

# Negotiating and Managing Effective Partnership Agreements in HIV/AIDS Organizations and Programs

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# Introduction

From their earliest days, AIDS Service Organizations have had to contend with limited resources, and have forged ties with other service providers in order to maximize resources and best serve their clients. The Ontario Organizational Development Program (OODP) has prepared this document to help organizations strengthen these ties through formalized partnership and sponsorship agreements. The value of using more formalized partnership and sponsorship agreements is elaborated in the following sections.

**Please note this is not a legal document but is a resource that must be used in conjunction with legal counsel.**

## 1. Getting Started

### 1.1 From informal to formal, verbal to written

For most small to medium-sized non-profits, “partnering” with another organization has traditionally been an informal arrangement. Often, it has meant little more than the occasional meeting of Executive Directors or Program Directors to share information or resources, or discuss community trends.

However, many organizations have made these partnerships more formal and for good reasons. Increasingly, deeper partnerships are developing in which staff from one agency is located in the other; where programs are operated collaboratively; or even when community planning happens collaboratively.

In these cases, if agreements are made verbally, or arranged informally through a series of emails or in person meetings, successful outcomes are difficult to achieve and to maintain. Problems can easily arise related to misunderstanding, false assumptions or unanticipated complications. Verbal or email arrangements have depended on the good will of existing staff, and this has meant that the partnership can be transient, easily broken when one agency decides independently that its priorities have shifted, or when there is a change in management or staff.

Furthermore, in Ontario, community planning has happened in all parts of the province, and in many of these areas, new or enhanced alliances between organizations have developed. AIDS Service Organizations are recognizing the need to adapt to current environments and so are looking for more accountability in their partnership agreements.

For these reasons, more and more, non-profits are entering into formalized, written partnership agreements in order to better serve their stakeholders.

## 1.2 Why should AIDS Service Organizations partner?

The motivation for partnering remains the same as always. Agencies, and in particular AIDS Service Organizations, engage in partnership agreements to:

- ✚ Better serve clients – by helping them get a more seamless continuum of services, or by bringing disparate services to a common physical location;
- ✚ To increase organizational capacity. For instance, a service provided by one agency might not be accessible to clients from a particular cultural community. By partnering with an agency serving that community, cultural expertise can be melded with experience in a particular type of service delivery. Both organizations gain.
- ✚ Share resources in a scarce funding environment.
- ✚ Achieving synergies – When agencies partner, 1 + 1 often equals 3 or 4, with a very small investment in additional dollars, and sometimes no additional investment. Organizations involved in service partnerships speak of “the magic” that occurs, either because their burden has decreased, or because they’ve served more clients or provided additional services;
- ✚ Avoid duplication of service; and satisfy funder requirements or anticipate future funding trends.

### 1.3 Why a partnership *agreement*?

Formalizing partnerships can raise our expectations of outcomes. A good partnerships agreement provides a clear roadmap, avoids future problems, and ensures continuity that survives beyond current staffing.

A partnership agreement, and the process used to negotiate it, can:

- Clarify objectives for all parties;
- Clarify responsibilities/ contributions of each party, including financial, human resources & space or other in-kind allocations;
- Spell out communication protocols;
- Spell out how project/ initiative decisions will be made;
- Predict or anticipate (and hopefully avoid) where difficulties might arise, before they arise;
- Protect organizations against liability;
- Define the beginning and end of a partnership; and
- Spell out a dispute resolution process.

The benefits of these positive outcomes will become clearer in Section 6, where sample clauses enumerate the components of a sound agreement and provide wording that can anticipate solutions to potential problems.

## 2. Partnerships and Agreements

The joint AIDS Bureau and ACAP OCHART document, that is utilized by all AIDS Service Organizations that receive funding from one or both of these sources, has defined three types of partnerships. In addition, there are other kinds of arrangements that are called partnerships, but which are really sub-contractual or fee-for-service arrangements. These are not dealt with in this document.

### 2.1 Different Types of Partnerships

#### 1. Consultative

In a consultative partnership, organizations share information. Activities include: provision of information, resources, referrals, or skills development.

For example, if an AIDS service organization refers clients to the local community mental health association for mental health services and in the process shares information about that client, then that is a consultative partnership. In this kind of informal arrangement, which usually does not have a written partnership agreement, the advantages are that without significant structural changes or input of resources, organizations can improve services to their users. Through the establishment of better linkages and agreed upon processes (and sometimes common forms), service users can see a more seamless delivery of programs.

On the other hand, these partnerships are highly dependent on the enthusiasm and continuity of the existing staff – they can easily fall apart, or shift. Ways to minimize this risk are to implement regular meetings to discuss the collaboration, and ensure that this partnership becomes part of annual workplanning.

## **2. Operational**

In an operational partnership, organizations share work, financial and other support according to the agency's capacity. They work together to meet goals and objectives. A formal or service agreement may exist. Activities of this type include arrangement regarding space for meetings or joint fundraising events.

For example, if a community-based AIDS organization negotiates with the local community mental health association to have staff work together to plan and run depression support groups together for people with HIV, that is an operational partnership.

## **3. Collaborative**

In a collaborative partnership, organizations share decision making by developing consensus among partners and responsibility for outcomes is shared equally among partners. A formal service agreement usually exists. An example of this might be the coming together of two organizations to deliver a common HIV prevention program for a shared client group. (An operational partnership can have elements of a collaborative partnership, in that decisions may be shared using consensus etc.)

For example, if a community-based AIDS organization and the local community mental health association work together to assess the mental health needs of people with HIV, agree on common goals and desired outcomes, develop a plan/agreement to use both organizations' staff/resources to address client needs, and are both accountable for implementing the plan and achieving the outcomes, that is a collaborative partnership. If organizations form a network or coalition to respond to an issue and all members contribute staff time and other resources, and share in decision making and accountability, that is a collaborative partnership.

*Note: For the purposes of contracts funded by the Public Health Agency of Canada's AIDS Community Action Program, the main distinction between the operational and collaborative is that in a collaborative partnership there is a service agreement that exists and there is shared decision making.*

## 2.2 Sponsorship Agreements (a form of Collaborative agreement)

In a sponsorship, one organization uses its resources, reputation, structures, and most often its incorporated status and relationship to funders to sponsor another autonomous group that requires its support because it is not incorporated and therefore cannot receive many types of funding.

Often, these arrangements are made because the opportunity for funding exists, but the funder requires the assurance that an incorporated agency will be the transfer-payment agency so that there will be certain checks and balances. An example of this is the AIDS Committee of Toronto's sponsorship of Positive Youth Outreach, or VIVER (the Portuguese-language outreach service). Each has its own advisory committee, and there are signed agreements for both. Signatories for the sponsored and sponsoring organizations are members of the respective advisory committees.

Sometimes, sponsorship agreements take the form of a satellite location in a different community. For instance, the Access AIDS Network sponsored a satellite location in Sault Ste-Marie.

The sponsorship relationship may be temporary or longer-term, but must be accompanied by an agreement. **See Appendix E for a template of a Sponsorship Agreement.**

## 2.3 Important considerations for organizations considering becoming sponsors:

### 1. The agreement's non-binding nature:

This is perhaps the most important consideration. Because the organization being sponsored likely has no legal status (i.e. it is not incorporated), the signature on the sponsorship agreement is symbolic of a commitment by the steering/ advisory committee, but not legally binding on the sponsored organization. This means that the incorporated organization

becomes wholly accountable for the activities and funding. However, your organization can be held to account for its commitments if you are in breach of the agreement.

## **2. Difficult to maintain separate services:**

It may be difficult to keep services, and indeed planning for services, separate from your mandate, especially over time, and if services are provided in the same physical location as your core services.

## **3. Be aware of possible additional commitments:**

Even though a specific pot of money may be attached to the agreement, you may be called on to provide additional resources: in-kind support, fund-raised dollars, etc., even if this is not in the initial agreement.

## **4. Union issues affect authority of steering/ advisory committee:**

If staffs, of the sponsored organization, are to be part of the collective bargaining unit of the sponsor, the steering/ advisory committee for the sponsored organization should be made aware that there may be restrictions to its authority. For instance, the collective agreement may stipulate; an internal posting process; rates of pay; probationary periods; termination clauses; benefits, hours of work; or other legally binding employment clauses.

## **5. Planning challenges:**

If staff of the sponsored organization become part of the sponsor's larger staff team, and if service planning occurs as part of the sponsor's regular processes, there must be a constant and easy connection with the sponsored organization's steering/ advisory committee. Otherwise, this steering/ advisory committee's role will be minimized. Once this staff become part of another organization, different employment policies and practices may apply. Also, the sponsor's agency may assume liability for the sponsored staff in accordance with the Ministry

of Labour, the Employment Standards Act, the Ontario Human Rights Code and the Occupational Health & Safety Act.

## **6. Space considerations:**

If funding is not available to rent a separate office for the sponsored organization, consider whether or not the physical location of the sponsor will be acceptable to the sponsored organization's service users. Having staff work off-site does not necessarily imply that they are exempt from membership in a union or specific policies and procedures

In addition to these considerations, the Public Health Agency of Canada has certain criteria for Sponsors, and for Sponsored Agencies. See Table 2 on page 13 for the guidelines used for funding proposals/applications.

## 2.4 Table 2: Public Health Agency of Canada Guidelines for Sponsor and Sponsored Applicants

In support of mentoring relationships between Sponsors and their partners, Sponsors can also submit proposals for satellite sites, sponsored agencies, sponsored programs, or sponsored coalitions (the Sponsored Applicant). As Sponsored Applicants, the satellite sites, sponsored agencies, sponsored programs, or sponsored coalitions will be responsible for ensuring the successful delivery of the proposed work.

A signed agreement between Sponsored Applicant and Sponsor is required in the proposal. This agreement should outline the commitment of roles and responsibilities and be signed by both the Sponsor and Sponsored Applicant. 10 copies must be collated and included with your application.

Sponsors can also submit for its satellite sites that are outside of the geographic region of the organization. For example, Access AIDS Network can submit for its site in Sault Ste-Marie for Time-Limited Project Funding (this satellite arrangement no longer exists September 2011).

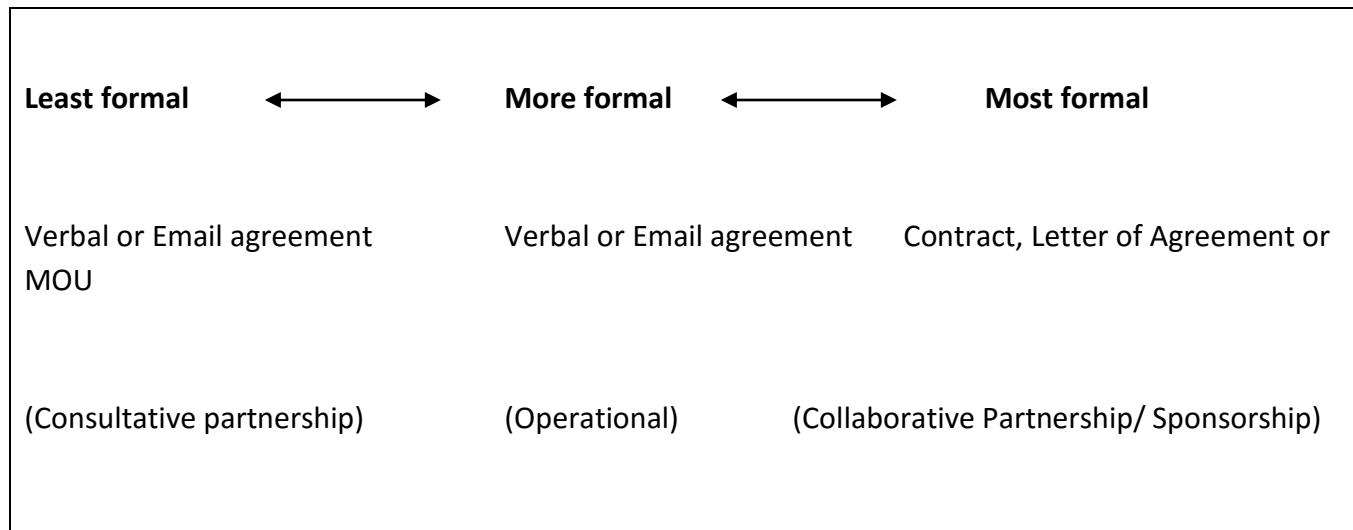
The criteria for Sponsored Applicants are:

- The sponsored applicant is a voluntary, non-profit, non-governmental organization actively dealing with HIV/AIDS issues.
- The sponsored applicant should be autonomous and accountable to a group of people that are independent of the sponsor organization like a board of directors or an advisory committee.
- The sponsored applicant must not be receiving core funding (e.g. salary and rent) from the sponsor organization. Special care should be taken to ensure sponsors' core programs are not confused for sponsored programs.
- The sponsored applicant must be mandated to operate in Ontario only. Organizations with a national or international mandate or from other provinces are not eligible.

In addition, there are other kinds of arrangements that are called partnerships, but which are really sub-contractual or fee-for-service arrangements. These are not dealt with in this document.

## 2.5 Different kinds of agreements (how formal or informal)

The agreement should model itself on a legal contract, and a letter of agreement or memorandum of understanding (MOU) is advisable.



It doesn't matter if the agreement takes the form of a Letter of Agreement or a Memorandum of Understanding - Either one can contain the same clauses. The important aspects are the content, and that all parties sign.

See Appendix C for a template of a Partnership Agreement.

### 3. Different Stages of a Partnership

Each partnership goes through its own evolution, and each stage has its own challenges. These are summarized in the sections below:

#### 3.1 The courtship – beginning to talk

In this phase, the different organizations should be approaching one another to determine if their interests converge. See Table 1 for some considerations. Occasionally, during this phase, funding is sought. In other cases, there will already be a funding offer contingent upon a negotiated agreement. If funding is not yet secured, you may need to proceed to the negotiation phase.

If a partnership is being contemplated, it's usually because there is work to be done, and the parties are eager to get to it. Nonetheless, agencies seasoned in partnerships will advise that this is not a time to "just do it." Take the time to talk through all the issues, building the partnership agreement clause by clause, and ensuring that all details are worked out.

At this point, when the talks are preliminary, the potential partners should be trying to figure out if the partnership will be advantageous, and if it will work.

The potential partners should also explicitly confront systemic power and resource capacity differences between their organizations. This requires openly identifying and addressing the ways how systemic inequities may impact partnership negotiations and their ongoing working relationship. These inequities may include differences in size, funding, target populations, geography, etc.

The following was adapted from a table developed by Decision Support Consulting. It can be used as a tool to assess whether or not the conditions are right for you to engage in a successful partnership:

**Table 1: Tool for Predicting the Successes or Failures of Partnerships**

Failures are associated with the following conditions:	Successes are associated with the following conditions:
<p><b>Are any of these true of your situation? How many?</b></p>	<p><b>Which do you have in place?</b></p>
<ul style="list-style-type: none"> <li><input type="checkbox"/> Lack of shared goals</li> <li><input type="checkbox"/> Different measures of performance</li> <li><input type="checkbox"/> Mixed motives</li> <li><input type="checkbox"/> Unrealistic expectation by either party</li> <li><input type="checkbox"/> Under-investment</li> <li><input type="checkbox"/> Reliance on formal structures to maintain alliance health</li> <li><input type="checkbox"/> One sided alliance (one agency gains more than the other)</li> </ul> <p>The alliance is being built on perceived versus actual agency strengths</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Initial discussions have taken place to properly qualify who is a partner</li> <li><input type="checkbox"/> The right differences and similarities</li> <li><input type="checkbox"/> Clearly defined alliance scope</li> <li><input type="checkbox"/> Good indication that day to day collaboration / communication will be successful</li> <li><input type="checkbox"/> Early and incremental resource commitment</li> <li><input type="checkbox"/> No unilateral decisions</li> <li><input type="checkbox"/> Developing a map of the measures of success, based on each agency's perspective</li> </ul>

Below are some other lessons to be learned from organizations that have developed and managed partnerships. Some are helpful hints, others serious warnings.

These are some of their statements:

 “Start with a shared vision – identifying shared values helps.”

- “Start from the beginning to clarify roles and responsibilities.”
- “**Figure out the sensitive issues first, so that you don’t get too far into it before realizing that the partners aren’t on the same page.**”
- “Be extra careful if your partnership will involve the hiring of project staff. It’s extremely risky for a staff to work full time at one partner site, if that partner is not the employer. Even with part-time staff.”
- “The potential for inter-agency culture clash is high, particularly if some partners are unionized and others are not – make sure you have a conflict resolution process in place ahead of time, and that this process accounts for the constraints each agency might feel.”
- “Don’t be overly focused on just one outcome – consider all the benefits at the outset.”
- “If only one of the partners is to receive funds (perhaps this has been pre-determined by the funders), or if one partner will be the employer of a project staff, make sure all partners agree this agency has a different set of responsibilities. There are times that the partner receiving funds or supervising a staff might have to take action quickly, without fully consulting all parties (e.g. firing a staff person, returning funds to a funder.) If all partners don’t accept, in writing, that this might be necessary, then *don’t get into the partnership*. All parties have to understand that because one organization has signed the funding agreement, it is mainly accountable for the difficult decisions.”

### 3.2 The negotiation (and letters of commitment/ contribution)

Once it has been decided that the partnership is desirable, the parties to the agreement must begin to work out the details. It’s possible, during this phase, that issues will arise that are unforeseen, and which create an impasse. For a list of issues to consider during the negotiation, see Section 6.

If the funder requires Letters of Contribution/ Commitment, this is the time to write them. Any organization that is contributing in-kind or monetary support to the project/ initiative should be asked for a Letters of Contribution/ Commitment, even if the partnership agreement has not been signed.

Please note that Letters of Contribution/ Commitment are not general letters of support. They must specify exactly what the organization will be committing to in terms of dollars, in-kind support, hours of service, service levels etc. The Public Health Agency of Canada's AIDS Community Action Program (ACAP) application guidelines, for instance, state that:

“Commitment letters are not letters supporting your project. ... They must describe each partner’s contribution(s) and commitment to the project. Ensure that each letter of contribution confirms the contribution described in your proposal.”

Please note also that any letters of contribution/ commitment and all partnership agreements should be signed by an agency representative that has legal signing authority, for example the Executive Director.

**See Appendix D for a sample Letter of Commitment/ Contribution.**

### **3.3 The trial period**

After signing the agreement, the partnership will be implemented, and the kinks worked out. During this initial period, which may or may not be for the life of the agreement, it may become apparent that if the partnership is to continue, some terms may need to be re-negotiated. Unless they must urgently be dealt with, it is suggested that partners keep track of the issues and raise them if the agreement is to be renewed.

### **3.4 The renewal**

Some partnerships will be short-term and therefore not renewed. Others will carry on. If so, the agreement should at least be reviewed to see if any clauses need to be revised, removed or added.

### **3.5 The dissolution**

The agreement should have an end date. Unless partners renew, it will expire without any action. However, it is advisable to have a meeting to assess or evaluate the partnership, in case the partners to the agreement wish to work together in the future. Funders may also require an evaluation upon dissolution. Any assets purchased during the term of the partnership will have to be dealt with as per the negotiated terms.

Of course, if there is a problem with the partnership, one or more partners may pull out before the end of the term,

and the project/ initiative will be wrapped up as per terms that should be noted in the agreement. However, if the project, program or initiative is to continue, a new partnership may be required or alternate arrangements may need to be made.

Please note that you may be required to contact funders in the case of possible dissolution of a partnership, particularly if there is a breakdown in the sponsorship agreement. Funders have an interest in ensuring the success of a project, program or initiative and can provide support if the partnership, sponsorship, or program is in trouble.

## 4. Negotiating the partnership agreement

It is important to note that a Partnership Agreement must also take into consideration and comply with all other Funding Agreements the agency may have in place, for example, the AIDS Bureau Service Agreement and Financial Guidelines as well as the Public Health Agency of Canada Contribution Agreement or Grant Letter.

Using the headings noted below in this section can help guide you to an agreement that ensures clarity and efficiency in the partnership. If you wish, you can skip this section and begin working with the sample Partnership Agreement template found in Appendix C.

Because every partnership is different, there may be some clauses that are unnecessary in your case. It's advisable for all parties to sit down and go through each of these clauses, deciding jointly which may not be needed.

After the initial document has been prepared, you should pass it by your organization's lawyer. If your organization can't afford a lawyer, you can always get support from the Volunteer Lawyers Service - <http://www.volunteerlawyers.org/>.

Sample headings and considerations:

### 1. Background and Broad Objectives

- ▣ This clause should define the background and broad objectives of the partnership.

- Before writing this clause, each partner should ask themselves what are the benefits to each agency, and the drawbacks of not getting involved in this partnership. It helps to clarify motivation and lead to full disclosure of each party's interest.

Sample clause:

*This agreement evolved as a result of a recommendation in a community planning forum undertaken in October 2002. The objectives of this partnership are to respond to the community forum recommendations, namely to a) more efficiently and with greater authority provide HIV/AIDS education to the population of Sault Ste-Marie, and b) inform residents of the other sexual and mental health services provided by the local public health department, making referrals where appropriate.*

## 2. Term of the Agreement

- Considerations: will this partnership operate indefinitely or for a finite length of time? Will there be a trial period?

Sample clause:

*This Agreement will come into effect on April 1<sup>st</sup> 2007 and remain in effect until March 31<sup>st</sup> 2010. Extension of the Agreement will be contingent on signed agreement of both parties.*

## 3. Financial Contributions & Responsibilities

- What will each partner contribute in dollars?
- Under what payment schedule or conditions will these contributions be made?

- Who will handle financial transactions on behalf of the project/ initiative?
- What will happen if a party is late or reneges on its contribution?

Sample clause:

*Agency X will provide \$25,000 per year towards the project, while Agency Y will provide \$40,000 per year. Day to day financial transactions will be managed by Agency Y. Payments by Agency X will be made quarterly, within 15 days of the beginning of each quarter.*

*If payments are not made within that time frame, Agency Y will follow up with reminders within one week of the 15<sup>th</sup> day of the first quarter. If after a reasonable time has elapsed, Agency X has still not made its payment, Agency X will make itself available forthwith for a meeting to discuss any extenuating circumstances.*

*If within two months of the quarter, payment has still not been made, this is grounds for termination of the Agreement, regardless of the circumstances. Termination of the Agreement under these circumstances is not automatic – it must be initiated by Agency Y.*

*Agency Y will provide quarterly financial reports to Agency X. Also, Agency Y will respond to all reasonable requests for financial information about the project made in writing (email or other) by Agency X.*

#### 4. In-kind (non-monetary) contributions

- What other kinds of non-monetary contributions will be made?

- What will each partner contribute?
- Under what schedule or conditions will these contributions be made?
- Don't forget to include: space, training opportunities for partners' staff, equipment, software access, and/or anything else.

Sample clause:

- *Agency Y will provide the use of its computers at 15 Main Street to clients of the project, except on Thursdays when staff of Agency Y are conducting weekly evaluation surveys.*
- *Agency X will provide its boardroom at 25 Shady Pines Lane on Wednesday evenings for the project's support group*
- *Agency Y will allow clients registered in the project to access its transit tokens, donated by the local transit commission.*
- *Staff of Agency X will be allowed to participate in monthly in-service trainings provided by Agency Y.*

## 5. Communications Protocol

- This can be key to managing a successful partnership (see also section 7). This clause may start with less detail and need to be amended to include greater detail if problems arise.
- Considerations:
  - Organizations who have not been clear in this regard have paid for it later, especially when there is a power imbalance between the two parties (for example, if one agency is bigger than the other) and the smaller organization does not feel it is being consulted properly.

- Who calls/emails whom and for what reasons?
- Meetings – how often and who can call them?
- Whose obligation is it to communicate the outcomes of meetings if a party misses a meeting?
- What kind of documentation (e.g. minutes) will be kept from meetings and what does that look like?
- What is the expectation of timeliness? (Suggest putting a clause in the agreement that “Time is of the essence”)

Sample clause:

*Communication regarding the Project will be primarily between the Program Director of Agency X and the Director of Services of Agency Y.*

*Each party to the Agreement shall be held responsible for timely and clear communication, and for actively seeking information rather than waiting for it to be received. Time is of the essence in all communication matters.*

*Calls and emails:*

*The Director of Services of Agency Y will check in by phone weekly with the Program Director of Agency X to give a general update. If there is a contentious situation, these calls should be made at least three times per week until the situation is resolved. Messages left by either party will be returned by the other party by the end of the business day.*

*If important information is to be communicated, phone calls should be followed by an email summary of decisions made. The person initiating the call is responsible for summarizing this information, but either party may add to the information.*

*Notice of meetings & notice of decisions made:*

*Meetings will be set at the beginning of each quarter for the next three months, at least. The schedule will be agreed to by all parties. No single party may call a meeting outside of this schedule, unless it is of an urgent nature.*

*A schedule of meetings will be distributed by Agency Y, but no reminders need be sent by email. It is the responsibility of each party to these meetings to seek out this information if they do not have it, and to attend meetings without being sent reminders.*

*If any party cannot make a meeting and an alternate time cannot be arranged, a delegate will be sent. Non-attendance of the meeting does not invalidate any decisions made at the meetings.*

*While formal minutes need not be kept, decisions made at meetings (along with who is responsible for action items and by when) will be communicated by the chair to all parties (in attendance and absent) by email within two business days. If, after two days elapse, no summary is sent out, it is the responsibility of all parties (present and absent) to seek out this information.*

## 6. Project/Initiative Decision-making Process (not including Human Resources)

- How will decisions be made? Consensus? What does consensus mean? If there are more than two partners, will majority carry?
  
- Serious consideration should be given to a process that will not stall a project/ initiative if one or more partners fail to attend meetings or send a delegate. Agencies with low staff capacity need to consider an arrangement with which they can live, which is realistic, and which allow the project/ initiative to move forward. Predicting such eventualities and developing guiding principles that can guide the other partners may be one solution. These principles might define the level of seriousness of an issue – and name

the kinds of decisions that absolutely cannot be made without consultation of the absent partner. Another solution may be to ensure easy mobile phone access is possible for quick consultation on key decisions.

Sample clause:

*Major decisions about the direction of the project will be made by consensus of all parties.*

*Day-to-day decisions may be made by the staff on duty without consulting all parties, and will be made in compliance with this Agreement and any applicable laws, within the spirit of its objectives, and in accordance with any adopted Terms of Reference.*

*Decisions to amend or terminate this Agreement may only be made by the Executive Directors of each partner.*

## 7. Dispute Resolution

- A process should be negotiated and written into the agreement to anticipate how disputes regarding the management of the partnership will be handled.

Sample clause:

*The following process will be followed if there are disputes relating to the handling of the project, coming from either party*

- 1) *Step 1: the party with the dispute will call the other party or parties directly and try to resolve it informally. If email will facilitate clarification, the issue may be laid out in a series of emails until there is resolution. Time is of the essence in responding to emails. If a resolution is agreed*

*upon by both parties, the party who initially expressed a concern will ensure that the agreed upon resolution is clearly spelled out and communicated in a follow-up email. At this stage, and at stage 2, it is inappropriate to involve supervisors or funders, except to report to them, if required by each agency's protocol, the nature of the disagreement, and that an attempt is being made to resolve it.*

- 2) Step 2: If the issue cannot be resolved by phone, an in-person meeting will be arranged. Relevant parties will be invited, unless confidential human resources issues are being discussed.*
- 3) Step 3: If the issue cannot be resolved after a meeting, the issue will be brought to the supervisors of the staff in question. If the dispute is between Executive Directors, and funding is at stake, the funders will be informed of any issues that cannot be resolved. A second meeting will take place with the funders, if the funders are willing.*
- 4) Step 4: If the issue still cannot be resolved, the Agreement will be amended or terminated if no consensus can be reached regarding the terms of the amendment.*

*Exceptions to this process may be made in the following circumstances:*

- 1) Disputes regarding HR, which may need to be handled while respecting employee confidentiality or obligations under employment law or the collective agreement.*
- 2) If the dispute is regarding a human rights issue, in which case it will be handled as per each agency's non-discrimination/ equity policies, and in compliance with the Ontario Human Rights Code.*

## 8. Human Resources Contribution & Responsibilities

-  Who is the legal employer? The employer may be held legally accountable to any employment standards, human rights or health and safety complaints and investigations.
-  Revenue Canada will look to the legal employer for any claims or issues with payroll and remittances.

- Who is responsible for the recruitment, selection, training, orientation, daily supervision, performance management, discipline and termination?
- Which workplace policies and procedures will apply to the employee(s)?
- Which organization will provide Workers Safety Insurance coverage?
- Considerations: staff hired in a partnership need to have one clear employer and supervisor. If more than one partner wishes to provide input into staff performance monitoring, this should be set up in such a way that the employee does not feel managed by committee. For instance, feedback can be given to the primary supervisor and not to the staff directly.
- The organization hiring will assume responsibilities not shared by other partners and this must be recognized in the agreement.

Sample clauses:

*As of (date), Agency Y is considered the legal employer of the (position/employee). As such, Agency Y is responsible for the hiring, supervision, performance management, payroll, benefits, supervision and applicable personnel policies, direction, discipline and work activities for this position.*

*In the event that Agency Y chooses to terminate the employment of the position for any reason, Agency Y will notify the other organizations/partners in writing prior to the termination. The amount of any termination payment (or pay in lieu of notice) will be based upon the calculation as set out by the Employment Standards Act and will be the sole responsibility of Agency Y as the legal employer.*

*As well, Agency Y will have sole responsibility as the employer for any such claims arising from any and all other applicable employment legislation (e.g. Human Rights Code, Occupational Health & Safety Act, Employment Standards, Labour Relations Act, Revenue Canada).*

*Supervision: While all parties may agree to provide joint supervision regarding major terms of the project, employees working on the Project will be designated one official supervisor and that person must be a staff of the employing agency. Time must be provided one-on-one to discuss any confidential human resources issues.*

*Decisions: The decision regarding which staff to hire will be made by both parties, however Agency Y, who will be the formal employer may unilaterally turn down a candidate it deems unsuitable (reasonable explanation will be given). While every effort will be made by Agency Y to consult with other parties as appropriate in terms of general staff management, Agency Y must respect standards of employee confidentiality, and has the right to protect its assets and reputation as the primary employer by acting swiftly if necessary in matters of discipline or termination of project staff. Discipline and termination decisions may be made unilaterally by Agency Y without consulting other parties, and Agency Y is not obliged to report any such confidential information to other parties of this Agreement.*

## 9. Information Management, Ownership and Privacy Protection

- Confidentiality (client and other): What information is shared between staff in the partner agencies? How will clients be informed of this? Are new forms required?
- How long will confidentiality agreements last – for the duration of the agreement or forever?
- Ownership of data: Who owns the data produced by the partnership (suggest that all parties own it, or have access to it).

- Record-keeping responsibilities.

Sample clause:

*Records of service data will be kept by the Project Coordinator. Project financial data will be kept by Agency*

*X. Aggregate client data collected under the Project will be accessible to any of the parties to the Agreement. Data will be collected by staff of the project and given to Agency Y for roll-up. Agency Y will include this data in quarterly reports to project managers. Reasonable requests for data outside of these terms will be honoured if it doesn't place undue hardship on project staff or divert them from the main goals of the project.*

*Individual client matters will remain confidential to the staff of the project and any other parties as per the confidentiality agreements of that staff person's employer. Clients served under the project will be informed at intake or first contact that the project is a partnership of all parties, and how information about them might be shared.*

*Employee confidentiality will be maintained as per the clause in section 6.8.*

#### 10. Ownership of Property Purchased as part of the Project/ Initiative

- Consideration should be given to defining who owns, at the end of the agreement, materials, equipment and other property obtained during the life of the agreement. Note that this may be defined by your funding guidelines.

Sample clause:

*Computers purchased by the project will remain the property of Agency X after the project terminates. Any office furniture will remain the property of Agency Y after the project terminates.*

## 11. Insurance

 What insurance must be held by all parties, if any?

Sample clause:

*Neither party shall rely upon the other for fire, liability, or other insurance coverage during the Term. Both parties shall, without in any way limiting their liability, secure, maintain and keep in full force and effect:*

*Comprehensive General Liability Insurance, Both parties shall carry insurance in an amount of not less than five million dollars (\$5,000,000) per occurrence, against damages arising from property damage and personal injury (including death), which might arise directly or indirectly out of their operations, their staff, agents, employees, personnel, or those for whom they are responsible at law, in carrying out its obligations under this Agreement;*

*Such policies, acceptable to the other party acting reasonably, shall be issued by an insurance company licensed to conduct business in the Province of Ontario and shall remain in full force and effect for the Term of this Agreement or any extension thereof. Such certificates shall provide that the insurance is cancelable only upon thirty (30) days prior written notice to the other party.*

*Both parties shall provide to the other, evidence of such insurance policies, in the form of original documents, before either party commences its obligations under this Agreement.*

*Notwithstanding the foregoing, Agency X, at its own cost and expense, shall be responsible for insuring the*

*[insert any particularly expensive equipment not contained in regular insurance clause – such as video teleconferencing equipment] against loss or damage while such equipment is in its possession.*

**12. Indemnity (protection against liability)**

- Suggest a clause that will protect all partners.

Sample clause:

*Both parties agree to indemnify and save harmless the other party, its directors, employees, agents and all those for whom in law it is responsible, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses the other party, its directors, employees, Agents and all those for whom in law it is responsible may sustain, incur, suffer, or be put to at any time, in respect of any loss of life, personal injury or disability, loss of or damage to property, breach of third party Intellectual Property Rights or any other loss either before or after this Agreement ends, which are based upon, arise out of or occur, directly, by reason of any negligence or wrongful act or omission by the other party or any of its agents, employees, officers, or directors in providing the Services or in connection with, or incidental to this Agreement or any breach of this Agreement by the other party.*

*Neither party shall be liable to the other party for any incidental, indirect, special or consequential damages, including loss of profits, arising out of, or in connection with, this Agreement whether or not such party was advised of the possibility of such damage; provided, however, that the foregoing limitations shall not apply to any liability arising out of third party claims.*

### 13. Reporting

- What are the expectations from government or other funders regarding reporting? What responsibilities does each of the parties have in producing data or narrative, financial or other reports for this purpose? What are the expectations of your boards of directors in terms of reporting?

Sample clause:

*Regarding the collection and roll up of data see the clause in section 6.9 (Information Management, Ownership and Privacy Protection). The reporting of this data to funders will happen quarterly, as per the requirements of each funder.*

### 14. Monitoring & Evaluation of Project/ Initiative

- Will the project/ initiative undergo a formal 3rd party evaluation?
- What will the participation of each party be in any evaluation or monitoring (this may go beyond funding or reporting requirements)?

Sample clause:

*In addition to regular narrative, statistical and financial reporting to funders, the Project/ initiative will be subject to a formal process and outcome evaluation conducted by Marville & Associates, or any other firm as contracted by Agency Y, and as agreed to by Agency X.*

*Staff of Agency X & Agency Y will make every effort to facilitate this evaluation. As manager of the contract with the evaluators, Agency Y will require interim reports in June 2008 and a final report by June 2010.*

## 15. Enurement/ Succession

- This clause allows the contract to stay in force, even if the particular individuals who sign it are no longer in their jobs. Suggest a clause such as: "This Agreement is binding upon the parties hereto and their respective successors and permitted assigns until the termination date as agreed upon in Section 6.2..."

Sample clause:

*This Agreement is binding upon the parties hereto and their respective successors and permitted assigns until the termination date as agreed upon in Section 6.2.*

## 16. Conflict of Interest

- This clause defines what would constitute a conflict of interest among the partners, how that conflict should be declared and how that conflict will be resolved.

Sample clause:

*Conflict of interest is defined as any personal or institutional benefit that goes beyond the mutual benefit that derives from this Partnership Agreement. Any such benefit must be declared and if possible, the Partner representative should excuse him/herself from the discussions in question.*

## 17. Amendments to the Agreement

- ⊕ This clause should spell out how and when any amendments to the agreement should be made. For instance, it would be important to state that all parties have to agree to the amendment.

Sample clause:

*Amendments to this Agreement may be made at any time, but must be made with agreement by all parties. Any Agreement or amendment to this Agreement regarding this or any substantively similar project which is made with fewer than all parties will be considered to constitute a new and separate Agreement, and will not override this Agreement. However, such a new Agreement may be considered grounds for the excluded party to terminate this Agreement as per the clause in section 6.17 (Termination or Dissolution of the Agreement).*

*Amendments to this Agreement signed by all parties will supersede this Agreement.*

*Either party may propose an amendment to the Agreement by submitting, to the other party, an email or letter that indicates the proposed amendment and the reason an amendment is deemed necessary. Other relevant information may be included in the email or letter.*

## 18. Termination or Dissolution of the Agreement

- ⊕ This clause anticipates what steps would be needed if any party to the agreement wants to break it.
- ⊕ This clause can state what actions by any party might constitute breaking of the agreement.

- Suggest giving 60 calendar days written notice, by regular mail.
- Suggest pro-rating any remaining financial contribution in the event of dissolution.
- Suggest a clause stating that indemnity, ownership of data or property, and confidentiality all survive beyond the termination or dissolution of the agreement and as stipulated in funding agreements.

Sample clause:

*Any party may initiate the termination of this Agreement. The process would be as follows. The party initiating termination will give written notice, by regular mail, at least sixty (60) calendar days prior to intended termination.*

*The following actions will constitute the immediate breaking of this Agreement and may lead to its immediate termination, if any of the other parties' individually so wishes:*

- *Failing to make a financial contribution as per the clause in section 6.3 (Financial Contributions & Responsibilities)*
- *Breach of dispute resolution protocol, as per the clause in section 6.7 (Dispute resolution)*
- *Breach of agreement regarding Human Resources Management as per the clause in section 6.8 (Human Resources contribution & responsibilities)*
- *Breach of confidentiality agreement as per clause the clause in section 6.9 (Information Management, Ownership and Privacy Protection)*
- *Failure to negotiate in good faith an amendment to the Agreement, as per the clause in section 6.16 Amendments to the Agreement*

*Prior to termination, any breach of the above clauses may be dealt with as per the clause in section 6.7 Dispute Resolution. Any other breaches of this Agreement should be dealt with under the clause in section 6.7, but may lead to termination of the Agreement if parties cannot agree to a resolution.*

*In the event of termination, any remaining financial contribution of Agency X to Agency Y will be pro-rated to the remaining term of the Agreement.*

*Indemnity, ownership of data or property, and confidentiality all survive beyond the termination or dissolution of the Agreement and as stipulated in funding agreements, and in the clause in section 6.10 (Ownership of property purchased as part of the project/initiative).*

## 5. Managing the Partnership Effectively

In partnership agreements between non-profits, the organizations must monitor the relationship themselves. There is no specific legislation that governs or enforces *the compliance* with the agreement (beyond common contract law), funders often do not mandate an agreement's content, and though auditors may review the agreements at year end, the success or failure of the relationship depends on the management of the relationship.

The agreement is a tool with which that relationship can be monitored, but it is only a beginning.

**Agencies who have worked within successful partnerships have pointed to the following factors that have helped:**

- Reviewing the agreement every year (and at the six month mark in the first year);
- Developing terms of reference that expand on the agreement, especially if there is an advisory committee to steer the partnership;
- Ensuring timely compliance with any payment schedules, or mutual reporting; and

- Concise written reports to partners who are not involved in direct delivery (if an operational partnership).

Resources that help organizations to manage partnerships suggest that the partnership's effectiveness be assessed based on the following criteria:

- Synergy (How much does working together produce new/ better results?);
- Leadership (How strong is the leadership of the partnership as a whole, not the leadership of any one partner?);
- Efficiency (How well are financial & in-kind resources as well as each other's time used?);
- Administration and management (How well are staff performing the nitty-gritty tasks of the maintaining the partnership, such as holding meetings, applying for grants, etc.?);
- Effective use of non-financial resources (Do the partners have what they need to work effectively together?);
- Financial and other capital resource availability (Does your partnership have what it needs to work effectively together?);
- Decision-making (How well are decisions made, is the process good, etc.?);
- Comparison of drawbacks and benefits of participation (Take an inventory of the pros and cons, and weigh them against one another.)

A tool that helps to assess these criteria and others, for an already existing partnership, is available at Partnership self-assessment tool – Center for the Advancement of Collaborative Strategies in Health - <http://www.cacsh.org/psat.html>.

## 6. Appendices

### 6.1 Appendix A - Resources Used

- Deborah Leach & Associates, August 2003 (unpublished) "Collaboration & Partnership Interviews: Final Summary Report.
- Evert, Lurie & Higgins, 2001 "On Alliances, joint ventures and networks" (From Everett, Lurie and Higgins; the whole picture: A provincial framework for redesigning the Ontario mental health system.)
- UK Audit Commission, October 2005, "Governing Partnerships: Bridging the Accountability Gap"
- Porter, F & Godsoe, D, May 2003 (unpublished) "Joint Working Group re: Strategic Alliance – report to the Boards" – prepared for the Canadian Centre for Philanthropy/ Coalition of National Voluntary Organizations
- Powell, Jackie, 1999. "Contract Management and Community Care: A Negotiated Process," from British Journal of Social Work (1999) 29, pp 861-875.
- René, Jean-François, & Gervais, Lise, 2001, "Les enjeux du partenariat aujourd'hui". From Nouvelles Pratiques Sociales, vol. 14, no. 1, 2001.
- Decision Support Consulting – "Predicting The Success Of An Alliance Between Storefront, ESS And Canes."

## 6.2 Appendix B – Partnership Checklist

- Determine why your ASO needs a partnership
- Determine if the values of your ASO and the potential partner ASO are similar
- Determine if you need:
  - To share information – if so, enter into a consultative partnership
  - To share work and support – if so, enter into an operational partnership
  - To share decision-making – if so, enter into a collaborative partnership
- Jointly write a letter of commitment
- Negotiate and jointly draft a partnership agreement (work out the most contentious issues first)
  - Make sure to include all clauses necessary to ensure an effective partnership
- Consult with a Human Resources professional and have a lawyer review the draft agreement
  - Revise if necessary
- All parties sign the agreement

## 6.3 Appendix C – Sample Partnership Agreement

The template in this section was prepared using various sample agreements provided by the Canadian Mental Health Association, Surrey Place Centre, Peterborough AIDS Resource Network, and Toronto PWA Foundation.

**THIS AGREEMENT** made as of [INSERT DATE OF AGREEMENT],

**BETWEEN:**

**Agency X**

(the party of the First part)

**and**

**Agency Y**

(the party of the Second part)

### **Definitions:**

In this Agreement, the following terms have the meanings set out below:

**“Business Day”** means a day other than Saturday, Sunday or a statutory holiday in the Province of Ontario, Canada;

“ <b>Agency X</b> ”	means [full legal name of Agency X]
“ <b>Agency Y</b> ”	means [full legal name of Agency Y];
“ <b>Group</b> ”	means Agency Y, Agency X, & [names of any other partners]
“ <b>Ministry</b> ”	means the Ontario Ministry of Health and Long Term Care AIDS Bureau.
“ <b>PHAC</b> ”	means the Public Health Agency of Canada
“ <b>Operating Costs</b> ”	means the costs directly incurred by either agency X or Y in proving these Services in accordance with [DESIGNATE SECTION WHERE SERVICES ARE DESCRIBED]
“ <b>Services</b> ”	means the [DEFINE THE RELATIONSHIP; e.g.: “services provided to Agency Y by Agency X” OR “services provided to Agency X by Agency y”];
[ADD ANY OTHER DEFINITIONS THAT MAY BE OPEN TO MISINTERPRETATION OR MULTIPLE MEANINGS]	

### 1.1. Background and Broad Objectives

What goes in this clause?

- This clause should define the background and broad objectives of the partnership.
- Before writing this clause, each partner should ask themselves what are the benefits to each agency, and the drawbacks of not getting involved in this partnership. It helps to clarify motivation and lead to full disclosure of each party's interest.

Sample clause:

*This agreement evolved as a result of a recommendation in a community planning forum undertaken in October 2002. The objectives of this partnership are to respond to the community forum recommendations, namely to a) more efficiently and with greater authority provide HIV/AIDS education to the population of Sault Ste-Marie, and b) inform residents of the other sexual and mental health services provided by the local public health department, making referrals where appropriate.*

## 1.2. Term of the Agreement

What goes in this clause?

- This is the length of time the agreement will be in effect.
- Considerations: will this partnership operate indefinitely or for a finite length of time? Will there be a trial period?

Sample clause:

*This Agreement will come into effect on April 1<sup>st</sup> 2007 and remain in effect until March 31<sup>st</sup> 2010. Extension of the Agreement will be contingent on signed agreement of both parties.*

### 1.3. Financial Contributions & Responsibilities

What goes in this clause?

- ✚ What will each partner contribute in dollars?
- ✚ Under what payment schedule or conditions will these contributions be made?
- ✚ Who will handle financial transactions on behalf of the project/ initiative?
- ✚ What will happen if a party is late or reneges on its contribution?

Sample clause:

*Agency X will provide \$25,000 per year towards the project, while Agency Y will provide \$40,000 per year. Day to day financial transactions will be managed by Agency Y. Payments by Agency X will be made quarterly, within 15 days of the beginning of each quarter.*

*If payments are not made within that time frame, Agency Y will follow up with reminders within one week of the 15<sup>th</sup> day of the first quarter. If after a reasonable time has elapsed, Agency X has still not made its payment, Agency X will make itself available forthwith for a meeting to discuss any extenuating circumstances.*

*If within two months of the quarter, payment has still not been made, this is grounds for termination of the Agreement, regardless of the circumstances. Termination of the Agreement under these circumstances is not automatic – it must be initiated by Agency Y.*

*Agency Y will provide quarterly financial reports to Agency X. Also, Agency Y will respond to all reasonable requests for financial information about the project made in writing (email or other) by Agency X.*

#### **1.4. In-kind (non-monetary) contributions**

What goes in this clause?

- What other kinds of non-monetary contributions will be made?
- What will each partner contribute?
- Under what schedule or conditions will these contributions be made?
- Don't forget to include: space, training opportunities for partners' staff, equipment, software access, and/or anything else

Sample clause:

*Agency Y will provide the use of its computers at 15 Main Street to clients of the project, except on Thursdays when staff of Agency Y are conducting weekly evaluation surveys.*

*Agency X will provide its boardroom at 25 Shady Pines Lane on Wednesday evenings for the project's support group*

*Agency Y will allow clients registered in the project to access its transit tokens, donated by the local transit commission.*

*Staff of Agency X will be allowed to participate in monthly in-service trainings provided by Agency Y.*

### **1.5. Communications Protocol**

What goes into this clause?

⊕ This can be a key aspect to managing a successful partnership (see also section 7). This clause may start with less detail and need to be amended to include greater detail if problems arise.

⊕ Considerations:

- Organizations that have not been clear in this regard have paid for it later, especially when there is a power imbalance between the two parties (for example, if one agency is bigger than the other) and the smaller organization does not feel it is being consulted properly.
- Who calls/emails whom and for what reasons?
- Meetings – how often and who can call them?
- Whose obligation is it to communicate the outcomes of meetings if a party misses a meeting?
- What kind of documentation (e.g. minutes) will be kept from meetings and what does that look like?
- What is the expectation of timeliness? (Suggest putting a clause in the agreement that “Time is of the essence”)

Sample clause:

*Communication regarding the Project will be primarily between the Program Director of Agency X and the Director of Services of Agency Y.*

*Each party to the Agreement shall be held responsible for timely and clear communication, and for actively seeking information rather than waiting for it to be received. Time is of the essence in all communication matters.*

*Calls and emails:*

*The Director of Services of Agency Y will check in by phone weekly with the Program Director of Agency X to give a general update. If there is a contentious situation, these calls should be made at least three times per week until the situation is resolved. Messages left by either party will be returned by the other party by the end of the business day.*

*If important information is to be communicated, phone calls should be followed by an email summary of decisions made. The person initiating the call is responsible for summarizing this information, but either party may add to the information.*

*Notice of meetings & notice of decisions made:*

*Meetings will be set at the beginning of each quarter for the next three months, at least. The schedule will be agreed to by all parties. No single party may call a meeting outside of this schedule, unless it is of an urgent nature.*

*A schedule of meetings will be distributed by Agency Y, but no reminders need be sent by email. It is the responsibility of each party to these meetings to seek out this information if they do not have it, and to attend meetings without being sent reminders.*

*If any party cannot make a meeting and an alternate time cannot be arranged, a delegate will be sent. Non-attendance of the meeting does not invalidate any decisions made at the meetings.*

*While formal minutes need not be kept, decisions made at meetings (along with who is responsible for action items and by when) will be communicated by the chair to all parties (in attendance and absent) by email within two business days. If, after two days elapse, no summary is sent out, it is the responsibility of all parties (present and absent) to seek out this information.*

#### 1.6. Project/ Initiative Decision-making Process (not including Human Resources)

What goes in this clause?

- How will decisions be made? Consensus? What does consensus mean? If there are more than two partners, will majority carry?
  
- Serious consideration should be given to a process that will not stall a project/ initiative if one or more partners fail to attend meetings or send a delegate. Agencies with low staff capacity need to consider an arrangement with which they can live, which is realistic, and which allow the project/ initiative to move forward. Predicting such eventualities and developing guiding principles that can guide the other partners may be one solution. These principles might define the level of seriousness of an issue – and name the kinds of decisions that absolutely cannot be made without consultation of the absent partner. Another solution may be to ensure easy mobile phone access is possible for quick consultation on key decisions.

Sample clause:

*Major decisions about the direction of the project will be made by consensus of all parties.*

*Day-to-day decisions may be made by the staff on duty without consulting all parties, and will be made in compliance with this Agreement and any applicable laws, within the spirit of its objectives, and in accordance with any adopted Terms of Reference.*

*Decisions to amend or terminate this Agreement may only be made by the Executive Directors of each partner.*

### 1.7. Dispute resolution

What goes in this clause?

- + A process should be negotiated and written into the agreement to anticipate how disputes regarding the management of the partnership will be handled.

Sample clause:

*The following process will be followed if there are disputes relating to the handling of the project, coming from either party*

- 5) *Step 1: the party with the dispute will call the other party or parties directly and try to resolve it informally. If email will facilitate clarification, the issue may be laid out in a series of emails until there is resolution. Time is of the essence in responding to emails. If a resolution is agreed upon by both parties, the party who initially expressed a concern will ensure that the agreed upon resolution is clearly spelled out and communicated in a follow-up email. At this stage, and at stage 2, it is inappropriate to involve supervisors or funders, except to report to them, if*

*required by each agency's protocol, the nature of the disagreement, and that an attempt is being made to resolve it.*

- 6) *Step 2: If the issue cannot be resolved by phone, an in-person meeting will be arranged. Relevant parties will be invited, unless confidential human resources issues are being discussed.*
- 7) *Step 3: If the issue cannot be resolved after a meeting, the issue will be brought to the supervisors of the staff in question. If the dispute is between Executive Directors, and funding is at stake, the funders will be informed of any issues that cannot be resolved. A second meeting will take place with the funders, if the funders are willing.*
- 8) *Step 4: If the issue still cannot be resolved, the Agreement will be amended or terminated if no consensus can be reached regarding the terms of the amendment.*

*Exceptions to this process may be made in the following circumstances:*

- 2) *Disputes regarding HR, which may need to be handled while respecting employee confidentiality or obligations under employment law or the collective agreement.*
- 2) *If the dispute is regarding a human rights issue, in which case it will be handled as per each agency's non-discrimination/ equity policies, and in compliance with the Ontario Human Rights Code.*

#### 1.8. Human Resources contribution & responsibilities

What goes in this clause?

- ❖ Who is the legal employer? The employer may be held legally accountable to any employment standards, human rights or health and safety complaints and investigations.

- Revenue Canada will look to the legal employer for any claims or issues with payroll and remittances.
- Who is responsible for the recruitment, selection, training, orientation, daily supervision, performance management, discipline and termination?
- Which workplace policies and procedures will apply to the employee(s)?
- Which organization will provide Workers Safety Insurance coverage?
- Considerations: staff hired in a partnership need to have one clear employer and supervisor. If more than one partner wishes to provide input into staff performance monitoring, this should be set up in such a way that the employee does not feel managed by committee. For instance, feedback can be given to the primary supervisor, and
  - not to the staff directly.
- The organization hiring will assume responsibilities not shared by other partners and this must be recognized in the agreement.

Sample clause:

*As of (date), Agency Y is considered the legal employer of the (position/employee). As such, Agency Y is responsible for the hiring, supervision, performance management, payroll, benefits, supervision and applicable personnel policies, direction, discipline and work activities for this position.*

*In the event that Agency Y chooses to terminate the employment of the position for any reason, Agency Y will notify the other organizations/partners in writing prior to the termination. The amount of any termination payment (or pay in lieu of notice) will be based upon the calculation as set out by the Employment Standards Act and will be the sole responsibility of Agency Y as the legal employer.*

*As well, Agency Y will have sole responsibility as the employer for any such claims arising from any and all other applicable employment legislation (e.g. Human Rights Code, Occupational Health & Safety Act, Employment Standards, Labour Relations Act, Revenue Canada).*

*Supervision: While all parties may agree to provide joint supervision regarding major terms of the project, employees working on the Project will be designated one official supervisor and that person must be a staff of the employing agency. Time must be provided one-on-one to discuss any confidential human resources issues.*

*Decisions: The decision regarding which staff to hire will be made by both parties, however Agency Y, who will be the formal employer may unilaterally turn down a candidate it deems unsuitable (reasonable explanation will be given). While every effort will be made by Agency Y to consult with other parties as appropriate in terms of general staff management, Agency Y must respect standards of employee confidentiality, and has the right to protect its assets and reputation as the primary employer by acting swiftly if necessary in matters of discipline or termination of project staff. Discipline and termination decisions may be made unilaterally by Agency Y without consulting other parties, and Agency Y is not obliged to report any such confidential information to other parties of this Agreement.*

#### 1.9. Information Management, Ownership and Privacy Protection

What goes in this clause?

- ⊕ Confidentiality (client and other): What information is shared between staff in the partner agencies? How will clients be informed of this? Are new forms required?

- Ownership of data: Who owns the data produced by the partnership (suggest that all parties own it, or have access to it).
- Record-keeping responsibilities.

Sample clause:

*Records of service data will be kept by the Project Coordinator. Project financial data will be kept by Agency X. Aggregate client data collected under the Project will be accessible to any of the parties to the Agreement. Data will be collected by staff of the project and given to Agency Y for roll-up. Agency Y will include this data in quarterly reports to project managers. Reasonable requests for data outside of these terms will be honoured if it doesn't place undue hardship on project staff or divert them from the main goals of the project.*

*Individual client matters will remain confidential to the staff of the project and any other parties as per the confidentiality agreements of that staff person's employer. Clients served under the project will be informed at intake or first contact that the project is a partnership of all parties, and how information about them might be shared.*

*Employee confidentiality will be maintained as per clause 1.8.*

#### 1.10. Ownership of property purchased as part of the project/ initiative

What goes in this clause?

- Consideration should be given to defining who owns, at the end of the agreement, materials, equipment and other property obtained during the life of the agreement. Note that this may be defined by your funding guidelines.

Sample clause:

*Computers purchased by the project will remain the property of Agency X after the project terminates. Any office furniture will remain the property of Agency Y after the project terminates.*

#### 1.11. Insurance

What goes in this clause?

- ⊕ What insurance must be held by all parties, if any?

Sample clause:

*Neither party shall rely upon the other for fire, liability, or other insurance coverage during the Term. Both parties shall, without in any way limiting their liability, secure, maintain and keep in full force and effect:*

*Comprehensive General Liability Insurance, Both parties shall carry insurance in an amount of not less than five million dollars (\$5,000,000) per occurrence, against damages arising from property damage and personal injury (including death), which might arise directly or indirectly out of their operations, their staff, agents, employees, personnel, or those for whom they are responsible at law, in carrying out its obligations under this Agreement;*

*Such policies, acceptable to the other party acting reasonably, shall be issued by an insurance company licensed to conduct business in the Province of Ontario and shall remain in full force and effect for the Term of this Agreement or any extension thereof. Such certificates shall provide that the insurance is cancelable only upon thirty (30) days prior written notice to the other party.*

*Both parties shall provide to the other, evidence of such insurance policies, in the form of original documents, before either party commences its obligations under this Agreement.*

*Notwithstanding the foregoing, Agency X, at its own cost and expense, shall be responsible for insuring the [insert any particularly expensive equipment not contained in regular insurance clause – such as video teleconferencing equipment] against loss or damage while such equipment is in its possession.*

#### **1.12. Indemnity (protection against liability)**

What goes in this clause?

 Suggest a clause that will protect all partners. Refer also to relevant funding guidelines.

Sample clause:

*Both parties agree to indemnify and save harmless the other party, its directors, employees, agents and all those for whom in law it is responsible, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses the other party , its directors, employees, Agents and all those for whom in law it is responsible may sustain, incur, suffer, or be*

*put to at any time, in respect of any loss of life, personal injury or disability, loss of or damage to property, breach of third party Intellectual Property Rights or any other loss either before or after this Agreement ends, which are based upon, arise out of or occur, directly, by reason of any negligence or wrongful act or omission by the other party or any of its agents, employees, officers, or directors in providing the Services or in connection with, or incidental to this Agreement or any breach of this Agreement by the other party.*

*Neither party shall be liable to the other party for any incidental, indirect, special or consequential damages, including loss of profits, arising out of, or in connection with, this Agreement whether or not such party was advised of the possibility of such damage; provided, however, that the foregoing limitations shall not apply to any liability arising out of third party claims.*

#### **1.13. Reporting**

What goes in this clause?

- What are the expectations from government or other funders regarding reporting? What responsibilities does each of the parties have in producing data or narrative, financial or other reports for this purpose? What are the expectations of your boards of directors in terms of reporting?

Sample clause:

*Regarding the collection and roll up of data see clause 1.9 (Information Management, Ownership and Privacy Protection). The reporting of this data to funders will happen quarterly, as per the requirements of each funder.*

#### **1.14. Monitoring & Evaluation of Project/ Initiative**

What goes in this clause?

- Will the project/ initiative undergo a formal 3<sup>rd</sup> party evaluation?

- What will the participation of each party be in any evaluation or monitoring (this may go beyond funding or reporting requirements)?

Sample clause:

*In addition to regular narrative, statistical and financial reporting to funders, the Project/ initiative will be subject to a formal process and outcome evaluation conducted by Marville & Associates, or any other firm as contracted by Agency Y, and as agreed to by Agency X.*

*Staff of Agency X & Agency Y will make every effort to facilitate this evaluation. As manager of the contract with the evaluators, Agency Y will require interim reports in June 2008 and a final report by June 2010.*

#### 1.15. Enurement/ Succession

What goes in this clause?

- This clause allows the contract to stay in force, even if the particular individuals who sign it are no longer in their jobs or voluntary positions.

Sample clause:

*This Agreement is binding upon the parties hereto and their respective successors and permitted assigns until the termination date as agreed upon in Section (1.2).*

## 1.16. Conflict of Interest

- ⊕ This clause defines what would constitute a conflict of interest among the partners, how that conflict should be declared and how that conflict will be resolved.

Sample clause:

*Conflict of interest is defined as any personal or institutional benefit that goes beyond the mutual benefit that derives from this Partnership Agreement. Any such benefit must be declared and if possible, the Partner representative should recuse him/herself from the discussions in question.*

## 1.17. Amendments to the Agreement

What goes in this clause?

- ⊕ This clause should spell out how and when any amendments to the agreement should be made. For instance, it would be important to state that all parties have to agree to the amendment.

Sample clause:

*Amendments to this Agreement may be made at any time, but must be made with agreement by all parties. Any Agreement or amendment to this Agreement regarding this or any substantively similar project which is made with fewer than all parties will be considered to constitute a new and separate Agreement, and will not override this Agreement. However, such a new Agreement may be considered grounds for the excluded party to terminate this Agreement as per clause 1.17 (Termination or Dissolution of the Agreement).*

*Amendments to this Agreement signed by all parties will supersede this Agreement.*

*Either party may propose an amendment to the Agreement by submitting, to the other party, an email or letter that indicates the proposed amendment and the reason an amendment is deemed necessary. Other relevant information may be included in the email or letter.*

#### **1.18. Termination or Dissolution of the Agreement**

What goes in this clause?

- This clause anticipates what steps would be needed if any party to the agreement wants to break it.
- This clause can state what actions by any party might constitute breaking of the agreement.
- Suggest giving 60 calendar days written notice, by regular mail.
- Suggest pro-rating any remaining financial contribution in the event of dissolution.
- Suggest a clause stating that indemnity, ownership of data or property, and confidentiality all survive beyond the termination or dissolution of the agreement and as stipulated in funding agreements.

Sample clause:

*Any party may initiate the termination of this Agreement. The process would be as follows. The party initiating termination will give written notice, by regular mail, at least sixty (60) calendar days prior to intended termination.*

*The following actions will constitute the immediate breaking of this Agreement and may lead to its immediate termination, if any of the other parties, individually so wishes:*

- *Failing to make a financial contribution as per clause 1.3 (Financial Contributions & Responsibilities)*
- *Breach of dispute resolution protocol, as per clause 1.7 (Dispute resolution)*
- *Breach of agreement regarding Human Resources Management as per clause 1.8 (Human Resources contribution & responsibilities)*
- *Breach of confidentiality agreement as per clause 1.9 (Information Management, Ownership and Privacy Protection)*
- *Failure to negotiate in good faith an amendment to the Agreement, as per clause 1.16 Amendments to the Agreement*

*Prior to termination, any breach of the above clauses may be dealt with as per clause 1.7 Dispute Resolution. Any other breaches of this Agreement should be dealt with under clause 1.7, but may lead to termination of the Agreement if parties cannot agree to a resolution.*

*In the event of termination, any remaining financial contribution of Agency X to Agency Y will be pro-rated to the remaining term of the Agreement.*

*Indemnity, ownership of data or property, and confidentiality all survive beyond the termination or dissolution of the Agreement and as stipulated in funding agreements, and in clause 1.10 (Ownership of property purchased as part of the project/initiative).*

## 6.4 Appendix D – Sample Letter of Commitment/Contribution

[INSERT DATE & ADDRESS]

To whom it may concern,

This letter is to confirm that our organization, [AGENCY X] commits to providing the following financial resources, in-kind resources, and services towards the project/ initiative [NAME OF PROJECT/ INITIATIVE], as per the terms of a signed agreement between our organization and [NAME OF OTHER PARTIES TO THE AGREEMENT]:

### Financial Resources

[Actual dollar amounts per month and payment schedule]

### In-Kind Resources

[Actual in-kind resources, e.g., staff time, space, access to training, miscellaneous office items etc.]

### Services

[Which services, how many hours of service, how many clients served – be extremely specific, and provide a minimum amount. For instance, “We will provide at least 20 1-hour client consultations per month,” or “We will advertise, organize for and facilitate 2 support groups for HIV-positive women, lasting 1 year in length. These groups will hold at least 8 women and will meet weekly for 2 hours.”]

The time frame for this commitment/ contribution is [INSERT START AND END DATE FOR COMMITMENT/ CONTRIBUTION].

Please don't hesitate to contact me if you require clarification.

Sincerely,

[NAME OF EXECUTIVE DIRECTOR]

[NAME OF AGENCY]

## 6.5 Appendix E – Sample Sponsorship Agreement

**THIS AGREEMENT** made as of [INSERT DATE OF AGREEMENT],

**BETWEEN:**

**Agency X**

(the party of the First part)

**and**

**Organization Y**

(the party of the Second part)

### **Definitions:**

In this Agreement, the following terms have the meanings set out below:

**“Business Day”** means a day other than Saturday, Sunday or a statutory holiday in the Province of Ontario, Canada;

**“Agency X”** means [full legal name of Agency X]

**“Organization Y”** means [full name of Organization Y];

<b>“Group”</b>	means Organization Y and Agency X
<b>“Ministry”</b>	means the Ministry of Health and Long Term Care AIDS Bureau.
<b>“PHAC”</b>	means the Public Health Agency of Canada
<b>“Operating Costs”</b>	means the costs directly incurred by either agency X or Y in providing these Services in accordance with [DESIGNATE SECTION WHERE SERVICES ARE DESCRIBED]
<b>“Services”</b>	means the [DEFINE THE RELATIONSHIP; e.g.: “services provided by Organization Y”]
[ADD ANY OTHER DEFINITIONS THAT MAY BE OPEN TO MISINTERPRETATION OR MULTIPLE MEANINGS]	

#### 1.1. Background and Broad Objectives

What goes in this clause:

This clause should define the background and broad objectives of the partnership.

- Before writing this clause, each partner – the sponsor and the sponsored organization – should ask themselves what are the benefits to each organization, and the drawbacks of not entering into this sponsorship. It helps to clarify motivation and lead to full disclosure of each party's interest.

Sample clause:

*This agreement spells out the terms whereby Agency X will sponsor Organization Y to provide AIDS services to members of the Russian community in Ottawa.*

#### 1.2. Term of the Agreement

What goes in this clause?

- ⊕ This is the length of time the agreement will be in effect.
- ⊕ Considerations: will this partnership operate indefinitely or for a finite length of time? Will there be a trial period?

Sample clause:

*This Agreement will come into effect on April 1<sup>st</sup> 2007 and remain in effect until March 31<sup>st</sup> 2010. Extension of the Agreement will be contingent on signed agreement of both parties.*

#### 1.3. Financial Contributions & Responsibilities

What goes in this clause?

- ⊕ What dedicated funding will the sponsor manage on behalf of the sponsored organization?

- What will the sponsor contribute in dollars, over and above this amount (if anything)?
- Will the advisory committee for Organization Y commit to any fund-raising for the project/initiative, and if so, how much per year?
- Under what payment schedule or conditions will these additional contributions be made?

Sample clause:

*Agency X will administer all project funds on behalf of Organization Y. In addition, it will provide \$5,000 per year towards the project. Organization Y commits to raising \$10,000 per year towards project costs.*

*Agency X will respond to all reasonable requests for financial information about the project made in writing (email or other) by the advisory committee for Organization Y.*

#### 1.4. In-kind (non-monetary) contributions

What goes in this clause?

- What other kinds of non-monetary contributions will be made by either party? (in this category you could include any benefits that staff of Organization Y might take advantage of by being hired by Agency X)
- Under what schedule or conditions will these contributions be made?

Don't forget to include: space, training opportunities for partners' staff, equipment, software access, and/or anything else

Sample clause:

*Organization Y will provide the use of 2 computers the project.*

*Agency X will provide offices for staff at its 25 Shady Pines Lanes location. They will become members of the bargaining unit, have access to extended benefits, and will be supervised by staff at Agency X.*

#### 1.5. Project/ Initiative Decision-making Process (not including Human Resources)

What goes in this clause?

- How will decisions about the project/ initiative be made? Consensus? What does consensus mean?
- Serious consideration should be given to how input from Organization Y will contribute to the annual planning cycle of Agency X, and to how overall agency planning may impact on the project/ initiative (see also 1.6 – Communications Protocol).

Sample clause:

*Major decisions about the direction of the project will be made by Organization Y's advisory committee, except where these decisions conflict with Agency X's policies and procedures or with applicable laws, or where such decisions impact on the relationship with Agency X.*

*Day-to-day decisions may be made by the staff on duty, and will be made in compliance with this Agreement and any applicable laws, within the spirit of its objectives, and in accordance with any adopted Terms of Reference.*

*Decisions to amend or terminate this Agreement may only be made by the Executive Directors of Agency X, and the advisory committee of Organization Y. Termination of targeted project funding is grounds for termination of this Agreement.*

#### 1.6. Communications Protocol

What goes in this clause?

- This can be key to managing a successful sponsorship arrangement. This clause may start with less detail and need to be amended to include greater detail if problems arise.
- Because there is a power imbalance between the two parties in a sponsorship agreement, the sponsored organization may not feel it is being consulted properly on planning decisions. Be explicit about what type of information and input will be shared and what will not (see also 1.5 Project Decision-Making).
- Considerations:
  - Who calls/emails who and for what reasons?
  - Meetings – how often, who can call them?
  - Whose obligation is it to communicate the outcomes of meetings if a party misses a meeting?

- What kind of documentation (e.g.: minutes) will be kept from meetings and what does that look like?
- What is the expectation of timeliness? (Suggest putting a clause in the agreement that 'Time is of the essence'.)

Sample clause:

*Communication regarding Project planning will be primarily between the chair of the advisory committee for Organization Y, and Agency Y's Executive Director or delegate. Other day to day communication will happen between staff of the project, and his/her supervisor, as designated by the Executive Director of Agency X. Staff of the project will also report bi-weekly to*

*the chair of the advisory committee for the project, and seek program guidance from the advisory committee.*

*Each party to the Agreement shall be held responsible for timely and clear communication, and for actively seeking information rather than waiting for it to be received. Time is of the essence in all communication matters.*

*Calls and emails:*

*The Executive Director of Agency X will check-in by phone quarterly with the chair of the advisory committee for Organization Y to give a general update.*

*If there is a contentious situation, these calls should be made frequently until the situation is resolved. Messages left by either party will be returned by the other party by the end of the 2 business days.*

*If important information is to be communicated, phone calls should be followed by an email summary of decisions made. The person initiating the call is responsible for summarizing this information, but either party may add to the information.*

*Notice of meetings & notice of decisions made:*

*Meetings between Agency X and Organization Y will happen semi-annually, and be set at the beginning of each fiscal year. The schedule will be agreed to by all parties. No single party may call a meeting outside of this schedule, unless it is of an urgent nature.*

*A schedule of meetings will be distributed by Agency X, but no reminders need be sent by email. It is the responsibility of each party to these meetings to seek out this information if they do not have it, and to attend meetings without being sent reminders.*

*If any party cannot make a meeting and an alternate time cannot be arranged, a delegate will be sent. Non-attendance of the meeting does not invalidate any decisions made at the meetings.*

*While formal minutes need not be kept, decisions made at meetings (along with who is responsible for action items and by when) will be communicated by the chair to all parties (in attendance and absent) by email within two business days. If, after two days elapse, no summary is sent out, it is the responsibility of all parties (present and absent) to seek out this information.*

#### 1.7. Dispute resolution

What goes in this clause?

- A process should be negotiated and written into the agreement to anticipate how disputes regarding the management of the sponsorship will be handled.

Sample clause:

*The following process will be followed if there are disputes relating to the handling of the project, coming from either party*

- 1) *Step 1: the person with the dispute will call the other party or parties directly and try to resolve it informally. If email will facilitate clarification, the issue may be laid out in a series of emails until there is resolution. Time is of the essence in responding to emails. The person who had the dispute will follow up with an email to summarize any resolution. At this stage, and at stage 2, it is inappropriate to involve funders, except to report to them, if required by each agency's protocol, the nature of the disagreement, and that an attempt is being made to resolve it.*
- 2) *Step 2: If the issue cannot be resolved by phone, an in-person meeting will be arranged. Any concerned parties will*
- 3) *be invited, unless confidential HR issues are being discussed.*
- 4) *Step 3: If the issue cannot be resolved after a meeting, funders will be informed. A second meeting will take place with the funders, if the funders are willing.*
- 5) *Step 4: If the issue still cannot be resolved, the Agreement will be amended, or terminated if no consensus can be reached regarding the terms of the amendment.*

*Exceptions to this process may be made in the following circumstances:*

- 1) *Disputes regarding HR, which may need to be handled while respecting employee confidentiality, or obligations under employment law, or the collective agreement.*
- 2) *If the dispute is regarding a human rights issue, in which case it will be handled as per each agency's non-discrimination/ equity policies, and in compliance with the Ontario Human Rights Code)*

## 1.8. Human Resources contribution & responsibilities

- Who is the legal employer? The employer may be held legally accountable to any employment standards, human rights or health and safety complaints and investigations.
- Revenue Canada will look to the legal employer for any claims or issues with payroll and remittances.
- Who is responsible for the recruitment, selection, training, orientation, daily supervision, performance management, discipline and termination?
- Which workplace policies and procedures will apply to the employee(s)?
- Which organization will provide Workers Safety Insurance coverage?
- Considerations: staff hired in a sponsorship arrangement need to have one clear employer and supervisor. If more than one partner wishes to provide input into staff performance monitoring, this should be set up in such a way that the employee does not feel managed by committee. For instance, feedback can be given to the primary supervisor, and not to the staff directly.
- The organization hiring will assume responsibilities not shared by other partners and this must be recognized in the agreement.

Sample clause:

*As of (date), Agency Y is considered the legal employer of the (position/employee). As such, Agency Y is responsible for the hiring, supervision, performance management, payroll, benefits, supervision and applicable personnel policies, direction, discipline and work activities for this position.*

*In the event that Agency Y chooses to terminate the employment of the position for any reason, Agency Y will notify the other organizations/partners in writing prior to the termination. The amount of any termination payment (or pay in lieu of notice) will be based upon the calculation as set out by the Employment Standards Act and will be the sole responsibility of Agency Y as the legal employer.*

*As well, Agency Y will have sole responsibility as the employer for any such claims arising from any and all other applicable employment legislation (e.g. Human Rights Code, Occupational Health & Safety Act, Employment Standards, Labour Relations Act, Revenue Canada).*

*Supervision: While all parties may agree to provide joint supervision regarding major terms of the project, employees working on the Project will be designated one official supervisor and that person must be a staff of the employing agency. Time must be provided one-on-one to discuss any confidential human resources issues.*

*Decisions: The decision regarding which staff to hire will be made by both parties, however Agency Y, who will be the formal employer may unilaterally turn down a candidate it deems unsuitable (reasonable explanation will be given). While every effort will be made by Agency Y to consult with other parties as appropriate in terms of general staff management, Agency Y must respect standards of employee confidentiality, and has the right to protect its assets and reputation as the primary employer by acting swiftly if necessary in matters of discipline or termination of project staff. Discipline and termination decisions may be made unilaterally by Agency Y without consulting other parties, and Agency Y is not obliged to report any such confidential information to other parties of this Agreement.*

## 1.9. Information Management, Ownership and Privacy Protection

What goes in this clause?

- Confidentiality (client and other): What information can be shared, if any with the sponsored organization? How will clients be informed of this? Are new forms required?
- Ownership of aggregate data: Who owns the data produced by the sponsorship (suggest that all parties own it, or have access to it).
- Record-keeping responsibilities.

Sample clause:

*Aggregate client data collected under the Project will be accessible to both parties to the Agreement. Data will be collected by staff of the project, rolled up and provided to Organization Y on a quarterly basis. Reasonable requests for data outside of these terms will be honoured if it doesn't place undue hardship on project staff or divert them from the main goals of the project.*

*Individual client matters will remain confidential to the staff of the project and any other parties as per the confidentiality agreements of that staff person's employer. Clients served under the project will be informed at intake about their right to confidentiality, and any limits to that confidentiality.*

*Employee confidentiality will be maintained as per clause 1.8*

#### 1.10. Ownership of property purchased as part of the project

What goes in this clause?

- Suppose a computer is purchased with project funding, and then the sponsorship ends after two years: who will own it then?

Sample clause:

*Computers and office furniture purchased with project funding will remain the property of Organization Y in the case of a termination of the sponsorship agreement.*

#### 1.11. Insurance

What goes in this clause?

- What insurance must be held by all parties, if any?

Sample clause:

*Agency X will hold Comprehensive General Liability Insurance naming Organization Y as additional insured, in an amount of not less than five million dollars (\$5,000,000) per occurrence, against damages arising from property damage and personal injury (including death), which might arise directly or indirectly out of the operations of the other party, its staff, agents, employees, personnel, or those for whom it is responsible at law, in carrying out its obligations under this Agreement;*

*Such policies, acceptable to the other party acting reasonably, shall be issued by an insurance company licensed to conduct business in the Province of Ontario and shall remain in full force and effect for the Term of this Agreement or any extension thereof. Such certificates shall provide that the insurance is cancelable only upon thirty (30) days prior written notice to the other party.*

*Agency X shall provide to Organization Y evidence of such an insurance policy, in the form of original documents, before either party commences its obligations under this Agreement.*

*Notwithstanding the foregoing, Agency X, at its own cost and expense, shall be responsible for insuring the [insert any particularly expensive equipment not contained in regular insurance clause – such as video teleconferencing equipment] against loss or damage while such equipment is in its possession.*

#### 1.12. Indemnity (protection against liability)

What goes in this clause?

 Suggest a clause that will protect all partners. Refer also to relevant funding guidelines.

Sample clause:

*Both parties agree to indemnify and save harmless the other party, its directors, employees, agents and all those for whom in law it is responsible, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses the other party , its directors, employees, Agents and all those for whom in law it is responsible may sustain, incur, suffer, or be put to at any time, in respect of any loss of life, personal injury or disability, loss of or damage to property, breach of third party Intellectual Property Rights or any other loss either before or after this Agreement ends, which are based upon, arise out of or occur, directly, by reason of any negligence or wrongful act or omission by the other party or any of its agents, employees, officers, or directors in providing the Services or in connection with, or incidental to this Agreement or any breach of this Agreement by the other party.*

*Neither party shall be liable to the other party for any incidental, indirect, special or consequential damages, including loss of profits, arising out of, or in connection with, this Agreement whether or not such party was advised of the possibility of such damage; provided, however, that the foregoing limitations shall not apply to any liability arising out of third party claims.*

#### 1.13. Reporting

What goes in this clause?

- ⊕ What are the expectations from government or other funders regarding reporting? What responsibilities does each of the parties have in producing data or narrative reports for this purpose?

Sample clause:

*Regarding the collection and roll up of data see clause 1.9 (Information Management, Ownership and Privacy Protection). The reporting of this data to funders will happen quarterly, as per the requirements of the Ministry under the funding agreement with Agency X.*

#### 1.14. Monitoring & Evaluation of Project

What goes in this clause?

- ⊕ Will the project/ initiative undergo a formal 3rd party evaluation?
- ⊕ What will the participation of each party be in any project evaluation or monitoring (this may go beyond funding or reporting requirements).

Sample clause:

*In addition to regular narrative and statistical reports to the Ministry and to PHAC, the Project will be subject to a formal process and outcome evaluation conducted by Marville & Associates, or any other firm as contracted by Agency X and as agreed to by Organization Y.*

*Staff of Agency X & the advisory committee of Organization Y will make every effort to facilitate this evaluation. As manager of the contract with the evaluators, Agency X will require interim reports in June 2008 and a final report by June 2010.*

#### 1.15. Enurement/ Succession

What goes in this clause?

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Sample clause:

*This Agreement is binding upon the parties hereto and their respective successors and permitted assigns until the termination date as agreed upon in Section (1.2).*

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- This clause defines what would constitute a conflict of interest among the partners, how that conflict should be declared and how that conflict will be resolved.

Sample clause:

*Conflict of interest is defined as any personal or institutional benefit that goes beyond the mutual benefit that derives from this Partnership Agreement. Any such benefit must be declared and if possible, the Partner representative should recuse him/herself from the discussions in question.*

#### 1.17. Amendments to the Agreement

What goes in this clause?

- 💡 This clause should spell out how and when any amendments to the agreement should be made. For instance, it would be important to state that all parties have to agree to the amendment.

Sample clause:

*Amendments to this Agreement may be made at any time, but must be made with agreement by all parties. Any Agreement or amendment to this Agreement regarding this or any substantively similar project which is made with fewer than all parties will be considered to constitute a new and separate Agreement, and will not override this Agreement. However, such a new Agreement may be considered grounds for the excluded party to terminate this Agreement as per clause 1.17 (Termination or Dissolution of the Agreement).*

*Amendments to this Agreement signed by all parties will supersede this Agreement.*

### 1.18. Termination or Dissolution of the Agreement

What goes in this clause?

- This clause anticipates what steps would be needed if any party to the agreement wants to break it.
- This clause can state what actions by any party might constitute breaking of the agreement.
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- Suggest pro-rating any remaining financial contribution in the event of dissolution.
- Suggest a clause stating that indemnity, ownership of data or property, and confidentiality all survive beyond the termination or dissolution of the agreement and as stipulated in funding agreements.

Sample clause:

*Any party may initiate the termination of this Agreement. The process would be as follows. The party initiating termination will give written notice, by regular mail, at least sixty (60) calendar days prior to intended termination.*

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- *Breach of confidentiality agreement as per clause 1.9 (Information Management, Ownership and Privacy Protection)*
- *Breach of dispute resolution protocol, as per clause 1.7 (Dispute resolution)*
- *Breach of agreement regarding Human Resources Management as per clause 1.8 (Human Resources contribution & responsibilities)*
- *Failure to negotiate in good faith an amendment to the Agreement, as per clause 1.16 Amendments to the Agreement*

*Prior to termination, any breach of the above clauses may be dealt with as per clause 1.7 Dispute Resolution. Any other breaches of this Agreement should be dealt with under clause 1.7, but may lead to termination of the Agreement if parties cannot agree to a resolution.*

*In the event of termination, any remaining financial obligations of Agency X will be pro-rated to the remaining term of the Agreement.*

*Indemnity, ownership of data or property, and confidentiality all survive beyond the termination or dissolution of the Agreement and as stipulated in funding agreements, and in clause 1.10 (Ownership of property purchased as part of the project).*