Managing

Collaboration Risks:

Partnering with Confidence and Success

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Please note: This booklet is designed to provide general information about collaboration risks based on our many years of experience in handling claims and lawsuits against nonprofit organizations. This booklet is not intended to offer legal advice or counsel. The information contained in this booklet does not alter the terms of any insurance contract or the law of the jurisdiction which is the site of any potential claim or suit. It is the terms and provisions of your insurance contract which provide the scope of the applicable coverage. Because the areas of law constantly change, those using this booklet should not rely on it as a substitute for independent research.

Introduction

In an effort to combat dwindling budgets and vanishing resources while demand for services continues to increase, many nonprofits seek out opportunities to work together in new ways – leveraging resources, sharing strengths, increasing efficiencies and/or reducing overlap of services. Nonprofits recognize that when two or more organizations come together for a common purpose, the organizations and the clients they serve benefit. As a sector, we know that we are stronger together.

Collaboration may feel like a code word for "merger", but that's not the case. Collaborations and partnerships come in many forms. Information sharing, shared grant writing, shared office space and administrative resources, joint programming ventures, organizations advocating together, and even mergers of two or more organizations are just some examples. While collaboration is something that may bring joy to the collaborators and new revenues to the nonprofit involved, it can also spell disaster for a nonprofit. Failed collaborations can affect the ability of the nonprofit to operate effectively in the long run or exhaust the valuable resources of the nonprofit that are needed for mission-critical activities.

All collaborations involve risk. Unlike an activity where the nonprofit exercises control and can direct its staff and volunteers to do and not to do certain things, collaboration requires a heightened level of trust in the other party to do what it has promised it will do. Also of vital importance is open and honest communication.

Another element that makes collaborations inherently risky is that most of them represent an attempt to do something new. They frequently involve a first time effort at addressing a challenge. Many collaborating organizations don't know each other very well and have not worked with each other in the past. This booklet focuses principally on the risks associated with informal collaboration and strategic restructuring activities.

Chapter 1

Building Collaborative Relationships

Collaboration can take many forms, from the most informal agreement to work together on a one-time project, to multi-year joint ventures or a full-blown merger that involves substantial resource shifts and changes in organizational structure. Collaborations can be between nonprofits or a nonprofit and an entity from the public and/or private sector.

In the *Collaboration Handbook*, Michael Winer and Karen Ray define formal collaboration as "a mutually beneficial and well-defined relationship entered into by two or more organizations to achieve results they are more likely to achieve together than alone." There are many ways in which organizations can work together.
The following are examples of types of collaborations to consider:

Cooperation: Informal arrangements and relationships with no change in organizational structure of participating entities. (Example—endorsement of services or affiliation)

Coordination: More formal arrangements and relationships that focus on specific programs or projects and are accompanied by plans and a shared mission. (Example—co-sponsorship by jointly providing a program or service)

Strategic Restructuring: Longer-term, formal arrangements and relationships where separate organizations are brought into a new structure with a shared mission. (Example—forming a coalition by sharing a broader end goal).

Merger: Arrangement in which two organizations become a new entity.

It's important to remember that risk management activities are important in all collaborative environments. Although risk management may be increasingly critical in a formal merger, the failure to pay attention to threats and opportunities in even an informal collaboration could spell disaster.

Cooperation and Coordination

For many nonprofits, informal collaborations provide immediate and important rewards, such as access to information and other valuable resources, recognition by important constituencies, and the ability to offer services and assistance beyond the immediate means or scope of the nonprofit. Examples of information collaborations include information sharing, joint purchasing, sharing staff/co-locating and program coordination.

- ***Information Sharing*** – In this arrangement, two organizations might agree to share information so that the resources of each can reach the constituents of the other. A legal aid program might collaborate with a homeless shelter and domestic abuse shelter so that it can share information on the resources available from these providers with clients who require services in addition to legal aid. The collaboration may be as simple as maintaining a list of other providers in the community and updating the list periodically, or it may evolve into a program in addition to legal aid. The collaboration may be as simple as maintaining a list of other providers in the community and updating the list periodically, or it may evolve into a program

- ***Joint Purchasing*** – This arrangement benefits organizations as their purchasing power will be greater when they work in partnership to solicit bids for products or services. For example, the social services providers in one community may collaborate to hire a public relations firm that will assist in developing a public service announcement to air on local radio stations. The announcement benefits each provider by raising awareness about the services available from the organizations, and the cost is shared among the providers, making the campaign affordable to each. *[NOTE: Members of the Nonprofits Insurance Alliance Group can benefit from discounts through the group purchasing portal. Additional information is available on our secure website.]*

- ***Sharing Staff or Co-locating*** – Under such an arrangement, the collaborating organizations might be able to afford "shares" of state-of-the-art equipment, and under the arrangement each will enjoy access to staff specialists that would otherwise be out of reach to the organizations if operating independently. Specialized or high end equipment may be desirable but too expensive for one organization. Certain positions, such as graphic designer, IT director, human resources manager and risk manager, may be vital to an organization, but only needed on a part-time basis. Staff sharing can be an effective solution to this dilemma. Or a nonprofit may enter into an agreement with a local government that enables the nonprofit to operate out of local community centers. Without these collaborations, the nonprofit's services would be restricted to its headquarters. Under these collaborations, individuals can benefit from local access to services from several locations throughout their community.

- ***Program Coordination*** – A form of collaboration that could include two nonprofits working together to refer prospective clients to the other's services or the joint pursuit of funding and joint delivery of programs. For example, a domestic violence center may invite staff attorneys

from the community legal aid's or bar association's pro bono program to host an onsite legal clinic at their center one day per month.

Strategic Restructuring

Sometimes working with another entity involves more than simply sharing resources or information. From time to time a partnership may require that each organization make changes in the way it operates to accommodate the requirements of the collaboration. Examples include:

- ***Joint Venture*** – The term "joint venture" most often refers to a one-time partnership in which two entities join together, assuming shared responsibility for the success or failure of the undertaking. A joint venture may be limited to a project or by a time frame.
- ***Confederation*** – When several organizations collaborate on a project without relinquishing their legal status or independence, they have formed a confederation.
- ***Fiscal Sponsor*** – Used by newly formed nonprofits, this is a formal arrangement in which an established 501(c)(3) nonprofit sponsors a project that is not yet recognized as tax-exempt under Internal Revenue Code Section 501(c)(3).

Mergers

When two or more organizations discuss the possibility of combining, creating a new entity, or changing one entity to incorporate the other, they are contemplating a merger. The outcome of merger negotiations include:

- The dissolution of two or more groups after these groups transfer their assets, liabilities and programs to a new entity;
- The concurrent expansion of one organization and the dissolution of another. The dissolving organization transfers its assets and liabilities to the surviving entity; or
- The failure to reach agreement and the decision to continue operating the groups as independent, unrelated organizations.

If a new entity is created from a merger, the new entity's name may incorporate the names of one or more predecessor groups, or represent an entirely new label. Mergers involve significant legal and organizational changes and generally result in the creation of a new or substantially different organization.

Chapter 2

Strategies for Successful Partnerships

The most common mistake in developing new initiatives through collaboration is the failure to fully consider the risks of the project or program. When two organizations with different cultures, histories and perspectives come together to accomplish something, a wide range of unexpected events can occur. Even groups that believe at the outset of the relationship that they are like-minded often find the unique cultures of the groups emerge during the delivery of a collaborative effort.

Consider these scenarios:

The motivation of one partner may change over time, and the partnership may no longer be in the best interest of the nonprofit.

A nonprofit enters into a collaboration with a municipal government whereby the government allows the nonprofit to use a small inner-city park for the nonprofit's annual week-long day camp. There is one small building on the park grounds with restrooms, office space, and a small community room. As awareness about the day- camp increases, the number of enrolled campers surpasses the nonprofit's original projections. The park is large enough to accommodate the program on sunny days, but when the weather fails to cooperate with the camp schedule, the small community room doesn't provide enough room for activities that will hold the interest of the young campers. Although it's hard to pass up the "free rent" the city has offered, the nonprofit recognizes that it must move the program to an alternative location or limit enrollment. It decides to move, and finds another site that is owned by another nonprofit and offered for a reasonable rental fee.

One or both organizations realize that they did not accurately project the amount of effort and resources the partnership would require. As a result, the partnership is consuming more resources than its benefits warrant.

Two nonprofits that provide training agree to collaborate and hold joint conferences in select locations across the country. Attendance for the conferences falls short of the collaborators' expectation, but participants give high marks to the training. During a review of the collaboration, the staff involved agrees that the amount of time required to coordinate training schedules, trainers and logistics far exceeds the benefit of holding the joint conferences.

One partner discovers something about the other that makes continued affiliation inappropriate or too risky.

A nonprofit partners with a corporation to develop a campaign that encourages local residents to undergo a test for a treatable form of cancer. The corporation's name will appear on all of the printed campaign materials as well as in the public service announcement. The nonprofit agrees to this publicity in exchange for the company's generous funding of the campaign. When the corporation is embroiled in a scandal alleging misrepresentation of income, the nonprofit decides that proceeding with the company as its partner will attract negative attention to the nonprofit and reduce the ultimate effectiveness of the public education campaign.

One partner fails to live up to the promises made to the other, putting in jeopardy the results sought by both.

Two nonprofits partner to sponsor a 5K run. The event is expected to raise $10,000 and attract 500 runners. The nonprofits agree to split the net proceeds to support their charitable activities. Nonprofit A agrees to design and print 1,000 promotional flyers. Nonprofit B agrees to send its volunteers to businesses throughout the community to post the flyers. Both nonprofits agree to provide 10 volunteers each on the day of the 5K run. One week prior to the event, only 25 runners have registered. Nonprofit A learns that instead of visiting local businesses to obtain permission to post the flyers, Nonprofit B left the stack of flyers at the town's visitor's center. Rather than face embarrassment from low turnout, Nonprofit A decides to cancel the event.

The organizations involved in a collaborative effort discover they are not compatible, perhaps due to a culture clash or personality conflict involving representatives from each group.

A group of nonprofit performing arts organizations started a collaborative marketing effort. The immediate result of the collaboration was that all of the groups spent less to market tickets and ticket sales grew. Unfortunately, a serious dispute began about just who "owned" the patrons in the seats who were now donor prospects. The dispute resulted in a dissolving of the collaborative marketing program.

One or both partners feel that their "brand" has been lost or subsumed in the partnership.

Two nonprofits collaborate on a statewide conference for social workers. One organization is quite large and has the resources to produce eye-catching conference materials, including banners and conference signs. The other nonprofit is comparatively small, and the organization's receptionist is responsible for graphic design and desktop publishing. At the conference, the smaller nonprofit's materials and signs look amateurish next to the professional materials from the larger nonprofit. Several attendees ask whether the two organizations have merged, whether the smaller nonprofit has been "acquired" by the larger nonprofit, and whether the smaller organization is winding down its operations. The staff and board of the smaller nonprofit decide that while providing a meaningful educational opportunity, the joint conference left attendees with the false impression that the smaller organization was declining.

Assumptions made by one or both parties, such as attendance at an event or community support for the partnership, prove erroneous.

A government social-services agency contracts with a nonprofit to provide mentoring services to clients involved in the juvenile courts. When a mentor suffers an injury, the agency learns that the nonprofit hasn't purchased accident insurance and the organization doesn't have the funds needed to cover the participant's medical expenses.

As you establish your partnership, be sure you have clear and aligned objectives. Have you determined what are you trying to achieve together and why? The motivation and goals of the partners don't have to be identical, but candid conversations to discuss them will foster transparency and help manage expectations throughout the process.

Create a plan of action and follow it. Be sure you have measurable goals and evaluate outcomes throughout the relationship. Evaluation will help you determine whether to continue with the collaboration and in what capacity.

Risk Management Checklist for Collaborations

Here are some general tips to keep in mind regardless of the type of organization you hope to partner with.

- ☐ ***Confirm Compatibility*** – Is your organization compatible with your intended partner? Will you violate any precedents or policies by partnering with the organization? For example, is it appropriate for a youth-serving agency to engage an alcohol or tobacco producer (or the subsidiary of one) as a lead sponsor of an educational program?

- ☐ ***Understand Motivations*** – The motivation for a nonprofit may be clear—to raise additional monies for a critical initiative. Your partner may be motivated by a number of factors, including some that may not be obvious, such as the desire to repair a reputation or to target a new constituent group, such as young adults or members of an ethnic minority group.

- ☐ ***Conduct Due Diligence*** – It pays to conduct a minimal level of due diligence before formalizing a partnership. For example, is a business partner a subsidiary of a company that engages in activities your constituents may find objectionable, such as foreign labor or inadequate attention to environmental safeguards?

- ☐ ***Interpret the Message*** – Carefully consider the message your constituents will receive when they learn of your partnership or collaboration. Will they be bombarded with advertising that contains your partner's logo? Will it appear that you have endorsed another nonprofit or company's products or services?

- ☐ ***Clarify Expectations*** – The most important ingredient to a successful partnership is clarity of expectations. Make certain you and your potential partner know and acknowledge what each hopes to get out of the endeavor. If a partner expects an increase in sales to a specific constituency, determine what they expect you to do to accomplish that goal. If a government agency expects 100 percent enrollment, discuss what steps will be taken if some clients refuse to participate. As stated previously, communicate openly and be transparent.

- ☐ ***Put it in Writing*** – All partnerships or collaborations should be put in writing. A written agreement (MOU, contract or other type of formal agreement) is critical. It provides an opportunity to outline expectations and responsibilities, and assign risk to those who will be responsible if something goes wrong. Agreements include a Service Agreement, a Mutual Service Agreement, a License Agreement, a Resource-Sharing Agreement and a Fiscal Sponsor Agreement. The document you create should be appropriate to the relationship/activity. *[NOTE: Members of the Nonprofits Insurance Alliance Group can access an outline for a sample MOU on our web portal .]*

Another common danger is that one or a few of the partners will end up doing most of the work, with some of the groups shirking their responsibilities or failing to meet their requirements. It's unlikely that all participating organizations are able to make their respective efforts equal.

Risk Management Strategies for Successful Collaborations

With care, caution and due diligence, collaborative efforts with other organizations can be an effective way to conserve resources and advance your organization's mission. Another way to think about risk management for collaborative efforts is to consider the steps that should be taken during the phases of the relationship.

Before You Partner

Risk management and common sense go hand in hand when a nonprofit is preparing to enter into a partnership with another organization. The following sections contain some tips for getting it right before you leave the starting gate.

Ask and Answer Key Questions

Before working out the details of a partnership, consider asking the following questions. Your answers will help guide you to a decision to proceed or to look elsewhere for a partner.

- Why are you considering this collaboration?
- How did the idea to collaborate come about?
- Are you confident that there is an audience or demand for the outcome of the collaboration?
- Is the proposed collaboration consistent with your mission? Will the collaboration contribute to the mission or simply generate funds for low-priority or unnecessary activities or services? Are the anticipated outcomes (including products, events, or services) consistent with your mission?
- Does any other group currently provide the product or service that will be developed through the collaboration? If yes, how will your organization compete? Can you both be successful in the space?
- How will stakeholders (donors, service recipients, the public and others) likely perceive the collaboration, particularly in terms of your reputation? Will the collaboration alienate any of the organization's current partnering organizations or supporters?
- Will the collaboration cause an undue hardship on the organization, including your staff?
- How will the success or failure of the collaboration be measured?
- If the partner goes out of business, could the program continue? If not, could it be dissolved without causing a serious negative impact on the nonprofit?
- What are the best and worst possible outcomes of the collaboration? Is the organization prepared for both?
- Will the partnership enable your nonprofit to deliver additional services or reach a wider audience?
- Is the proposed collaboration cost effective? Will the outcomes of the collaboration be worth the investment of time and resources? Does the organization have enough information about the strategy to evaluate whether it will be cost effective?
- Does the relationship require a long-term investment of time or substantial investment of resources?

- What time and resource commitments are you making to this collaboration?
- What “return on investment” do you expect over what period of time? How will success be evaluated?
- Is the proposed collaboration ethical and above reproach?

Work Out the Details

Before you proceed with a partnership, work with your partner organization to hammer out the details of your collaboration. The discussions and negotiations should cover the following points:

☐ ***Point person in each organization***

- Who will do what, and by when;
- Who will pay for expenses incurred to support the partnership; and
- Who will be responsible if someone gets hurt.

☐ ***Put your commitments in writing*** – Discuss the value of a written agreement that documents your commitments. Be wary of a partner who refuses to put partnership details in writing and insists that you proceed with a handshake. As you develop the agreement, here are some issues to consider:

- ***Funding*** – Who will be responsible for coordinating your fundraising? Which partner will be responsible for the receipt funding? How will you explain/describe the joint project in fund-raising materials? How will you handle interim funding needs (e.g., project set-up phase)
- ***Management Structure*** – How are you going to lead and manage the project? How do you get buy-in from the relevant staff and volunteers before the project starts?
- ***Staffing*** – Who will legally employ staff working on the project? How will line management of staff and volunteers be handled?
- ***Communication and Conflict*** (including public relations) – Are all parties clear on the boundaries of the collaboration? When are staff speaking on behalf of your nonprofit and when are you speaking as a ‘group’? How will you manage any dispute between partners?

☐ ***Don’t rush*** – Take the time required to work out the details of your partnership. Until all parties to the agreement have had a chance to ask questions, pose concerns and resolve differences of opinion, they should avoid rushing to move forward. The most important issue is a shared vision of the outcomes of the partnership (e.g.,the number of people who will attend the event, the distribution of net proceeds). When partners have divergent expectations in terms of the results, the chances are slim that both will be satisfied with the outcome.

☐ ***Get support from the top*** – Partnerships with the best chances of success enjoy support from senior management at both organizations. To avoid a situation where management priorities are out-of-sync with the goals of your partnership, seek high-ranking support for the partnership and request that written commitments concerning the partnership be executed by senior officials at both organizations.

☐ ***Resolve the downsides before they materialize*** – Although many nonprofits find it easy to discuss all the positive outcomes that will flow from the collaboration, it is often difficult to discuss how the relationship could sour or what the partners will do if things go awry. However, it's essential to have a discussion about possible misfires, incidents and harm before they occur. Both parties to the collaboration should discuss the following "what ifs" and make certain that the organizations are in agreement about what will occur in the event one of these down- sides occurs:

- What if someone gets hurt?
- What if the event/program is under-subscribed?
- Under what circumstances will we cancel? Is there a time deadline for doing so? What if one partner decides not to continue with the partnership? May the other party "go it alone" and continue with the program or must the effort be abandoned if one partner backs out?

During A Partnership

☐ ***Act promptly*** – While the partnership is active, the nonprofit should act promptly if the key contact at your partner is unresponsive or appears unable to fulfill the requirements or duration identified in the written agreement.

☐ ***Communicate often and openly*** – Make certain that there is a process that encourages representatives of the partners to communicate as often as is necessary to keep information flowing between them. Partners should be encouraged to call on each other if problems or concerns arise or if one partner wants to make a change in the program or pursue a different course from the one that the parties agreed to at the outset of the collaboration.

☐ ***Fulfill your part of the bargain*** – Make certain your point person supervises the activities your nonprofit agreed to provide. See that they are done to specification, on-time and within budget. Your point person can work out any discrepancies with the point person for the other nonprofit to avoid delaying the project.

After the Partnership Concludes

☐ ***Review the partnership*** – Before the dust settles on a collaborative effort, take some time to review the processes used, expected and unintentional outcomes, and the ups and downs of working with your partner. In some cases, the lead representatives from both organizations will get together for this review. If the collaboration wasn't successful or there was a disagreement or falling out, you may want to undertake this review alone. As part of this review, consider asking:

- Did we achieve the principal goal of the collaboration? To what degree (100 percent, 50 percent)?
- What went especially well with the collaboration, and why (e.g., partners were open with each other, representatives got along well)?
- Did anything go wrong? If so, what could we have done, if anything, to prevent it?

☐ ***Review the written agreement*** – When the partnership or activity in which the partners are involved has concluded, the written agreement used for that collaboration should be reviewed:

- Were there other areas that we should have discussed and put in writing before the partnership began? If so, would they be applicable to other partnerships?
- What modifications to our agreement would improve the value of this document in a future collaboration of this type?

☐ ***Review the potential for future collaboration*** – Consider whether your nonprofit would entertain partnerships with this organization in the future. The following questions could apply:

- Under what circumstances would you partner with this group again?
- What would you do differently if collaborating with this group again?
- Are there similar groups that would be suitable partners for future collaborations? If yes, who are they? If not, why not?

Chapter 3

Special Collaboration Considerations

Collaborating With Insiders

Nonprofits often collaborate with "insiders," such as board members, friends or relatives of the nonprofit. Doing so may be necessary for small start-ups. Although they have more options and more developed networks of contacts, larger, more mature nonprofits may determine that collaborating with insiders is in the best interests of the nonprofit. For example, a board member or relative of a staff member may have special or unique skills the nonprofit requires, and be willing to offer these skills at a reduced price to the nonprofit. A board member or donor may also offer his or her home as a site for the nonprofit's upcoming fundraiser. The reasons to collaborate with insiders include:

☐ The comfort level of working with someone or an organization you know, particularly when the project is of great importance or special significance.

☐ Services, support or assistance can be obtained for less than the market price.

☐ There is no steep learning curve when you work with an insider—your partner is familiar with the organization and won't need time to understand the culture, decision-making process or mission of the organization.

Risk Management Strategies for Familiar Collaborations

When collaborating with insiders, it's important to consider the following risk management precautions:

☐ Select key contacts from each organization that pose the most limited conflict of interest. For example, if Nonprofit A and B are collaborating, and the president of Nonprofit A is the board chair of Nonprofit B, then someone other than the president of Nonprofit A should be the key contact from that group. Otherwise, Nonprofit B may feel undue pressure to please Nonprofit A and not forcefully advance the mission of Nonprofit B.

☐ Don't rely on a longstanding relationship and good feelings and forgo a written agreement memorializing the partnership. When you're comfortable with a potential partner, there's a tendency to want to skip the formal process and move straight into implementation. This is generally unwise. A written agreement helps both parties stay on course and live up to their commitments.

☐ Settle differences promptly. If something goes awry (missed deadline, contention), stop action and clear the air. Petty squabbles could develop into a ruined relationship. With insider collaborations, there is more at stake than the one-time project or event. You risk offending or, at worse, severing a long-term relationship if disagreements aren't aired and a mutually agreeable conclusion found.

☐ Make sure the deal is in the best interests of the nonprofit—obtain approval from parties independent of the key players.

Business – Nonprofit Collaborations

Business and nonprofit collaborations can yield valuable dividends for a nonprofit. However, even the best thought out collaboration can encounter difficulties. Some of the potential negative consequences of entering into a partnership with a for-profit entity include:

- ***Wasted resources*** – You could spend lots of money and time on an endeavor that doesn't produce the expected results.

- ***Reduced donations*** – Other funders may see a splashy corporate-funded educational or other program and believe that your organization no longer needs additional financial support.

- ***Loss of organizational flexibility*** – A significant part of your operation and a lot of energy may go into making a program work, leaving you with less time and fewer resources to focus on your mission.

- ***Tainted partners*** – Even with appropriate due diligence, there is always the risk that the affiliated company suffers a public relations nightmare. Your name could also get dragged through the mud.

- ***Antithetical marketing*** – The company's marketing strategy, product line, or reputation could be inconsistent with your message and mission.

- ***Overwhelming success*** – The program could become so successful that it becomes the dog and everything else you do is the tail. Are you a charity providing mentors for inner-city kids, or a sales force for an athletic apparel company?

- ***Structural atrophy*** – So much effort may be required to make this arrangement work that other departments, units, and programs start to suffer from neglect.

It is a good idea to develop a policy that guides the consideration of collaborations. This will help your organization during the early stages of determining if it should move forward in a relationship. Consider including the following elements:

- A provision explaining how the organization will deal with conflicts of interest – such as when a business relationship is considered in which a member of the nonprofit's board has a personal interest.

- The need to determine whether your organization intends to exclude any business or category of business from consideration for collaboration because of the business's products and/or services.

- What restrictions apply with respect to the use of your organization's name and marks?
- What restrictions or conditions apply with respect to the manner in which the business may promote its relationship with your organization and whether your organization requires that its approval be obtained in advance?
- What are your organization's standards for recognizing business supporters/partners?
- Will your organization entertain offers of exclusive partnerships or collaborations?

Insurance Considerations and Checklist

The topic of insurance is a common area for collaborators to assume things about their partner that turn out to be untrue. It's not unusual for one partner to assume that the other partner's insurance coverage will protect everyone involved in the collaboration. Don't let this happen to you.

First, never assume that your partner has you covered. Second, never assume that your existing insurance program is adequate. You must clarify, investigate and put your expectations and requirements in writing. The following checklist will help you get started in identifying insurance considerations for your next collaboration.

- ***Will the collaboration involve the rental or purchase of property?*** If yes, determine who will be responsible for insuring this property.
- ***Will automobiles be used in the delivery of services under the partnership?*** If yes, do the vehicle owners have insurance? Keep in mind that "insurance typically follows the car" and vehicles owned by employees and volunteers may be used. This means that the vehicle owner's coverage usually responds first and the organization's non-owned auto insurance applies only after the individual's insurance is exhausted or unavailable.
- ***Does the collaboration agreement contain a mutual indemnification clause?*** Does each party agree to be responsible for their own negligence and indemnify the other for legal expenses and claims based on its negligence?
- ***Does the collaboration create any special committees or governing groups?*** Are the management acts (decisions) of these groups covered under one or both partners' directors and officers liability insurance?
- ***Will the partners rent facilities as part of the collaboration, or use each other's facilities?*** Landlords often require that organizations that rent facilities provide proof of insurance coverage, so that the user pays for claims for liability or property damage.
- ***Will the collaboration involve the use of equipment?*** Make certain that insurance coverage is in place to pay for damage to property caused by any person exercising control over the equipment.
- ***Does the collaboration involve the delivery of professional services (e.g., medical, counseling, legal services)?*** If so, do one or both partners have appropriate professional liability insurance to cover claims alleging errors in the delivery of professional services?
- ***Will the collaboration involve the collection and transportation of money?*** If so, verify that these activities are covered under the appropriate crime insurance policy. Keep in mind that crime policies may only cover theft by employees of the insured.

- ***Does the collaboration involve service delivery to vulnerable clients?*** If so, will those services be provided on a one-to-one basis or otherwise unsupervised? Unsupervised or one-to-one service delivery to vulnerable clients (e.g., children, the elderly, or persons with disabilities) heightens the risk associated with the staff or volunteer position. As a result, a more rigorous screening process is in order, and the organization retaining these personnel should make certain that its insurance program includes coverage for allegations of sexual misconduct/abuse.

- ***Does the written agreement indicate whether each partner has insurance coverage at a specified limit?*** Remember that promises to indemnify are hollow unless backed by the ability to pay another party's legal costs. For most nonprofits, insurance backs the promises to pay. Here is an example of insurance requirements for a party agreeing to indemnify another:

Sample Insurance Requirements

1. Commercial General Liability policy in the amount of at least $1 million combined single limit for each occurrence, written on an occurrence form.

2. Auto Liability policy including coverage for owned (if any), non-owned and hired vehicles in an amount not less than $1 million.

3. Workers' Compensation Coverage covering all employees working on the collaboration and having statutory limits for each jurisdiction where the work under the collaboration is performed, and an Employer's Liability policy with at least the following limits: $250,000 per accident and $500,000 per disease.

4. Willingness to name [Name of Partner Nonprofit] as an Additional Insured on all applicable policies and provide valid Certificates of Insurance indicating coverage.

Appendix A

Drafting an Agreement

An effective agreement prevents misunderstandings and disputes by clarifying the expectations of the partners. The process of developing an agreement is an instructive and potentially invaluable experience in partnering. You will learn how responsive your partner will be—are your calls returned promptly? Does your partner give the partnership the attention and seriousness it requires? You may also learn how your partner reacts when you disagree on an issue. In many cases, you will learn vital information such as:

- The corporate structure of your partner (don't assume!);
- Whether your partner has liability and other types of insurance;
- What specifically the partner is willing to promise (ambitious projections may dissipate as your partner commits to something realistic);
- What aspects of the project your partner is willing to be responsible for;
- How each organization will assess or evaluate the success of the project; and
- Your partner's overall commitment to the project.

The refusal to put anything in writing is a red flag and may be the sole reason not to proceed with the arrangement.

There are a number of elements that should be contained in a typical agreement. As noted earlier, there are a variety of types of agreements. Since each project and its partners are unique, you will need to craft an agreement appropriate for your collaboration. The following suggestions are provided as an example of elements in a Memorandum of Understanding (MOU) or Service Agreement. As with any contract, it's critical to obtain legal counsel before obligating your nonprofit.

Overall Intent: Many agreements begin with a brief description of the overall intent of the parties, such as,

> *"Whereas the mission of We CARE is to provide hot meals to homeless persons living in the District of Columbia, and the mission of We DELIVER is to deliver food to homeless persons living in the District of Columbia, the organizations hereby agree to collaborate in developing an integrated food preparation and delivery system beginning (Mo/Day/Yr)".*

The overall intent clause must accurately reflect what the parties are intending to do. Ulterior motives have no place in effective partnerships.

The Parties: The next clause describes the parties to the agreement. It should be specific in indicating the types of organizations ("a nonprofit corporation headquartered in the District of Columbia").

The Period: Specify a time period for the partnership.

Assignments/Responsibilities: This important section of the agreement describes the duties and responsibilities of each partner. It's generally more effective to describe each organization's responsibilities separately, beginning with the items that are an organization's sole responsibility.

List each group's sole responsibilities, followed by a description of shared responsibilities, if any. In many cases, this section of the agreement will be the most detailed and lengthy. Clarifying responsibilities is the number one purpose of a written agreement.

Disclaimers: Many agreements will contain one or more disclaimers, including one indicating that employees of Organization A are not to be considered employees, borrowed or otherwise, of Organization B and vice versa. It may also be worthwhile to disclaim what the partnership is not intended to do, guarantee, or create.

Financial Arrangements: A typical partnership will have financial implications. These should be spelled out in detail including which entity will pay for each item and when payment is due.

Risk Sharing: Another critical element of an agreement is a description of who will bear the risk of a mishap. What if something goes wrong? What if the partnership's activities result in injury, death or a financial loss? An important tenet of risk management is that an organization should never assume responsibility for something over which it doesn't have control. For example, a non-profit renting a building to hold a dinner meeting shouldn't assume responsibility for the damage caused by a leaky roof. A formal agreement may include an indemnification provision, promising that Organization A will pay for losses suffered by or caused by Organization B. Ideally, indemnification provisions should be mutual in that each party will be responsible for its own negligent acts or omissions. Remember that an organization's agreement to indemnify your nonprofit without the financial resources (including insurance) to meet this responsibility is a hollow promise. So make certain your partner is not only willing but also able to pay for losses it causes. An "insurance requirements" section is one way to do this.

Insurance Requirements: This section indicates the insurance requirements that each organization places on the other. In some cases, one organization will require that its partner have certain insurance in place. If the parties have agreed to a mutual indemnification provision (see Risk Sharing, above), the insurance requirements should be bilateral. For example:

The parties to this agreement hereby agree that each will maintain insurance throughout the duration of the collaboration, that meets or exceeds the following:

- *Commercial General Liability policy in the amount of at least $1 million combined single limit for each occurrence, written on an occurrence form;*
- *Auto Liability policy including coverage for owned (if any), non-owned and hired vehicles in an amount not less than $1 million;*
- *Workers' Compensation Coverage covering all employees working on the collaboration and having statutory limits for each jurisdiction where the work under the collaboration is performed, and an Employers' Liability policy with at least the following limits: $250,000 per accident and $500,000 per disease.*

  In addition, each party to this agreement will name the other party as an Additional Insured on all applicable policies and provide valid Certificates of Insurance indicating coverage.

Signatures: *A representative from each partner, who has authority to bind the organization contractually, should sign the agreement.*

Appendix B:

Member Resources

Booklets

Written specifically for the nonprofit reader, our booklets explore liability issues faced by most nonprofits.

- Directors & Officers (D&O) – Key Facts About Insurance and Legal Liability
- Sound Advice for Functions & Events
- What Nonprofit Leaders Need to Know About Lawsuits

NOTE: Non-member organizations may request a single copy of our booklets or download a PDF from our website.

Loss Control Consulting

Free assistance with issues such as background checks, safely managing facilities and fleets, drafting and reviewing waivers, staff training, volunteer management and much more. If we don't have the answer, we find it for our members through our various resources.

My Risk Management Plan

A web-based interactive program to help you develop a customized risk management plan that reflects your organization's needs, priorities and culture. Free for members.

Risk Management Forms and Templates

Members can take advantage of an extensive library of downloadable forms, templates and information available on our web portal.