

Understanding MoUs

Private Sector Engagement Toolkit - Tip Sheet #14:

A Memorandum of Understanding (MoU) is a partnering agreement that documents the terms of the working relationship. Developing a MoU is a fundamental step in the engagement process as it bridges the relationship-building phase with follow-on program interventions.

MoUs can take many forms, depending upon the purpose of the MoU, the stage of the program when they are being signed, and the overall context. Some are high-level and serve as a way to clarify and document a relationship between two parties. Others are very complex and include specific deliverables and requirements essentially taking on the form of a contract. MoUs can have many purposes including:

- Committing us to a distinct activities in a project with a private sector partner, and compelling them to meet certain deliverables in exchange for that commitment (i.e. working with a lead firm in a specific sector).
- Defining a payment structure including amounts, frequency, and the deliverables.
- Creating a strategic partnership or a new private business (i.e. partnering with a financial institution to create a new MFI)

With the private sector, a MoU represents a formal agreement to work together in some manner and it almost always includes a confidentiality requirement. This can be a very important issue for firms due to concerns about their business secrets and the impact to their business if those secrets are revealed to their competition. As such, non-disclosure agreements (NDAs), which are MoUs that only address confidentiality, are often a requirement prior to having a meaningful partnership conversation.

MoUs with private firms are also often iterative. Sometimes many specifics of a relationship are not decided when an initial MoU is negotiated. Then, during program implementation as more details are determined, an additional MoU (or addenda to the initial agreement) may be created to address specific program elements.

Tips about Developing MoUs

- **No surprises:** A written MoU should never present new information. Important subjects and topics in the MoU should be discussed before being written into the MoU. When changes need to be made to drafts of a MoU (such as revisions called for by our Legal Services Team) we should

make every effort to discuss those with our partner prior to presenting them in a revised, written document.

- **Collaborate:** We should work out the details of a MoU together with our partners, ideally in person or on the phone. Doing so will strengthen our relationships and can streamline the MoU development process
- **Clear and Specific Roles and Responsibilities:** Be sure to clearly define roles and responsibilities for each party in the MoU. This is one area where it is important to not make assumptions.
- **Flexibility:** Leave room in the MoU for program expansion or adaptation if we think that is a possibility for the future. While we want a MoU to be as precise as possible, making it too precise can demotivate our partner to be innovative. We may want to include specific timeframes for reassessing the partnership and making any changes needed.
- **Itemize deliverables:** If the MoU calls for specific deliverables, from either side, make sure they are clearly defined with deadlines, if relevant.
- **Thoroughness:** The private sector is accustomed to having rigid contracts in place for their work, so seeing a MoU from us that is detailed and specific will support our professionalism and credibility.

Elements of MoUs

The specific elements in a MoU with a private sector partner will depend upon the nature of the engagement and the program context. Typically a partnership MoU has multiple sections; a **Base MoU**, followed by one or more **Annexes or Exhibits**. The **Base MoU** will contain an overview of the agreement, a general description of the program, and most of the standard terms and legal language. A standard Base MoU is often used for multiple types of purposes with minimal modification. **Addenda or Exhibits** often contain the details of an agreement including the budget, work plan, and reporting requirements. They are often more important for program implementation than the Base MoU because they include the practical elements.

There are no fixed rules about what appears in what part of an MoU. Sometimes items that might be in an addendum are incorporated into a base MOU or the other way around.

Following are some of the most common elements of a MoU:

Base MoU:

Section	Component
Introduction:	Outlines the effective date and the names of the parties who are signing the MoU
Description or Purpose	Describes the willingness to work together, and outlines the overall goal of the engagement that the MOU applies to. It also describes the high-level activities the parties will undertake to achieve the purpose.
General Terms:	Includes such items as: <ul style="list-style-type: none"> • Payments or compensation (who pays who, how much, when, etc.) • Authorized contact information: Also called responsible parties, identifies who in each organization is responsible for the MoU and communication on it. • Term: The length of the MoU and any provisions for extension and renewal, including notification periods for renewal or cancellation. • Termination: What must be done to cancel the agreement (either at the end of the term or mid-term) and any notification period. May include penalties for early termination.
Responsibilities of each Party	Summarizes the responsibilities each party has in the engagement. This section can be very specific depending upon the relationship.
Other Provisions (sometimes this section is combined with General Terms)	Clarifies any other general provisions for the MOU. These could include: <ul style="list-style-type: none"> • Confidentiality: The agreement to keep confidential material private. • Addenda and Exhibits: Recognition that the MOU may have them. May include a provision that enables them to be modified without modifying the Base MOU. • Legal Language: Specific terms addressing multiple topics such as: what is the official language of the MoU; what happens if it one party breaks the agreement; how the MoU can be modified, etc. • External Communication: Any rules and guidelines about discussing the partnership publically and any desired joint public relations strategies.

Addenda or Exhibits:

Addenda may have information related to provisions in the Base MOU, or may have entirely new information. Regardless, it is important that the content here does not conflict with anything in the Base MOU.

Engagement Description	An in-depth description of the engagement or program. This may further clarify the roles and responsibilities and deliverables.
Workplan	Description of what activities will take place and when, and who has responsibility for those activities. May also detail significant milestones related to the MOU.
Budget	If there is a complex financial element to the program, this section may outline how, when, and by whom those funds are to be spent.
Financing	Description of financial or other contributions each party may be responsible for.
Reporting	Outlines the expectations on both sides for the content and frequency of formal reporting and informal communication. This might include the frequency and composition of reporting. Also contains terms related to inspections and auditing by either party or external parties.

Resources

The Action for Enterprise report Cycle 3: Structuring and Managing Collaboration with Lead Firms is a good resource for developing and negotiating MoUs among NGO's and the private sector. It focuses on MoUs with lead firms but is relevant to other types of partnerships.

<http://www.actionforenterprise.org/field3.pdf>

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