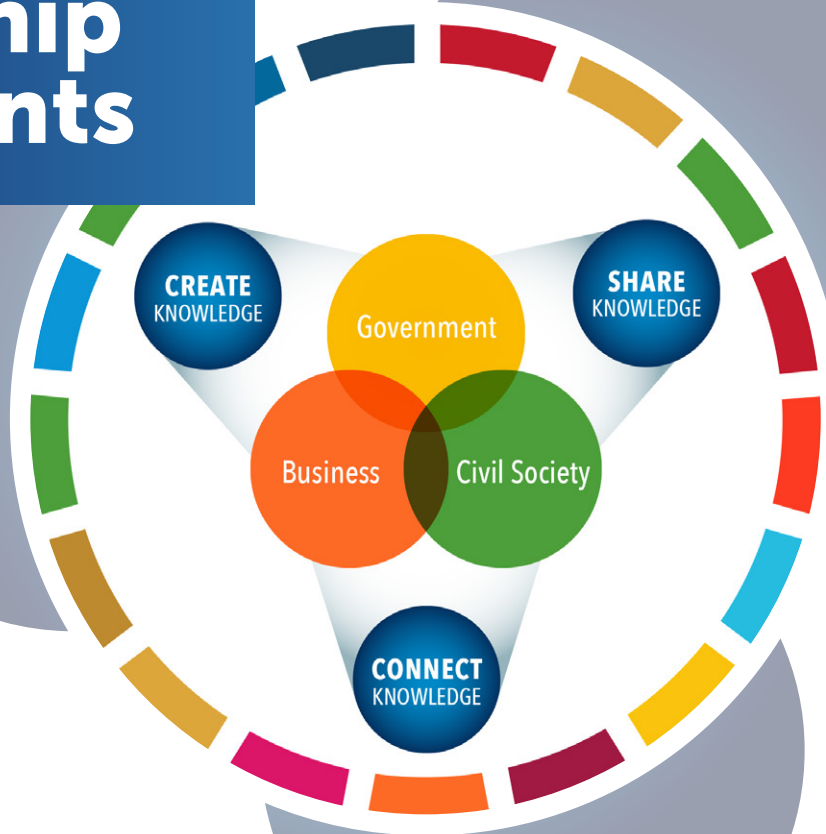


2

PrC Insight Series

Partnership Agreements



THE PARTNERSHIPS
RESOURCE CENTRE

FOUNDED BY

Rotterdam School of Management
Erasmus University

RSM
Erasmus

The **Partnerships Resource Centre (PrC)** at Rotterdam School of Management, Erasmus University is an international centre for research and knowledge about public-private collaboration for sustainable and inclusive development, bridging science and practice. PrC aims to understand how cross-sector partnerships work and how they can contribute to sustainable transformations. Through the **PrC Insight Series**, we share evidence-based knowledge to enhance the effectiveness and impact of partnerships.

#1 WHAT IS A PARTNERSHIP AGREEMENT?

Contracts have an important role in the formation of cross sector partnerships (CSPs)¹ because they enable partners to articulate individual and mutual goals explicitly². Civil society organisations, governments, companies and knowledge institutes that want to collaborate with each other might want to draw up and sign an agreement or contract at some point.

But CSPs cannot be steered by contracts alone. The quality of interaction, managerial activities and trust building between partners are what make partnerships work, and probably make the contract process easier³. Contracts are not a guarantee for success, but they are an important factor in setting out guidelines and rules that can be followed.

2



Partnership agreements can establish the aim of the collaboration, the roles, responsibilities and contributions of each partner, as well as other rules, e.g. how decisions are made, how the partnership will be managed, what happens when partners disagree, and how the partnership may dissolve.

#2 WHY, HOW AND WHEN

We know from practice that negotiations towards an agreement can be very challenging for partners because each partner has different interests, a different work culture – and often a different language. Here we explain why, how and when partners should develop their agreement.

We've included guidance and practical tools for making it fit for the purposes of your partnership. Our information is based on our experiences with developing partnership agreements ourselves⁴. We recognise the perspectives of

both sides; as partners who want to have a collaboration agreement in place for conducting research, and as a researcher or consultant who advises partnerships on their contracts⁵. There's an overview of types of agreements and their characteristics in the Appendix to this document.

#3 WHY DO PARTNERS WANT AN AGREEMENT?

This could be for several reasons:

- Because the organisations involved have a culture of recording agreements;
- It helps to get institutional buy-in;
- It's a way of recognising the contributions of partners and recording the commitment of resources;
- It formalises informal commitments;
- New partners enter the partnership.

In every case, a partnership agreement provides clarity and makes the collaboration formal. What's more, it often involves a comprehensive risk analysis, and it sets out how to address adjustments, conflict, withdrawal and termination.

Partnership agreements usually manage the expectations of partners and their internal and external stakeholders and serve as a reference point for reviews and for accountability.

#4 DIFFERENT TYPES OF AGREEMENTS: WHICH ONE APPLIES?

The status of the agreement – formal or informal, legally binding or not – is not always clear. Legally, contracts and agreements are the same thing, and it's a matter of the applicable law that makes a written contract necessary for a binding agreement or not. Generally, if commitments are made with the intention to be bound by law, then those commitments are binding and recognised in law. If participants do not want to be bound by law, it is best to make this explicit in the agreement.

The choice of a particular type of agreement can depend on the aim of the collaboration, the phase the collaboration is in, or whether partners are non-profits, for-profit, or government organisations. The Appendix contains an overview of different types of agreements against these elements.

#5 THE NATURE OF THE PARTNERSHIP IS CRUCIAL

The nature of the partnership is important for determining the choice of an agreement.



Partnership continuum

*Partnerships can be classified along a continuum⁶. On the left-hand side sit **transactional partnerships**, such as a philanthropic partnership where a company support a charity. They are based on a funding relationship, transfer risks and apply linear accountability. An example is Pampers who donates €1 per pack of diapers to UNICEF's vaccination programme for children.*

*On the other side of the spectrum we find **collaborative or transformational partnerships**, such as CSPs, where partners co-create activities. They jointly formulate goal and direction, determine the contributions needed and share decision-making and accountability, just as the risks and benefits are shared.*

If the collaboration focuses on service delivery or sub-contracted work, then a service agreement in which risks are transferred may apply. For most lawyers and managers, a contract lays down the rules of a transaction.

However, CSPs require an agreement that justifies the principles of co-creation, sharing responsibilities, and obligations.

Examples of collaborative or transformational partnerships⁷:

- A large bank and a nature conservation organisation working together to create value by promoting sustainable entrepreneurship amongst the bank's agri-food clients.
- A fair-trade non-profit organisation joining forces with a global platform of producers and traders to work in several African and Latin American countries, aiming to improve coffee farmers' economic viability.
- A large company specialised in medical supplies partnering with a civil society organisation (CSO) that works to improve the health of girls and young women in Africa, aiming to improve primary health care.
- A multinational in fast moving consumer goods (FMCG) working with a non-profit organisation to test innovations for scaling inclusive distribution in Africa and South-Asia.

#6 WHICH TOPICS ARE USUALLY INCLUDED IN AN AGREEMENT?

Common to every type of agreement are the description of who the partners are, the aim of the collaboration, partners' contributions, its term and termination, confidentiality, intellectual property, liability, an arrangement for dealing with force majeure, and in the case of international agreements, which law applies if a dispute occurs. In a partnership agreement for CSPs, some provisions may need to be worded differently, or provisions may need to be added because of their collaborative nature.

Every section of the agreement needs to be considered according to the information in the agreement's introduction that explains the background of the collaboration and the partners' intentions. Intentions are important because this is where partners state what they expect from each other, and it provides additional information for a judge if the partnership comes under legal scrutiny.



Formulating and composing an agreement for collaborative partnerships:

- What the partnership will do;
- The values and principles underpinning the partnership;
- How the partnership is managed, e.g. organisation of decision making, communication, and the governance structure;
- How the partnership's performance will be monitored and evaluated;
- Who speaks on behalf of the partnership;
- Risk and conflict mitigation;
- A grievance mechanism;
- How the partnership could change or terminate;
- How partners leave or enter the partnership.

Moreover, not everything can be anticipated in advance. Flexibility and the possibility of renegotiations may be relevant for complex relationships such as transformative partnerships – precisely the reason for including arrangements for processes in the agreement. There

are situations and unforeseen circumstances that may have unknown consequences for the partners or their relationship when the agreement is concluded. Here's an example of litigation:



'Agree to disagree'

The partnership contract contained a provision for crisis communication; partners anticipated it might be necessary if there were negative press reports about one or other of the partners, or if a social interest group acted against one of the partners. They agreed on a step-by-step approach.

First, they would immediately inform each other and start a dialogue. Then they would try to jointly

manage expectations and their reputations. They would contact the journalist or social interest group to explain their engagement and to gain information about the topic at hand. The final step indicated that if partners disagreed on the way to progress after this point (if they had conflicting points of view), they could each decide to follow different communication strategies.

#7 NEGOTIATIONS APPROACHES FOR MAKING PARTNERSHIPS

Negotiation is the key process for reaching an agreement. Traditionally, negotiations are characterised by the positions of two parties who both want to benefit as much as they can from a limited amount of resources. However, instead of starting by each partner stating what they want, they could ask each other why they want something; what are their underlying interests? Identifying underlying interests creates a win-win situation in which each partner can get what they want. This is called interest-based negotiation⁸: partners are looking for mutual interests. But consider the risk that only a compromise is reached based on the lowest common denominator. For CPSs *collective vision-based negotiation* might be needed which synthesises interests. This approach takes the problem as point of departure, and out of the box thinking aimed towards negotiating a clear goal, with

realistic resolutions, that are nevertheless based on the interests of all players involved. While interests can – and at times need – to diverge, partners are still able to collaborate. Goal alignment is a necessary condition for partnerships, whereas interest alignment is not⁹.

If done well, the negotiation process itself provides an opportunity for learning how to align goals and build a relationship and mutual trust. Contracting can then be seen as an effort to establish a pragmatic learning process between collaborators. In fact, the negotiation part of the contracting process may create more common ground and further trust. From this perspective, a contract institutionalises the alignment of the partners' interests and sharing of risks.



Commonplace challenges

- Ending it: partners often overlook figuring out how the agreement will dissolve or terminate and forget to put those details in the partnership agreement. It is not easy to consider how something will end when everyone is excited to get it started, but it is important.
- Intellectual property rights: should they be shared or not?
- Control and ownership: who decides about what, and when?
- Confidentiality and exclusivity: can partners enter into similar co-operation agreements with others?
- Liability: who is liable for damages or non-delivery? Are partners liable to each other at all times?
- Conflicts of interests: are partners' roles and contributions clearly defined?
- Applicable law: when different nationalities are involved, which law applies?

In practice, contracting seems challenging when large or public institutions or multinationals are involved. They are accustomed to working within their own frameworks and templates that are not usually designed for collaborating on an equal footing with others. They are often written from the perspective of a leading partner. This can be

addressed pragmatically with an addendum containing amendments to particular provisions that have been agreed by both partners. Or partners can add a Working Agreement: a document with practical arrangements for working together that makes an equivalence between partners.

#8 HOW TO DEAL WITH RISKS

By definition, collaboration is about mutual dependence and mutual risks. Risks to the smooth operation of the partnership include:

- the objective is not concrete enough;
- partner doesn't offer enough support to the partnership;
- partner has improper intentions;
- there's an imbalance of power or interest;
- partner does not keep promises;
- partner presents a falsely positive picture;
- partner withholds information;
- partner has a hidden agenda.

In some cases, these can lead to disruption of collaboration, and could escalate into conflict. So, risk and conflict management should be an integrated part of [the partnership's due diligence](#).

6



A partnership's due diligence

- Apply a structured approach to identifying and mitigating the factors that make achieving the partnership's objectives – the outcomes of its joint project – uncertain.
- First identify all the risks connected to the partnership's areas and activities. Some are more important than others.
- The risk assessment focuses on understanding and reducing a few important risks, and less on listing all possible risks. Be aware that each organisation might view these risks differently.
- Include all partners in the risk assessment process because this helps to build awareness and openness, and it may encourage partners jointly identifying risk areas that might not have been foreseen.
- Make sure that all new agreements between you and your partners are clearly written, easy to find, and are understood in the same way by all partners.

#9 HOW TO DEAL WITH CONFLICT

As a last resort, some partnerships may need a formal process to resolve significant disputes, so consider including provision for mediation in your agreement. Typically, mediation provision comprises two steps:

1. When there's a significant conflict between partners, they meet at the highest management level to settle the dispute amicably.
2. If this does not work, partners engage an external mediator that is approved by both sides. We advise partners to agree on a mediator at an early stage, when the relationship is still harmonious.

If a dispute cannot be settled amicably, partners should consider terminating the partnership. By this stage, the chances of re-establishing trust can be very low.

#10 HOW TO MAKE A PARTNERSHIP AGREEMENT WORK

It is important to recognise that a partnership agreement is distinguished by its function rather than its form. In other words, there is no set template for a partnership agreement but ideally, it will:

- safeguard the interests of all partners;
- set out the basis of the relationship between partners;
- allow for adaptation when there's uncertainty – including if one partner decides to leave;
- include jointly agreed risk and conflict mitigation measures.

And it will do all of this in a way that retains the spirit of a collaborative approach, avoiding over-complex or dry bureaucratic language.

We emphasise that jointly developing your agreement is important so that partners can negotiate based on the purpose and uniqueness of the partnership. Such a process strengthens the relationship and builds mutual trust. This implies that a successful partnership demands strong inter-personal relationships and communication, and it argues for targeted investments in partnership skills among those responsible for the collaboration.



"A successful partnership demands strong interpersonal relationships and communication"

7

#11 WHY IS A PARTNERSHIP AGREEMENT SUCH A POWERFUL TOOL?

Developing a Partnership Agreement should represent a good investment of time, an opportunity for stakeholder engagement and building trust. It is likely to result in a more robust partnership, with a clearer shared understanding of intentions, roles and responsibilities, of the organisational dynamics of each partner organisation, and of the aims of the partnership. What's more, your agreement can serve as a template for future applications, which could save you time in the future.

While contracts cannot guarantee successful collaboration, the contracting process – if you use it purposefully – can increase mutual understanding and learning and build trust. In this way, trust and contracts can be seen as complementary modes of governance rather than alternative. They supplement each other and serve as the foundation for solid and effective collaborative partnerships.



FURTHER READING

A partnerships scorecard

The PrC and The Partnering Initiative ([TPI](#)) published a free tool for helping you to co-create and review partnership agreements. This [partnerships scorecard](#) includes a scorecard with the most important questions that should be addressed when developing an agreement. It includes questions upon which to reflect including:

- who are the partners?
- what is the nature of the problem that the partnership addresses?
- why do we partner?
- what does the partnership want to accomplish and when will it do that?
- how will the partnership be implemented?
- how will it communicate
- what if something doesn't go as planned?

Provisions to include

Building Partnerships for Development ([BPD](#)) devoted a large part of one of their papers to which provisions must be included in an agreement. This [informative and comprehensive paper](#) covers what should be considered when structuring a partnership agreement, such as how the partnership will be managed, how disputes will be resolved, and who represents the partnership. It includes a useful table for discussion topics and other considerations for each component of your agreement.

The partnership broker's perspective

[PBA's](#) Director of Accreditation, Bulbul Baksi, wrote about negotiation in partnerships from a partnership broker's perspective. She emphasised that negotiations are integral part of collaboration and that sometimes conflict and confrontations are necessary to reach an agreement. You can find her article here: [Shaping Sustainable Change](#).

Methodology and practical tools

The [Access2Innovation](#) network promotes cross-sector partnerships and was started branches of the Danish government, The Confederation of Danish Industry, a Danish CSO and Aalborg University. This website provides a [Guideline](#) that offers methodology and practical tools for building cross-sector partnerships, including a [Risk Assessment Guide](#) and a [MoU/Partnership Agreement](#) template.

REFERENCES

1. In this Insight Series we discuss CSPs as a collaborative effort in which parties from different societal sectors (government, business, civil society organisations and/or knowledge organisations) pool resources to provide solutions to grand challenges. For an explanation please see the Introduction to this Series at www.rsm.nl/prc.
2. Schepker, D.J., Oh, W., Martynov, A. & Poppo, L. (2014). The Many Futures of Contracts Moving Beyond Structure and Safeguarding to Coordination and Adaptation. *Journal of Management*, 40(1), 193-225.
3. Amirkhanyan, A.A., Kim, H.J. & Lambright, K.T. (2012). Closer than 'Arm's Length'. Understanding the Factors Associated with Collaborative Contracting, *The American Review of Public Administration*, 42(3), 341-366.
4. For an overview of PrC's research projects, please visit: <https://www.rsm.nl/research/centres/prc/research/>
5. At PrC, when advising partnerships, we use our skills as (accredited) partnership brokers, a role that is relatively new but extremely valuable in guiding partnerships, such as in negotiations. For more information about this role: The Partnership Brokers Association (PBA) is the global standard setter for partnership brokering.
6. Austin, J.E. and Seitanidi, M.M. (2012). Collaborative Value Creation: A Review of Partnering Between Nonprofits and Businesses: Part I. Value Creation Spectrum and Collaboration Stages. In: *Nonprofit and Voluntary Sector Quarterly* 41(5) 726-758.
7. The PrC worked with these partnerships in different learning settings, ranging from a learning evaluation to a learning trajectory in which partners jointly designed the next phase of their collaboration.
8. Fisher, R. and Ury, W. (2011). *Getting to Yes: Negotiating Agreement Without Giving In*, London: Penguin Books (revised edition).
9. Van Tulder, R. (2018). *Skill Sheets*, Pearson Benelux.

APPENDIX

TYPES OF AGREEMENTS AND THEIR CHARACTERISTICS

Legally binding?

Is an agreement legally binding or not? The important thing to know is that neither a Memorandum of Understanding (MoU) nor a Letter of Intent (LoI) have any legal status. Their status depends on your own interpretation. You could enter into a MoU or LoI that describes only cautious intentions without obligations, but you could also enter a LoI in such a way that does result in obligations. This is also

true of the negotiation process. If a partner can reasonably trust that collaboration will happen as a result of statements or behaviour of another partner, then obligations will arise. In general, the Anglo-Saxon system is less likely to accept obligations if they have not been explicitly agreed in writing. In the Netherlands, for example, the focus is on what parties can expect from each other.

Type of agreement	Relevant characteristics per type of agreement	
	What is the aim of the agreement?	In which phase of the partnership it is used?
Memorandum of Understanding (MoU)	Parties agree to jointly examine their potential partnership. Parties sketch out expectations and responsibilities before entering or negotiating definitive agreements.	When parties intend to collaborate and decide to jointly investigate the feasibility of their potential partnership.
Letter of Intent (LoI)	Official start of parties negotiating their collaboration. To provide safeguards in case the collaboration collapses during negotiation. Finalising due diligence. Parts of an LoI: which steps to take in building the partnership, information sharing, whether or not to conclude a nondisclosure agreement (NDA), and an exclusivity agreement.	An LoI describes how and under which conditions parties will negotiate a possible partnership.
Partnership Agreement (PA)	A PA is a contract between partners which sets out the terms and conditions of the relationship, including roles, responsibilities, contributions, the decision-making process, and risk and conflict mechanisms. It's essential for a PA that it takes partner equivalence as a starting point	A PA makes a collaboration formal. It is usually negotiated and signed after partners have been selected and they have gone through a scoping and building phase, identifying their projects.
Purchasing Contract (PC)	A PC is an agreement to use certain products and services on a project. The types of PCs are either fixed-price, cost-reimbursable, or for time and materials.	A PC is negotiated and signed before products and services are delivered.
Collaboration Agreement (CA)	Parties agree to work together in a project aimed at conducting research together and / or developing new products or services. It specifies the intent to share data, research materials and facilities, and defines intellectual and publication rights of research findings or results.	A CA describes the nature of the working relationship and is signed before the start of activities.
Grant Decision (GD)	A GD is a non-repayable fund disbursed or given by one party, often a government department or a foundation.	A GD is made by an authorised body. The funding process is as follows: proposal submission, assessment, decision. The applicant must meet certain requirements called Grant Rules.
Covenant	A covenant is an agreement between one or more parties, from which reciprocal rights and obligations arise. The goal is often an ambitious public issue and the execution is complex. Usually, multiple parties are needed to achieve the goal.	To realise specific public goals such as reducing energy consumption, the co-operation of a whole industry is desirable or necessary. A covenant is signed at the start of activities.
Terms and Conditions (T&C)	General T&Cs are the rules that apply as standard when concluding an agreement. The mutual rights and obligations are laid down as clearly and completely as possible. The primary goal is to prevent conflict.	T&Cs are brought in at the start of contract negotiations.



Type of agreement	Relevant characteristics per type of agreement	
	Which type of partners are involved?	Financial clauses included?
Memorandum of Understanding (MoU)	MoUs are signed for all partnerships with or between civil society organisations (CSOs), companies, governmental bodies and knowledge institutions.	An MoU is an agreement between parties but doesn't have to contain legally enforceable promises or obligations. Parties should address the legal status of their agreement. An MoU doesn't include financial arrangements.
Letter of Intent (LoI)	LoIs are signed for all partnerships with or between CSOs, companies, governmental bodies and knowledge institutions.	Be aware that an LoI may contain binding clauses, including financial clauses.
Partnership Agreement (PA)	A PA can be applicable for all types of partnerships of different constellation (public, private, not-for-profit, non-profit, etc.)	Usually financial agreements and obligations are part of a PA. All PA clauses are legally binding.
Purchasing Contract (PC)	A PC is a legal document between buyers and sellers in a transaction.	A PC includes, amongst others: how vendors are selected, payment terms and conditions, how goods are ordered, paid for, and delivered.
Collaboration Agreement (CA)	An agreement between institutions, e.g., knowledge or research institutions or R&D departments of companies.	Usually, a CA doesn't include financial obligations. However, if an exclusivity clause is included, this is binding and can have far-reaching consequences, including financial ones.
Grant Decision (GD)	The grant provider leads and sets the rules that the recipient must comply with.	The GD consists of at least: application and assessment process, financial and reporting clauses, and delivery of project results.
Covenant	The leading partner is the government, which pledges specific commitment (for example, reducing taxes) in exchange for the sector obligations (such as reducing energy consumption).	The covenant is a 'mixed agreement' with a private law and an administrative law character. It can include financial clauses.
Terms and Conditions (T&C)	Usually brought into a negotiation by large institutions (governments) or multinationals. They consider their T&Cs as a starting point that's sometimes not negotiable or difficult to negotiate.	T&Cs may contain general provisions for financial agreements (for example, default of obligations). For specifications such as amounts or payment terms, then reference should be made to the contract of which the T&Cs are part.

COLOPHON

For an introduction to the PrC Insight Series and the other Insights, please visit:

www.rsm.nl/prc

©The Partnerships Resource Centre, 2020.



FOUNDED BY

**Rotterdam School of Management
Erasmus University**

