

Section 1 – Definitions:

“Memorandums of Understanding” are generally considered formalized written agreements between State agencies that cannot be enforced in court and which involve programmatic and/or fiscal issues and enunciate mutual understandings, agreements, duties, responsibilities, policies, procedures, time frames, and other matters as necessary and appropriate.

“Memorandums of Agreements” are generally considered formalized written agreements between a State agency and another party, including a private entity, that does not contain enforceable promises. These agreements include things such as letters of intent or letters of agreement that memorialize the intention of the parties to collaborate. Agreements between a State agency and another entity that include provision(s) that could be enforced in court must be memorialized by a contract that is subject to review under IC 4-13-2-14.1.

In this FMC, Memorandums of Understanding and Memorandums of Agreements are collectively referred to as “MOUs”.

“Data Sharing Agreements” refers to the form prescribed by the Management Performance Hub (MPH) to memorialize the exchange of electronically-recorded information as required by IC 4-3-26-14. As stipulated by MPH, all Data Sharing Agreements are to be no-cost agreements between the parties involved.

Section 2 – General Policy: Due to the possibility of direct or indirect State fiscal impact, the State Budget Agency’s (SBA) general policy is that all MOUs between State agencies require SBA review and approval. In order to facilitate the eventual approval, the agency may wish to make the budget analyst aware of the formulation of the document prior to being presented for review and approval. The use of an MOU does not alter State and/or federal requirements related to personnel, budgeting, fiscal, accounting, reporting, procurement, auditing, or other matters.

This FMC does not allow the use of an MOU to memorialize the exchange of electronically-recorded information, which shall only be memorialized in Data Sharing Agreements as defined in Section 1.

An MOU with the Indiana Office of Technology (IOT) is generally not required for recurring, usual expenses such as seat charges, phones, product licenses, etc.; however, expenses that tend to be one-time or for a short duration, such as those associated with an agency specific IT project, do require an MOU in order to memorialize the agreement between IOT and the respective agency.

Section 3 – MOU Format: An acceptable format for an MOU could include the following provisions:

- **Title of document** - Memorandum of Understanding (or Agreement).

- **Whereas** - List the necessary "whereas" paragraphs which state the need for the document.
- **It is Therefore Agreed** - List the necessary paragraphs which articulate the understandings or agreements including the funding cancellation language (see Section 5) and, if applicable, funding/accounting treatment (see Section 6).
- **In Witness Thereof** - Include the signature block for each State agency party to the documents to include the person's signature that has authority to sign the MOU, their State agency, their printed name and title, and date (see Section 8).
- **SBA signature** - A SBA signature block should appear on the document as follows:

Approved:

 (Name of Budget Director)
 Director, State Budget Agency
 Date: _____

Instruction note: Refer to the Professional Services Contract Manual for further information on development of an MOU. Other formats, including the MOU template on IDOA's website, may be used as necessary and appropriate, but the document should contain the above basic provisions.

Section 4 – Duration: Generally, no MOU should extend for a term of more than 4 years (original term plus renewals). Exceptions may be approved by SBA. SBA may revoke (in writing) its approval of a MOU at any time, in which case, the document will cease to bind the State agencies. If a revocation would occur, SBA will consult with all the State agencies party to the MOU regarding funding issues.

Section 5 – Required Funding Cancellation Language: The following language for cancellation of MOUs must be in all MOUs. MOUs will not be approved by SBA without this cancellation language:

“When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this memorandum, the memorandum shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.”

Section 6 – Funding/Accounting Treatment: The following items should be considered and documented in the MOU:

- The source of funding. State agencies should not enter into an MOU if funding is not available to support the agreement.
- Method of transfer:

- Generally, a Board of Finance transfer is required to transfer non-federal appropriations between State agencies party to an MOU as required under IC 4-9.1-1.
- Alternatively, a General Ledger Journal Entry (JE) is used when agencies are sharing non-federal expenses. All related JEs must include an attached valid MOU for the State Comptroller to approve the JE.
- When determining the method of transfer, agencies should consider both the amount of the transfer and the most appropriate place to reflect the expenses. Consult with your budget analyst for further guidance.
- Agencies entering into MOUs should not use interdepartmental bills (IDB journals/ID bills) to share expenses.
- Generally, federal funds are not transferred via Board of Finance and do not involve the journaling of expenses between agencies, but instead use the Sub-State transfer process described in Section 7.
- Disposition of unused funds. The MOU should discuss how remaining transferred funds will be treated at the end of the term of the MOU.


Section 7 – Federal Sub-State Awards:

- If a State agency (Granting Agency) awards federal funds to another State agency (“Sub-State” Agency), the agencies must enter into an MOU that provides the Sub-State Agency with the following information:
 - Assistance Listing and Name (formerly CFDA number)
 - Federal Award Name
 - Federal Award Identification Number
 - Federal Award Date
 - Name of Federal Agency
 - Total Amount of Funds obligated to the Sub-State Agency
 - Period of Performance: Period of time Sub-State Agency can obligate funds: start and end dates
 - Liquidation Period: Period of time Sub-State Agency can liquidate funds: start and end dates
 - Federal Award Project Description
 - Requirements imposed on the Sub-State Agency so that the award is used in accordance with Federal statutes, regulations and the terms and conditions of the award
 - State Budget Agency Funding Source Number
 - Indirect cost rate or cost allocation that can be charged to the federal grant
 - Match requirements including source fund and responsible agency
 - No later than five days after execution of a subgrant, the Sub-State Agency must provide the supplying agency with information necessary to comply with Federal Funding Accountability and Transparency Act (FFATA) requirements of the grant.
- In the list of required information, the Granting Agency must inform the Sub-State Agency if FFATA is a requirement of the grant.

- In addition, the agencies must use the PeopleSoft federal draw billing module to complete their federal draws and reporting requirements.
- The Granting Agency must determine the capacity of the Sub-State Agency to carry out the terms of the federal award and provide technical assistance as needed.
- The Federal award identified in the MOU must match the Federal award on the Sub-State transfer request form. If those do not match, the transfer will not be processed until one is amended.
- Multiyear agreements may need to be amended to update the federal award information and chartfields.
- Sub-State Agencies are not considered subrecipients.

Section 8 – Document Signatures and Routing: MOUs are required to be signed by all State agency appointed authorities or designees party to the document. The granting State agency is the “lead agency” and shall route the document through the Supplier Contract Management System. If no funding is involved, either agency may serve as the “lead agency”. SBA approval is required on all MOUs.

Section 9 - Termination or Suspension: This MOU may be terminated or suspended by either party if the other party has failed to comply with the terms of this MOU, or for any reason if such termination is in the best interest of the terminating agency, upon thirty (30) days written notice. The notice of termination or suspension shall state the reasons for termination or suspension. Regardless of the reason for termination or suspension, the parties will be compensated for services properly rendered prior to termination or suspension of this MOU. The written notice of termination must be sent through SCM and signed by the State Budget Agency.



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