

MEMORANDUM OF UNDERSTANDING (MOU)

WHAT IS A MOU?

A Memorandum of Understanding (MOU) is a signed **non-obligating** and legally **non-binding** document that describes the intentions of the alliance members 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” or “partnership agreement”).

DO I NEED TO HAVE A MOU FOR MY PUBLIC-PRIVATE PARTNERSHIP?

MOUs are not required for public-private partnerships, but they are strongly recommended. They are frequently used when USAID and a resource partner are providing parallel funding to a common implementing partner. They are not typically used when a resource partner is receiving USAID funds through a Collaboration Agreement, because the Collaboration Agreement itself addresses the kind of information set forth in an MOU. They are also typically not used when the alliance 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 alliance activities. Consult with your Regional Legal Advisor or the General Counsel's office to determine whether a MOU is appropriate for your proposed alliance.

WHAT ARE THE BENEFITS OF USING A MOU?

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

- Ensures that all parties 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 alliances, 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 MUST BE IN THE MOU?

For your convenience, IDEA/GP and the General Counsel's office have developed a detailed MOU template to help you get started. Typically, an MOU would cover the (1) alliance purpose, (2) partner roles and responsibilities, (3) implementation issues such as an alliance governance

structure, funding, and reporting and evaluation requirements, and (4) information relating to effective date, duration, amendments and termination.

MOUs must contain the following critical language, issued by USAID's General Counsel's office:

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

“The Parties 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 among the Parties as outlined in this MOU shall not be construed as a partnership or other type of legal entity or personality. Each Party 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 Parties, either prior to or subsequent to the signing of this MOU. Nothing in this MOU shall be construed as an exclusive working relationship. The Parties specifically acknowledge that this MOU is not an obligation of funds, nor does it constitute a legally binding commitment by any Party or create any rights in any third party.”

HOW DETAILED DOES THE MOU HAVE TO BE?

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 parties 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 (ex. Work plans, communications protocol, etc.). It is best to consult with your Regional Legal Advisor or the General Counsel's office to determine 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 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 any risks to USAID. You can find step-by-step due diligence guidance on IDEA/GP's Tools for Alliance Builders intranet website.

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

WHO PREPARES AND SIGNS THE MOU?

Typically, the technical officer will 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 their own approval process, but at a minimum, the Regional Legal Advisor or General Counsel's office must approve an MOU, and the Mission Director or appropriate Assistant Administrator in USAID/Washington must 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 alliances with more than one program bureau or of special significance, having the Administrator or Deputy Administrator directly involved should be seriously considered.

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 specific agreements for their activity, and incorporate the terms and conditions of the higher-order MOU by reference.

MOU TEMPLATE

Download the [GDA MOU template](#).

For more information on MOUs, contact IDEA/GP at gda@usaid.gov.