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# The Partnership Paperchase

## Structuring Partnership Agreements in Water and Sanitation in Low-Income Communities

Barbara Evans, Joe McMahon and Ken Caplan  
November 2004

Building Partnerships for Development  
[www.bpdws.org](http://www.bpdws.org)

# Building Partnerships for Development in Water and Sanitation

## The Challenge

The numbers are well known – too many poor people still lack access to basic water and sanitation services throughout the world. Factors that influence access are numerous. *Financial and economic* factors relate to connection charges and tariffs; *technological* issues include standards that are often challenging to introduce in poor communities; *political* barriers include the lack of priority that is placed on services in poor communities; and *institutional* factors relate to the question of who makes decisions, who co-ordinates action, and who implements projects.

## Multi-Sector Partnerships

Partnership approaches for implementation and stakeholder engagement over wider sector reform present progressively important pieces in an increasingly complex puzzle. Existing technical and financial approaches have proven time and again to be insufficient to meeting the challenge of providing sustainable water and sanitation services in poor communities. Multi-sector partnerships between relevant stakeholders – be they from public, private, civil society and donor spheres – provide one tool to overcome these failures. Such partnerships promote innovation and greater accountability whilst improving the understanding and capacity that make projects more appropriate and effective. Understanding more concretely the impact of sector reforms (be they on institutional arrangements, tariff setting, community responsibility or on other issues) contributes to this analysis and to the development of new implementation models.

## BPD

As a non-profit membership organisation, Building Partnerships for Development in Water and Sanitation (BPD) seeks to respond to this challenge. BPD works with strategic partnerships involving government, business, civil society and donors to improve access to safe water and effective sanitation for the poor. Taking the lessons learned from these strategic partnerships, BPD seeks to influence policy and debates at all levels to ensure that basic services are designed with the poor in mind. Furthermore, BPD promotes dialogue around institutional approaches for serving the poor, a more realistic understanding of multi-sector relationships, and the development of broad-based support for appropriate environments that enable partnerships to thrive. Through the development of a set of analytical and facilitation tools, BPD aims to influence the way organisations work together in partnership.

## BPD Components

The components of BPD derive directly from the recognition that each sector has a legitimate contribution to make toward the provision of basic services in poor communities. Hence, BPD:

1. Provides a forum for international debate that balances the participation of public, private, civil society and donor sectors;
2. Builds capacity of specific target groups to engage in (and/or support) local-level partnership projects;
3. Supports nascent/existing partnership projects for implementation of water and sanitation services in poor communities; and
4. Conducts research and analysis on issues relating to water and sanitation, partnerships and poverty.

At the project/programme level, BPD works with appropriate partners from across the different sectors to address individual and partnership goals. BPD is not prescriptive nor does it impose a 'one-size fits all' model. It emphasises capacity building, innovation and accountability through partnership.

# The Partnership Paperchase:

## Structuring Partnership Agreements in Water and Sanitation in Low-Income Communities

Barbara Evans, Joe McMahon and Ken Caplan  
September 2004

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# The Partnership Paperchase:

## Structuring Partnership Agreements in Water and Sanitation in Low-Income Communities

### Preface

In recent years ‘partnerships’ are increasingly being proposed as a tool to increase access to and quality of water supply and sanitation services in low-income communities. The importance of partnerships was emphasised in the Millennium Development Declaration through the Millennium Development Goals (MDGs); the World Summit on Sustainable Development (WSSD) held in Johannesburg in 2002 further endorsed the idea of partnerships. Partnerships in this context are instruments that enable organisations with differing skills and priorities to leverage increased impact through working together than would be possible by working alone. In the water supply and sanitation arena the usual idea is that partnerships – by bringing together the technical skills of professional service providers, the social-development skills and local knowledge of civil society groups, and the planning and management responsibilities of local government – will be better able to link informal or poor communities to systems of formal service provision. There are many examples of these ‘multi-sector’ partnerships, some concerned directly with service provision and some focusing more on policy development and advocacy.<sup>1</sup>

Despite their increasing prominence however these partnerships are not without problems. Empirical analysis is beginning to confirm anecdotal evidence that such partnerships sometimes come under severe strain, and indeed sometimes disintegrate in the face of seemingly insurmountable differences that in fact originate in relatively simple misunderstandings.

One commonly suggested remedy for these disappointments is to improve the ‘glue’ that binds partners together; in other words, to develop more effective, more accountable, and more predictable modes of working collaboratively. There is as yet, however, rather limited literature on how this can best be achieved.

This document, focusing on how such collaborations are structured, sets out to partially fill that gap.

### Consideration... Typical Water Partnership

In its simplest form, an example of an informal association could include: (a) a private company with a delegated management contract to provide water services throughout a city; (b) the municipal government agency; and (c) a local non-profit organisation with community ties. The motivations and interests of the various partners could be as follows:

Some low-income communities are not connected to the formal water system, so the municipality may prioritise these communities to receive expanded services. The municipality works with the company to map the communities and with the regulatory agency to experiment with different types of technology for affordable and sustainable water and sanitation services. A non-profit organisation (NGO/CBO) works with the company to document the profile of poor households; with the municipality to design education and awareness campaigns on hygiene, drainage and other issues; and with the community to form water committees that can deal directly with the company. Though primarily outputs-oriented, the work of this partnership has a number of policy implications.

<sup>1</sup> See for example [www.bpdws.org](http://www.bpdws.org) and also Plummer, J. *Focusing Partnerships: A Sourcebook for Municipal Capacity Building in Public-Private Partnerships*, Earthscan Publishers: London, 2002.

## SECTION 1 – Setting the scene

### About the document

This document has been written for partnership practitioners grappling with the questions of when, why and how to introduce ‘**paperwork**’ into the partnership process. Although some of our comments have general application, the focus of our work is multi-sector water supply and sanitation partnerships between government agencies, private business entities and non-profit organisations.

Although written guidance on partnerships often prescribes the introduction of formal agreements among parties, field experience shows that practice varies widely – with some partnerships relying on formal, binding contracts and others being more loosely organised. Therefore in this document the generic term ‘**paperwork**’ refers to both informal (letters, non-binding memoranda of understanding, etc.) as well as more formal documents (contracts, corporation articles and bylaws) that describe how partners come together, how they interact, what they do and how their partnership is expected to evolve over time.

The degree of formality required in the documentation is a result of a range of factors including local and societal norms as well as general practice. Furthermore, the legal effect rests more in its intent and detail than in what it is called (a point discussed in more detail later). Therefore, rather than promoting more or less formality, this document provides guidance on how any form of paperwork can best support partners in their efforts to achieve their objectives.<sup>2</sup> Through the introduction of a number of trigger questions, the aim is to get partners talking – addressing more clearly the issues that matter to them.

### About the authors and the methodology

Whilst all three of the authors have significant partnership experience, the team writing this document consists of three individuals whose primary jobs are as a water and sanitation specialist, a legal expert, and what might be called a partnership analyst. We note that our initial thinking on the task, though not the same, was fairly simplistic. We initially assumed that reviewing a number of partnership arrangements and their paperwork would lead to conclusions of what works best in different circumstances. A fairly comprehensive 90-minute interview was conducted with over 20 practitioners. From these initial interviews, we then expected to work more closely with a handful of projects.

We found, however, that what exists in practice is by no means predictable, with a huge number of variables influencing practitioner approaches. We therefore refashioned our approach towards a more inductive line of analysis. This analysis benefited greatly from a two-day workshop held in London with over a dozen practitioners from across the different sectors, including donors. Our recommendations are based on numerous conversations with more than 40 partnership practitioners from across the public, private and civil society sectors.

<sup>2</sup> Though clearly related to paperwork and touched on several times throughout this document, partnership governance is not explored in depth. For further guidance on different aspects of institutionalisation, please refer to Tennyson, R., *Institutionalising Partnerships: Lessons from the front line*, 2004 and Tennyson, R., *The Partnering Toolbook*, 2004, both available at [www.iblf.org](http://www.iblf.org); and upcoming work from AccountAbility at [www.accountability.org](http://www.accountability.org)

### Legal considerations and disclaimer

**This publication does not constitute legal advice.** Rather, it covers a broad range of subjects and is intended to supply general information to individuals and organisations potentially, or currently, involved in some form of collaboration to provide water and sanitation services in low-income communities. We expect that most of the concepts and analysis will resonate with partnership practitioners from the health, education or other sectors and would welcome comments particularly around those elements of the publication that do not reflect experiences in these other sectors.

Although BPD Water and Sanitation tries to ensure the accuracy of all of its publications, it cannot guarantee that the subjects described in this document are applicable in the many and varied relationships or countries in which the reader is engaged. Additionally, the national and local laws in any particular jurisdiction should be consulted before taking any specific action. To determine the applicability of this information to individual circumstances, the reader should conduct further research (including the various relationships sanctioned or promoted within a particular regulatory framework) and/or obtain legal advice as necessary and appropriate.

## SECTION 2 – Special considerations in the water supply and sanitation sector

Whilst much of the discussion in this document is applicable to multi-sector partnerships in general, our focus is on the provision of water supply and sanitation services in low-income communities. Although other sectors or issues (energy, education, security, health, finance, HIV/AIDS, etc.) may exhibit some of the same characteristics, the water sector has some specific distinguishing characteristics, both in the nature of the 'product' and its provision.<sup>3</sup>

The two primary factors that distinguish water supply and sanitation from other sectors are:

- water is both politically and emotionally highly charged. Given its relationship to life and livelihood, people have strong values and widely varying opinions associated with water,<sup>4</sup> not unlike HIV/AIDS but certainly different from energy for example; sanitation is similarly highly personal;
- while many different types of organisations are engaged in the delivery of water supply and sanitation, in many situations technical or resource constraints limit the ability of all but a few from operating effectively.

Because of this combination of political/emotional and technical qualities, establishing a mode of service delivery that is both widely acceptable as well as technically and financially practical can be very challenging. A wide range of different types of organisations has an interest in the issue (including national government, local government, private companies, NGOs and Community-Based Organisations, and obviously communities and households themselves). This may also explain why partnerships have become a popular concept in the water supply and sanitation sector. This complexity, however, also gives rise to tensions within partnerships and may call into question the values and interpretations that individual partners place on the objectives of the relationship. These complexities can have direct implications on who participates, what a partnership project does, how it is managed and how it relates to the external world – all standard topics of partnership agreements that will be discussed later in this document.

<sup>3</sup> BPD has analysed partnerships from a variety of angles and published a number of reports on the perceived benefits of partnerships among the public, private and civil society sectors to expand services in poor communities. (See Practitioner Note Series on benefits for each sector written by David Jones and available at [www.bpdws.org](http://www.bpdws.org))

<sup>4</sup> See Moss, J. et al. Valuing Water for Better Governance: How to promote dialogue to balance social, environmental, and economic values? CEO Panel for Business and Industry, 10 March 2003.



## SECTION 3 – Reviewing the various forms of collaboration

### Basic terminology

The terminology of partnerships is full of ambiguity as many readers endow the same terms with widely differing meaning. The term partnership itself is particularly likely to give rise to misunderstanding because of this. Consequently before proceeding, some clarity is needed about our usage of the following terms:

- Partnership
- Non-profit organisation
- Personal relationship
- MOU
- Informal association
- Association with written charter
- Contract
- New and separate legal entity (either non-profit or for-profit)

Partnership – This document focuses specifically on the various forms of collaborative engagement possible among public (e.g. municipal agency), private (e.g. water company) and civil society organisations that exhibit some characteristics of shared information, mutual decision making, duty of loyalty and care, and transparency. These forms of partnerships are meant to be more flexible and responsive ways of approaching a problem than a typical contract among business organisations.

Although we discuss the formation of a separate entity governed by its members to carry out the partnership's work, we are not referring to partnerships that are formally recognised by law (referred to in this document as 'legal partnerships'). Legal partnerships are legal entities that have rights, duties and characteristics that are distinct from the persons or entities that *comprise* the legal partnership. Such duties under law may include the responsibility of each partner for the acts and debts of the partnership and other partners. Such partnerships are created when parties explicitly state that they are partners. A court of law may also prevent a party from denying to third parties that he or she is a partner if their behaviour suggested that they were acting as a partner (the legal term for this is "partnership by estoppel").

In our experience, when institutions working in international development use the term partnership, they usually are referring to an informal association or to a contractual relationship.

Non-profit organisation – The term 'non-profit organisation' generally refers to organisations that engage in development or charitable activities. The term is sometimes used interchangeably with 'non-governmental organisation' (NGO). In most countries, however, NGO is not a distinct legal category. In Britain, NGOs are registered as non-profit companies that may also be registered with the Charities Commission, thus creating an extra layer of reporting responsibilities and particular considerations around how funds are spent and taxes levied. In the United States, such organisations are generally referred to as non-profit tax-exempt organisations. In water and sanitation partnerships, such non-profit organisations may be local, national or international; are generally mission or values driven; and may fulfil some

### Consideration... A multitude of paperwork forms

The paperwork of any relationship may encompass any combination of the following types of documents:

- Articles of Association
- Charter
- Code of Conduct
- Constitution
- Contract
- Correspondence (letters and emails)
- Letter of Agreement
- Letter of Intent
- Memorandum of Agreement
- Memorandum of Understanding
- Minutes from Meetings
- Terms of Reference

Often the title of the document is less important than the relational form it describes, its intent and the precise words that are either included or omitted.

combination of a variety of functions around research, implementation of projects (service delivery), and advocacy and policy work. Such organisations can be funded from a variety of sources including the general public, donor or corporate grants, and increasingly through contracts for services rendered.

### Consideration... “Don’t worry, it’s only an MOU.”

In many jurisdictions, a Memorandum of Understanding (MOU) may, in fact, be binding and legally enforceable in court. Generally, if participants make real commitments to each other with the intention to be bound, those commitments are binding and recognised in law. A legal and binding contract may be created even if the document containing the commitments is referred to as an ‘MOU’. If participants do not want to be bound to a document that summarises negotiations or undertakings, it is best to state this directly.

*“The participants acknowledge that this memorandum is non-binding and is not an enforceable agreement. Rather, this memorandum describes some of the parties’ common goals and summarises the possible format for future relationships and actions. No party will have a binding obligation to the other until they negotiate and sign a detailed written agreement that creates specific obligations and rights.”*

### The spectrum of engagement

Different circumstances clearly require different approaches to collaboration. In some instances, a contract may be the most appropriate form of working together. The task for partners is to determine what their particular circumstances require to achieve the goals. While this may sound obvious, many partnerships tend to determine form before function. Later sections of this document focus on the functionality of partnerships, but to provide some contextual guidance, this section provides some explanation of a variety of different collaborative forms.

**Personal relationships** – Personal relationships between party representatives or senior management are sometimes used to bind an association together and provide the motivation to act. This approach is very informal and flexible.

***Example:** Senior management of a water utility, an international non-profit organisation and a local non-profit organisation may decide that they can confer from time to time to discuss common interests and approaches to water supply and sanitation in their locality. Because of the demands of other work, they elect to meet informally to exchange ideas and learn from each other rather than taking a more formal approach to collaboration.*

**Memorandum of Understanding (MOU)** – The term ‘MOU’ in this document refers to a memorandum that sets forth the understanding of two or more parties about the objectives of their undertaking. If the partners intend the agreement to be legally recognised and enforceable, the MOU may in fact be recognised as a contract. Partners should understand that the

fact that they call a document an MOU does not mean that a court will not enforce the document as a contract. The content, rather than the name of the document, controls its legal effect. If partners do not want to be in a binding and legally enforceable agreement, the document should state that it is non-binding.

***Example:** A government agency and local non-profit organisation decide that they could each benefit from each other’s perspective on sanitation and the environmental needs of a certain community. The representatives of each organisation draft and sign a non-binding MOU that sets forth their joint goal to study this community, meet each month to share ideas and sponsor a joint community forum. Although not legally enforceable as a contract, the MOU nonetheless clarifies their collaborative efforts and may motivate action.*

**Informal association** – The term ‘informal association’ (often referred to in the United States and UK as an ‘unincorporated association’) refers to circumstances where participants wish to collaborate informally and do not intend either to create binding contracts among themselves or to create a legal entity (such as a new non-profit organisation) for their undertakings. Although they may give themselves a name to identify their collective efforts, informal associations are generally not recognised as separate legal entities. As a general rule, an informal association would not have the authority, under its own name, to enter into contracts or own property. Informal associations may or may not have written rules or guidelines about their function. These agreements tend to rely on moral authority for their force.

**Example:** A government agency, local utility and local non-profit organisation determine that they will meet as a group with local community representatives to make an assessment of the water supply and sanitation needs of the community. The representatives determine that they will refer to themselves as the 'WATSAN Initiative'. They do not want any more formality than to use the name of the initiative and their joint work to: a) convene the necessary meetings; and b) publish a joint recommendation about community needs. No governance framework is written out and each relies on the good faith of the other to make progress toward a final report.

Associations with written charters or guidelines – As described previously, associations are groups of organisations or persons who act collaboratively in a common purpose. An association's written guidelines can direct joint efforts, describe how the members of the association will make joint decisions, and provide for entry to and exit from the association. In many jurisdictions, an association has no separate legal existence and therefore no legal capacity to enter into contracts or own property. Thus, where an association's activities do not require such entry into contracts or the ownership of property, an association may be the simplest and most suitable form for collaboration. Although an association is informal, participation in an association is not without risk. Some jurisdictions will hold officers or members of an association personally responsible for actions undertaken by the association with their approval.

**Example:** A group of non-profit organisations, academic institutions, trade union representatives and other organisations meet together to learn of each other's activities and to create policy and advocacy positions. They may elect a chairperson and put in place other governance structures. Their written charter refers to how policy positions are targeted at international events and publicised more generally.

Contract – The term 'contract' generally refers to a negotiated, legally recognised and enforceable agreement among two or more organisations that formally sets forth the rights and obligations of each party. Contracts (sometimes referred to as 'principal-agent' relationships) are the core of many business relationships. Contracts usually set forth who is obligated, what they are obligated to do, under what terms they are obligated to act and what they will receive for fulfilling their obligations. In most jurisdictions, a contract can be enforced in court if key obligations are breached by a party to the contract. As a general rule, if partners do not intend for their agreement to be enforceable in court, the document: (a) should not be referred to as a contract and (b) should contain language that confirms that the agreement is non-binding (such as a 'non-binding letter of intent' or a 'non-binding memorandum').

**Example:** A private water utility decides that it will obtain better information about community water and sanitation needs by using two local non-profit organisations to conduct a needs assessment and provide a joint report to the utility. To accomplish this goal, the two non-profit organisations and the utility enter into a written agreement that describes the work to be done, deadlines and specifications for the final report, and the payments to be made to the non-profit organisations by the utility. The parties intend that the written agreement is enforceable, entitling the utility to the agreed-upon report, and entitling the non-profit organisations to the agreed upon compensation.

New and separate legal entity formed to undertake the partnership work – In some circumstances, partners may wish to form a separate entity (either non-profit or a for-profit business entity) to accomplish their collaborative goals. Partners who choose to form a separate legal entity may do so to:

- have a collaborative entity that has the authority to enter into contracts;

### Consideration... Implications of forming a 'for-profit' entity

In many locations, to protect their tax-exempt status, non-profit organisations must not directly engage in business activities. One common option that may be available in these situations is the formation by the non-profit of a for-profit subsidiary to engage in these activities. Such a for-profit subsidiary must be created and managed in accordance with the non-profit's governing laws and locale.

- have the special legal, social and political recognition that comes with being a separate entity recognised by governments and local law;
- own property in the name of the new entity;
- speak with a common voice and name;
- create a separate brand for the collaborative work with control over the name and its use; and/or
- use the corporate form of an entity to minimise the risk to them personally and the individual organisations they represent.

Each participant in this effort would become a member of the newly formed entity and could also want to search for other members. The documents that create and govern the new entity would set forth the rights of participants, the methods of governance, how decisions are made, and how members can join or leave.<sup>5</sup>

Participants may choose between either forming a non-profit or a customary for-profit business entity. The detailed forms of either non-profit or for-profit will depend on the laws of the jurisdiction in which the project operates.

***Example:** A government agency is preparing to enter into a concession contract with a private utility and seeks a method of monitoring and assessing the utility's efforts in providing increased supplies to poor communities. A group of small non-profit organisations involved in service delivery, and with strong ties to several local utilities, wish to provide the monitoring in return for compensation. The non-profit organisations form a new entity called the Water Auditor, Inc., organised under the applicable host country laws and governed by Articles and Bylaws. Water Auditor, Inc. enters into a written agreement with the government agency to provide monitoring and to receive compensation.*

Alternatively, partners may create a new for-profit corporation formed to undertake the collaborative work of the partners. In this instance, non-profit organisations could become shareholders in the new corporation for which specific corporate documents govern its management and operations. This option is substantially more complex than the formation of a new non-profit entity. An existing non-profit organisation that is considering ownership (shareholder status) in a for-profit corporation should obtain tax and legal advice to ensure protection of its legal and tax exempt status. As business and non-profit entities enter into new forms of relationships, this area of practice and law is both increasing in frequency and changing rapidly. This document cannot and does not provide any general advice as to whether non-profit organisations can or should enter into such arrangements. The risks and benefits of ownership in business ventures by non-profit organisations must be carefully investigated and analysed.

### Practice pointer

Many different words are used to describe collaborative relationships and they may take a number of different forms. However, the most challenging aspect of collaborating is likely to be reaching a common and clear understanding of what will be done individually and collectively. Only after reaching that understanding should detailed work begin on the paperwork.

***Example:** A government agency seeks to enter into contracts with consortia that can provide a one-stop focus to develop service delivery in poor communities. The consortia thereby include private firms and non-profit organisations that can deliver design, construction, operations and maintenance and community institutional and social development work.*

<sup>5</sup> Examples in the water sector include the Global Water Partnership (GWP) and Building Partnerships for Development in Water and Sanitation (BPD).

## SECTION 4 – Making the case for paperwork

### 4.1 Drivers and factors of paperwork

Drafting partnership paperwork in the water sector is usually complex due to differences in the aspirations of individual partners with widely different world views. Various external and internal triggers and factors (often the first indication of a potential dispute) lead partners to introduce paperwork that attempts to capture the intent of each partner organisation, enhance mutual accountability, or mitigate risk. Recognising what has triggered the need for paperwork can be a useful way of understanding what the paperwork is for and how it can help to improve collaboration. Some common triggers are discussed below.

#### Internal triggers

Inside the partnership, several primary triggers and factors tend to lead to the introduction of some form of paperwork. These revolve around:

**Cultural factors** – Clearly certain kinds of organisations have a culture of recording agreements. Professional habits in the private sector (e.g. motivated by risk mitigation and limiting liability) suggest that everything must be in writing. Mistrust in multi-sector partnerships often forces groups to put things in writing, attempting to create a more 'level playing field' or to safeguard certain advantages. Institutional buy-in may also be easier to achieve by formulating some sort of agreement for senior management. Geographic cultural factors also play an important role in determining how paperwork is approached. In some cultures, for example, a greater emphasis is placed on the handshake. In other cultures, the written, signed agreement is extremely important as the primary evidence of legitimacy.

**Commitment of resources (staff time, money, in-kind)** – A logical point at which partners decide to create paperwork is when partners are asked to commit resources. The drive for documenting these contributions could arise because:

- an organisation wants to ensure that their contribution is recognised;
- an organisation wants to ensure that informal commitments made by a partner organisation are forthcoming;
- a change is made in the expected contribution (of staff time, money in-kind or otherwise) from one or more organisations and they want it on record; or
- one organisation is concerned about the lack of appropriate controls in a partner organisation and in the extreme case want to curb corruption by registering their (financial) commitments, how they will be spent and accounted for and by when.

Paperwork should promote a clear understanding of what partners expect (rewards and milestones) in return for their commitment.

**New representatives or new partners enter the collaboration** – The introduction of new partners is a fairly obvious point in time to introduce some recognition of processes for decision-making that have been used to date (or to review their efficacy). If not sufficiently documented, new people or partners may seek to introduce ideas concerning the partnership that are inconsistent with the group's prior efforts – thereby disrupting or challenging the working of the initial partners. Though changes and new influences may be welcomed by some, the paperwork will clarify why certain things have been done in a particular way in the past. If changes to the group's work are appropriate, documenting such changes will bring clarity to expectations.

**Implementation challenges begin to appear** – Partnerships will often introduce some form of paperwork when things do not go as originally planned or when anticipated changes require careful management. When a partnership project or approach has unintended outcomes, partners will often wish to negotiate how they will deal with any problems that arise. For example, the introduction of an uncertain technology, mismanaged community expectations,

## Practice pointer

While familiarity between partners may reduce the perceived need to document the partnership, care is needed; while there may be familiarity between individuals there may still not be a deeper mutual understanding of the partner organisations. Even where such an understanding exists, formal and informal paperwork may help to avoid future disputes.

or increased profile of the partnership project may all change the goals of the different partners. Similarly fears of litigation from possible negative impacts often lead to a perceived need to record aspects of the partnership.

Presence of milestones or critical events – Urgency or expediency will often lead partners to put something down on paper. Perhaps the partnership is approaching a milestone (i.e., a leadership or staff change, an election, etc.) by which time they expect to have reached a certain point or achieved certain results. Increasing conflict could also be a point whereby documentation is introduced (or revisited).

Under-performance – When one partner is underperforming, partners will often seek to record expected commitments in an effort to bring the underperforming partner back in line. The process of recording expectations should help identify the root cause of underperformance.

Much of the analysis above stems from negative aspects that propel a partnership into entering into agreements of some sort. In fact, some positive factors might also create the need to record commitments, objectives, approaches or achievements. A successful approach or project that seeks to institutionalise the learning process, replicate itself, expand its mandate to meet increasing demand, and/or protect a 'copyright' may also drive the partnership to enter into or refine agreements.

### External triggers

External triggers encouraging the development of paperwork are probably fewer in number but no less influential.

Pressure points – Community demands, the media and financing partners can all create pressure to formalise and document relationships. Paperwork may prove useful in managing the expectations of the communities while media pressure may force the partners towards greater transparency and clarity. Donors and financiers also often impose their own documentation and reporting requirements.

External shocks – External shocks, such as elections, staff turnover and so on have implications for what the partnership does. The introduction of new laws and regulations could also have a significant impact on pilot programmes, technology choice, grievance mechanisms, etc., that ultimately will have a bearing on the partnership. A crisis like an outbreak of cholera may spur partners into trying to find a way to record progress and document their efforts. Even international forums that offer the opportunity to showcase a partnership's work could be the impetus for establishing clear protocols for the partnership, particularly around an approach to publicity and who speaks on behalf of the partnership. (See Section 6.8 below.)

Thus a number of factors can potentially drive partners to document their relationship. The challenge is to understand how these drivers and factors might limit individual partners or the partnership's ability to respond to changing internal and external contexts.

## 4.2 The rationale for paperwork

When the question "Why introduce paperwork?" is asked, the most common response is that having written understandings will be important for reference if and when disputes arise. Although that reason alone may justify the time and energy of drafting an MOU or other types of documents, several other important rationale for paperwork also exist. Many of these are directly related to the accountability of partners to each other but also of the accountability of the partnership to its objectives. The development of paperwork can be expected to:

Provide clarity – The process of describing the relationship in writing assists dramatically in enhancing the partners' joint understanding, thus increasing certainty and preventing disputes. Often partners do not realise the significance of different points of view until the agreement has been drafted and reviewed. Converting mental concepts to written documents demands a clarity that can often stimulate new and additional thoughts on how to work together more effectively.

Ensure more comprehensive negotiations and risk analysis – On some occasions, when agreements are written, areas of negotiation that may have been omitted become obvious. By finding the omission, the partners can then continue their negotiations in a more comprehensive fashion. Partners can also reference a pro forma agreement or checklist of provisions to ensure that all-important issues have been addressed in the final documents.

Make development initiatives more professional – The use of paperwork can support the professionalism that NGOs and their partners in business and government seek. Written paperwork records understandings as a way of ensuring that their efforts are transparent and accountable. Paperwork also should determine how the partnership would be reviewed and evaluated. In this way, partners (and other interested parties) can more clearly understand the approaches that they have taken, allowing for some greater understanding of possible channels for and challenges of replication ('knowledge management').

Serve as a reference point for partners as well as external organisations and individuals – From time to time, questions may arise about how or whether an action is appropriate. Written paperwork, rather than the personal recollections of negotiators, can serve as a reference to help respond to the question or inquiry from partners. This is particularly helpful when the representatives for the individual organisations change or new partners join. Paperwork can also serve as a reference point for outside organisations or individuals that wish to interact with the partnership.

Serve as the basis of discussion on future efforts – When partners in a collaborative relationship are considering how or whether to move the relationship to a higher level of function or closer working arrangement, paperwork can serve as a benchmark for devising how the partners would like the relationship to develop.

Provide a tool for obtaining senior management 'buy-in' – Greater importance is usually attached to activities that are documented, particularly those that require signature by senior management. Summarising collaborative relationships for senior management increases opportunities for authentic buy-in from each organisation. Signing ceremonies are also a way of increasing management interest.

Describe how to address modification, conflict, withdrawal and termination – No issue is more crucial to collaborative relationships than how the partners will respond to changing circumstances and contexts, and effectively deal with conflict, exits and termination. A tense situation makes it particularly challenging to either resolve a conflict or terminate a relationship. By addressing these issues when the relationship is formed, no party is then unexpectedly forced to serve as mediator or make an inequitable or unnecessary concession. The presence of written and negotiated procedures permits all affected partners to move down a predetermined path towards appropriate modification, equitable resolution of a conflict, or an equitable termination of the relationship.

### Practice pointer

Recognise that paperwork is only one aspect of the collaborative relationship. The health of collaborative relationships is dependent on many factors besides the paperwork (such as mutuality, good communication, aligned goals, parallel commitments, transparency). Paperwork – no matter how perfect – cannot substitute for these other aspects of a healthy relationship. While jointly drafting paperwork that describes the collaborative effort requires extra effort, the documents as well as the process of negotiating them often makes the collaborative work more effective.

## SECTION 5 – Getting to know each other: Are the partners compatible?

Partnerships are often designed to take advantage of differences among partners, such as knowledge, resources, ability to influence others or otherwise. Differences are not only expected but sought. Whilst creating value for the partnership, managing these differences can be challenging particularly if there is insufficient familiarity between partners. Thus, partners should invest time in the early stages getting to know each other. Negotiations around partnership paperwork can provide a helpful framework for this process. Critical aspects to consider include:

Motivations, perspectives and attitudes towards working together – An individual partner needs to understand how the proposed partnership’s activities will affect them. Does the proposed partnership advance the individual vision and objectives of each partner? Partners should exercise caution where the partnership project represents a planned move into a new or marginal business area (for example, an international NGO that works on education moves into water and sanitation, or an NGO working in rural Vietnam shifts focus to Hanoi). Partners that have to make such changes might have difficulty making the case within their own organisation that they have the skills and competencies, resources and credibility to do the job. Although it is not expected that partners will fully share a set of values, the task is to determine where areas of conflict might build up over time.

A lack of previous partnership experience or simple unfamiliarity with potential partners may lead to simplistic assumptions about the motives, practices and decision-making processes of partner organisations. To work together effectively, organisations need to have a reasonable understanding of each others’ attitudes to risk, modes of operating, tactics of coping and flexibility. Often organisations fail to understand each other fully at the start, leading to disappointment or acrimony later.

1. **Reviewing objectives** – How important are the goals of the partnership to each partner? Does the partnership (and its goals) have the buy-in of senior management? Do the partnership goals fit within each partner’s long-term mission and vision? Does collaboration enhance their other efforts?
2. **Attitudes towards social development** – Do the partners define important terms such as poverty, needs and demands in the same way? Do the partners for example have compatible views of the causes and effects of poverty, the provision of water supply and sanitation, and the needs/roles of the local communities?
3. **Attitudes to risk** – Are partners’ attitudes about certainty or ambiguity in projects compatible? Are there similar attitudes about risk? Is one partner more reluctant to take risks? If so, will that affect the working relationship?
4. **Stretching to meet the needs of the partnership** – Are partners patient and willing to put energy into developing the collaborative relationship, modifying (‘stretching’) as the project progresses, adding to the resource base if the project requires it, and willing to defer to other leaders and non-hierarchical decision-making processes?

Level of interdependence – The level of dependence that partners have on one another greatly affects how they approach the partnership, how seriously they take the paperwork, and how carefully they think through the grievance mechanisms in case something goes wrong. Rather than work in partnership, businesses can easily hire social development consultants to operate various projects. The public sector entities can use contract relationships to obtain the services that they seek without expending energy on a partnership approach. Interdependence is a function of the choice partners have (“*Can I work with someone else if I don’t think we are compatible?*”) and the urgency to complete the task (“*Do I have time to explore other options for getting the job done?*”).

Often in water supply and sanitation partnerships, choice may be limited because a certain NGO, government partner or private water company is the only feasible, realistic or willing partner in a given community. In other situations, one partner may have a choice whilst



others do not. The lack of choice might force partners to be more assertive about documenting their relationship. Partners that 'choose' to work together may be just as comfortable creating a less formal relationship.

High levels of interdependence but woefully mismatched urgencies can have an extremely negative effect on partner morale and partnership working. In its simplest form, for the public sector, upcoming elections might be a milestone; for the private sector, an annual shareholders' meeting; and for a community group, seasonal or funding arrangements may dictate the terms along which progress can be made in the community. Negotiations around paperwork need to arrive at some preliminary conclusions of how partners will address incongruent timeframes.

1. **Degrees of choice** – Do partners have choices about whether they get involved or remain engaged in the partnership? How are different organisations reliant on their partners to achieve the goals of the partnership?
2. **Timeframes** – Is there a similar or compatible perception of the urgency of achieving the goals of the partnership?

Transparency and freedom of information – Partnerships must pragmatically determine who needs what information in order to meet the objectives of the partnership. A lack of transparency around financial information appears to be the most contentious area (e.g. who is being paid how much to deliver what?). Because partnerships are dynamic and therefore in constant negotiation, the disclosure of information is also strategic when timing is critical.

Transparency is a commonly used word in development circles with many meanings. Some commentators suggest that full and total transparency is unrealistic. Our inquiry into the subject of multi-sector collaboration and partnerships indicates that – although full, open and truthful exchanges of information are rarely feasible – it is important that participants work to be as open and truthful as possible in their collaborative undertakings. Participants who have a tendency to withhold data tend to find themselves in conflict more frequently than those who are more open.

1. **Disclosure of information** – What information do partners need to meet the objectives of the partnership? What information, if not disclosed, would impair or destroy the relationship?
2. **Financial oversight** – Do partners have similar views about financial management; share similar understanding of accountability in finances; hold common views on record keeping practices and levels of detail; and have compatible views of donor reporting responsibilities?

Legitimacy, capacity and power – In this age of multi-stakeholder dialogues, increasing attention is being paid to the legitimacy and accountability of each group that comes to the table. Partners need to consider both their own and their partners' organisational standing, resources and capacity. The balance of power in a partnership may be a function of an appreciation for the contribution and risks of each partner. Paperwork should clearly suggest recourse mechanisms to resolve disputes (see Sections 6.9 and 6.10 below).

1. **Legitimacy** – Is each partner organised properly with sufficient capacity for its intended function? Is formal recognition as an NGO/charity/corporation needed for this work? Does each partner have the representational authority/mandate it claims? Are there structural asymmetries among the organisations that will affect how they collaborate?
2. **Resources** – Do partners have the ability to respond to the likely commitments and 'stretch' as needed to meet new and perhaps unexpected challenges (to add financial resources or assign additional staff to the work)?
3. **Valuing different contributions** – How will partners value the contribution of each partner and deal with power asymmetries? Is there a risk that smaller or less powerful entities will be undervalued or ignored? Will partners have sufficient strength to hold each other mutually accountable?

### Practice pointer

To expect full transparency is perhaps neither practical nor desirable. Creating an atmosphere of constructive communication, clear and shared financial oversight, and an intolerance of corruption appears to be the best approach.

## Section 6 – What to include in the paperwork

### 6.1 Making partnerships strong and flexible

An advantage of partnerships can be that they are generally flexible in the face of changing circumstances, while simultaneously strong enough to deliver against challenging targets. Such strength and flexibility is most likely to arise when a partnership has:

- clear boundaries and roles within which flexibility is encouraged;
- some expectation of who is responsible for what and when;
- a culture of joint problem solving that recognises and accepts that circumstances will change;
- a mutual recognition of the constraints and opportunities faced by each partner organisation;
- a formal timetable or arrangement of regular meetings and discussions that encompasses both the implementation level and the management level of each partner if necessary;
- clear processes for reviewing progress, changing direction if need be, and bringing in new resources or partners; and
- workable mechanisms for dispute resolution, arbitration and termination to protect partners and create confidence.

Part of the objective of the paperwork is to help to create these conditions.

In an effort to strengthen the familiarisation process or negotiations involved in creating strong yet flexible partnerships, the following sections review areas of discussion for structuring the paperwork, based on contents generally included in such documents.

### 6.2 Why do the partners need a partnership? – The opening clauses

Partnerships provide a mechanism for:

- enhancing or ensuring the results of a project (contractual compliance);
- mitigating risk (social license to operate);
- experimentation and innovation around products and services; and/or
- influencing the 'rules of the game' (creating new processes that inform policy and decision-makers).

Any given water supply and sanitation partnership could have a variety of partners (including government agencies and municipalities, non-profit / community-based organisations, companies, donors, etc.). Each participant will likely view the relationship slightly differently. Furthermore, perspectives often vary within each partnering entity.<sup>6</sup>

To adequately serve these different perspectives, the partnership paperwork must find a meaningful way to record the varying objectives of different partners. Seeking a common vision may be a non-starter, because this may result in text that has been so watered down through negotiation as to be rendered meaningless. Nonetheless, some sort of common understanding of the project is absolutely critical (e.g. 400 water taps installed in a community, the building of a health care centre, etc.).

<sup>6</sup> For example, within the non-profit partner organisation, the programme/operations team is looking for concrete results; the finance team is looking to reduce possible risk; the marketing department is looking for new and different products and services to offer; and the advocacy team is trying to influence the direction of the sector.

Great care must be exercised to avoid the use of ambiguous words to describe important ideas. For example, a vision statement for a partnership could refer to the “provision of sustainable water and sanitation services” but there could be widely different interpretations of the meaning of the word “sustainable” in this context.

Recommendation on drafting open clauses – Clear statements of partnership objectives can provide a framework for interpreting all other provisions of the paperwork.

**Example clause #1 for use in memoranda or an exchange of letters:**

*“The mission of the [Name of Programme] is the creation of a network among [Names of participants] that will: (i) make a comprehensive assessment of the water, sanitation and hygiene education needs (collectively “Needs”) of the communities that comprise [Name of location], (ii) develop long-term plans to meet the Needs (“Plan”) with detailed explanations of the relevant costs and implementation activities, and (iii) conduct the educational, advocacy and fundraising efforts that are aimed at implementing such plans. The [Name of Programme] now intends to complete and publish its assessment no later than [date] and complete and publish its Plan no later than [date]. Thereafter, the [Name of Programme] will work, as described below in this document, to guide implementation and necessary revisions to the Needs and Plan.”*

**Example clause #2 for use in memoranda or an exchange of letters:**

*“The purpose of the [Name of Alliance] is to attract, manage and disburse additional resources in [locations] through a new public-private partnership that will make a sustainable and significant contribution to the satisfaction of the communities’ water and sanitation needs, thereby mitigating the impact caused by water borne or transmitted diseases, and contributing to poverty reduction as part of the Millennium Development Goals. Although the objectives of the participants and the [Name of Alliance] may change over time, the current objectives are to:*

- Promote, encourage, develop and support efforts to create [Name of Alliance];
- Enable and facilitate educational efforts to increase public and governmental awareness of the water and sanitation needs of [communities];
- Solicit, raise and receive funds and other support for the furtherance and advancement of [Name of Alliance];
- Engage in public events, workshops and conferences that may support these educational and fundraising needs;
- Devise and establish a legal framework and structure, as appropriate, within which to carry out the mission and goals of [Name of Alliance] and;
- Perform any additional functions in furtherance of the foregoing.

*In this document the members of the [Name of Alliance] have set forth their specific goals, how they will manage their joint efforts, and respond to the changing environment in which they work.”*

**Practice pointer**

Getting to the point of an agreed statement of objectives can be very challenging. Some partners like to establish a mode of operating first – through drafting a code of conduct or similar document that outlines how partners will engage in the debate. The problem with such documents is that they too may end up being so general as to be almost meaningless. An example of a code of conduct is shown within this document.

### 6.3 Who are the partners?

The next step is to describe who is part of the partnership, who represents each partner (and in what capacity), and what each partner has committed to doing. Again the framing of such a text will reveal important challenges that are best addressed early before conflicts arise. In the following sections, some questions are posed that each partner should be asking at this stage.

A partnership's ability to undertake a project or programme may be reduced if an important potential member is excluded. Exclusion may be detrimental to a partnership for several reasons. Firstly, the excluded organisation may be needed to accomplish the partnership goal. Secondly, the excluded organisation or individual may have the power to block the intended programme if not involved from the planning stages. Although the inclusion of additional partners can make operations more effective, the partnership should evaluate and balance the risks and benefits of increasing membership. Smaller partnerships can be more efficient, but adding new partners is harder later in the process.

1. **Stakeholder assessment** – Who is not included in discussions? Would their participation enhance the partnership's ability to meet its objectives? If they don't participate, what is their likely influence on the partnership project? Would they join if asked?
2. **Partner review mechanisms** – What is a realistic timeframe for reviewing participation in the partnership?

Recommendation on identity of the partners – A list of all participants makes it clear to every reader who has agreed to undertake the programme.

**Example clause for use in memoranda or an exchange of letters:**

*“The founding members of the [Name of Alliance] and the entities that are signatory to this non-binding MOU are:*

*[Name of organisation #1]*

*[Name of organisation #2]*

*[Name of organisation #3]*

*[Name of organisation #4]*

*By signing this non-binding MOU, each member confirms that it has the authority to make this commitment, and that it has made the necessary commitment of time, resources and personnel to carry out the activities contemplated by [Name of Alliance].”*

## 6.4 Who will represent each partner?

A partnership's day-to-day function and health depends on the capacity and ability of the individuals who represent each participant – the 'party representatives'. The selection of party representatives can be as important as the selection of institutional partners.

Tennyson describes the challenge of being a partner representative very well, suggesting that individuals often find themselves in the

*“highly unenviable position of [having] to speak on behalf of their organisation with confidence (bravado?) whilst knowing that they may only have minimal or short-term institutional backing... at the same time having to represent the partnership robustly within their own organisation even when progress is slow and the organisational benefits far from certain.”<sup>7</sup>*

Representatives need to ensure that different internal views are sufficiently aired. These views are all legitimate; internal negotiation within an organisation will strengthen its participation in the partnership.

<sup>7</sup>Tennyson, R. *Institutionalising Partnerships: Lessons from the Front Line*. IBLF: London. (2003, p5) ([www.iblf.org](http://www.iblf.org))

1. **Skills** – Does s/he have the knowledge and perspective needed to guide the project? What is their ability to communicate effectively with other partners?
2. **Location** – Is s/he in the most appropriate unit within the partner organisation to actually achieve what needs to get done? Are all party representatives roughly at the same level within their respective organisations? If not, does (will) this matter, particularly around authority to take decisions on behalf of her/his organisation?
3. **Mandate and support** - Does s/he have influence with, and the acceptance of, the senior management? Does s/he have clear recourse mechanisms in the case of different kinds of challenges?
4. **Motivation** – How motivated is s/he with regard to the partnership? The projects? Can this person serve as a ‘cheerleader’ for this effort within his or her own institution?

Recommendation for paperwork on partner representatives – Care must be given to identifying the most appropriate person to represent each participant in the collaborative work.

**Example clause:**

*“For the purposes of the [Name of Programme] collaborative water and sanitation programme, [Participant A] has appointed [name of person] to serve as its representative, [Participant B] has appointed [name of person] to serve as its party representative, and [Participant C] has appointed [name of person] to serve as its representative (collectively and individually the “Representative(s)”). To make programme meetings efficient and effective, each Representative will review pre-meeting materials and schedule his/her activities to make time for the meetings held to discuss this programme. Each Representative has the authority to participate in the programme on behalf of the participant whom she/he represents.”*

## 6.5 What are partners’ commitments regarding loyalty and care?

In some jurisdictions, the creation of a partnership can mean that: (a) each partner is responsible for the actions of its other partners (including accidents, injuries and debts); and (b) each partner has the right to make partnership commitments. A partnership may be created informally in some jurisdictions – without the need for legal documents. In some jurisdictions, an organisation may be viewed as a partner that is responsible for other partners merely by making oral or written statements that suggest that it is in a partnership.

In addition to describing the practicalities of management and enshrining the ‘spirit’ of the partnership in a statement of partnership objectives, some partnerships may also find it useful to describe the duties of loyalty (to each other) and care (of the partnership) that are inherent in the partnership. This option can be included in both formal and less formal relationships and may not always be considered necessary by the partners.

Partners typically expect a high duty of care for each other in their internal relationships. Consequently, it is common for partners in a legally recognised partnership to expect that their internal relationships will include:

- The right to participate in management
- Transparency in internal and external processes
- Mutual responsibility and accountability

## Consideration... The Partner Representative

Many factors influence the way individual representatives behave when engaged in work with a partnership; their position and other work within the partner organisation will be critical. She could be new on the job and wanting to establish herself as either innovative or as part of the establishment. He may be about to retire and want to go out with a bang, or about to retire and go out as quietly as possible. She may be completely inundated with work and this partnership is only one of 20 that she is managing, or this particular partnership might be 80 per cent of her job and thus all her time and reputation hinges on the partnership’s success. He may have initiated the partnership and hence is very driven, or been handed the partnership by someone else in the organisation and so be not very interested.

Developing a degree of personal relationship between representatives can help to relieve tensions that may build up unnecessarily; if your opposite number knows that you are inundated with work for an upcoming meeting, for example, they may be more flexible and less combative.

### Consideration...

**“We are partners but have no real legal obligation to or for each other.”**

While a partnership may choose to avoid assuming the legal duties of loyalty and care, moral obligations between partners still exist. Generally partners would be expected to remain loyal to each other and to the work of the partnership, exercising the same level of care towards the work of the partnership as to their own independent endeavours.

Multi-sectoral partnerships may decide to include many (but not all) of the characteristics of legal partnerships in their own relationship. Partners could include selected characteristics by describing them in their paperwork, whether operating in an association, under a contract or as part of a new entity.

Options for setting out relational goals or commitments vary with the form of relationship chosen. One option for an association would be to place a written ‘Relational Code of Conduct’ in the written charter to encourage the participatory and mutual relationship associated with being partners. If operating as a new entity, similar terms could be included in the by-laws or in a procedure or policy adopted by the Board of Directors.

Recommendation for paperwork on legal obligations – To avoid being considered ‘partners’ in this legal sense, parties should not introduce each other to other persons as ‘partners’, they should avoid making joint commitments and their memoranda or agreements should clearly state that they are not partners. Suitable wording, such as that given below, should always be included:

*Nothing in this memorandum is intended to create a partnership, joint venture, principal agent or similar relationship.*

Recommendation regarding commitments to each other – Confirm that each partner will act with due care and loyalty to both the partnership and its members.

***Example clause regarding care and loyalty:***

*“Although the members of the [Name of Alliance] have determined that they will not form a legal partnership, they have also agreed and confirm that they will each professionally conduct the activities of the [Name of Alliance], with due care to the objectives of the [Name of Alliance] and the needs of other members. Each member confirms that, so long as it is a member of [Name of Alliance] it will demonstrate loyalty to the [Name of Alliance] and its members. These commitments to care and loyalty are not intended to limit the other activities of members. Rather, the relationships formed in [Name of Alliance] are collaborative and non-exclusive. Therefore, each member is free to pursue any other desired projects independently with no obligation to any other member of the [Name of Alliance].”*

### **Sample**

#### **Relational Code of Conduct for the [Name] Water Association**

To accomplish the goals of this Association and to confirm our commitment to a healthy and transparent working relationship, we agree to the following Code of Conduct:

##### **Our work together**

- We will make integrity a priority in our working relationships.
- On issues regarding the work of the Association, we will be loyal to the Association and its Members.
- We will exercise care and professionalism in the work of the Association.
- We accept that conflict can arise in this work. We will work through disagreements willingly and without being disagreeable. We will not let disagreements grow intense – but rather we will respectfully raise our differences and work to prompt and equitable resolutions.
- We will avoid disputes about the status of any Member. Rather, we will treat each other as equals.
- Because we are working as partners and equals, Members will not seek to force any other Member to a decision or commitment. Our working relationships will be based on persuasion and our common goals.

##### **Honest communications and honouring commitments**

- We will freely share information regarding our common work, and will not withhold information without substantial justification.
- We will honour schedules made with other Members to expedite the joint work in this Association. In meetings we will work together in good faith and adhere to the agreed upon agenda.
- We will work together as partners, communicating honestly and maintaining flexibility.
- We will freely disclose our interests in or bias about the outcome of any matter being discussed among the Members.
- The records of the Association will be open and accessible for all Members.

##### **Decision-making**

- Consistent with other Association agreements about decision-making, we will attempt to solicit the views of all Members before important decisions are made. In so doing, we will listen responsively and help each other toward our common goals.
- We will respect the bona fide interests of all Members and seek actions that both advance the goals of the Association without requiring compromise of a Member's key interest.

Source: Drafted by J McMahon as modified from Milton R Wessel's *Rule of Reason*, 1976, Howard Raiffa's *The Art of Negotiation*, 1982 and Fred Ikle's *How Nations Negotiate*, 1987.

## **6.6 What will the partnership do?**

Implementation – Partnerships may have objectives ranging from measurable and tangible deliverables (e.g. water connections) to less measurable and sometimes intangible outcomes (e.g. changes in approach and policy). Setting out the objectives on paper can be surprisingly challenging, but invaluable in avoiding later misunderstandings. Partners should again ask a range of questions:

1. **Partnership stages** – Can the stages of the partnership project be clearly defined? If so, what is the best format for this? If not, what are the parameters that can be confirmed?
2. **Deliverables** – To promote flexibility and creativity while maintaining accountability, is it better to define inputs (cubic metres of concrete and Xmm diameter pipes),

outputs (number of taps) or outcomes (household health improvements)? If the deliverables are less tangible or measurable, can some outcomes be agreed upon and defined instead of inputs? Is it cost effective to measure such outcomes?

3. **Flexibility** – What is the best way to allow for changes in circumstances? What variations is it reasonable to allow and how will these be agreed as the partnership progresses?

### Practice pointer

Some people regard paperwork as binding and non-negotiable – forming the basis for evaluating performance – while others see it as a flexible starting point for further negotiations. The first approach is often associated with the Anglo-Saxon legal tradition while the latter is often associated with the Napoleonic Code, but in fact the differences between the two are not so clearly demarcated. It is crucial that partners agree on the nature of the documents and that there is mutual understanding of how negotiable they are intended to be.

Division of labour and commitments – Partners are often quick to divide up roles and responsibilities amongst themselves. Whilst partners come together in the first place because they rely on the synergies and competencies between them, partnerships must be careful to frequently review their assumptions around roles and responsibilities. In a typical water supply and sanitation partnership, for example, the public, private and civil society partners are generally expected to contribute along fairly predictable lines. BPD's experience has shown that such straightforward divisions of labour are rarely maintained in practice – what seemed predictable at the outset of a partnership project often proved to be inconsistent with reality after a period of working together. Therefore, while the partnership objective may establish clear work divisions at the outset, the partnership should have the flexibility to respond to changing circumstances as well as evolving competencies, risks and accountabilities.

1. **Division of labour** – Does the paperwork make clear who is expected to do what? For example, if there is an expectation that the by-laws relating to tenure and access to services will be waived, who is supposed to ensure

that this happens? If it is not yet clear exactly how roles and responsibilities will be divided up, when and how will these decisions be made? How frequently and in what way will assumptions be reviewed?

2. **Resources** – Does each partner have the resources to match their responsibilities? If not, how will resource shortfalls be met and accommodated? Who has access to partnership resources? How will modifications be made if allocations are delayed?
3. **Timeframes** – Is the timeframe reasonable for all partners? What will happen if the timeframe has to be adjusted?

Recommendation for paperwork on establishing participant contributions – A key component of paperwork is a description of what is to be done, by whom, with what resources and in what timeframe. In a traditional service delivery contract, this element usually forms the bulk of the paperwork (and may include, for example, Bills of Quantities, Drawings, Special Conditions of Contract and so on). In a partnership with perhaps less tangible objectives, framing this section of the paperwork may be harder. This is the point at which ambiguities in the 'Statement of Partnership Objectives' must be addressed. If it is not possible to be explicit, then the terms under which outputs can be negotiated over time must be defined.

## 6.7 How is the partnership managed?

Multi-sector partnerships do not typically rely on traditional hierarchical or management structures. To compensate for this, clear arrangements need to be agreed from the start. A frequent mistake, however, is for partnership organisations to decide on a structure of engagement and management before they even determine what the partnership will do and who should rightfully be involved. Steering groups are often established and rules around decision-making confirmed (usually in an effort to achieve buy-in) before partners are even convinced that they (or, more likely, their partners) have a real contribution to make.



## How will decisions be made?

At the outset of a partnership, numerous decisions need to be made concerning the objectives, scope, tasks, possible resource allocations and so on. At this time, partners are getting to know one another and determining who should rightfully do what. As partners become more vested and interlinked, and the partnership begins to 'do things' and forge a relationship with the outside world, decision-making becomes more complex, with most partners holding an increasing stake in the outcome of joint decision-making.

However, while decision-making is becoming more complex, partners are generally becoming more familiar with each other, moving away from their original assumptions, some of which may have been based on stereotypes ("naturally all NGOs/ companies/ public sector organisations will behave like this"). Partners will usually progress towards a relationship based more on understanding and less on assumptions.

Whilst establishing clear decision-making processes early on is important, these need to be based on the creation of a commonly agreed decision-making culture rather than hard and fast rules. Over time effective decision-making processes will probably evolve.

Some options for decision-making arrangements include:

- Majority decision-making – the partners vote on key decisions and abide by the majority preference, or decisions must be approved by a fixed number of the partners or their representatives. In this case different partners may carry different weights of decision-making authority, but fixing these should take into account the issues of real and perceived risk;
- Consensus decision-making – all the partners need to arrive at consensus for a decision to become effective (noting that some consider that this can result in lowest common denominator effectiveness);
- Substantial consensus – rather than full consensus, participants agree that decisions can be based on the full agreement of the vast majority and the ability of the remaining members to 'live with the decision'.

Some options for governance include:

- Steering committee – the participants delegate certain decision-making authority to a steering committee that is smaller but nonetheless adequately representative of the larger group.
- Delegated authority – partners reach some agreement on the specific circumstances under which one partner delegates authority to another partner to speak on their behalf or obligate them in any way to do certain things;
- Rotating chairs and scribes – overarching authority for ensuring decisions are taken and recorded is shared amongst the group. This can promote a greater understanding and transparency between partners and enhance ownership of the resulting decisions.

Key areas for discussion include:

1. **Governance arrangements** – What is the forum where decisions will be taken? Who leads the process? Are all partners comfortable with the level of formality (or informality) in the partnership?
2. **Decision-making within the partnership** – What is the basis for decision-making? Will it incorporate some understanding of risk levels to individual partners? Is there agreement about the kinds of issues that need to be brought to the partnership for decision?
3. **Individual partner decision-making processes** – How do the partners make decisions within their own institution? Are some fast decision-makers while others are slow and very deliberate? Are some hierarchical whilst others are more consultative?

### Practice pointer

Partners should determine the overall objectives and modes of operating before embarking on discussions about the finer details of management. Such discussions should also recognise that each partner organisation may make decisions in different ways. Individual staff may end up with accountabilities both internally to their own organisation and externally to their colleagues in the partnership. This may lead to conflict if decisions are made in different ways in each case. A clear culture of decision-making must be mutually agreed upon and implemented.

## How will partners communicate with each other?

Communication amongst partners is essential, as is communication within the partnering organisations between those staff directly involved with the partnership (the implementers) and those above them who may have less personal commitment and knowledge of the arrangement (the managers). A simple programme of regular progress reporting and meetings with standardised agendas can ensure that important issues are covered. Regular progress reports and meetings at implementation level should at least review:

- resources (availability and usage),
- partners (current status, requests to enter the partnership, requests to leave),
- implementation challenges,
- external perceptions of the partnership, and
- potential for future shocks.

At the management level, such reviews should also cover staffing and external reporting of the partnership by individual partners.

1. **Communication needs** – Are partners clear about what needs to be communicated, how frequently, and to whom?
2. **Communication systems** – Do partners have a system of regularised communication in place (face-to-face, telephonic, electronic, conferences/workshops, written reports)? Is there a timetable for communications? How effective are these communication methods? Are sufficient resources (time, money, staff, etc.) dedicated to maintaining the system? What barriers to communication are present and what can be done to address those barriers?
3. **Communication styles** – Do partners communicate in similar methods? Do partners generally understand each other?

## How will partners manage joint implementation?

Partnerships employ a number of different mechanisms to actually implement the work. They can use dedicated staff that work in tandem but separately; joint task teams of dedicated staff that work together; or a dedicated secretariat that manages the work but pulls in expertise from different parts of the partnership.

1. **Implementation mechanisms** – How will implementation be effected on a practical day-to-day level?
2. **Staff relations** – How will staff relate to each other at the implementation level? Will there be instances where staff from one organisation supervise staff from a partner organisation? In what way will staff from any partner organisation influence the activities of staff from another organisation at the level of implementation?

### Consideration... Partnership Brokers

A partnership broker is a 'go-between'. He or she acts as an intermediary between different participants in an active rather than passive manner, guiding a partnering process, interpreting one party to another or negotiating some kind of agreement. A partnership broker inspires others to work together, building collaboration between partners, encouraging the adoption of behaviours that enable the partnership to function effectively, and developing or protecting the principles and vision of the partnership.

**Internal brokers** - individuals from (or working for) an organisation who take on the role of preparing their organisation for working in multi-sectoral partnerships, negotiating their organisation's involvement in a partnership, and/or playing a key role in maintaining a partnership arrangement, tracking performance or securing mutual benefits.

**External brokers** - independent third-parties contracted to plan or facilitate consultation or negotiations to develop a partnering arrangement, and/or to research, maintain, monitor, review or evaluate partnerships over time.

*Adapted from information on the International Business Leaders Forum/Overseas Development Institute's Partnership Brokers Accreditation Scheme at [www.odi.org.uk/pppg/PBA](http://www.odi.org.uk/pppg/PBA) - see also [www.partnershipbrokers.net](http://www.partnershipbrokers.net)*

## How will performance be monitored and evaluated?<sup>8</sup>

Partners often disagree on what constitutes acceptable performance and may not sufficiently understand the constraints faced by their partners. Disagreements may arise over the quality of workmanship, communications, decision-making on the part of individual partners, the inability to dedicate sufficient levels of staff to a project and so on. The relative strength of each partner will also come into play at the point where performance is to be evaluated. Strong partners are known to cause problems when they exert too much control over decisions, but weak partners may also damage partnerships if they cannot deliver what is needed. Strong partners can be dealt with if others form alliances, or use alternative mechanisms to hold them accountable (the media may have a role to play, for example). It may be more challenging to work with weak partners when capacity needs to be built. The partnership itself may come under pressure if one partner feels (as is often the case) that their own institution could do aspects assigned to different partners more effectively or expeditiously.

Because partnerships grow, adapt and change, measurement indicators must capture those elements that will remain constant throughout the lifespan of the project, but be flexible enough to allow for change and adaptation of project strategies. Qualitative indicators should measure the effectiveness of the partnership by reviewing change through the measurement of intangible outcomes such as confidence, attitudes, opinions and perceptions. Quantitative indicators should measure outputs that have occurred as a result of the partnership's activities such as economic benefits, service provision, etc.

Partners may have different attitudes towards evaluation, with some seeing it as a learning tool and others as an exercise in accountability (and potentially culpability). Indicators should be as simple and clear as possible, while demonstrating some measure of progress or magnitude of change. Indicators should not focus on what is easily measurable but on what will inform the partners about progress. A key issue here is to ensure that there is a common understanding of what the assessment is for, whose objectives are being served, and how the data will be used.

1. **Establishing indicators** – Have the partners negotiated performance indicators, clear guidance on how performance will be reviewed and by whom, and how performance indicators or the structures around collecting information will be reviewed as the partnership evolves?
2. **Embedding learning** – Have the partners negotiated a clear process to enable monitoring and evaluation to inform decision-making in the future?
3. **Sanctions** – Have the partners determined clear sanctions or redress in the case of breach of commitment?

Recommendations for paperwork on managing the partnership – The paperwork and negotiations should provide a focal point for defining how the partnership will be managed. This should include a description of how the partnership will make decisions, how regular communications will be maintained, how joint implementation and coordination will be achieved, and the systems for monitoring and evaluation.

***Example clause regarding decision-making when using a Board of Directors:***

*“The [Name of Alliance] shall use best efforts to make all decisions by consensus. If all practical efforts by the [Name of Alliance] Chair have not led to*

<sup>8</sup> Section adapted in part from draft discussion paper by Leda Stott on evaluating partnerships, Post-Graduate Certificate in Cross-Sector Partnership, IBLF and University of Cambridge Programme for Industry, 2004.

*consensus, any member of the [Name of Alliance] Board may call for a vote. In order to pass, motions require a [two-thirds or simple] majority of those present.”*

**Example clause for convening the partners:**

*“The ABC Water Network will meet on the first Tuesday of each month from 12 noon to 1:30pm rotating around partners’ offices. The host organisation shall distribute by appropriate means a draft agenda at least one week prior to the meeting.”*

**Example arrangements for management:**

*Informal association (not formed as a legal entity) – may be governed by ‘rules of operation’ that create a board of directors and executive or steering committee authorised to make decisions.*

*Non-profit corporation – may be governed by board of directors and with an executive director or secretariat for day-to-day management.*

*Contract relationship – generally has no management function because the rights and obligations of the parties are established by the contract terms. Contracts sometimes contain provisions that state that the contracting parties will use ‘best efforts’ to deal with changed circumstances or unexpected events.*

## **6.8 How does the partnership relate to the external world?**

### **Who speaks on behalf of the partnership?**

Partners often have different requirements and approaches with regard to publicity. While one partner, for whatever reason, may need to be seen by the public to be doing something early on, other partners may be less interested in seeking publicity until clear targets have been met. How to deal with publicity, stakeholder engagement and the media more generally tends to receive insufficient discussion time in partnership meetings. In the absence of a good understanding between partners, it may happen that announcements are being made at international conferences – naming names, disclosing sums of money and generally making a number of promises that had not actually been agreed by the partners. Confusion and frustration arises when Partner A learns that Partner B has publicly taken a position on behalf of the partnership that is inconsistent with Partner A’s own thinking or position on the subject.

The partnership needs to clarify who should be consulted and how decisions shall be taken concerning who can commit the partnership to perform certain actions, or provide goods or services, that go beyond the agreements previously reached between the partners.

1. **Who needs what recognition?** – Is there a willingness to see the work done without specific attribution to any one partner? Is one partner requiring some form of self-promotion?
2. **Agreeing on public relations** – Who needs to be consulted before a partner can make public statements (either to the press, TV or radio, or in public forums)? Under what circumstances can this be done and on what topics? Are there some issues on which only the full group should jointly speak?
3. **Making commitments** – Under what circumstances and limits may a partner(s) make further commitments on behalf of the partnership? How are these commitments made and documented?

### **Does the partnership want to enter into contracts or own property?**

Although an informal association (see definition in Section 3) may be perfectly appropriate, under some circumstances the partnership may need to form a separate legally recognised entity (e.g. a new non-profit organisation, a charity or corporation). This may be the case when the partnership wants either to own property in its own name or enter into contracts in the partnership’s name. In some countries and jurisdictions, the partnership may not be legally capable of entering into agreements or owning property unless it becomes legally recognised. The method for doing so will vary depending on the jurisdiction and partners

should seek the assistance of a government agency, consultant or lawyer to complete such a process.

1. **Legal status** – Does the partnership need independent legal status to achieve its objectives? If not, how will the partners deal with information, goods and resources that relate to the partnership as opposed to that which is individually held? If a new entity is to be formed, how will it relate to the parent organisations?

Is name or brand recognition important?

In addition to owning property or entering into legally enforceable contracts, the partnership may want to create a formal and legal entity for other reasons. The name recognition and brand value associated with having a formal entity may bring some benefits beyond mere legal status. Along with legal status, the partnership may have more perceived validity, commitment and recognition through having both structure and a recognised name.

1. **Defining the partnership's identity** – What identity (and how formal) should the partnership have?
2. **Using the brand** – What are the rules relating to the use of the partnership's name, logo, etc.?

Recommendations regarding external relations – Confirm who speaks for the partnership and how.

**Example clause for use in memoranda or an exchange of letters:**

*"The partners in the [Name of Water Partnership] have determined that it is important that communications from the [Name of Water Partnership] to non-members, particularly the media and press, be consistent and clear. It is therefore agreed that no member of the [Name of Water Partnership] will make public statements (such as to television, radio or press) about the [Name of Water Partnership] or its activities without obtaining written approval from the [Name of Water Partnership] Secretariat. The name or logo of the [Name of Water Partnership] will be used only to promote its mission and objectives, and will not be used in any manner that will embarrass the [Name of Water Partnership] or undermine its work."*

**Example clause:**

*"The [Name of Water Alliance] has determined that public statements regarding the [Name of Water Alliance] and its work will be made jointly by [Name of two persons], and no other persons."*

## 6.9 How will disputes be resolved?

Building on the need for good and regular communication, an explicit system of conflict resolution can positively impact on the relationship. This occurs in the short term by raising the confidence of all partners and in the long term by mitigating the potentially damaging effects of unresolved disagreements.

### Dealing with crises

Even with a working system of regular progress reporting and meetings, crises can arise. In the absence of a culture of regular communication and mutual problem solving, crises are almost inevitable. Some crises can be anticipated and may be dealt with by formal provisions in the paperwork. Examples may include:

- agreed action or procedure in the event that anticipated resources do not materialise;
- agreed procedure for admitting new partners or for enabling partners to leave; and
- provision for any partner to call a high-level (management) meeting in the case of unanticipated shocks.

If regular reporting and meetings fail to anticipate and resolve a problem, a more formalised approach to resolving the dispute may be required. In the first instance, local practices and methods of dispute resolution should be considered. Conflict resolution practices from one

culture may not work well when mechanically applied elsewhere. One or more of the following options, amended as required, may be appropriate:

Convening by a senior person or higher levels of management – In the first instance the more senior management staff from each entity would attend a joint meeting to see if the conflict can be resolved.

Convening by an outside neutral or respected authority – A respected community member (e.g. from a university department, retired political leader, religious or spiritual leader, respected business person) may be willing to convene members in conflict and assist in resolution or management. Sometimes, it can be helpful to have such a person or organisation identified and approved when forming the partnership – so conflicts can be promptly managed.

Mediation – Some conflicts are best addressed by asking a person to mediate the conflict. Such a mediator could come from inside the partnership but not be related to the conflict, or an external mediator may be appointed.

Independent fact finding and reporting on specific issues – In this process, the partnership uses an outside consultant to: (a) investigate the situation (such as by interviews and document review); and (b) issue a public report to the partnership on the conflict, its causes and possible resolution processes.

Special audit or investigation procedures – In some circumstances (such as a conflict that is financial), an outside entity may be brought in to conduct a special audit or investigation and report the results.

#### Penalty and censure options

While it may seem rather 'legalistic' to talk about penalties and censure, it is worthwhile to at least ask the question "*what if my partners don't do what we agreed?*" For many partnerships it may be appropriate simply to leave in place mechanisms for dispute resolution, but if circumstances could arise where conciliation or mediation might not adequately address the conflict, a partnership may determine that it needs to have more stringent procedures to demand accountability of one of the parties. In such serious circumstances, the partnership could consider a policy that sets forth the accountability measures for serious breaches of the Code of Conduct or other commitments of the partnership. These could include:

- Forfeiture or liquidated damage provisions – This would mean that a party forfeits certain privileges or prior payments or is required to pay determined damages (an amount set in advance to fairly estimate the cost of a breach of a commitment) to the partnership.
- Contingent actions for re-admission – A partnership could demand that a party undertake and accomplish certain actions that, if completed, would satisfy the partnership and permit re-admission of the member back into the partnership.
- Suspension or termination for cause – This would remove the offending party from the partnership for a period of time or permanently.

Talking points for the partners include:

1. **Clear systems for conflict resolution** – Is there a clear hierarchy of actions to deal with misunderstandings, disputes and conflicts? Is the system designed to minimise misunderstandings and/or conflict?
2. **Recognition that conflict is normal and can be productive** – Do partners recognise that conflict necessarily arises in collaborative efforts and that healthy responses to conflict can strengthen the partnership?
3. **Resource people** – Are partners generally happy with the people nominated to assist in resolving disputes and conflicts?

Recommendation regarding dispute resolution – Identify the series of steps that will be taken if a dispute arises.

**Example clause for use in a memoranda or an exchange of letters:**

*“The Parties enter into this [Name of Water Partnership] in a spirit of collaboration and intend that all unforeseen matters on issues that arise, as the relationship evolves, will be resolved in a spirit of mutual understanding. If any dispute arises between the partners relating to the [Name of Water Partnership], the partners agree that they will first attempt to resolve the dispute through direct and amicable negotiations among the partner representatives. If such efforts to resolve the dispute through negotiations fail, the partners agree to attend a conciliation meeting, facilitated by a knowledgeable facilitator [consider naming a respected business person, local leader, religious leader, university professor, etc.], to discuss how the dispute can be fairly and equitably resolved. Any partner may request a conciliation meeting regarding a dispute by sending written notice to the other partners. For such a conciliation meeting, the partners agree that they will jointly select the facilitator, schedule a meeting at a mutually acceptable time and location, and will attend and participate in good faith. Parties anticipate that at such a conciliation meeting the facilitator would lead a discussion about how to equitably resolve the dispute and any underlying conflict so that the activities of the [Name of Water Partnership] may proceed.”*

### Practice pointer

Establish a means of working through conflicts as they arise and do not let conflicts linger and expand. Take early action to maintain the health of the collaboration.

#### 6.10 How does the partnership change or terminate? How does a partner leave the partnership?

The most appropriate way to change or end a partnership arrangement will vary depending on the nature of the partnership and the legal context. When setting up any formal management arrangements and drafting paperwork, partners should consider what will happen at the end of the partnership. Disagreements about how to terminate a partnership can potentially damage what has until that point been a constructive and effective relationship. Sometimes, to avoid such disputes, partners may simply allow a partnership to lapse without a formal conclusion, but this too can result in later misunderstandings. Partners should consider the possibilities and preferred arrangements for modifying or ending the partnership at the start, bearing in mind that not all eventualities can be anticipated – it is the spirit and general mechanisms that will be important.

Some important changes that should be considered include:

- adding new partners
- changing direction toward new goals
- making new commitments and seeking appropriate funding for such
- increasing formality
- changing structure
- removing partners
- terminating work and winding up

Whilst some of these issues have been addressed in preceding sections, the more specific issue of formality merits additional consideration here.

#### Does the partnership require increased formality?

If the status quo is not meeting the needs of the partners, they may determine that a more formalised approach would best meet the needs of the partnership (see Section 4.2 – The Rationale of Paperwork). An association without a written charter may determine that to have one would create greater understanding. Similarly a further step might be to consider the formation of a new entity.

Changing associations – Where partners are working as an association with a written charter or guidelines, revised guidelines would be drafted by all members of the association (or a lesser number if the guidelines permit amendment by less than all members). Where operating in an informal association without written charter or guidelines, changes should be negotiated among all members to determine whether there is consensus for change or whether the association may need to terminate due to lack of consensus.

Amending contracts – Where the partners have chosen to enter into a contractual relationship, a change in task is generally accomplished by relevant partners signing an amendment to the agreement. Assuming the partners have signed a written contract, they may negotiate changes to that contract and sign an amendment. Many contracts require that changes must be made in writing and signed by all parties.

Because a contract is a commitment to perform certain tasks, partners do not generally withdraw from contracts. Rather partners would generally follow the contract processes for amendment. If the contracting partners cannot agree to amend, in most jurisdictions the contract will remain unchanged. Also as a general rule, if all partners to an agreement find it acceptable to terminate the contract, they may do so.

Amending the partnership structure – Where partners have formed a self-standing legal entity to accomplish their joint undertakings, the changes in mission or task are approved and made according to the existing articles and by-laws of that entity. Similarly, the articles and by-laws generally set forth the methods for adding new members or withdrawal of existing members. As a general rule, the entity may provide that a member may terminate its membership after completing its obligations to the organisation by sending a written notice of withdrawal. Similarly, the entity may have by-law provisions that provide for the expulsion of a member, with or without cause, upon majority vote of the other members.

#### Making terminations and changes more equitable

Even if termination of a partnership is necessary, the partners can and should find ways to terminate so that the relationships are honoured and the termination is equitable. The need for equity may occur more greatly in contracts, where power asymmetries may be most profound. It may be possible to withdraw from an association or membership in a legal entity with limited implications. However, unilateral termination of a contract, even where permitted by the contract provisions, may cause substantial harm to a partner – particularly the smaller entity that is often the not-for-profit organisation. In drafting contract termination procedures, all partners should consider the effect of power asymmetries on termination and determine whether equity calls for some provision to make termination more equitable. In essence, there should be some analysis up front on the part of different partners of *“If the contract ends early, where will I be? What will I owe or be owed?”*

Contracts are generally terminated once the undertaking has been completed, by mutual agreement of the signatories, or by replacement with a new contract. In the case of an early end to the partnership, some provisions that could be included in contracts or grant agreements to enhance the equity are listed below. The usefulness of such provisions is dependent on the reason for termination. Where the termination is for convenience or loss of donor funding (rather than for breach of commitment), the non-profit organisation may be more significantly affected than their business or government partners. Some form of equitable termination may need to be considered including:

Payment to a partner if the contract is terminated early – Under a provision such as this, the partners would agree at the beginning of their relationship that, if the major partner must terminate the intended collaboration prior to a specified date, the disadvantaged partner would receive a payment of a sum intended to approximate the cost to that organisation of terminating the work, adjusting staffing and engaging in new ventures.



Phased termination – Under this provision, the major and/or funding partner would agree that any termination prior to a specified date would be undertaken in phases, where funding to the partnership project was gradually reduced.

Training or other rights on early termination – Under this provision, larger partners make concessions that assist smaller partners who may be most adversely affected by early termination of the project or programme. For example, a premature end of the partnership would trigger the disadvantaged partner's right to have certain training or equipment funded by the larger partners to ensure that the capacity of that organisation has been enhanced.

Though termination may seem to be a very 'negative' topic for discussion in the early days of a partnership, partners should make a special effort to consider the following key questions:

1. **Status of the partnership** – Do the partners agree that the partnership may continue to exist if any member or a certain key member seeks to withdraw?
  - a. If so, can the partnership continue to use the same name, retain and use all information, resources and input received from the withdrawing partner?
  - b. If not, can the remaining members form a new association for the same purpose?
2. **Public statements** – What may be said publicly about the withdrawing partner? Should a jointly drafted statement be used to announce the partner's withdrawal?
3. **Impacts on the withdrawing partner and the partnership** – Can a partner withdraw without undue penalty? Will the withdrawal cause undue penalty on the remaining members? What are the future financial obligations, if any, of the withdrawing partner? Must a withdrawing partner complete all ongoing obligations to the association (e.g. finishing current projects) prior to or within a defined time after withdrawal?
4. **Impact of contract termination** – What provisions can be included in the contract to minimise the adverse effects of cancellation or termination on the partners? Will cancellation or termination of a contract or grant unduly affect a partner that may have limited financial resources? If so, can provisions limit the adverse effects of termination?

Recommendation regarding change and termination – The paperwork should set out the procedures for making changes to the partnership. This needs to cover minor changes (adjustments to the timescale, alterations in deliverables) and fundamental changes (new partners, partners leaving, significant alterations in scope, timescale and level of resources). The paperwork should also describe the process by which a partner leaves the partnership and cover the consequences of this happening (does the name of the partnership have to change, what happens to resources held in common or already committed?).

**Example clause regarding change of membership for use in memoranda or an exchange of letters:**

*“Other organisations may become parties to this non-binding MOU when a majority of members of [Name of Alliance] so agree.”*

**Example clause regarding changes of membership for use in memoranda or an exchange of letters:**

*“If all members agree, additional parties may join the [Name of Water Alliance] by signing a new [Name of Water Alliance] non-binding MOU. The new MOU may include revised terms and conditions that better reflect the needs of the new member. All existing members must approve the addition of the new member, and any changes to the MOU. This MOU can be terminated immediately by a simple majority decision of the members.”*

**Example clause regarding term and termination:**

*“This non-binding MOU becomes effective on the date of signature by all parties and continues until modified by mutual consent or unless terminated with 60 days written notice by any party. This MOU should be reviewed annually and amended or revised when required.”*

**Example clause regarding term, change and termination for a two party alliance:**

*“This [Name of Alliance] Agreement will remain in effect for two years. Either party may terminate it for any reason at any time provided they give 30 days written notice to the other. This agreement may be modified at any time with the written concurrence of both parties.”*

#### **6.11 Considering the paperwork as a whole**

The preceding sections have discussed a range of issues that could be covered in the paperwork of a partnership. These issues are universal, and can be considered irrespective of what form the partnership or the paperwork takes. However, it may be useful, once there is a draft of possible paperwork ‘on the table’ for all partners to consider the overall effect of the paperwork. Partners need to judge the balance between detail and workability; an overlong and complicated document may not be as well used as a short and simple one. However detailed the discussion, partners may still end up with a very short and simple document, judging that this gives them the best flexibility and strength to deliver on the partnership’s objectives.

Importantly, there is no prescription for what sort of paperwork is generally or universally most appropriate – each partnership needs to develop what works for it, based on serious consideration of the issues outlined in the sections above.

## SECTION 7 – Taking the subject further

Partnerships for water supply and sanitation service delivery can take a multitude of different forms and will exist in a wide range of social, legal and technical contexts. Because of this it is impossible to provide detailed guidance for practitioners that can be used directly. This document outlines what paperwork can do for a partnership, discusses how it relates to and is dictated by the modes of operation of the partnership, and provides some pointers towards issues that partners should address before formalising their relationship. The discussion may give rise to even more questions; addressing these will ultimately strengthen the partnership even if it appears to delay the start of operations. Solutions will obviously be context-driven and thus this document has been cautious not to appear too prescriptive. Relationships that bring together vastly different organisations can be difficult and predicting at the start how the relationship will evolve is extremely challenging. On the other hand recognising the challenges and building both strength and flexibility into the relationship through greater familiarity significantly increases the chances of success.

### Selected websites for further insight

BPD is committed to supporting organisations that seek to collaborate together to deliver better water and sanitation services. BPD would welcome any feedback and additional resources that could be added to this work; individuals and organisations with relevant experience are encouraged to contact BPD via the website at [www.bpdws.org](http://www.bpdws.org)

For readers who want to understand more about their partnerships – either as a result of attempts to formalise the relationship through paperwork, or because they are experiencing challenges in an existing arrangement, additional analysis and support is available in a number of places, some of which are listed below.

- AccountAbility: [www.accountability.org.uk](http://www.accountability.org.uk)
- Building Partnerships for Development: [www.bpdws.org](http://www.bpdws.org)
- Business Partners for Development Natural Resources Cluster: [www.bpd-naturalresources.org](http://www.bpd-naturalresources.org)
- Global Public Policy Institute: [www.globalpublicpolicy.net](http://www.globalpublicpolicy.net)
- International Business Leaders Forum: [www.iblf.org](http://www.iblf.org)
- International NGO Training and Research Centre (INTRAC): [www.intrac.org](http://www.intrac.org)
- One World Trust / Global Accountability Project: [www.oneworldtrust.org](http://www.oneworldtrust.org)
- Partnership Brokers: [www.partnershipbrokers.net](http://www.partnershipbrokers.net)
- The Partnering Initiative: [www.thepartneringinitiative.org](http://www.thepartneringinitiative.org)
- The Seed Initiative: [www.seed.org](http://www.seed.org)
- United States Food and Drug Administration (FDA): [www.fda.gov/ora/Partnership\\_Agreements/partnership.htm](http://www.fda.gov/ora/Partnership_Agreements/partnership.htm)

Annex 1 – Summary of Paperwork Contents

Paperwork Components and Rationale	Key Discussion Areas	Considerations
<p><b>Pre-paperwork discussions to establish partner compatibility (See Section 5)</b></p>	<p>Motivations, perspectives and attitudes towards working together</p> <ul style="list-style-type: none"> <li>• Reviewing objectives</li> <li>• Attitudes towards social development</li> <li>• Attitudes to risk</li> <li>• Stretching to meet the needs of the partnership</li> </ul> <p>Level of interdependence</p> <ul style="list-style-type: none"> <li>• Degrees of choice</li> <li>• Compatible timeframes</li> </ul> <p>Transparency and freedom of information</p> <ul style="list-style-type: none"> <li>• Disclosure of information</li> <li>• Financial oversight</li> </ul> <p>Legitimacy, capacity and power</p> <ul style="list-style-type: none"> <li>• Legitimacy</li> <li>• Resources</li> <li>• Valuing different contributions</li> </ul>	<p>Partnerships are often designed to take advantage of differences among partners, such as knowledge, resources, ability to influence others or otherwise. Differences are not only expected but sought. Whilst creating value for the partnership, managing these differences can be challenging particularly if there is insufficient familiarity between partners.</p> <p>Some extra effort at the beginning of the discussions regarding compatibility can save a great deal of time later. Take time early in the discussions to obtain a thorough understanding of your own objectives, those of the other partners and how you would collaborate.</p>
<p><b>Why do the partners need a partnership? (Section 6.2) – Opportunity to clarify motivations and understand each other better</b></p>	<p>Broad objectives</p> <p>Interdependency</p>	<p>Difficult balance between complex statements that take time to negotiate and bland statements that lack substance and fail to provide meaningful guidance. Some partnerships first establish a “code of conduct” to lay the ground rules for negotiations and on-going communications</p>
<p><b>Who are the partners? (Section 6.3) – Opportunity to ensure that all the needed partners are on board</b></p>	<p>Stakeholder assessment: Is necessary party missing?</p> <p>Partner review mechanisms</p>	<p>First steps would be to address some of the key questions above around partner compatibility and alignment of goals.</p>

Paperwork Components and Rationale	Key Discussion Areas	Considerations
<p><b>Who will represent each partner? (Section 6.4) – Opportunity to ensure that there is consistent informed representation from all partners</b></p>	<p>Skill sets</p> <p>Location</p> <p>Mandate and support</p> <p>Motivation</p>	<p>Institutions act through individual persons – so the selection of partner representatives is very important. Partner representatives may come under pressure as they try to balance the expectations of their parent organisation and their partner organisations. Understanding the relative importance of the partnership to each representative can alleviate some personal frustrations.</p>
<p><b>What are partners’ commitments regarding loyalty and care? (Section 6.5) – Opportunity to discuss the legal and moral obligations within the partnership</b></p>	<p>Legal duties</p> <p>Moral obligations</p>	<p>As this work is value driven, commitments to loyalty to the partnership and care in carrying out partnership activities are critical to building trust among partners.</p>
<p><b>What will the partnership do? (Section 6.6) – Opportunity to clarify the partners’ rights (e.g. payment for services) and obligations (e.g. deliverables).</b></p>	<p>Implementation</p> <ul style="list-style-type: none"> <li>• Partnership stages</li> <li>• Deliverables</li> <li>• Flexibility</li> </ul> <p>Division of Labour and Commitments</p> <ul style="list-style-type: none"> <li>• Division of Labour</li> <li>• Resources</li> <li>• Timeframes</li> </ul>	<p>Clear definition of partner commitments helps achieve goals and reduce misunderstanding. This becomes more challenging if outputs are less tangible. It is important to outline what is expected from each partner. (Generally contracts do this better than other forms of paperwork.) Better to be realistic about what is possible to avoid later disappointments and to build in mechanisms for adjustment and review.</p>
<p><b>How is the partnership managed? (Section 6.7) – Opportunity to clarify day-to-day decision making processes and build in robust systems of information exchange.</b></p>	<p>How will decisions be made?</p> <ul style="list-style-type: none"> <li>• Governance arrangements</li> <li>• Decision making within the partnership</li> <li>• Individual partner decision-making processes</li> </ul> <p>How will partners communicate with each other?</p> <ul style="list-style-type: none"> <li>• Communication needs</li> <li>• Communication systems</li> <li>• Communication styles</li> </ul>	<p>Communication is the key to success. It should not be left to informal processes of information exchange, but should be based on a reliable timetable of meetings and communications and an agreed decision-making process. Early agreement on how decisions will be made reduce the risk of later disputes.</p>

Paperwork Components and Rationale	Key Discussion Areas	Considerations
	<p>How will partners manage joint implementation?</p> <ul style="list-style-type: none"> <li>• Implementation mechanisms</li> <li>• Staff relations</li> </ul> <p>How will performance be monitored and evaluated?</p> <ul style="list-style-type: none"> <li>• Establishing indicators</li> <li>• Embedding learning</li> <li>• Sanctions</li> </ul>	
<p><b>How does the partnership relate to the external world? (Section 6.8) – Opportunity to consider reputational risk to the partnership or individual members if something goes wrong</b></p>	<p>Who speaks on behalf of the partnership?</p> <ul style="list-style-type: none"> <li>• Recognition needs</li> <li>• Agreeing on public relations</li> <li>• Making commitments</li> </ul> <p>Entering into contracts or owning property?</p> <ul style="list-style-type: none"> <li>• Legal status</li> </ul> <p>Is name or brand recognition important?</p> <ul style="list-style-type: none"> <li>• Defining the partnership's identity</li> <li>• Using the brand</li> </ul>	<p>It is important to agree on how the partnership is represented. Each partner will have a different perspective but all will be associated with each other's public position on the partnership.</p>
<p><b>How will disputes be resolved? (Section 6.9) – Opportunity to agree on how to deal with unforeseen challenges and build in robust communication mechanisms.</b></p>	<p>Systems for conflict resolution</p> <p>Value of conflict</p> <p>Resource people</p>	<p>Agreeing on a mechanism for resolving disputes is much easier in the early "optimistic" period of a partnership. The mere existence of a dispute resolution provision tends to reduce conflict and can minimise the effect of conflicts.</p>
<p><b>How does the partnership change or terminate? How does a partner leave the partnership? (Section 5.10) – Opportunity to agree on a mechanism for making future changes</b></p>	<p>Status of the partnership</p> <p>Public statements</p> <p>Impacts on withdrawing partner and the partnership</p> <p>Impact of contract termination</p>	<p>Changes can bring issues of equity and balance of power to the fore. Recognise the relative legal weight and influence of each party and build in arrangements that do not unduly penalise smaller, less powerful partners.</p>

