



Acquisition & Assistance Policy Directive (AAPD)

From the Director, Office of Acquisition & Assistance Issued: December 30, 2004

AAPD 04-16

Public-Private Alliance Guidelines & Collaboration Agreement

Subject Category: Assistance, Miscellaneous
Type: Procedure; General Info.

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends
CIB/AAPD No: _____

Precedes change to: AIDAR Part(s) _____ Appendix _____
 USAID Automated Directives System (ADS) Chapters 303, 304
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFAs issued on or after the effective date of this AAPD;
 Other or N/A Amend all open RFAs

New Form Provided Herein: Yes; scheduled update to Prodoc: TBD
 No

(signed copy on file)
JEFFERY D. BELL, ACTING DIRECTOR

1. PURPOSE:

This AAPD provides step-by-step guidance for the formation of Global Development Alliances (GDAs), including:

- Step one, **Finding a Partner:** Competition; Public Notice and Advertising Requirements; Appropriate Outreach Efforts (Other than "Discussions or Negotiations")
- Step two, **Reaching Agreement:** Responsibility Determination and Due Diligence; Cost Share/Match versus Leveraging; and use of MOUs
- Step three: **Funding of GDAs:** contracts, grants and the introduction of the new Public Private Alliance Collaboration Agreement (PPA CA)

2. BACKGROUND:

The Global Development Alliance (GDA) initiative, announced in 2001, actively promotes strategic alliances between USAID and private and public sector partners as a business model for achieving United States Government (USG) development assistance objectives. GDA embraces the new reality of development assistance, that flows of private sector assistance to the developing world have overtaken official development assistance (ODA) (in 1970, 70% of assistance to the developing world was ODA and 30% was from the private sector. Today, the percentages are roughly reversed). GDA agreements direct some of this rapidly expanding stream of private funding to the same targets as parallel ODA programs, maximizing the impact of both and affording each partner the chance to bring its comparative advantage to bear on development problems of common interest and concern. The Agency defines a GDA alliance as a public private agreement (PPA) with shared responsibility, joint planning and decision making, new partners and new approaches, shared credit, and an equal or greater ratio of partner funds to USG funds.

An assessment of the GDA business model as it has developed over the past several years at USAID was undertaken in early 2004. The assessment found that the GDA business model is alive and working in all regions of the world, and is evolving into an increasingly important developmental methodology with a huge potential. The assessment also found that it will take time and effort to realize this potential, and recommended that USAID provide both more guidance and more flexibility in entering into alliances. The assessment further recommended entering into alliances that evolve beyond corporate or enterprise 'social responsibility' and engage alliance partners' core businesses or missions.

This guidance is intended to provide both more clarity on the steps to creating successful alliances, and more flexibility to USAID operating units to enter into PPAs/GDAs, while ensuring that the following four key characteristics, known as the **Alliance Precepts**, are present in successful alliances:¹

- Joint definition of the development goal and the means to achieve it, by all development partners in the alliance
- Agreement between the PPA partners to share resources and risks, and to collaborate on results in pursuit of an objective that can be better obtained with a joint effort

¹ Tools for Alliance Builders, Version July 2004, Appendix XX, pg. 34, http://www.usaid.gov/our_work/global_partnerships/gda/tab.html

- Looking toward new partners (or existing partners in new ways) for innovative approaches
- Leveraging significant resources that may include financial resources, in-kind contributions and intellectual property

As you consider these precepts and the guidance below, please keep in mind that Public Private Alliances ARE NOT procurements, they are partnerships. To this end, there are many kinds of GDAs that do not involve obligation of USAID funds to a second party for the benefit of a third party (the aid recipients), such as partnership MOUs. This example is emphasized in order to demonstrate both the scope and flexibility of GDA agreements.

3. GUIDANCE ON ALLIANCES:

The guidance attached at attachments 1, 2 and 3 sets forth step-by-step considerations in reaching a GDA agreement: from competition requirements, advertising and outreach, to reaching agreement on the goals and methods, and finally, formal formation of alliances. While USAID grants and cooperative agreements are appropriately and routinely used (and the contract mechanism remains available), there are some circumstances when the relationship between USAID and another resource partner may be better supported through an alternative alliance agreement. Therefore, this guidance also introduces a new mechanism for formal formation, the Public Private Alliance Collaboration Agreement (PPA CA). The PPA CA is appropriate when:

- A Non-Traditional Partner² will be receiving USAID funds directly,
- The proposed alliance is within the GDA precepts, above, and the alliance program is deemed appropriate under the terms of the Annual Program Statement (APS) or Request for Application (RFA),
- There is a compelling reason for the government and non-government funding resources to be jointly programmed, and
- Other funding/implementing mechanisms have been considered and rejected as unfeasible or inappropriate

4. ATTACHMENTS:

- Attachment 1. Step one, Finding a Partner
 - Section I. Guidance Regarding Competition, Public Notice & Advertising Requirements for PPAs.
 - Section II. Guidance Regarding Outreach Efforts
- Attachment 2. Step two, Reaching Agreement
 - Section I. Responsibility and Due Diligence
 - Section II. Cost Share/Match vs. Leveraging
 - Section III. Memorandums of Understanding (MOU)
- Attachment 3. Step three, Funding the Agreement, including guidance regarding the Public Private Alliance Collaboration Agreement (PPA CA)

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² A non-traditional partner is a private organization offering resources at a leveraged ratio in excess of one to one, whose principal business purpose is other than foreign development assistance or whose development assistance purpose was recently established, and who has not routinely received federal funding under traditional grants and cooperative agreements.

ATTACHMENT 1: Step 1, Finding a Partner

SECTION I: COMPETITION

Competition is strictly required for contract awards and is generally advised for awards of grants and cooperative agreements. In furtherance of this requirement and in the context of GDA agreements, the Office of Acquisition and Assistance (M/OAA) has issued an agency-wide Annual Program Statement (APS) to ensure competition for GDA proposals, as set forth below. USAID/W/GC has determined that issuance of the APS satisfies competition requirements.

SECTION II: GUIDANCE REGARDING PUBLIC NOTICE AND ADVERTISING REQUIREMENTS FOR PPAs

As an executive agency administering public funds appropriated by Congress, USAID has a legal responsibility to inform the public of federal funding opportunities. The GDA Secretariat meets these responsibilities through two complementary means: first by issuing an Agency-wide APS as described more fully below, and second by providing guidance on how operating units may also undertake tailored notices to meet more specific development goals that an alliance is intended to obtain. It is envisioned that these efforts will enhance the Agency's ability to attract alliance proposals.

A. Catalog of Federal Domestic Assistance

The Federal Program Information Act, (31 U.S.C. 6104), and OMB Circular A-89 established the Catalog of Federal Domestic Assistance (CFDA) as a database of all Federal programs available to U.S. non-governmental organizations, individuals, educational institutions, and state and local governments, but does not exclude for-profit private entities such as corporations and contractors. A potential applicant can search this database to find assistance programs meeting its requirements and for which it is eligible. The individual or organization can then contact the office that administers the program and find out how to apply, but this catalog does not serve as a mechanism to actually apply for Federal assistance. The agency will maintain a single CFDA database entry for all agency GDA assistance programs, including opportunities for for-profit entities.

B. Grants.gov –Formal Advertisement of Funding Opportunity³

USAID has a responsibility to notify the public of specific application opportunities for PPA assistance programs, and present an invitation for application. It fulfills this responsibility by announcing funding opportunities at the Grants.gov website, through two different approaches:

- 1) Maintenance of an agency-wide GDA grants.gov APS
- 2) Posting of individual operating unit/Mission announcements/APSs/RFAs

Approach #1--Agency-wide PPA grants.gov APS

The USAID/Washington GDA Secretariat has issued an agency-wide grants.gov APS. This APS (<http://www.fedgrants.gov/Applicants/AID/OP/WAS/GDA-05-001/Attachments.html#upload3873>)⁴:

³ The advertisement approaches addressed here are separate and distinct from USAID internal processes of creating alliance incentive funds to assist operating units and Missions in their support for alliances. Bureaus or the GDA Secretariat may create incentive funds for alliances in which operating units or Missions propose alliance programs for full or augmented funds from the Bureau or the GDA. However, the external advertisements for these alliance programs must clearly fall within or be undertaken through one of the advertisement approaches described here, or be justified under an exception to competition.

- Remains open continuously for receipt of the broadest spectrum of PPA applications
- Presents general guidance on PPAs
- Provides a central point of contact within the GDA Secretariat for parties interested in PPAs with USAID
- Invites any and all applications meeting the general announcement criteria for PPAs, in any of the sectors in which USAID provides development assistance
- Requires that any actual application under the announcement must provide a reference to the agency-wide announcement number
- Provides that a commitment by USAID to fund the activity will not occur until a commitment and obligation is made by a warranted USAID Agreement Officer. Discussions with USAID technical officers must not be misconstrued as a funding commitment by USAID.
- Presents a Multiple-Stage Application and Evaluation Process, to include the following:

Stage 1: Concept Paper Submission: This stage requires interested parties to submit a brief concept paper describing the proposed PPA development assistance activity. Concept papers must be submitted to the Mission or operating unit for comment (the GDA Secretariat may also receive concept papers; in this case Missions and operating units will be contacted to provide relevant input). Concept papers are limited to approximately five pages in length (not including the cover page or budgets). Concept papers must include:

- The purpose of the alliance for which funds are being requested
- Problems and issues the proposed alliance will address
- The estimated number of beneficiaries
- Information about the organization(s) partnering to form the alliance (including their legal and tax status), as well as the potential synergies created in the alliance (note: information submitted in a concept paper marked as private and proprietary must be protected from disclosure according to law)
- Estimated resources required for the project, including financial and in-kind contributions by the alliance partners
- Amount and duration of funding agreement
- Technical Qualifications of those who will be engaged in the alliance

Note: Submission of a PPA concept paper may result from independent, unsolicited efforts of the interested party, or networking or outreach efforts as defined below, which do not constitute a commitment or negotiations on the part of USAID. *(Refer to discussion below for a definition of these types of communications.)*

Stage 2: Review of Concept Paper: The cognizant USAID Mission or operating unit's Senior Program Officer or his/her designee will review the concept paper and should notify the applicant within 60 days of any further interest in the concept paper, or lack thereof, with copy to the GDA Secretariat. If USAID has further interest in the proposed PPA activity, USAID may invite the applicant to submit a detailed application for assistance. Such an invitation is not a commitment by USAID to support the activity.

⁴ This specific announcement is for fiscal year 2005, and historically the GDA Secretariat issues an annual announcement in support of world-wide alliance efforts.

Note: This stage may also include networking, outreach efforts and/or discussion of USAID as a non-financial alliance partner, as discussed below. These activities do not constitute a commitment or a promise of negotiations.

Stage 3: Application: The applicant, upon notification from the USAID technical/program office that reviewed the PPA concept paper, must follow any specific instructions provided by them. In general, USAID will require submission of an SF 424, "Application for Federal Assistance," and a more detailed application that provides elaboration on items presented in the concept paper. Submission of an application provides no commitment by USAID to support the proposed activity.

Stage 4: Evaluation: Decisions to proceed with the award of a PPA grant, cooperative agreement, or collaboration agreement must be made in accordance with the criteria of the announcement/APS/RFA, and any other more specific information provided in the application. This evaluation process is considered a competitive process for alliances and meets the competition requirements.

Stage 5: Award Consideration and Negotiation: The USAID Agreement Officer, upon receipt of an award recommendation under the agency-wide APS from the USAID sponsoring operating unit, will proceed to negotiate an award. If it is determined that the subject matter of PPA application is acceptable for funding under the agency-wide APS, the application will serve as the basis for negotiation.

A recommendation for award from the sponsoring office does not guarantee an award, nor does it mean that a successful negotiation will lead to an award within the same fiscal year that the concept paper/application was submitted. The final negotiation will typically involve a request for more detailed budget information, clarifications and/or discussions of cost issues to determine reasonableness, allowability and allocability.

The Agreement Officer is also required to make a pre-award responsibility determination.

Stage 6: Award: After completing the required evaluation, if the Agency is interested in offering funding for the application, the Agreement Officer will provide an award based upon this competitive process.

Approach #2: Individual Operating Unit PPA Announcements/APSs/RFAs

The agency-wide APS discussed above does not prohibit operating units or Missions from pursuing separate, more discrete PPA competitions by advertising and issuing their own APS/RFA through grants.gov. Such individual APSs/RFAs, however, must provide for a more distinct program, with more specific requirements, than those provided for in the agency-wide APS. Operating units may desire to opt for this latter approach when more targeted and distinct programmatic approaches to alliances are desired.

Any APS/RFA may provide for a PPA component as a part of the evaluation factors for award.

Any Individual Operating Unit solicitation must also include information on cost sharing or leveraging requirement, see the guidance at Attachment 2, I B.

SECTION III - GUIDANCE REGARDING OUTREACH EFFORTS (OTHER THAN "DISCUSSIONS/NEGOTIATIONS")

A. Networking: General, non-committal networking between USAID and private sector entities to discuss ways USAID and the entity might work collaboratively are permissible as a part of ordinary business practices, and generally do not require attention to competitive concerns. Operating units must consider potential conflicts of interest when conducting networking discussions prior to the issuance of a program specific APS/RFA.

A common challenge in pursuing alliance opportunities is that the final form of an alliance is often unclear in the earlier stages. It often requires several discussions to determine if there is a potential opportunity for an alliance. In the event that networking leads to a concept paper or application, it may be submitted under, and in accordance with, the procedures provided in the agency-wide PPA announcement. The application and award therefore should not require a non-competitive justification when undertaken in accordance with the agency-wide PPA announcement.

B. Private Sector Outreach to USAID: If a private sector entity approaches USAID to explore forming an alliance, it is permissible to have general discussions and exchanges before the entity submits a concept paper or application. The entity should, however, be immediately referred to the agency-wide announcement for guidance if they are seeking funding from USAID. As provided in the agency-wide announcement, these discussions do not commit USAID to accept the proposal if actual funding by USAID is a part of the proposed alliance, or even if no USAID funding is provided.

C. USAID Outreach to Private Sector: If a Strategic Objective/Results Package (SO/RP) Team desires to be proactive in its search for possible contributors towards an alliance, it is permissible for USAID to contact potential alliance partners. As provided in ADS 201.3.7 (*Content of Strategic Planning: Strategic Objective Level*), "Operating Units should actively consider the feasibility and desirability of planning selected SOs or IRs in an alliance mode. In cases where this is appropriate, the key decisions concern how early and in what ways to involve potential alliance partners in the analysis of the problem and the formulation of strategies to address it." There are a variety of venues, such as business associations, chambers of commerce, etc., that can provide platforms to share information about USAID development objectives and goals with the private sector.

If a SO/RP Team is utilizing these forums in conjunction with an upcoming competition, it may do so within the scope of the agency-wide APS or an individual APS/RFA. Reference to the announcement during outreach efforts becomes particularly critical if these organizations may be seeking USAID funds.

D. USAID as a Non-Financial Alliance Partner: If a potential alliance does not involve the obligation of USAID funds, competition is not a factor, and outreach can proceed without restrictions. The following provide a few examples of cases in which USAID is a non-financial alliance partner:

- A private sector entity wishes to provide parallel support to a USAID-supported effort, via a grant to the same or a related recipient. The private sector entity is not requesting that USAID provide it a direct award of funds.
- A private sector entity wishes to provide assistance directly to a host country government or private entity. The entity has limited experience working with host country governments/entities, and wishes USAID to serve as a liaison in negotiating the terms and logistics of providing that assistance.

ATTACHMENT 2: Step 2, Reaching Agreement

SECTION I - GUIDANCE ON REACHING AGREEMENT

After the partner is identified and the general discussions begun, the operating unit must undertake traditional assistance award responsibilities and processes that have special application to the PPA-specific context, as well as related requirements specifically for PPA Agreements. These include:

- Due Diligence and Responsibility
- Cost Share/Match or Leveraging
- Memorandum(a) of Understanding (MOUs)

A. DUE DILIGENCE AND RESPONSIBILITY

Due Diligence: The concept of due diligence was developed to confirm that potential private sector partners have ethical business practices and corporate social responsibility. A due diligence investigation is a well thought-out inquiry of a prospective partner that must be carried out prior to engaging in alliance negotiations. Its essence is to investigate what is often called the "triple bottom line," (i.e., Is the prospective partner socially responsible, environmentally accountable and financially sound?). This investigation includes an organization's past performance, reputation, commitment to relevant ethical and better business standards and protocols, and future plans. The SO/RP Teams are strongly encouraged to work with the GDA Secretariat and make use of the Secretariat's subscription database (known as CALVERT) to review information on proposed contributors to ensure that the track record, the objectives, and reputations of all alliance partners are examined to protect the interest of all parties. The SO/RP Team must record the conclusions obtained from these searches as part of the pre-obligation process (ADS 201) and share the information with the Agreement Officer. The Agreement Officer is ultimately responsible for making any final award determination, based on the information obtained relating to due diligence and responsibility.

Responsibility: ADS 303.5.9a (*Pre-Award Surveys*), requires that, prior to award, the Agreement Officer make "a positive determination that the applicant possesses, or has the ability to obtain, the necessary management competence in planning and carrying out assistance programs and that it will practice mutually agreed upon methods of accountability for funds and other assets provided by USAID." This responsibility determination applies to the recipient of any USAID award, including PPA awards. The responsibility determination involves a review of many factors, such as management competence, methods of accountability, A-133 audits or similar audits.

While "responsibility determinations" involve review of the primary applicant's systems for management, accounting, and audit as noted above, "due diligence" typically involves review of the proposed alliance partners' (including additional organization(s) participating in the alliance, that are not the direct recipient of USAID funds) social/corporate responsibility through various resources and websites of the type contained within the GDA Secretariat's *Tools for Alliance Builders*. Other resources, such as Dunn & Bradstreet reports, may also be used.

B. COST SHARE/MATCH vs. LEVERAGING

Cost Share/Match: Cost sharing or match refers to that portion of a project or program costs not borne by the Federal Government. Cost share or match is normally associated with contributions from the same prime and sub-recipients sources that also receive USAID funds. Cost share, which must be verifiable from the recipient's records, is subject to the requirements of 22 CFR 226.23 (http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/aprqtr/22cfr226.23.htm), and is subject

to audit. A recipient's failure to meet its cost share requirement can result in questioned costs.

Leveraging: In the context of PPAs, the concept of leveraging is an additional way that costs and risks for a program may be shared. Like cost share/match, leveraging refers to a portion of a project or program costs not borne by the Federal Government. Contributions may be specified in the PPA as "cost share/match" subject to the regulatory guidelines in 22 CFR 226.23 and for which the partner will be held accountable for shortfalls, or as "resource leveraging" (see below). The PPA may stipulate both cost share/match and resource leveraging or each could be used exclusively. In either case the contribution to the PPA must be at least at the level of a one to one ratio to qualify as resource leveraging under the PPA precepts.

While contributions offered as cost share/match are categorized in regulation, resource leveraging is not. Resource leveraging may include financial contributions; third party contributions; the value of donated services and property, including intellectual property; or may be anything of value that can be measured in some form that permits evaluation of the contribution's impact on achieving desired results. For example, resource leveraging may involve one or more partners proposing financial contributions that will be spent in parallel to the USAID funded activity, but not expended by the recipient or its sub-awardees. Alternatively, resource leveraging may come in the form of the entity's fund raising capability to provide their own form of assistance directly to the same end-users. Another instance where a contribution may be categorized as "resource leveraging" is in situations where USAID does not determine it reasonable to designate a contribution as "cost share or match" (for which the partner would be held accountable for shortfalls), because of the nature of the proposed contribution. An example of such a circumstance is where the proposed partner is dependent upon uncertain market demands or conditions to reach the proposed level of contribution.

Though resource leveraging is not subject to the requirements of 22 CFR 226.23, entities must be able to demonstrate whether leveraged contributions have been obtained as proposed in program implementation (see Solicitation/Application Language below) in order to determine whether the desired impacts from the alliances are being achieved. Although the alliance partners are not subject to the guidelines in 22 CFR 226.23 when "resource leveraging" is used, USAID has the ability to revise or withdraw from the Alliance agreement when contributions are not forthcoming as originally proposed in the agreement.

Determination of Cost Share or Resource Leveraging: The SO/RP Team must advise the Agreement Officer whether the contributions under the public-private alliance should be treated as "cost-share or match" and/or "resource leveraging" consistent with agency policy on determining appropriate cost share/match. Regardless of approach, the ratio of alliance contributions to USAID funding is a consideration for a PPA, and part of the contributions must be from a private source.

Solicitation/Application Language: The solicitation must specify whether "cost-share or match" and/or "resource leveraging," are either allowed or required, and that the applicant clearly designate the proposed contributions as "cost-share or match," or "resource leveraging," or both. To the extent that the contributions are being proposed as "resource leveraging," the solicitation must require that the applicant provide at a minimum: 1) annual benchmarks that include proposed results to be accomplished with the USAID funds and the additional leveraging, and 2) annual timelines that include percentages or amounts depending on the structure of the alliance. The level of detail will vary per award depending on the formulation and structure of the alliance. The benchmarks and timelines must be included in the terms of the award or provided for in programmatic reporting at some level. The solicitation and award must also include a discussion of the consequences, including termination, that will result if the proposed resource leveraging does not materialize.

C. MEMORANDUM(A) OF UNDERSTANDING (MOUs)

MOUs are not required to formulate an alliance, but are highly recommended to document the arrangement agreed upon by the alliance members. An MOU is a non-binding, non-obligating agreement that describes the intent of the alliance members to pursue an agreed-upon course of action. The MOU document summarizes the mutually agreed upon objectives, the role of each member, the resources provided by each member and how the alliance members will work together to accomplish the objective.

Timing of the MOU: Although not required (and not required prior to award), ideally, an MOU is completed in preparation for an award. Early completion of the MOU facilitates early evaluation of programmatic and financial issues that may need to be agreed upon prior to the execution of the award. A pre-award MOU is an effective way to guide the Agreement Officer in proper execution of the legally binding agreement. In cases where the program objective, alliance resources and responsibilities are already captured in a signed assistance agreement, there may be less of a need for an MOU. There may, however, be value realized in the face-to-face engagement of all external alliance members and USAID, or value in further describing how the alliance members are going to work together to accomplish the common objectives. The SO team and Agreement Officer must jointly determine if an MOU is necessary. Any MOU associated with an alliance award must be included as a part of the award file.

Purpose/Content: MOUs can be used at different stages of the process of building an alliance relationship with companies, foundations, or other institutions. An *early-stage* MOU may serve the purpose of indicating the agreement of USAID and other parties to discuss, and where possible collaborate on, development issues of mutual interest. A more developed or *later stage* MOU might identify a specific focus for the alliance, establish a basic alliance decision-making structure and discuss implementation (to be undertaken by USAID and other alliance members through the award of separate contracts or grants). Thus, in all instances, care should be given to the preparation of MOUs to ensure that they accurately reflect the purpose of the alliance, the roles of each party, the understandings that have been reached, and the process for reaching any further agreements contemplated with respect to implementation.

Leveraging: In cases where either part or all of an alliance member's contribution will be in the form of "resource leveraging" (as opposed to "cost share"), the MOU is critical in describing the resources that will support the program.

Review/Clearance: All MOUs must be reviewed and cleared by Regional Legal Advisors (RLAs) or GC to ensure that they are drafted with language that does not bind the Agency and to ensure some level of consistency with other relevant assistance agreements.

Review and clearance of the MOU is also required from the Agreement Officer if the SO/RP Team intends to award a USAID grant, cooperative agreement, or PPA CA⁵ in support of the alliance.

Approval/Signature: An MOU between USAID and the external alliance members may be signed by Assistant Administrators or their designees in USAID/W and by Mission Directors or their designees in the field. Given that the MOU is a non-obligating document, the authority to sign is delegable to any level. The head of the operating unit maintains discretion to determine who should sign the MOU, but in most cases alliance MOUs should be signed at no lower than the Assistant Administrator or Mission Director level. In some instances, when alliances involve more than one program bureau, or are especially significant because of the subject matter of the alliance and/or the alliance partners involved, it may be more appropriate for the Administrator or Deputy Administrator of USAID to sign the MOU.

⁵ In the PPA CA, the Articles of Collaboration may already address the roles of the alliance partners, etc., and an MOU may be determined to be unnecessary.

The following clause must be included in all MOUs:

“The purpose of this MOU is to set forth the understandings and intentions of the parties with regard to these shared goals. The Parties are entering into this MOU while wishing to maintain their own separate and unique missions and mandates, and their own accountabilities. Unless specifically provided otherwise, the cooperation between the parties as outlined in this MOU is not to be considered or construed as a partnership or other type of legal entity or personality. Nothing in this MOU shall be construed as superseding or interfering in any way with other agreements or contracts entered into between two or more of the parties, either prior to or subsequent to the signing of this MOU. The Parties further specifically acknowledge that this MOU is not an obligation of funds, nor does it constitute a legally binding commitment by any party.”

Additional information regarding public private alliance development and management can be found at the GDA website: [http://www.usaid.gov/our work/global partnerships/](http://www.usaid.gov/our_work/global_partnerships/).

ATTACHMENT 3: Step 3, FUNDING THE AGREEMENT

USAID's funding/implementing mechanisms such as procurement contracts and grants are authorized in USAID's framework legislation, the Foreign Assistance Act of 1961, as amended (FAA). FAA Section 635(b) provides that "[USAID] may make loans, advances, and grants to, make and perform agreements and contracts with, or enter into other transactions with, any individual, corporation, or other body of persons, friendly government or government agency, whether within or without the United States, and international organizations in furtherance of the purposes and within the limitations of this chapter." Many GDA agreements to date have been funded by USAID contracts or grants, and Contract/Agreement Officers are encouraged to continue to consider use of contracts and grants to fund future GDA agreements. USAID personnel working on GDA agreements are also reminded that GDA partnerships not involving obligation of USAID resources are encouraged.

In addition, under Section 635, the agency also has the authority to enter into "other transactions" (OT) and has developed an alternative agreement mechanism that is suitable for some Global Development Alliance partnerships, in addition to the contract and grant mechanisms currently available. Thus, as a matter of agency policy and where appropriate, USAID contract and agreement officers, in consultation with RLAs or USAID/W/GC, may use the PPA CA as a legal mechanism for GDA partnerships. This mechanism is intended to reflect the partnership nature of development alliances, rather than the procurement, 'purchase of goods or services' nature of a procurement contract. It also represents a more involved relationship between the Agency and the partner than allowed through a grant or cooperative agreement.

Courts which have reviewed government use of statutory OT authority define it by what it is not, namely that it is not a procurement contract, grant or cooperative agreement.⁶ While an agency such as USAID that has statutory OT authority may use it for any purpose of the agency, and OT authority is not subject to government procurement statutes or regulations, the Comptroller General (and presumably other courts) WILL review use of the OT authority to ensure that the Government could not have proceeded by contract or grant, and is not using OT authority to avoid procurement requirements and restrictions (such as competition). Thus, and as stated above, one of the agency requirements for use of the OT authority is that "Other funding/implementing mechanisms have been considered and rejected as unfeasible or inappropriate." This requirement is met by CO/AO completion of the written determination to use OT authority that should be placed in the GDA award file, as follows:

- "In order to ensure proper use of the non-procurement instrument and protect against any protest that the agency is using the non-procurement instrument to avoid the requirements of procurement statutes and regulations or the Federal Grants and Cooperative Agreements Act, the Agreement Officer determines as follows: 1) that the principal purpose for use of the non-procurement instrument IS NOT the acquisition, by purchase, lease or barter, property or services for the direct benefit or use of the United States Government, and 2) that the principal purpose of the relationship created by use of the non-procurement instrument IS NOT the transfer of a thing of value to a recipient for the public purpose of supporting or carrying out an activity by a non-federal government recipient (if either # 1 or #2 is not true, than reconsider use of a contract or grant); 3) instead, the principal purpose for use of the non-procurement instrument is to a) facilitate a relationship with a Non-Traditional Partner who will receive USAID funds directly; b) be used only for alliances within the GDA precepts; and c) provide USAID resources to be jointly programmed and controlled

⁶ See Matter of Energy Conversion Devices, Inc., 1995 WL 364 109 (Comp. Gen), 95-2 CPD, P 121v (to review briefly, a procurement contract is to be used when the government intends to acquire property or services for the direct benefit or use of the United States Government. A grant or cooperative agreement is to be used when the government intends to carry out a public purpose of support or stimulation authorized by a law).

in the alliance implementing agreement, and the non-traditional partner assumes a fiduciary responsibility for government funds.”

While OT authority is not subject to procurement laws and regulations, the OT authority and PPA CA do not have “notwithstanding authority” that permits obligation of USAID funds ‘notwithstanding’ the activity or country level restrictions that are imposed by Congress. Standard USAID funding mechanism provisions, emphatically those concerning terrorist financing, foreign tax reporting, anti-human and narcotics trafficking and the “Mexico City” policy, apply as equally to the PPA CA instrument as to the “loans, advances, contracts and grants” authorized by Congress as USAID funding mechanisms in Section 635 of the FAA. In addition, OT authority is subject to traditional Treasury funds management regulations, including audit regulations. Accordingly, consultation with a RLA or GC concerning applicable provisions is recommended as part of the required “activity approval” process (see ADS 201).

However, use of the Section 635(b) authority does permit creativity in crafting the funding mechanism for the GDA public/private partnership to achieve relationships beyond that of a procurement contract and grant. This is particularly the case when dealing with non-traditional partners, (e.g., a private organization offering resources at a leveraged ratio in excess of one to one, whose principle business purpose is other than foreign development assistance or whose development assistance purpose was recently established, and who has not routinely received federal funding under traditional grants and cooperative agreements) and use of an innovative instrument may be indicated. In these circumstances, technical officers are encouraged to determine the objective and essential framework of the partnership arrangement. COs/AOs must consider how best to reflect and achieve the objective and essential framework of the GDA by considering the forms of legal relationships - leases, joint agreements, such as tenancies, limited partnerships - that reflect an equal partnership or other appropriate relationship between USAID and a GDA partner, rather than a procurement relationship between a vendor and purchaser. It is impossible to predetermine all of the possible characteristics of every alliance. Therefore, technical officers and COs/AOs should consult with RLAs and if necessary USAID/W/GC when establishing the terms of the alternate instrument, to ensure the appropriate balance between mandatory legislative requirements and a flexible business arrangement for these strategic alliances.

SECTION I - GUIDANCE ON GDA CAs

The PPA CA is appropriate for alliances when:

- A Non-Traditional Partner⁷ will be receiving USAID funds directly,
- The proposed alliance is within the GDA precepts, above, and the alliance program is deemed appropriate under the terms of the Annual Program Statement (APS) or Request for Application (RFA),
- There is a compelling reason for the government and non-government funding resources to be jointly programmed, and
- Other funding/implementing mechanisms have been considered and rejected as unfeasible or inappropriate

The following matters should be taken into account when the Agreement Officer is considering the use of the PPA CA. The questions and answers provided below are designed to address common topics related to developing the terms of the agreement.

1. *What is the meaning of “jointly programmed” which is a requirement for consideration of the PPA CA?*

⁷ Same as footnote 2 on page 3, a private organization offering resources at a leveraged ratio in excess of one to one, whose principal business purpose is other than foreign development assistance or whose development assistance purpose was recently established, and who has not routinely received federal funding under traditional grants and cooperative agreements.

- “*Jointly programmed*” means when USAID and alliance members jointly collaborate on the programming of USAID funds and member contributions, and recipient assumes a fiduciary responsibility for use of USAID funds. USAID funds are to be retained in a separate account in accordance with Treasury regulations.

2. *What is the general policy relied upon for the resource partner’s financial, property and purchasing systems?*

Policy regarding these systems when using the PPA CA is consistent with those for procurement contracts and grants.

- The general policy for cost reimbursement agreements is to avoid requirements that would force participants to alter or use different financial management, property management, and purchasing systems than they currently use for:
 - (a) Cost reimbursement Federal procurement contracts and assistance awards in general, if they receive them; or
 - (b) Commercial business, if they have no expenditure-based Federal procurement contracts and assistance awards.

3. *What are some types of the PPA CA legal relationships that may be used by USAID and the proposed alliance members?*

- A prime partner and lower tier partners
This legal/management structure is a traditional one that is commonly utilized in traditional grants and contracts. USAID has privity only with the prime/lead partner, and they are responsible for ensuring performance of the lower tier partners.

- A joint-venture agreement
In this context, a legal entity formed between two or more parties for the specific purpose and duration of the GDA activity. A joint venture may take a variety of legal forms including partnership, tenancy in common or corporation. This legal/management structure is one with which the agency is familiar, and while not frequently proposed, USAID has standard solicitation language relating to joint-ventures.

- Business Consortium formed but not fully incorporated under Articles of Collaboration
A cooperative arrangement between businesses, not formally incorporated, in which they combine efforts for a specific business purpose. The legal/management structure of this partnership is memorialized in Articles of Collaboration negotiated between the non-USAID parties. These Articles of Collaboration are commonly used with or incorporated in other transaction instruments in DARPA/DOD, etc. Below are the types of issues to be addressed when an offeror proposes a consortium approach with articles of collaboration:

(a) When the prospective alliance partner consists of a consortium not formally incorporated, the CO/AO’s determination that the consortium meets responsibility standards requires the CO/AO’s review, in consultation with legal counsel, of the management plan in the consortium’s Articles of Collaboration. The purpose of this review is to ensure that the management plan is sound and that it adequately addresses the elements necessary for an effective working relationship among the consortium members. An effective working relationship is essential to increase the GDA project’s chances of success.

(b) The Articles of Collaboration is the document that sets out the rights, responsibilities and inter-organizational relationships of each consortium member. It binds the individual consortium members together, whereas the GDA

Collaboration Agreement binds the Government and the consortium as a group (or the Government and a consortium member on behalf of the consortium). The document must discuss, among other things, the consortium's:

- (1) Management structure.
- (2) Method of making payments to consortium members.
- (3) Means of ensuring and overseeing members' efforts on the project.
- (4) Provisions for members' leveraging and/or cost sharing contributions.
- (5) Provisions for ownership and rights in intellectual property developed previously or under the agreement.
- (6) Procedure for dispute resolution

4. *What impact does the type of organization (non-profit or for-profit) have on the terms of the agreement?*

- Non-profit
The nature of the organization will determine the applicability of various other provisions, such as audit noted below.
- For-profit
The same as noted immediately above. Also, fee or profit is not an allowable cost when the for-profit organization receives USAID direct funding. (This does not prohibit a for-profit from obtaining financial benefits from the outcome of an alliance.)

5. *How will alliance contributions be treated?*

- Cost-share
Please see discussion in the supplemental guidance on Cost Share/Match vs. Resource Leveraging in Attachment 1, and incorporate as appropriate based on the alliance and negotiations.
- Resource Leveraging
The same as noted immediately above.

6. *What kinds of payment arrangements are applicable?*

- Fixed milestone payments
This payment method is likely to be more conducive to formulating alliances with non-traditional partners as payments based on milestone achievements coincide with commercial business practices with which non-traditional partners are more familiar. In addition, audits for these payment arrangements focus on the reasonableness of the jointly determined estimates for the milestones and the achievement of the milestones. These milestones facilitate monitoring and verification of the progress towards the achievement of the overall program results. The CO/AO may use fixed milestones if:
 - (a) The agreement is to support or stimulate a program with outcomes that are well defined, observable, and verifiable; and
 - (b) If it is possible to reasonably estimate the resources required to achieve those outcomes well enough to ensure the desired level of leveraging and/or cost sharing.
- Reimbursement
This is a traditional cost reimbursement payment method that is used when an organization does not qualify for advance payments/letter of credit or when sufficient milestones cannot be developed for payment purposes.

- **Advances/Letter of Credit**
This is a traditional payment method and is favored over cost reimbursement for non-profit organizations. The traditional procedures and process are applied as described in 22 CFR 226 and ADS 636. Advances are not typically provided to for-profit organizations, and this would be the governing principle, unless a compelling case can be made for advances. Advances to for-profit organizations require the approval of the Procurement Executive. In accordance with Treasury regulations, advances must be maintained in interest bearing accounts, and interest earned over \$250 per year must be remitted annually to the Government.

7. *What cost principles, audit and record provisions are applicable?*

The discussions below are provided within the context of non-profit and for-profit organizations from which the applications of the provisions flow. However, the **establishment of milestones** and the joint establishment of payments based on their achievements can be applied to awards for both non-profit and for-profit organizations. The ability to establish payable milestones has practical implications on the nature of the audits and access to records as these types of payments are similar in nature to fixed price arrangements. Accordingly, the audit of the agreement will center upon the overall reasonableness of the costs associated with each milestone and the verification that milestones were achieved as agreed upon.

- **Non-profits**
So as not to force financial system changes for any participant, the **cost reimbursement** type will provide that costs to be charged to the program by any non-profit participant must be determined to be allowable in accordance with the applicable OMB Circulars. Non-profit organizations are subject to the Single Audit Act (31 U.S.C. 7501-7507) and the audit and record terms of OMB Circular A-133, **Audits of States, Local Governments, and Nonprofit Organizations**.
- **For-profits**
So as not to require any firm to needlessly change its system, the **cost reimbursement** types of awards are to apply the Government cost principles to for-profit participants that currently perform under cost re-imburement based Federal procurement contracts or assistance awards and therefore have existing systems for identifying allowable costs under those principles. The traditional access to records provision applies to those organizations that already provide access. See ADS 591 for traditional audit and records access.

For other for-profit participants that do not have prior Federal experience, the CO/AO may establish alternative standards in the agreement as long as that alternative provides, as a minimum, that Federal funds and funds counted as recipients' resource leveraging and/or cost sharing will be used only for costs that:

- (1) A reasonable and prudent person would incur in carrying out the program contemplated by the agreement. Moreover, costs must be allocated to USAID and other programs in accordance with the relative benefits the programs receive. Costs charged to USAID programs must be given consistent treatment with costs allocated to the participants' other program activities (e.g., activities supported by the participants themselves or by non-Federal sponsors).
- (2) Are consistent with the purposes stated in the governing Congressional authorizations and appropriations. The CO/AO is responsible for ensuring that provisions in the award document address any requirements that result from authorizations and appropriations.

In regard to access to records for other for-profit participants that do not currently give the Federal Government direct access to their records and are not willing to grant full access to records pertinent to the award, there is no set requirement to include a provision in the PPA agreement for Government access to records. If the audit provision of a cost re-imbusement agreement gives an IPA access to the recipient's financial records for audit purposes, the Federal Government must have access to the IPA's reports and working papers and you need not include a provision requiring direct Government access to the recipient's financial records. For both fixed milestones and cost re-imbusement agreements, you may wish to negotiate Government access to recipient records concerning technical performance. Should the CO/AO negotiate a provision giving access only to specific Government officials (e.g., the Agreement Officer), rather than a provision giving Government access generally, it is important to let participants know that the OIG has a statutory right of access to records as well as notification of additional materials to which other USAID officials have access.

8. *What general approach should be taken in negotiating intellectual property rights?*

- General approach as described below:

(a) Intellectual property includes any invention, creation, innovation, discovery, or improvement developed with USAID resources and typically protected by copyright, data, trademark or patent rights. The technical officer must confer with CO/AO and the RLA or GC to develop an overall strategy for intellectual property that takes into account any intellectual property the Government is furnishing and any pre-existing proprietary information that the recipient is furnishing, as well as data and inventions that may be generated under the award (recognizing that new data and inventions may be less valuable without pre-existing information). All pre-existing intellectual property, both the Government's and the recipient's, must be marked to give notice of its status.

(b) Because alliance agreements entail substantial leveraging and/or cost sharing by recipients, the CO/AO must use discretion in negotiating Government rights to data and patentable inventions resulting from research under the agreements. The goal should be an intellectual provision reflecting USAID's interest in:

(1) Gaining access to the best technologies for development assistance needs, including technologies available in the commercial marketplace, and promoting commercialization of technologies resulting from the program. Either of these interests may be impeded if excessive rights for the Government are negotiated. One objective of alliance agreements is to help incorporate development assistance into the development of what ultimately will be commercially available technologies, an objective that is best served by reducing barriers to commercial firms' participation in the program. In that way, the commercial technology and industrial base can be a source of readily available, reliable, and affordable components, subsystems, computer software, and other technological products and manufacturing processes for development assistance; and

(2) Providing adequate protection of the Government's investment, which may be weakened if the Government's rights are inadequate. The CO/AO should consider whether the Government may require access to data or inventions for Governmental purposes, such as a need to develop unique development assistance products or processes that the commercial marketplace likely will not address.

9. *What standard provisions and certifications apply?*

There is no authority in USAID framework legislation, the Foreign Assistance Act of 1961, as amended, or in supplemental or appropriations legislation, that permits obligation of federal funds, notwithstanding the currently required

certifications and standard provisions. Standard USAID funding mechanism provisions, emphatically those concerning terrorist financing, foreign tax reporting, anti-human and narcotics trafficking and the "Mexico City" policy, apply. Therefore, USAID must determine the most appropriate certifications and standard provisions to include in a PPA CA. At this time, the most appropriate model appears to be those in ADS 308, Grants and Cooperative Agreements with Public International Organizations, specifically those that apply when USAID is not the only donor. However, there are other provisions that may be necessary. COs/AOs must consider adapting the standard provisions and certifications required in ADS 308, but they must consult with the RLA or GC.

10. *What other provisions are required by appropriations and/or may be desired?*

- Please see no. 11 above, and please also be aware of any special Congressional provisions that accompany appropriations by account (such as CSD, FSA, etc.) or fiscal year.

11. *Do government ethics and procurement integrity standards apply to OTs?*

- The Standards of Conduct apply as usual to government employees (and PSCs) in the three steps to entering an agreement. If and when an OT is chosen as an instrument for award, USAID takes the position that the procurement statutes and regulations, including the procurement protest system, do not apply. However, as stated above, the Comptroller General has reviewed, and other courts may review, the decision to award under OT authority, not to review the award to a particular party, but rather to ensure that an OT award was not used to circumvent restrictions and regulations that apply to awards of contracts and grants.

GDA partners may have their own ethical standards that may be referenced or included in the GDA agreement.

12. *Who has signatory authority on behalf of USAID to sign PPA CA awards?*

- A review of delegation authorities will be undertaken to determine applicable signatory authority. It will likely follow the warrant authorities that are provided to Contracting Officers/Agreement Officers.

PPA CA ALLIANCE MODEL
AGREEMENT
BETWEEN
(INSERT ALLIANCE NAME), after this known as "The Alliance"
AND
USAID
CONCERNING
(INSERT DEVELOPMENT EFFORT)
after this collectively known as "the Parties"

This Agreement is entered into between the United States of America, represented by United States Agency for International Development (USAID) and the (ALLIANCE NAME) pursuant to and under U.S. Federal law.

(THE MODEL IS INTENDED TO BE USED AS A TEMPLATE UPON WHICH TO BUILD A COLLABORATION AGREEMENT. ALL PROVISIONS OF THIS MODEL ARE NEGOTIABLE AND SUBJECT TO MODIFICATION, EXCEPT FOR THE LANGUAGE IN ARTICLE VII CONCERNING "OBLIGATION AND PAYMENT" (EXCEPT AS NOTED); CERTIFICATIONS REQUIRED BY CONGRESSIONALLY IMPOSED ACTIVITY AND COUNTRY RESTRICTIONS; AND THE "CIVIL RIGHTS ACT OF 1964" ARTICLE. IN MOST CASES A NUMBER OF THE PROVISIONS WOULD BE REVISED OR MODIFIED BASED UPON THE PRIOR GUIDANCE SECTION AND THE SPECIFIC NATURE OF THE ALLIANCE. THE METHODOLOGY FOR THE AWARD NUMBERING PROCESS AND OTHER SYSTEM RELATED RECORDING INFORMATION WILL BE FORTHCOMING AS WELL AS CLARIFICATION OF WARRANT AUTHORITIES ASSOCIATED WITH THE COLLABORATION AGREEMENT.)

Agreement No.:

Total Amount of the Agreement: \$(INCLUDES ALL ALLIANCE RESOURCES, CASH And IN-KIND, AND USAID FUNDING)

Total Estimated Government Funding of the Agreement: \$

Funds Obligated: \$

TABLE OF CONTENTS

ARTICLE I Scope of the Agreement
ARTICLE II Term
ARTICLE III Management of the Project
ARTICLE IV Agreement Administration
ARTICLE V Obligation and Payment
ARTICLE VI Disputes
ARTICLE VII Patent Rights
ARTICLE VIII Data Rights
ARTICLE IX Title and Disposition of Property
ARTICLE X Civil Rights Act
ARTICLE XI Other Standard Provisions
ARTICLE XII Order of Precedence
ARTICLE XIII Execution

ATTACHMENTS

ATTACHMENT 1 Program Statement
ATTACHMENT 2 Report Requirements
ATTACHMENT 3 Schedule of Payments and Payable Milestones
ATTACHMENT 4 Funding Schedule
ATTACHMENT 5 List of Alliance Representatives
ATTACHMENT 6 Guidance on Articles of Cooperation

ARTICLE I: SCOPE OF THE AGREEMENT

A. Background

(This Paragraph describes the vision of the program and should answer the following questions: What is the agreement about? What is the state of development in the relevant sector? What makes this program a critical development effort? Why is the alliance approach important to this effort? What are the issues of particular importance to USAID? What are the commercialization goals, if any? If the alliance is successful, what will we have accomplished?)

B. Definitions

(DEFINITIONS MUST BE PROVIDED HERE)

1. USAID Agreement Officer is the person who is the official signatory to this Agreement on behalf of USAID.
2. Articles of Collaboration:...
3. Alliance Management Committee:....
4. Alliance Members:...
5. Alliance Administrator:.....
- 6 Joint Venture....

C. Goals and Scope

The Parties shall perform a coordinated effort to design and develop a program to [DO WHAT? What is the development purpose? What is economic support purpose?]. The program shall be carried out in accordance with the Statement of Work incorporated in this Agreement as Attachment 1. The Alliance shall submit or otherwise provide all documentation required by Attachment 2, Report Requirements.

[Legal Status: If a consortium or articles of collaboration, typically the members are independent contractors and the consortium is not a separate legal entity under the laws of the U.S. or any country in which it operates. If you determine that the agreement should not have status as a separate legal entity you should include a disclaimer that the consortium is not be construed as a joint venture, partnership or any type of legal entity. Consult with your RLA or USAID/W/GC]

Article II: TERM

A. Term of this Agreement

The Program commences upon the date of the last signature to this agreement and continues for (INSERT NUMBER OF MONTHS) () months. If all funds are expended prior to the (INSERT NUMBER OF MONTHS) ()-month duration, the Parties have no obligation to continue performance.

B. Extending the Term

The Parties may extend by mutual written agreement the term of this Agreement if funding availability and opportunities reasonably warrant. Any extension must be formalized by modification of the Agreement by the Agreement Officer and the Alliance Administrator.

C. Termination Provisions

Subject to a reasonable determination that the program will not produce beneficial results commensurate with the expenditure of resources, and provided that such written notice is preceded by consultation between the Parties, any Party may terminate this Collaboration Agreement, in whole or in part, by giving the other Party ninety (90) days of written notice. In the event of partial termination, such notice shall specify affected activities. Termination of this Agreement shall terminate any responsibilities of Parties to provide financial or other resources for this activity, except for payments that they are committed to make pursuant to noncancellable commitments entered into with third parties prior to the termination of this Agreement. Obligations of the parties set forth in Sections ___ and ___, above, that relate to the use of property furnished and records, audits and inspections under this Agreement shall remain in

force after termination. In the event of a termination of the Agreement, it is agreed that disposition of data developed under this Agreement will be in accordance with the provisions set forth in Article VIII, Data Rights. The Government, acting through the Agreement Officer, and the Alliance, acting through its Alliance Management Committee, will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article VI, Disputes. The Government has no obligation to pay the Alliance beyond the last completed and paid milestone if the Alliance, acting through its Alliance Management Committee, decides to terminate.

ARTICLE III: MANAGEMENT OF THE PROJECT (For Illustrative Purposes Only)

A. Alliance Members

Alliance Members, as set forth in the Articles of Collaboration of the Alliance, are:
(LIST ALLIANCE MEMBERS)

B. Alliance Management Committee (AMC)

1. The AMC must be comprised of one Voting Representative from each Alliance Member, and their votes, in accordance with the Alliance Articles of Collaboration, shall bind the Alliance Members. The following AMC decisions are subject to USAID approval, at its sole discretion:

- (a) Changes to the Articles of Collaboration, if such changes substantially alter the relationship of the Parties as originally agreed upon when the Agreement was executed;
- (b) Changes to, or elimination of, any USAID funding allocation to any Alliance Member as technically and/or financially justified;
- (c) Technical and/or funding revisions to the Agreement; and
- (d) Admission of additional or replacement Alliance Members.

2. The AMC is responsible for establishing a schedule of regular technical meetings to be held on a quarterly basis. The AMC must notify all Alliance Members and the USAID CTO of the established meeting schedule and, in the event of changes to this schedule, must notify all Alliance Members and the USAID CTO thirty (30) calendar days prior to the next scheduled meeting.

3. A quorum (NEED TO DEFINE) is required of the Voting Representatives (or their proxies) representing the Alliance Members and the USAID CTO. All technical decisions will be made by (MAJORITY/CONSENSUS/ETC.) vote of the AMC and the USAID CTO (and the USAID Agreement Officer if the technical change will result in a material change requiring a modification to the terms of the agreement).

C. Management and Program Structure

Technical and program management of the coordinated program established under this Agreement must be accomplished through the management structures and processes detailed in this Article.

1. The AMC will be responsible for the overall management of the Alliance including technical, programmatic, reporting, financial and administrative matters.

2. The USAID's Cognizant Technical Officer (CTO) is expected to fully participate in all meetings of the AMC. Other Government personnel approved by the USAID CTO may also participate in the technical portion of these meetings.

D. Program Management Planning Process

The program management and planning process will be subject to quarterly and annual reviews with inputs and review from the AMC and the USAID's CTO.

1. Initial Program Plan: The Alliance will follow the initial program plan that is contained in the Statement of Work (Attachment 1), and the Schedule of Payments and Payable Milestones (Attachment 3).

2. Overall Program Plan Annual Review

(a) The AMC, with USAID's CTO participation and review, will prepare an overall Annual Program Plan in the first quarter of each Agreement year. (For this purpose, each consecutive twelve (12) month period from (and including) the month of execution of this Agreement during which this Agreement will remain in effect will be considered an "Agreement Year.") The Annual Program Plan will be presented and reviewed at an annual site review, concurrent with the appropriate quarterly meeting of the AMC, which will be attended by the Alliance Members, the USAID's CTO, and other program managers and personnel as appropriate. The AMC, with USAID's participation and review, will prepare a final Annual Program Plan.

(b) The Annual Program Plan provides a detailed schedule of activities, commits the Alliance to use its best efforts to meet specific performance objectives, includes forecasted expenditures and describes the Payable Milestones. The Annual Program Plan will consolidate all prior adjustments in the schedule, including revisions/modifications to payable milestones. Recommendations for changes, revisions or modifications to the Agreement which result from the Annual Review must be made in accordance with the provisions of Article III, Section E.

E. Modifications

1. As a result of quarterly meetings, annual reviews, or at any time during the term of the Agreement, progress or results may indicate that a change in the Program Statement and/or the Payable Milestones would be beneficial to program objectives.

Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted by the AMC to the USAID CTO with a copy to the USAID Agreement Officer. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the existing assistance program. The AMC may approve any Agreement modification. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestones Schedule (Attachment 3) is formally revised by the USAID Agreement Officer and made part of this Agreement.

2. The USAID's CTO will be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement Statement of Work, Schedule of Payments or Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.

3. For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to USAID or Alliance personnel identified in the Agreement, etc.), no signature is required by the Alliance.

ARTICLE IV: AGREEMENT ADMINISTRATION

Unless otherwise provided in this Agreement, approvals permitted or required to be made by USAID may be made only by the USAID Agreement Officer. Administrative matters affecting material terms and conditions of this Agreement must be referred to the following representatives of the parties:

USAID: (INSERT NAME) (Agreement Officer) (INSERT TELEPHONE NUMBER)

ALLIANCE: (INSERT NAME) (Alliance Administrator) (INSERT TELEPHONE NUMBER)

Technical matters under this Agreement must be referred to the following representatives:

USAID: (INSERT NAME) (CTO) (INSERT TELEPHONE NUMBER)

ALLIANCE: (INSERT NAME) (INSERT TITLE) (INSERT TELEPHONE NUMBER)

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE V: AMENDMENT

This agreement may be amended upon mutual consent of the parties by formal modifications to this document or by exchange of letters between the agreement officer and appropriate Alliance Administrator.

ARTICLE VI: PROGRAM INCOME [if necessary-if there will be program income, add provision guiding its use]

ARTICLE VII: OBLIGATION AND PAYMENT

A. Obligation

1. Upon execution of this Agreement, USAID hereby obligates \$ _____ (U.S. Dollars). USAID's total estimated contribution, subject to the availability of funds and agreement to proceed, is \$ _____ (U.S. Dollars). USAID's liability to make payments to the Alliance is limited to only those funds obligated under this Agreement or by modification to the Agreement. USAID may incrementally fund this Agreement.

2. If modification becomes necessary in performance of this Agreement, pursuant to Article III, paragraph E, the USAID Agreement Officer and Alliance Administrator must execute a revised Schedule of Payable Milestones consistent with the then current Program Plan.

B. Payments

[Must be amended to reflect/provide guidance on the determined method - milestones; cost reimbursement; or advances]

1. In addition to any other financial reports provided or required, the AMC must notify the USAID Agreement Officer immediately if any contribution from an Alliance Member is not made as required.

2. Prior to the submission of invoices to USAID by the Alliance Administrator, the Alliance must have and maintain an established accounting system which complies with Generally Accepted Accounting Principles, and with the requirements of this Agreement, and must ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. The Parties recognize that as a conduit, the Alliance does not incur nor does it allocate any indirect costs of its own to the Alliance cost directly incurred pursuant to this Agreement. Consistent with this, an acceptable accounting system will be one in which all cash receipts and disbursements are controlled and documented properly.

3. The AMC must document the accomplishments of each Payable Milestone by submitting or otherwise providing the Payable Milestones Report required by Attachment 2, Part D. The Alliance must submit an original and one (1) copy of all invoices to the Financial Management or the Mission Controller for payment approval. After written verification of the accomplishment of the Payable Milestone by the USAID CTO, the invoices will be forwarded to the payment office within _____ () calendar days of receipt of the invoices at USAID. Payment approval for the final Payable Milestone will be made after reconciliation of USAID funding with actual Alliance contributions. Payments will be made by _____ within _____ () calendar days of USAID's transmittal. Subject to change only through written Agreement modification, payment will be made to the address of the Alliance Administrator set forth below.

4. Address of Payee: (INSERT NAME AND ADDRESS OF PAYEE)

5. USAID funds must be maintained in an interest-bearing account prior to disbursement to Alliance. Any interest earned must be remitted annually to the USAID Agreement Officer, or designee. Interest payments must be made payable to the U. S. Treasury. Interest amounts less than \$250 per year may be retained by the Alliance for administrative expenses.

6. Payments must be made in the amounts set forth in Attachment No. 3, provided the USAID CTO has verified the accomplishment of the Payable Milestones. It is recognized that the quarterly accounting of current expenditures reported in the "Quarterly Business Status Report" submitted in accordance with Attachment No. 2 is not necessarily intended or required to match the Payable Milestones until submission of the Final Report. However, payable milestones must be revised during the course of the program to reflect current and revised projected expenditures.

7. Limitation of Funds: In no case will USAID's liability exceed the amount obligated under this Agreement.

8. Financial Records and Reports: The Alliance and Alliance Members must maintain adequate records to account for all funding under this Agreement and must maintain adequate records to account for Alliance Member funding provided under this Agreement. Upon completion or termination of this Agreement, whichever occurs earlier, the Alliance Administrator must furnish to the Agreement Officer a copy of the Final Report required by Attachment 2, Part E. The Alliance's and Alliance's Members' relevant financial records are subject to examination or audit by a certified public accountant for a period not to exceed three (3) years after expiration of the term of this Agreement. Payment records are to be maintained for six years and three months as applicable.

ARTICLE VIII: DISPUTES

A. General

Parties must communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article. This article does not limit in any way the termination procedures set forth at Article II C.

B. Dispute Resolution Procedures

1. Any disagreement, claim, or dispute between USAID and the Alliance concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties must attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event must a dispute, disagreement or misunderstanding, which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article, constitute the basis for relief under this article unless the USAID AO, in the interests of justice, waives this requirement.

3. Failing resolution by mutual agreement, the aggrieved Party must document the dispute, disagreement, or misunderstanding by notifying the USAID Agreement Officer in writing of the relevant facts, identifying unresolved issues, and specifying the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a decision by the USAID Agreement Officer. The Agreement Officer shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested.

4. If the aggrieved party desires a further review, the party must submit a written request to the USAID Procurement Executive, made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above. The USAID Procurement Executive may elect to conduct this review personally or through a designee or jointly with a senior executive (no lower than (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) level) appointed by the AMC of the Alliance. Following the review, the USAID Procurement Executive or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, will be final and binding. [N.B. - please note that if the parties wish to

amend this provision to permit judicial review, it is advisable to modify this provision to comply with the Wunderlich Act, which precludes contract clauses from preventing review of agency decisions on disputes.]

ARTICLE IX: NONLIABILITY

USAID does not assume responsibility for any 3rd party claims arising out of this agreement. Claims for damages of any nature whatsoever pursued under this Agreement must be limited to direct damages only up to the aggregate amount of USAID funding disbursed as of the time the dispute arises. In no event will USAID be liable for any claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

ARTICLE X: PATENT RIGHTS

A. Definitions

1. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
4. "Subject invention" means any invention of an Alliance Member conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

Where it is a legal entity, the Alliance will retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of the Articles of Collaboration, this Article, and 35 U.S.C. § 202. With respect to any subject invention in which the Alliance retains title, USAID will have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world. USAID also retains march in rights to license the invention for commercial purposes if the Alliance fails to take reasonable steps to achieve practical application. Notwithstanding the above, the Alliance may elect, as defined in its Articles of Collaboration, to provide full or partial rights that it has retained to Alliance Members or other parties. This provision is applicable to, and flows down to, all sub or lower tier agreements under this agreement.

ARTICLE XI: DATA RIGHTS

A. Definitions

"Research data" is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

"Published" is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

"Used by the Federal Government in developing an agency action that has the force and effect of law" is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

B. Allocation of Principal Rights

Where it is a legal entity, the Alliance may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. USAID reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. USAID has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

This provision is applicable to, and flows down to, all sub or lower tier agreements under this agreement.

If USAID exercises march-in rights, above, with respect to subject inventions, the Alliance agrees, upon written request of USAID, to deliver at no additional cost to USAID all data necessary to achieve practical application within sixty (60) days from the date of the written request.

In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, USAID may request, and the recipient must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If USAID obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency and the Alliance. Title to intangible property and debt instruments acquired vests in the Alliance.

ARTICLE XII: TITLE AND DISPOSITION OF PROPERTY

A. Definitions

In this article "property" means any tangible personal property other than property actually consumed during the execution of work under this agreement.

B. Title to Property

No significant items of property are expected to be acquired under this Agreement. Title to each item of property acquired under this Agreement with an acquisition value of \$5,000 or less will vest in the Alliance upon acquisition, with no further obligation of the Parties unless otherwise determined by the Agreement Officer. Should any item of property with an acquisition value greater than \$5,000 be required, the Alliance must obtain prior written approval of the Agreement Officer concerning taking of title to property with a value greater than \$5,000. The Alliance will be responsible for the maintenance, repair, protection, and preservation of all property at its own expense.

C. Disposition of Property

At the completion of the term of this Agreement, items of property must be disposed of in accordance with USAID disposition instructions by the AO.

ARTICLE XIII: CIVIL RIGHTS ACT

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs. Each Alliance company has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act. The Parties recognize that, since the Alliance has no employees, that compliance is the responsibility of each Alliance Member.

ARTICLE XIV: AUDITS AND RECORDS

[The provisions as provided for non-profits or for-profits should be incorporated here. However, when the agreement is established on the basis of payable milestones, the nature of the audit and access to records would be similar to those governing fixed price arrangements.]

ARTICLE XV: OTHER STANDARD PROVISIONS

The following standard provisions are required unless a deviation has been approved in accordance with ADS 308.3.12. See ADS 308 for full text templates of these provisions at <http://www.usaid.gov/policy/ads/300/308mab.pdf>) (Other provisions may need to be added to the ones listed below based on appropriation and other statutory authorities.)

1. Investment Promotion
2. Payment (Periodic Advance) or Payment (Letter of Credit) or Payment (Cost Reimbursement)
3. Prohibition of Assistance to Drug Traffickers
4. Terrorist Financing Clause
5. Publications and Media Releases
6. Reporting of Foreign Taxes
7. Foreign Government Delegations to International Conferences
8. Implementation of the United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003
9. Anti-trafficking Activities - AAPD 04-09 (8/3/2004)
10. Equal Opportunity for FBOs - AAPD 04-08 (6/29/04)

ARTICLE XVI: ORDER OF PRECEDENCE

In the event of any inconsistency between the terms of this Agreement and language set forth in the Alliance's Articles of Collaboration, the inconsistency must be resolved by giving precedence in the following order: (1) The Agreement, (2) Attachments to the Agreement, (3) Alliance Articles of Collaboration.

ARTICLE XVII: EXECUTION

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of the AMC and the USAID Agreement Officer. This Agreement, or modifications thereto, may be executed in counterparts, each of which will be deemed as original, but all of which, taken together, constitute one and the same instrument.

Article XVIII: REPORT REQUIREMENTS

[Define reports required/desired.] All indicated reports must be delivered in accordance with determinations inserted here and in accordance with ADS 540. Other reports merely made available to USAID are not agency records subject to release to third parties under the Freedom of Information Act or other statutes.

ARTICLE XIX: PUBLICITIY AND MARKING:

The parties must confer about a visibility and publicity strategy for the programs, projects, activities or public communications supported by this Agreement. The program, project, activity or public communication must be marked in accordance with the provisions of USAID ADS 320 and the USAID Partner Branding Guide.

PROGRAM STATEMENT

Task 1:

[INSERT MONITORING AND EVALUATION REQUIREMENTS]

REPORT REQUIREMENTS

[This section may be amended based on the needs of the programmatic office.]

A. QUARTERLY REPORT

On or before [_____] () calendar days after the effective date of the Agreement and quarterly thereafter throughout the term of the Agreement, the Alliance Management Committee (AMC) must submit or otherwise provide a quarterly report. Two (2) copies must be submitted or otherwise provided to the USAID CTO and one must be submitted or otherwise provided to the USAID Agreement Officer. The report will have two (2) major sections.

1. Technical Status Report. The technical status report will detail technical progress to date and report on all problems, technical issues or major developments during the reporting period. The technical status report will include a report on the status of Alliance activities during the reporting period.

2. Business Status Report. The business status report must provide summarized details of the resource status of this Agreement, including the status of contributions by the Alliance participants. This report will include a quarterly accounting of current expenditures as outlined in the Annual Program Plan. Any major deviations, more than plus or minus 10%, must be explained, along with discussions of the adjustment actions proposed. The report will also include an accounting of any interest earned on Government funds. The Alliance is reminded that interest in amounts greater than \$250 per year is not expected to accrue under this Agreement. In the event that this interest does accrue on Government funds, the Alliance is required to provide an explanation for the accrual in the business report. Depending on the circumstances, the Payable Milestones may require adjustment.

B. ANNUAL PROGRAM PLAN DOCUMENT

The AMC must submit or otherwise provide to the USAID CTO one (1) copy of a report which describes the Annual Program Plan as described in Article III, Section D. This document must be submitted not later than [_____] () calendar days following the Annual Site Review, as described in Article III, Section D.

C. SPECIAL TECHNICAL REPORTS

As agreed to by the Alliance and the USAID CTO, the AMC must submit or otherwise provide to the USAID CTO one (1) copy of special reports on significant events, such as significant target accomplishments by Alliance Members.

D. PAYABLE MILESTONES REPORTS

The AMC must submit or otherwise provide to the USAID CTO documentation describing the extent of accomplishment of Payable Milestones. This information must be as required by Article V, paragraph B, and must be sufficient for the USAID CTO to reasonably verify the accomplishment of the milestone of the event in accordance with the Statement of Work.

E. FINAL REPORT (NOTE: The Final Report is the last Payable Milestone for the completed Agreement.)

1. The AMC must submit or otherwise provide a Final Report making full disclosure of all major developments by the Alliance upon completion of the Agreement or within [_____] () calendar days of termination of this Agreement. With the approval of the USAID

CTO, reprints of published articles may be attached to the Final Report. Two (2) copies must be submitted or otherwise provided to the USAID CTO.

2. The Final Report must be marked with a distribution statement to denote the extent of its availability for distribution, release, and disclosure without additional approvals or authorizations.

F. EXECUTIVE SUMMARY

The AMC must submit a one to two page executive-level summary of the major accomplishments of the Agreement. This summary must include a discussion of the actual or planned benefits of for commercial sectors, as applicable.

Two (2) copies must be submitted to the USAID Agreement Officer.

SCHEDULE OF PAYMENTS AND PAYABLE MILESTONES

ALLIANCE

TASK	MONTH	PAYABLE MILESTONES	PAYMENT
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FUNDING SCHEDULE

A. PROJECTED PROGRAM FUNDING COMMITMENTS

USAID

Funding Contribution

FY 0* \$ \$

FY 0* \$ \$

FY 0* \$ \$

TOTALS \$ _____ \$ _____

USAID funding will be applied toward the following expenses: **(list types of expenses)**.

B. ALLIANCE MEMBER CONTRIBUTIONS

Member Contribution Cash* In-kind**

Company A \$ \$ \$

Company B \$ \$ \$

Company C \$ \$ \$

Company D \$ \$ \$

TOTALS \$ \$ \$

***Cash** contributions consist of ... **(list types of contributions)**.

****In-kind** contributions consist of ... **(list types of contributions but also include the basis for determining the in-kind value)**.

LIST OF USAID AND ALLIANCE REPRESENTATIVES

USAID:

(CTO)

(Agreement Officer)

ALLIANCE:

(NAME)

(ORGANIZATION)

(ADDRESS)

phone:

FAX:

E-mail:

Guide for Preparing
Articles of Collaboration

This Guide is provided to assist the Alliance in preparing Articles of Collaboration.

PURPOSE: The purpose of the Articles of Collaboration is to set forth the working relationship between and among the members of the Alliance. It defines roles and responsibilities and how members will interface within the Alliance.

MINIMUM REQUIREMENTS: As a minimum the articles must address the following:

1. Identify the name of the Alliance and the members of the Alliance.
2. Identify who has the authority to negotiate with the Government on behalf of the Alliance.
3. Identify who has the authority to sign the agreement thereby binding other members of the Alliance. Alternatively, identify whether all Alliance members will sign the agreement.
4. List the goals of the Alliance.
5. Identify the term of the articles.
6. Define pertinent terms, including what constitutes a quorum.
7. Identify management and organizational structure of the Alliance (how decisions will be made, who has the authority to vote on what issues).
8. Identify who will represent the Alliance in dealing with the Government on administrative and financial matters.
9. Describe procedures for disbursement of Government funds among Alliance members.
10. Identify procedures for handling proprietary information and intellectual property rights.
11. Identify a procedure for disputes resolution among members, to include recourse if a member of the Alliance fails to comply with articles of collaboration or agreement.
12. Discuss procedures for admitting new members into the Alliance and circumstances under which existing members may leave the Alliance.