

Collaboration Toolkit

Creating an MOU



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What is an MOU?

In a collaboration, a written agreement – a contract, MOU, or another type of formal agreement – is an important tool for building long-term stability and success. A written agreement:

1. Helps ensure that a collaboration can survive changes in environment or key people, serving as a structure around which the partnership can adapt and grow.
2. Prevents confusion and conflict among the collaboration’s partners.
3. Supports accountability among partners by clearly defining roles, responsibilities, expectations, and decision-making processes.
4. Provides an opportunity for the collaboration, through the process of creating or revising the agreement, to discuss key issues such as goals, strategies, and procedures; this process itself can play a key role in planning at all levels of the collaboration.

A **Memorandum of Understanding (MOU)** or a Memorandum of Agreement (MOA) is a written agreement, usually simpler and less formal than a legal contract, which outlines an agreement between parties. An MOU doesn’t need to include complicated legal conditions, exclusions, indemnifications, etc.

A **contract** is a legally-binding agreement between parties which is enforceable in a court of law. A contract generally includes language defining what would constitute a *breach of contract*, and outlines the damages or compensation due if a partner fails to fulfill its contractual obligations. A contract may also include indemnification provisions, detailing whether and how a partner bears legal responsibility for the actions of another partner. Compared with a less formal agreement, a contract provides more legal protection to each partner.

The inclusion of certain elements in an MOU can make it a legally-binding document. The Foundation Center suggests that “if you are certain that you do not want your agreement to be legally binding, you should be sure to say so within the document.” Please consult an attorney for assistance creating an agreement that meets the needs of your collaboration.

What Should Be Included?

When deciding what to include in an MOU, keep in mind the purposes of the agreement. The MOU should be detailed and comprehensive enough that each partner has a clear understanding of the collaboration, their role in it, what is expected of them, and what they can expect from the rest of the group. It should also be broad and simple enough to support a nimble, adaptable collaborative effort. **Most importantly, the MOU should *support the work of the collaboration, not get in the way.***

It's not necessary for an MOU to include every detail or decision that the collaboration will face. Some decisions may be controversial but not mission-critical; those may be better addressed by the collaboration (or a subcommittee) sometime after the MOU is completed. Other issues may need to remain flexible, revisited too frequently to include in a longer-term written agreement.

This section is *not* meant to be a list of mandatory MOU ingredients, nor is it designed to be a comprehensive list of issues. Instead, a collaboration can use the topics listed here to build an agreement that meets their partnership's unique needs.

Some standards or policies may, if violated by any of the partners, bring about legal, financial, or other serious consequences for the collaboration – and its work – as a whole. (For example, for a collaboration that serves vulnerable populations, it may be critical that partners conduct rigorous background checks on its prospective employees and volunteers.) If the collaboration relies heavily on its partners complying with a particular policy, a formal and legally-binding agreement may be necessary. Please consult an attorney for assistance creating an agreement that meets the legal needs of your collaboration.

This section has been adapted in part from the Denver Office of Strategic Partnerships' Indicators of Collaborative Success.

The Partners

An MOU should identify the collaboration's partners. Each partner should sign the MOU to indicate their agreement and participation.

The Purpose

An MOU should include a clear and specific statement of the collaboration's purpose. It may also include a vision statement and/or a values statement.

Depending on the term of the MOU – how long it's intended to remain in effect – it may feature more detailed goals, plans, milestones or timelines.

Term

The MOU should specify the start and end dates of the agreement.

The term of the agreement is not necessarily the term of the collaboration itself! The agreement should be reviewed, revised, and approved on a regular basis.

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Governance and Leadership Structure

Is the collaboration led by a board, committee, or a group of committees? Who are the committee members? Who are voting members?

Meetings: The MOU should define how often meetings are held, the purpose of meetings, how often members are required to attend, etc.

Decision-Making

The MOU should identify how decisions are made. It should specify:

- Whether the collaboration uses a consensus model, majority vote, or another system.
- What constitutes a quorum, and what types of discussions or decisions may or may not take place without a quorum.
- How partners will be informed in advance about the specific discussions and votes to take place at a meeting.
- What alternative voting systems may be used (voting via email, sending a proxy to a meeting to vote, etc.)
- Any special or high-level decisions that require special decision-making rules. (For instance, some major decisions may require the agreement of more than a simple majority.)

Roles and Responsibilities

One of the most critical pieces of an MOU is the description of the roles and responsibilities of each partner. In most cases, each partner will fill a few specific roles such as: providing funding or other resources; delivering services; connecting the collaboration with other people or groups; or offering expertise.

The MOU should address some key elements of each partner's roles and responsibilities, including:

- Aside from a steering committee or other governing body, what committees or groups will carry out the work of the collaboration? How are committee members selected or assigned?
- What are the specific goals, functions, and responsibilities of each committee or group operating under the collaboration?
- What are the specific goals, functions, and responsibilities of each partner of the collaboration?
- What resources does each partner agree to commit to the collaboration?
- Another key piece: who is responsible for the functioning of the collaboration itself? The MOU should identify which partners are responsible for planning, conducting, and documenting the collaboration's meetings and other internal work.

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Financial Relationship

The MOU should describe the financial relationship between the partners. Some financial questions an MOU may address are:

- Will one partner serve as the collaboration's fiscal agent?
- Which partners handle financial transactions on behalf of the collaboration? What reports, procedures, or financial controls are required of those partners?
- What are the policies regarding income for the collaboration (to which organization are payments made, how are payments handled and recorded, etc.)?
- What are the policies regarding expenses for the collaboration (which partner is responsible for making payments, how are expenses approved, etc.)?

Fundraising

Some collaborations are supported directly by the partners themselves; others rely (at least in part) on third-party funding and fundraising. Even if the collaboration isn't currently planning on seeking third-party funding, it's a good idea to include some general fundraising policies in the MOU. The MOU's fundraising policies may include:

- Gift acceptance policies: these should describe how gifts are accepted, recorded, and acknowledged. In addition, the MOU should describe the circumstances under which a gift would be declined.
- Fundraising roles and responsibilities: who interacts with donors and funders on behalf of the collaboration? Are funding proposals reviewed and/or approved by other partners?
- Policies around sharing fundraising information externally and among partners.

Communications

The MOU may detail specific communications policies, or it may describe how these policies are created and who's responsible for making those decisions. Some communications issues that may be addressed are:

- Talking points about the collaboration and its work
- Standard or shared terminology, including consistent ways that partners are identified in written and verbal communication
- General communications policies (social media policies, communications calendar, branding, graphic standards, etc. as applicable)
- Processes for reaching out to – or receiving calls from – the press
- A crisis communications plan

Communications policies may also include expectations for how each partner describes the collaboration in their own communications (for example, whether they are expected to describe the work as part of the collaboration, or whether it's acceptable for them to discuss just their own piece of the work).

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Planning

How – and how often – is planning conducted for the collaboration?

An MOU works closely with a collaboration's strategic and operational plans. Plans inform the agreement; the MOU addresses strategies, goals, and tasks that are identified during the planning process. Conversely, the MOU should outline the planning process and the group's expectations for when and how planning occurs.

Outcomes and Evaluation

Regardless of whether the MOU describes the collaboration's specific goals or timelines, the agreement should describe when and how the group assesses its work.

- How does the collaboration define its goals and monitor its progress?
- What information does the collaboration rely upon to measure its success?
- What data, reports, or other information are partners expected to provide? How frequently are they expected to provide them?
- Who is responsible for evaluation: for deciding what will be evaluated and how; for ensuring resources are available for conducting evaluation; for reviewing evaluation results and incorporating them into future plans?
- Does evaluation happen at specified times, or is it an ongoing effort? How often are results reviewed?

Conflict Resolution

The agreement should outline a process for resolving conflict among group members. It may also describe the collaboration's values around conflict resolution.

Adding or Removing Partners

The MOU should describe how new partners are added to the collaboration: how prospective new partners are identified; what criteria the group looks for in a new partner; how partners are brought in to the group; and how roles and responsibilities of new partners are determined.

The MOU should detail when and how partners may be removed from the collaboration, featuring objective criteria around the group's expectations and each partner's responsibilities, and including any processes involved in making the decision to remove a partner. It may also describe the group's expectations of a partner which chooses to leave. For instance, partners may be expected to provide a certain amount of advance notice before leaving the collaboration, or actively participate in helping the group plan for the departure.

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Other Policies

Many other policies may be important to include in an MOU, depending on the work of the collaboration.

Confidentiality: the MOU should include, as appropriate, policies outlining the confidentiality of: conversations and information handled internally by the collaboration; donor information; client information; and other program information or data.

Intellectual Property: the MOU should identify which entities own intellectual property rights for program materials, marketing pieces, etc.

Compliance with Federal, State, and/or Local Regulations

Conflict of Interest Policy

Document Retention and Destruction Policy

Diversity/Inclusivity Policies

Accessibility Policies

Risk: the MOU should address key areas of risk for the collaboration. Partners may be expected to maintain certain types or levels of insurance coverage, conduct background checks on employees and volunteers, maintain security of electronic data, etc.

The Process: Creating (or Revising) the MOU

If a collaboration is complex – and sometimes, even if it’s not particularly complex! – the process of creating an MOU can be a long and intensive one. However, the process itself is a critical part of creating a stable and effective collaboration, enabling partners to clarify expectations, plan and set goals, and learn more about one another.

How long does this process take? Like the MOU – and the collaboration itself – the timeline and factors involved are unique to every partnership.

Before You Begin

At the outset, decide who will be involved and what their roles will be:

- Who will lead the process, set discussion topics, and facilitate meetings?
- Who will be actively involved in decision-making and negotiation, who will participate in discussions, and who will be asked to provide input? Fewer negotiators, of course, usually means a quicker decision-making process. On the other hand, engaging more staff members and other stakeholders generally involves a more inclusive process which can fuel a stronger sense of ownership and commitment to the partnership.
- At what stage(s) will the partner organizations’ boards review the agreement, and what level of feedback will they provide?
- Will third parties (such as consultants or attorneys) be involved?

Step 1: Define the Vision

Who should be at the table: each partner should be represented by people who have – or have ready access to – authority to make the high-level strategic decisions involved in this step.

- Determine the collaboration’s vision and its basic purpose.
- Define the landscape: identify needs, gaps, and external factors.
- Engage communities and key stakeholders.
- Develop the strategic plan.

Step 2: Build the Plan

Who should be at the table: once again, it’s important to have active involvement from high-level decision-makers. This step should also involve people responsible for making operational decisions, implementing the operating plan, or securing funding and resources.

- Assess the collaboration’s needs and resources.
- Develop the operating plan.
- Determine roles and responsibilities of each partner.
- Discuss the topics, policies, and responsibilities to be included in the MOU.

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Step 3: Get It in Writing

Who should be at the table: it depends! Decide who will participate based on the items that need to be resolved at this stage.

- Identify points of agreement...and celebrate them! Keep a record of the collaboration's decisions and achievements to date.
- Identify points for further discussion or negotiation. Resolve issues that need to be included in the MOU; document issues that will be resolved later, assigned to a subcommittee or working group, or addressed on an ongoing basis.
- Draft the MOU. Collect feedback, revise, and repeat.

Step 4: Finalize and Formalize

- Create the final agreement.
- Approve the agreement with the signature of an authorized representative from each partner.
- Announce and share the final agreement with staff and key stakeholders (those who were involved in the MOU process and those who weren't).

Step 4: Keep It Going

- Revisit the topics, questions, and unresolved issues that came up during the MOU creation process. Who will handle these issues: the collaboration's governing body, a subcommittee or working group, or some other combination of partners and their representatives?
- Build a plan and timeline for reviewing and renewing the MOU, evaluating the collaboration and how it functions, exploring the possibility of bringing in new partners, etc.

Compromise, Compromise, Compromise!

Hammering out the final (sometimes stubborn) details of your agreement can be a tough process. During this stage, just remember:

- In a highly successful collaboration, each partner is willing to compromise for the sake of the collaborative effort, sometimes setting aside not just their own preferences, but their organization's priorities, goals, and needs.
- Compromise can be uncomfortable! Expect conflict. Commit to resolving it patiently and respectfully.
- Stay positive. Focus on the collaboration's goals and the possibilities you're creating.

References and Resources

There's more to this toolkit! For downloadable worksheets and sample policies, visit www.ColoradoNonprofits.org/collaborationaward/resources/mou-toolkit/.

References

- *Indicators of Collaborative Success*, Denver Office of Strategic Partnerships (www.denvergov.org/strategicpartnerships)
- *Developing a Contract or Written Agreement for Your Nonprofit Collaboration*, Foundation Center (<http://newyorkblog.foundationcenter.org/2012/04/developing-a-contract-or-written-agreement-for-your-nonprofit-collaboration.html>)
- *Checklist for a Memorandum of Understanding*, Nonprofit Risk Management Center (<http://www.nonprofitrisk.org/library/fact-sheets/collaboration.shtml>)
- *A Guide to Memorandum of Understanding Negotiation and Development*, U.S. Department of Health and Human Services; Mary L. Johnson, M.S.W., and Linda M. Sterthous, M.P.A., Temple University, Institute on Aging, Mid-Atlantic Long Term Care Gerontology Center (<http://aspe.hhs.gov/daltcp/reports/mouguide.htm>)

About the Colorado Collaboration Award

The Colorado Collaboration Award acknowledges and inspires successful cooperation among nonprofit organizations. Recognizing the advantages gained in efficiency and impact from working together, the Colorado Collaboration Award shines a spotlight on successful collaborations. In addition to providing a \$50,000 award to one exceptional collaboration each year, the program's goal is to increase awareness within the nonprofit community about successful models of collaboration.

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