

Collaboration Agreement

Guidance & Template

Disclaimer

This guide provides information on collaborating with other organisations. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding about what to do.

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Using the right language

Understanding the legal ramifications of using the term 'partnership'

Although the term 'partnership' is often used by community groups and organisations to describe a wide variety of relationships between two organisations, it is important to note that in a western legal sense 'partnership' refers to a specific type of legal relationship. As such, using this term will attract specific legal and tax obligations on its parties (see our Partnership guidance for further information).

In comparison, the terms 'collaboration', 'consortia' or a 'consortium' are very broad and do not have defined legal meanings. As a result, their meaning can be defined by the communities themselves. This may occur informally (e.g. through a Memorandum of Understanding or terms of reference) which are not legally-binding, or through the development of a formal contract (e.g. a collaboration agreement) which is legally-binding. Being mindful of this, communities should consider which type of arrangement is best suited to describe you're their relationship and intended obligations to another entity and to ensure they avoid using language which will attract specific legal and tax obligations (e.g. Partnership).

What language could you use

The terms collaboration, association and consortium/consortia are all broad terms to describe the effort of two or more entities working together towards a common purpose and can often be used interchangeably without attracting specific legal and tax obligations. An incorporated association is an exception to this, as once incorporated any collaborative arrangement will attract unique legal and tax obligations. Likewise, you should also be mindful that a consortium exists between two entities and a consortia (as the plural for Consortium), exists between more than two entities. Your community might also choose another term that works for you.

What is a collaboration agreement?

A collaboration agreement is a legally binding document between parties that wish to work together towards a common purpose (noting, as described above that a collaboration is different to a Partnership). A collaboration agreement (unlike a Partnership agreement) is a written document which details the specifics of the collaboration (as self-determined by the parties), including their responsibilities and obligations, how profits and compensation is to be structured, and remedies in the event one party does not meet their obligations.

What type of arrangements can use a collaboration agreement?

Whilst there are many arrangements that can be established to support collaboration, the type of agreement you enter should reflect the nature of the relationship you wish to have with the other party. For example, common collaboration types include:

- An **auspice arrangement**, where one entity will support/sponsor the other, along with holding full responsibility and liability for the delivery of the other party's activities. This is best suited to an entity that needs additional support to complete its activities.
- A **joint venture**, where two or more separate entities join on a temporary basis to create a new entity for the purposes of completing a specific project. This is best suited to entities wanting to share resources and liabilities for a shared project, often aiming to accelerate short-term growth and mitigate risk.
- A **partnership**, where two or more separate entities join on a permanent basis to create a new entity for the purposes of completing ongoing business. This is best suited to entities wanting to share resources and liabilities on a permanent/long-term basis.
- An **association**, can be incorporated or unincorporated and is a broad term to describe a near limitless number of scenarios whereby two or more entities work together towards a common purpose. Sometimes referred to as a collaboration or consortium/consortia, an association is not subject to as rigid legal and tax requirements as a joint venture or partnership and will tend to offer greater flexibility to set the unique terms of your collaborative arrangement to best suit your community's needs.

When is a collaboration agreement used?

There is no legal obligation to have a collaboration agreement in place; however, they can be a helpful tool to clarify and guide how parties will work together towards a common goal. For instance, a collaboration agreement can be created to guide the terms and conditions of any of the above arrangements. However, it is important to note the distinction between each type of arrangement to ensure that the agreement you draft accurately reflects and responds to the unique legal and tax obligations associated with that type of relationship.

For further information, please refer to our separate guides on each type of collaborative arrangement, along with our general guide to collaborative arrangements, all [available on our Resources Hub](#).

How long can you use a collaboration agreement?

Parties are free to determine the period of their collaboration agreement. Typically, parties will determine their agreement is at first instance enforceable for a period of two to three years, after which the agreement will be renewed or renegotiated as needed.

Who can use a collaboration agreement?

Collaboration agreements can be used by anyone, including individuals and other legal and non-legal entities.

What are the typical obligations of each party?

Each collaboration agreement is unique so the only authoritative source for the obligations of each party is the agreement the parties have created.

Advantages of a collaboration agreement

Collaboration agreements are not compulsory and take time and effort to draft; however, they can provide significant value to the work you are undertaking, including:

- **Defining objectives and responsibilities:** They provide a transparent framework for defining the collaboration's goals, objectives, and scope. It outlines the specific activities and responsibilities, ensuring alignment and collective efforts toward a common purpose. By establishing clear guidelines, the agreement minimises the likelihood of misunderstandings and conflicts, promoting a more harmonious and productive collaboration.
- **Mitigating risk:** Collaboration inherently involves sharing risks and rewards. However, a collaboration agreement helps mitigate potential risks by outlining contingency plans, mechanisms for sharing risks, and dispute resolution procedures. It allows parties to identify potential obstacles and establish protocols to address them effectively. By clarifying liabilities and risk allocation, the agreement minimises uncertainties and enhances trust among collaborators, fostering a more secure and resilient partnership.
- **Optimising resources:** A collaboration agreement lets parties clearly define the resources they will contribute to the partnership, such as capital, technology or expertise. By combining these resources, organisations can leverage economies of scale and scope, reducing costs and enhancing efficiency. This optimised resource allocation enables partners to pursue projects and opportunities that may have been beyond their capabilities, opening doors to new opportunities.
- **Sharing of knowledge and expertise:** Collaborations bring together diverse worldviews, knowledges, experiences, and areas of expertise. A collaboration agreement facilitates the exchange of knowledges, intellectual property, and best practices between partners. By sharing insights and competencies, organisations can tap into a broader pool of ideas and innovations, leading to enhanced problem-solving, creativity, and faster decision-making.

For First Nations peoples, two way sharing of knowledges brings together traditional worldviews and western perspectives. This knowledge transfer can catalyse innovation and drive competitive advantage by leveraging the strengths of each collaborator.

- **Accessing and expanding reach:** Collaboration agreements often aim to expand reach and access new opportunities. By collaborating with entities possessing complementary strengths and/or having a presence in different sectors, you can tap into new opportunities more effectively. Through a collaboration agreement, parties can define multi-disciplinary and holistic strategies which better support their collective vision.
- **Elevating the initiative's image and reputation:** Collaborating with reputable and established partners can enhance the work's reputation, by leveraging positive perceptions and trust that their partners have built over time. A collaboration agreement ensures the values, ethics, and quality standards align, safeguarding the reputation and integrity of all involved.

Drafting a Collaboration Agreement

Terms and conditions to consider

For general guidance only, we have provided examples of the common provisions that will be included within a Collaboration Agreement. However, every agreement will be different and will reflect and respond to the unique circumstances and needs of the parties involved, including any specific legal and/or tax obligations associated with the type of relationship you have created.

Key terms and conditions to consider include:

- Contact persons
- Decision-makers (this may be different for different areas of decision-making such as finance, strategy, communications)
- Project managers
- Project specialists (i.e. is there an individual(s) with specialists skills and experiences needed to undertake the work)

Key persons

- The nature and scope of the work to be completed
- Any key deliverables and/or milestones
- The process for revision of scope/strategy
- The legal structure of the parties as individuals and the intended legal structure/arrangement they are creating (e.g. joint venture through the establishment of a new corporation, association, contract, etc.)

Scope, structure, and objectives

- The extent to which the parties intend to be bound (regulations, tax, law, fiduciary obligations if applicable, etc.)

Collaboration period and schedule

- Start and end date
- Date of review/renewal
- Due date for delivery of key deliverables and milestones
- Any fixed notice periods to the other party, etc.

The obligations and liabilities of each party

- Resources to be contributed (e.g. funding, staffing, infrastructure, expertise, etc.)
- Division of roles and responsibilities between the parties
- The key accountabilities of each party
- Whether parties will share liabilities or be held separately responsible and if so, under what circumstances.

Key policies and procedures

- Project management processes and responsibilities
- Reporting schedule, hierarchy, milestone and review meetings
- Strategic decision-making processes, approvals and delegations
- Communications processes, approvals and delegations
- Codes of conduct and other performance requirements

Financial management

- Financial contributions of each party
- Financial management, decision-making and reporting policies, processes, approvals and delegations for the project
- Accounting, book-keeping and auditing policies and processes
- Distribution of profit/loss between the parties
- Financial liability of each party
- Financial remedies in the event of a dispute

Confidentiality

Policies and processes for the protection of sensitive and confidential information, including:

- The type and nature of sensitive information likely to be accessed and/or used during the work
- Who is authorised to access and/or use it and under what circumstances

- How will breaches of this be dealt with and/or remedied

*Intellectual
property rights
and Data
Sovereignty*

Policies and processes for the protection of intellectual property rights and Data Sovereignty, including:

- Who will own any property/data created
- Who and how can any property/data be used during the process
- How will the transfer of ownership take place once the collaboration ends
- How will personal and sensitive data collected during the project be monitored, stored, and protected (following the guidelines of the *Privacy Act 1998* and relevant state/territory legislation)
- How will breaches of this be dealt with and/or remedied

*Exclusivity and
non-compete*

- Is there a need to put restrictions in place to protect against other parties trying to poach employees, consultants, key partners and other personnel? Such clauses should specify a time duration after the project during which no talent can be poached by the other parties. These clauses need to be drafted carefully for them to be legally applicable and hence it is advisable to consult a legal expert.
- Can parties work with other external parties or are they in an exclusive collaboration with the other parties to the joint venture? It should also clarify whether and when these parties can collaborate with other entities engaged in similar businesses and/or projects with similar activities.

*Dispute
Resolution*

- The process for resolving disputes (e.g. you may agree to a specified style of dispute resolution, or to work with an agreed third party)
- Any preferred remedies in the event of certain circumstances (i.e. non-performance may incur a fixed penalty)

Termination

- The process for project closure (i.e. how will activities be wound up and project materials and assets be divided)
- The due process to follow in the event of termination (including division of project materials and assets, and in the case of multiple parties, add provisions regarding the process if only one party chooses to exit the contract)

Template Collaboration Agreement

Start of template

Tip: Once you have inserted relevant details within the square brackets below, remove the highlighting, square brackets, and these tip boxes. Any text currently placed in bold should remain bold after you remove these details.

Collaboration agreement

This Collaboration Agreement (here on referred to as the "Agreement") is made and entered into by and between:

[insert Party 1 name] ABN: [insert ABN or ACN number, if you have one] of [insert address] (referred to in this document as **'the 1st party's abbreviated name'**) and

[insert Party 2 name] ABN: [insert ABN number or similar, if you have one] of [insert address] (referred to in this document as **'the 2nd party's abbreviated name'**)

Each is referred to as a "Party" and collectively as "Parties".

1 Duration

1.1 This is a legally-binding contract between [the 1st party's abbreviated name] and [the 2nd party's abbreviated name].

1.2 The contract will apply from [insert date] and will continue to apply until [insert date / certain milestone is achieved / termination by either party on the giving of 1 month's written notice to the other / include date for renewal or renegotiation].

Tip: Numbering each provision is optional, however, it will assist you with referring back to relevant parts of the contract easily within future communications.

2 Purpose

2.1 [1st party's abbreviated name] and [2nd party's abbreviated name] are committed to maintaining a positive and cooperative working relationship.

2.2 [1st party's abbreviated name] and [2nd party's abbreviated name] are committed, where practicable to work collaboratively to deliver [insert project details].

2.3 As part of the parties' mutual commitment, [1st party's abbreviated name] and [2nd party's abbreviated name] will act in accordance with the spirit and intent of this MoU, even though neither party intends that it be legally binding.

12 Signatures

Signed for [insert Party 1 name] by its authorised representative in the presence of [name of witness].

Signature of authorised representative

Name and position of authorised representative

Signature of witness

Name of witness

Date

Signed for [insert Party 2 name] by its authorised representative in the presence of [name of witness].

Signature of authorised representative

Name and position of authorised representative

Signature of witness

Name of witness

Date

End of template

More information

For access to more resources on how to establish your JR initiative, [visit our resources hub](#) on the Justice Reinvestment Network Australia website, or contact the JR Partner team on justicereinvestment@nitione.com.au.