



MEMORANDUM OF UNDERSTANDING

WHAT IS AN MOU?

A Memorandum of Understanding (MOU) is a signed **non-obligating** and legally **non-binding** document that describes the intentions, roles and responsibilities of USAID and other actors who decide to work together to address a shared development challenge.

In some cases, companies (and particularly their legal departments) may use the term MOU to refer to a legally binding document. In this situation it is imperative that all parties understand and agree that the document is non-legally binding; if helpful, you may change the term “MOU” to a term used by the organization to refer to a non-legally binding document (e.g., “letter of intent,” “statement of principles,” or “memorandum on cooperation”).

WHEN SHOULD AN MOU BE USED?

MOUs are an established best practice and **strongly** recommended for public-private partnerships. USAID personnel should presume that an MOU is needed for a partnership or other collaboration that involves external parties that are non-traditional partners. In addition, MOUs are required for Global Development Alliances developed under the Global Development Alliance Annual Program Statement.¹

In some instances, a separate agreement between USAID and the core private sector partner(s) may reduce the importance of having an MOU. For example, an MOU might not be needed when a resource partner is receiving USAID funds through a Collaboration Agreement, because the Collaboration Agreement itself addresses the kind of information typically set forth in an MOU. An MOU also might not be used when a partnership consists only of a gift from a resource partner to USAID, where the resource partner is providing no other in-kind contributions and does not expect to be involved in the programmatic activities. Consult with your Resident Legal Officer or the General Counsel’s office – as well as the U.S. Global Development Lab’s (the Lab) Center for Transformational Partnerships (CTP) – if you have questions whether an MOU is appropriate for your proposed partnership or collaboration.

¹ Note: Global Development Alliances (GDAs) are a type of public private partnership and one of many ways in which USAID engages and collaborates with the private sector. For purposes of this document, the word partnership will be used to refer to the various types of collaboration that would warrant an MOU, including but not limited to GDAs.

WHAT ARE THE BENEFITS OF USING AN MOU?

There are many benefits to formalizing your partnership through an MOU. The MOU:

- Promotes full exchange of ideas and elaboration of participants' expectations through the negotiation process.
- Ensures that all participants are in agreement on the partner roles and activities, thereby decreasing misunderstandings and future conflicts.
- Outlines how decisions about the partnership will be made during implementation.
- For many partnerships, represents the only document that formalizes the relationship between USAID and a private sector partner (that is not also an implementer).
- Can help keep the partnership on track and focused on the original objectives/activities.
- Provides an easy framework to allow additional partners to join and expand the partnership.

WHAT INFORMATION SHOULD BE IN THE MOU?

For your convenience, the Lab's Center for Transformational Partnerships and the General Counsel's office have developed a detailed MOU template to help you get started (see below). Typically, an MOU would cover the (1) partnership purpose, (2) partner roles and responsibilities, (3) implementation issues such as a partnership governance structure, anticipated funding, and reporting and evaluation requirements, and (4) information relating to effective date, duration, amendments and termination.

MOUs must contain the following mandatory language required by USAID's General Counsel's office:

"The Participants enter 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 Participants as outlined in this MOU shall not be construed as a legal form of partnership or other type of legal entity or personality. Each Participant shall accept full and sole responsibility for any and all expenses incurred by itself relating to this MOU. Nothing in this MOU shall be construed as superseding or interfering in any way with any agreements or contracts entered into among the Participants, either prior to or subsequent to the signing of this MOU. Nothing in this MOU shall be construed as an exclusive working relationship. The Participants specifically acknowledge that this MOU is not an obligation of funds, nor does it constitute a legally binding commitment by any Participant or create any rights in any third party."

This language is included in the MOU template. If the template is not used, please include this language in the final MOU.

HOW DETAILED DOES THE MOU HAVE TO BE?

MOUs should be tailored to the needs of the proposed working relationship. MOUs can be very short and general in scope or longer and more detailed. In some cases, a more detailed MOU can help provide a better roadmap for the partnership going forward. In other cases, that kind of detail may not be known at the time the participants seek to formalize their relationship. An additional factor to consider is that the legal departments at each partner organization will have to review and approve the MOU. Therefore, it is better to limit the MOU to the essentials of the relationship so that it does not get bogged down in too many details (e.g. projected annual work plans). However, it is important to make

sure the MOU covers the matters needed to reflect and support the working relationship desired between USAID and the private sector partner(s). It is best to consult with your Resident Legal Officer or the General Counsel's office – and the Lab's Center for Transformational Partnerships (CTP) – if you wish to discuss the right MOU approach for your partnership.

WHEN SHOULD THE MOU BE COMPLETED?

You should start drafting the MOU as soon as the private sector partner has indicated they would like to join the partnership, USAID has concluded it also wishes to proceed, and you have started discussing the specific design of the partnership. However, due diligence on any private sector partner must be completed before the MOU is signed to ensure that the USAID signatory is aware of and has taken into account any risks to USAID.²

Once due diligence has been finalized, the MOU should be completed and signed before any joint activity or resources are allocated to the partnership.

WHO PREPARES AND SIGNS THE MOU?

Typically, the appropriate technical officer will and should draft the MOU and shepherd it through the appropriate approvals at the Mission or the Washington Operating Unit. Each Mission or Operating Unit can determine its own approval process, but at a minimum, the Resident Legal Officer or General Counsel's office must approve an MOU, and the Mission Director or appropriate Assistant Administrator in USAID/Washington should sign the final MOU. If circumstances warrant, Mission Directors or Assistant Administrators may delegate the authority to sign MOUs to an appropriate USAID official. For partnerships involving more than one program bureau, or partnerships of special significance, having the Administrator or Deputy Administrator directly involved should be seriously considered. The Lab's Center for Transformational Partnerships is available to provide perspective and input.

USING A SUB-MOU UNDER A GLOBAL OR REGIONAL MOU

If there is a global or regional MOU between USAID and a resource partner, the Mission may use a sub-MOU to detail the arrangements for a specific activity, and incorporate the terms and conditions of the higher-order MOU by reference. In such cases, particular attention should be paid to the validity dates of the documents in question.

MOU TEMPLATE

The Lab's Center for Transformational Partnerships, in collaboration with USAID's Office of the General Counsel, has developed an MOU template for use with GDAs and other types of PPPs. [The template is available to USAID personnel here.](#) Typically, USAID will use the template to formulate an initial draft of an MOU and then provide that draft to the private sector partner(s).

For more information on MOUs, contact LAB/CTP at gda@usaid.gov.

² USAID personnel can find step-by-step due diligence guidance in the Lab's Center for Transformational Partnerships' Private Sector Engagement Toolkit on the CTP intranet website.