury Accounts. Provide associated financial reporting, loan accounting, internal controls, and audit support related to DPA loans.
- 4.2.6 Establish and maintain points of contact for accounting, reporting, and policy processes governing the execution of E.O. 13922 authorities outlined in this MOA.
- 4.2.7 Prepare, submit, and certify reports and filings with the U.S. Treasury and OMB (e.g., Treasury Report on Receivables (TROR), the Digital Accountability and Transparency (DATA) Act (Public Law 113-101), Statement of Transactions (SF 224), Apportionment and Reapportionment Schedule (SF 132), Budget Execution and Budgetary Resources (SF 133)). DoD will coordinate with DFC to request and receive information which it will rely upon.

- 4.2.8 Report any delinquencies to DFC and the responsible DFC asset manager.
- 4.2.9 As the creditor agency, make administrative determinations of indebtedness, as may be necessary to support debt collection by DFC.

4.3 Both Parties will:

- 4.3.1 Make best efforts to dedicate staff resources to develop the interagency (DoD, DFC) process, avenues of communication, and transaction flow.
- 4.3.2 Establish a working group to share, discuss, and resolve issues the implementation of this agreement on a periodic basis, as necessary.
- 4.3.3 Agree to reevaluate the budget no less than annually.
- 4.3.4 Agree to consult and agree on any Congressional or oversight (e.g., Inspectors General, Government Accountability Office (GAO), and other auditors) communications in respect of the program. Direct and indirect costs sustained by DFC will be reimbursed by DoD through an amendment to the budget, as necessary.
- 4.3.5 Audit Requirements: Comply with guidance delineated in OMB Circular A-11 Preparation, Submission, and Execution of the Budget; OMB Circular A-123 Management's Responsibility for Enterprise Risk Management and Internal Control; OMB Circular A-129, OMB Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables; and OMB Circular A-136 Financial Reporting Requirements.
- 4.3.6 Conduct all business operations, recording of financial transactions and financial reporting in accordance with Federal generally accepted accounting principles. Meet financial reporting obligations and deadlines specified by OMB, Treasury, the GAO, and Congress.
- 4.3.7 Support periodic assessment of internal controls over business processes and audit requirements as necessary.
- 4.3.8 Prior to the acceptance of any loan application, agree to a detailed process document, as cited in **Paragraph 4.1.1**.

- 5. PERSONNEL: Except for costs and reimbursements as provided for in this agreement, 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. For personnel retained as a reimbursable cost to either Party, a list of job title, function, status, and OPM-recognized pay category.

6. GENERAL PROVISIONS:

6.1 POINTS OF CONTACT: The following points of contact (POC) will be used by the Parties to communicate in the implementation of the MOA. Each Party may change its POC upon reasonable notice to the other Party.

6.1.1 For DFC—

6.1.1.1 Mildred Callear

Vice President and Chief Financial Officer (CFO)

Telephone: 202-336-8407

Email mildred.callear@dfc.gov

6.1.2 For DoD—

6.1.2.1 Christopher Lehman

Director, DPA Title III

OUSD (A&S)/Industrial Policy

Telephone: 703-695-5347

Email: christopher.m.lehman16.civ@mail.mil

6.2 Any changes to the above contacts shall be made in writing, and the Party making the change shall notify the other Parties as soon as possible.

6.3 REVIEW OF AGREEMENT: This MOA will be reviewed annually on or around the anniversary of its effective date for financial impacts and triennially in its entirety.

6.4 MODIFICATION OF AGREEMENT: This MOA may only be modified by the written agreement of the Parties, duly signed by their authorized representatives.

6.5 DISPUTES: Any disputes relating to this MOA 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.

6.6 TERMINATION OF AGREEMENT: This MOA may be terminated by either Party by giving at least 180 days written notice to the other Party. The MOA may also be terminated at any time upon the mutual written consent of the Parties.

6.7 TRANSFERABILITY: This Agreement is not transferable except with the written consent of the Parties.

6.8 ENTIRE AGREEMENT: It is expressly understood and agreed that this MOA embodies the entire agreement between the Parties regarding the MOA's subject matter.

6.9 EFFECTIVE DATE: This MOA takes effect beginning on the day after the last Party signs.

6.10 EXPIRATION DATE: This Agreement shall have a base period of nine (9) years, with two nine (9) year option periods, which may be executed when mutually agreed upon, in writing, by the Parties.

6.11 INTEGRATION: This MOA constitutes the entire agreement of the Parties with respect to its subject matter. To the best of the Parties' knowledge, there have been no representations, warranties, or promises made outside of this MOA. This MOA shall take precedence over any other documents that may be in conflict with it, except where limited by applicable laws.

6.12 Nothing herein is intended to conflict with current DFC or DoD directives or policies. If the terms of this MOA are inconsistent with existing directives or policies of either Party, then those portions of this MOA, which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect.

7. FINANCIAL DETAILS

7.1 AVAILABILITY OF FUNDS: This MOA does not document the obligation of funds between the Parties. Any obligation of funds in support of this MOA will be accomplished using a Form 7600. The obligation of funds by the Parties is subject to the availability of appropriated funds pursuant to the DoD Financial Management Regulation.

7.2 BILLING: DFC will bill DoD on a monthly basis in accordance with the procedures of DFC. A record of the transaction will be sent to DoD within 30 days after the month in which the transaction occurred.

7.3 PAYMENT OF BILLS: The DoD paying office will forward payments, along with a copy of billed invoices, to DFC within 30 days of the date of invoice. Bills rendered will not be subject to audit in advance of payment.

7.4 FINANCIAL SPECIFICS: See Appendix for all other details and information on the reimbursable support identified in paragraph 4.

7.5 ECONOMY ACT DETERMINATION AND FINDINGS: Both Parties agree that the requirements listed in paragraph (a) of the Economy Act as amended, 31 U.S.C. 1535, have been met. Any required Economy Act D&F has been completed.

APPENDIX
TO
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Financial details for a reimbursable MOA

1. Reimbursable support: [list sub-paragraphs from section 4 that specify the reimbursable support]

2. Estimated amount of funds to be reimbursed: \$ _____,
Appropriation: _____ FY _____.

3. Business Partner Network (BPN) Number (if required) Supplier _____,
Receiver _____.

4. Financial Points of Contact:

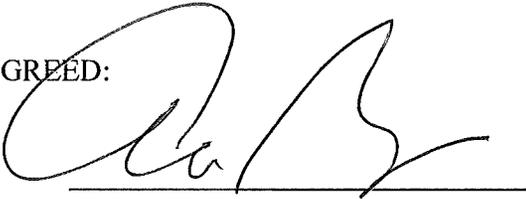
Supplier: financialoperations@dfc.gov

Receiver:

5. [Add any other financial information that is required by the FMR or any other reference, or is desired to be included in the MOA but is not included in the format of the MOA elsewhere]

SIGNATURE PAGE
of
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AGREED:



Date:

6/22/20

Name: Adam S. Boehler
Title: Chief Executive Officer
U.S. International Development Finance Corporation



Date:

June 22, 2020

Name: Ellen M. Lord
Title: Under Secretary of Defense, Acquisition & Sustainment
U.S. Department of Defense