

Joint working agreements

Developing agreements between voluntary or community organisations



What is collaborative working?

NCVO defines **collaborative working** as partnership between voluntary or community organisations. An organisation may work with one other **partner organisation** or may belong to a wider consortium. Organisations can work together in a spectrum of ways from informal networks to joint delivery of projects. They can collaborate for a range of purposes for a fixed time or as a permanent arrangement.

Collaboration should be in the best interests of your beneficiaries, making your work more effective or efficient and contributing to the objectives set down in your organisation's governing document. Trustees are responsible for ensuring that their organisation acts legally and that professional advice is taken where relevant.

How this guidance can help

This document aims to guide organisations developing their own agreements with partners in the voluntary and community sector. While it identifies key areas to include, it does not provide a template. The content of a joint working agreement should be tailored to the specific needs and circumstances of your collaboration, following considered input by the partner organisations and professional advice where necessary.

This guidance is no substitute for legal advice.

NCVO's checklist, *Should you collaborate? Key questions* helps organisations make informed decisions about whether collaborative working will help you meet your aims.

Please visit www.ncvo-vol.org.uk/jointprojects for this checklist and models of the different ways that voluntary or community organisations can work together.

This guidance is online at www.ncvo-vol.org.uk/jointworkingagreements

Joint working agreements

An agreement which covers collaborative working may be known as a

- collaborative working, joint working or partnership agreement or protocol
- memorandum of understanding (MoU)
- service level agreement (SLA)
- contract
- joint venture agreement

SLAs often commit organisations to specific targets or quality standards while MoUs are often used for more informal relationships, but the above terms are not mutually exclusive.

Legal advice is essential to ensure that the agreement you devise meets the specific needs of your collaboration and sufficiently covers your organisation in risk areas. Advice is also recommended on how contract law affects your agreement.



Legal partnerships

Some of these arrangements will create enforceable rights and obligations and others will not. In particular, beware of the word “partnership” as it has a specific legal meaning with profound legal implications. A legal partnership is always created when two or more people work together with a view to making a surplus. The problem with a legal partnership is that partners are jointly and separately responsible for all the partnership’s debts and liabilities. A creditor can sue the more affluent partner, recover its claim, and leave the partner to try and recover the appropriate share of the debt from the other partner(s). If you intend to establish a legal partnership, consider using a limited liability partnership (LLP).

In this publication the word partnership is not used in its legal sense.

Why is an agreement a good idea?

Trust plays an important part in relationships between organisations. However, even where there is trust on which to build, a written agreement can help you avoid misunderstandings. It provides a common reference point, useful to guide the collaboration on a daily basis in addition to occasions when confusion arises. If staff or trustees change, the agreement can be crucial to maintaining mutual understanding and expectations between partners.

It is good practice to define roles and responsibilities and the boundaries that separate your joint work from the ongoing operations of each partner so that all parties are clear. The process of discussing what goes into your agreement is a good way for partners to build their relationship and to develop joint ‘ownership’ of collaborative work.

Your agreement could also be used to explain to funders/commissioners how collaboration works.

How can you determine how formal your agreement should be?

Organisations should identify and assess the risks involved before they start working collaboratively and trustees are responsible for ensuring this is done at a level suitable for the nature and scale of the proposed collaboration. Your joint working agreement should be proportionate to the level of risk in your collaboration and the resources you have invested in it. The greater the risk, the more formal your agreement needs to be. Your trustees have final responsibility for this decision.

Is an agreement legally necessary?

Verbal agreements may have legal standing if challenged, but written agreements are more reliable. If you intend your agreement to be legally binding, then it is, and will almost certainly be subject to contract law. Organisations must determine whether they share this intention at the outset so legal advice is recommended. Partners should understand the extent of the undertakings made in binding agreements.

The Charity Commission publishes guidance on Charities and Contracts
www.charitycommission.gov.uk/publications/cc37.asp

How do you produce your agreement?

It is best to compile your agreement jointly with partners as the process is as important as the finished document itself. The process gives partners the opportunity to get to know each other’s ways of working and to discuss all the areas that are later documented.

- Who will be involved in drawing up your agreement?
- How will you draw it up? Face to face meetings are best to allow for frank discussion, with draft text circulated around all partners.
- Will you use a facilitator who is not involved in the collaboration?

- Do you need to take professional advice? Whether legal or financial, choose a neutral adviser who is familiar with the voluntary and community sector and agreed by all partners. You may also want to take advice as an individual organisation.

Once you have finalised and agreed the text, the document should be formally accepted by a representative of each of the partners. This is usually the senior staff member responsible for overseeing the joint work such as a chief executive and/or your chair or another trustee from each organisation.

This can be done by:

- signing the agreement
- exchanging letters/emails confirming the agreement
- signalling acceptance of the agreement in the minutes of a meeting

Each partner should have a copy of the final agreement and any updated versions that follow.

How can you use your agreement?

Use your agreement as a practical reference tool. It can help you review how well the collaboration is working. This way staff will be more likely to bear in mind how they are working collaboratively in all aspects of their joint work.

- Which new staff need to be given a copy as part of their induction?
- Who do you need to publicise its existence to? Circulating your agreement beyond the staff directly involved in the joint work can help all staff present the work to external audiences.
- The agreement should be a living document. Set dates to assess how well it reflects the way that partners wish to work together and how well the relationship is going. Any changes made to the agreement should be discussed and agreed using the same process as for the original document.

What to include

This list is not a comprehensive guide to the content of your agreement, but considering all these areas will help you reach informed decisions about what to include. Incorporate the content relevant to you. Other sections may need to be added depending on the nature of your collaboration or the requirements of funders.

Introduction

- **Title:** *Type of agreement between Names of the partners for Name of the collaboration/partnership.*
- Explanations of **terms** used.
- Brief outline of **shared purpose** underpinning your collaboration. What are you aiming to achieve together?
- **Specific objectives:** avoid general overarching statements which may conceal differences of opinion.
- Brief outlines of partners' individual vision, mission and values.
- **Benefits of collaboration** to each partner.
- **Duration:** how long will the collaboration last?

The agreement

- What is the purpose of the agreement?
- Do you intend it to be legally binding?
- Does it create a partnership? (see *Joint working agreements* above)
- What activities does it cover?
- Who is it for/relevant to?
- For how long is the agreement valid?
- When and how will you review it?

Roles and responsibilities

- **Expectations:** what is expected from each partner? You may choose to attach specific outputs and delivery timetables separately.

Partner X agrees to...

Partner Y agrees to...

Obligations of Partner X

Service to be provided by Partner Y

- State any **quality standards** you agree to meet or performance measures you will use.
- Outline of **decision-making** process. Consider the number and roles of people required to legitimise a decision. Do you require unanimity?
- Can one organisation make commitments which bind all partners? What are the limits to this? When do partners have the right to be consulted? List the areas where decisions cannot be taken without the express agreement of partner/s.
- **Declarations of interest:** state that partners agree to be transparent on matters concerning the collaboration and to declare conflicts of interest.
- Do you see the **partners** as equal?
- What is the role of the **accountable body**? See *Accountability: roles and responsibilities* below for more detail.
- **Liaison:** who is the designated point of contact for the work in each organisation?
 - How much management time do you expect each partner to give to the collaboration?
- **Staffing:** who will legally employ staff working on your collaboration?
 - Who will line manage them?
 - How will their time be divided between partners? Will they work in more than one location?

Please visit www.ncvo-vol.org.uk/jointstaffing for more on staffing collaborative work.

- If you use a **steering group** to oversee your collaboration, who will sit on it?
 - What will their role be? What decision-making powers will they have? See *Meetings* below.
- What role will your **trustees** have? How much time do you expect them to contribute?
 - Your trustees should discuss the collaboration before it begins as part of their duty to assess risk and ensure their organisation acts legally. Thereafter, the level of trustee involvement necessary depends on the scale of your project. Trustees need to be kept informed, but may not need to actually sign the agreement.

Costs and assets

- Who will source or provide and pay for facilities or support used by the collaboration? E.g. premises, equipment, phone line, consultants.
- Will these assets then become the property of the collaboration, ie. jointly owned, or remain owned by one partner? If jointly owned, can each partner use them? Establishing who owns what will be helpful when the collaboration ends.
- Who has copyright on written material resulting from the collaboration?
- Who owns the intellectual property rights?

Accountability: roles and responsibilities

Your accounting arrangements should incorporate the requirements of your funders. Charities must also account for their collaborative projects in line with the Charities' Statement of Recommended Practice (Charities SORP). Professional advice is recommended to ensure compliance.

Your funder may stipulate that it liaises with just one organisation, the **accountable or lead body**, making them financially accountable to the funder or commissioner for the receipt of funding and the funded work. The accountable body carries the bulk of the risk, but it can share this risk among partners by setting them conditions for their receipt of funding.

- State each partner's specific liability, including liability for the defaults of other partners, as agreed with funders.
- State the responsibilities of the accountable body, e.g. reporting to the funder according to an agreed schedule, circulating reports among the partners for them to sign off before they are submitted.

Other questions for the accountable body include:

- How many payments to partners will you make, of how much and at what intervals?
- Will you make payments subsequent to provision of monitoring data to ensure prompt provision of information?

If there is no requirement for one organisation to act as accountable body, you still need to allocate financial and co-ordinating responsibilities amongst the partners.

Questions for all partners include:

- How will you determine and divide management costs?
- What management charge will be allocated to the accountable body?
- Which partners are undertaking which other costs?
- How will any earned income be divided?
- What will happen to underspent funds, e.g. will they be returned to the project's central funds to be incorporated into next year's budget? Do funders agree to this?
- How often will you review spending?
- When will you agree next year's budget? e.g. by the last quarter of the previous project year.

Monitoring and audit

Partners should agree to:

- keep records for monitoring purposes
- provide certain information at set times in a set format
- respond to additional requests for information, e.g. from the accountable body, direct from the funder or from regulators
- submit copies of annual accounts to the accountable body
- participate in evaluating the joint work to assess how the partnership is achieving its aims

What will the audit arrangements be for your joint project?

What financial information will the accountable body provide to partners to give each party the information it needs for its own reporting?

Other kinds of accountability

There may be legal and regulatory requirements to be met specific to your subsector in addition to the requirements of the Charity Commission and other regulators. For instance, which organisation takes legal responsibility for looking after children, ensuring staff and volunteers are CRB checked, and whose child protection policy is to be followed?

Fundraising

- Will one partner take responsibility for identifying funding sources and securing future grants or contracts?
- How will you co-ordinate this work?
- Will time spent on this be incorporated into payment made to the partner responsible?



Communicating with partners

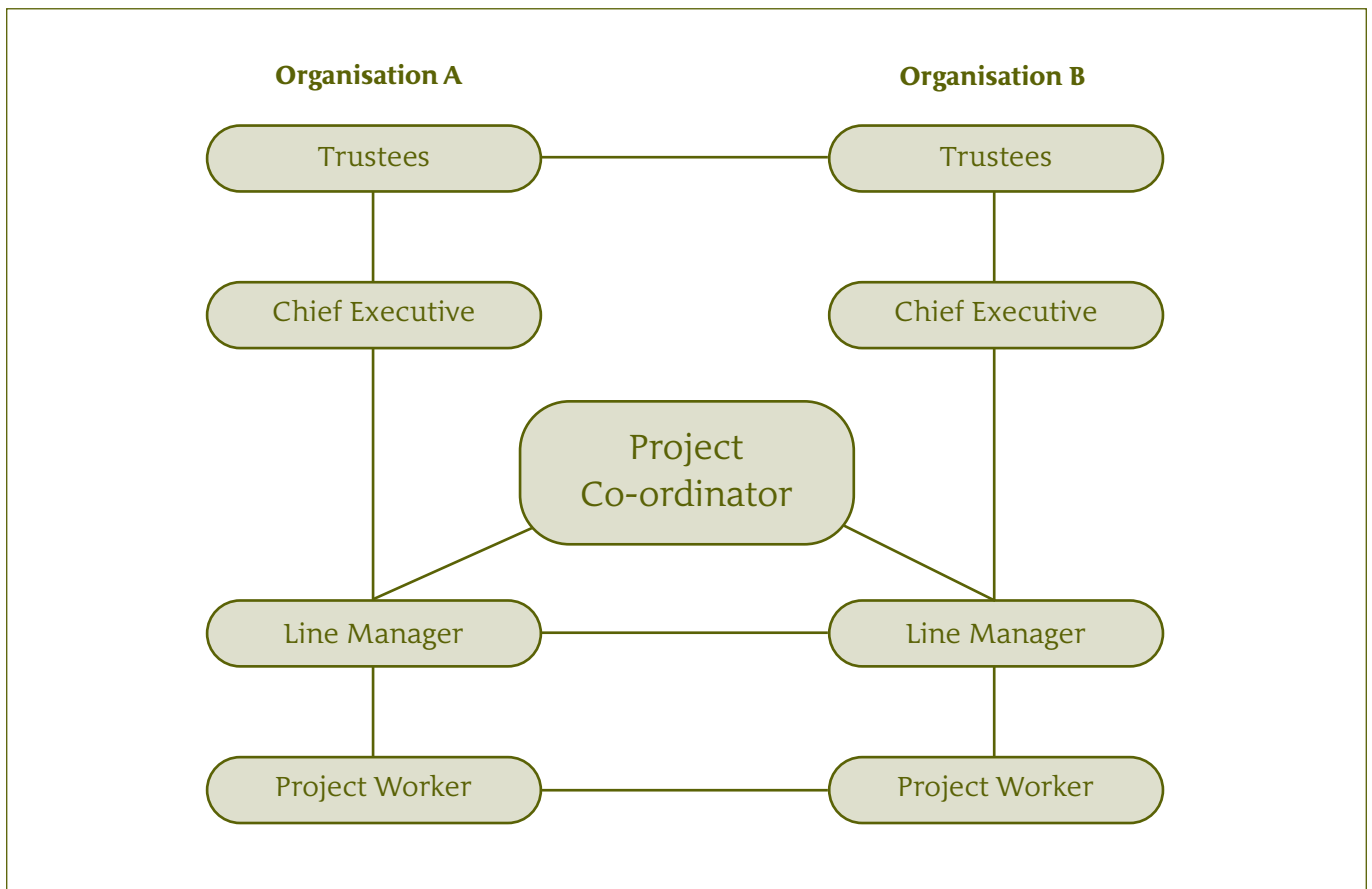
- How will you communicate with partners about the progress of your project?
- Will you share additional information as a commitment to learning from each other?
- How will you make referrals between partners?

- How much information will you share about clients? How will you handle confidentiality?

You need to comply with data protection law: how will you collect, handle, store and use any personal data which needs to be shared among partners?

Who will be told what, by whom, when and how?

Main lines of communication in a joint project – an example



Meetings

As a partnership, you may want to state minimum attendance at meetings as a condition of involvement in a partnership.

- How often will you meet?
- Who is expected to attend?
- Who will chair and note action points?
- Will you undertake to send substitutes when main representatives cannot attend?
- Where will you meet?

Public Relations

- How will you refer to the collaboration in publicity material? E.g. name of collaboration, use and order of logos. Where you need to follow your organisation's own branding policy, make sure all partners discuss what this involves.
- How will you share publicity costs? If partners jointly own a brand, you may want to ensure that each partner contributes equally to the costs of producing publicity material.

Exit strategy

- Under what circumstances will you mutually decide to end the collaboration?
- Under what conditions will your organisation withdraw from the collaboration?
- Who will decide? How will you decide?
- How many months' notice will organisations give their partners?
- What will happen to staff?
- How will you divide assets and liabilities when the collaboration ends?
- How will you handle any costs associated with termination?

Dispute resolution

- How will you address misunderstandings/conflict? E.g. mediation, professional arbitration. How will you pay for this?
- Will you use sanctions if a partner breaches the agreement?
- Under what circumstances would you ask a partner to withdraw from the collaboration?

Centre for Effective Dispute Resolution
www.cedr.co.uk

Legal clauses

Other areas you may consider include the following. Take legal advice on whether and how they apply to your joint work.

- **Right to sub-contract**
- **Right to inspect each other's books and records**
- **Confidentiality**
- **Data protection**
- **Representations and warranties**
- **Indemnities**
- **Force majeure:** removes liability where agreed activities cannot be carried out due to barriers outside the partners' control
- **Legal basis** for the agreement, e.g. *this agreement is governed by English law*

Contact details of partner organisations

Signature

Name

Job title

on behalf of Partner organisation

Date



Further advice and information

Collaborative Working Unit

email collaborate@ncvo-vol.org.uk
telephone 020 7520 2440
www.ncvo-vol.org.uk/collaborate

Charity Commission contact centre

telephone 0870 333 0123
email enquiries@charitycommission.gsi.gov.uk
www.charitycommission.gov.uk

NCVO's HelpDesk

telephone 0800 2 798 798
textphone 0800 01 88 111
email helpdesk@askncvo.org.uk

Local support

Councils for Voluntary Service
www.nacvs.org.uk/cvsdir/
Rural Community Councils
www.acre.org.uk/rcclinks.htm

More guidance on agreements

The Prince's Trust www.princes-trust.org.uk – see *Common cause*, then *Our delivery partners*, then *Making partnerships work*

Partnership between the voluntary and public sectors

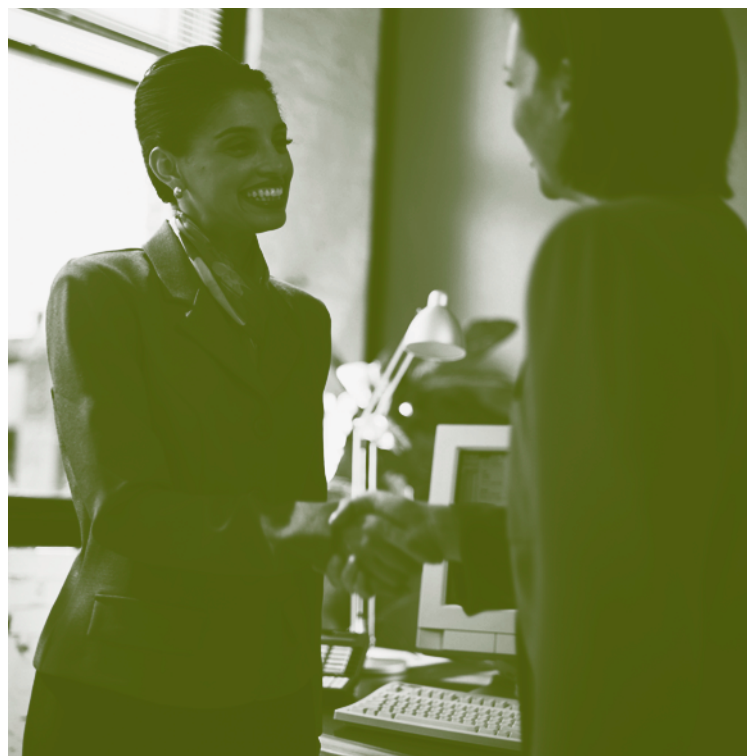
www.ourpartnership.org.uk – see *Guidance*, then *Setting up a partnership*

The Compact www.thecompact.org.uk

The Employers' Organisation for Local Government
www.lgpartnerships.com/resources.asp

Disclaimer

NCVO cannot accept liability arising from reliance on this information. It is for guidance only and should not replace legal advice.



NCVO's CWU

The Collaborative Working Unit offers information and advice to help voluntary and community organisations make decisions about whether and how to work collaboratively.

The Unit serves the managers and trustees of voluntary organisations and infrastructure bodies as well as engaging with funders and policy makers.

The Collaborative Working Unit is supported by the Baring Foundation, the Bridge House Trust and the LloydsTSB Foundation.



The Baring Foundation



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