

**Collaboration Agreement**

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| **About this template agreement**  This template supports the implementation of its Commercial Arrangements, Sponsorship and Donations Policy.  It has been designed by the NSW Department of Education to assist schools, business units and directorates to collaborate with external parties on projects that meet the education needs for the State of New South Wales including projects that benefit schools and students.  **When to use and not use this template**  This **template can be used for** projects involving:   * one school or a business unit / directorate * one external organisation that is not a NSW government agency * both parties contributing to the achievement of an objective, and * no payment of money by the Department (or students or parents) to the external organisation or vice versa.   This **template should not be used for** projects involving:   * the Department (or students or parents) paying an external organisation or individual to do something or otherwise provide goods or services * an external organisation using School grounds (whether paid or unpaid) without supervision of the School * an external organisation paying the Department for advertising * an arrangement with multiple schools or that is statewide (other than where consultation with the Director, Educational Leadership and Business Engagement and Development directorates has occurred), or * for projects involving multiple external organisations * for projects developing a product for commercial sale.   See ‘Getting advice from Department directorates’ below if you are unsure about use of this template.  **Parts of this template to be completed**  The Schedule at the beginning of the template should be completed with information about the parties and the project. Annexure A can be used if the Schedule does not provide enough space or there are additional documents to attach.  This document is locked so the Terms of the agreement cannot be amended.  Once completed the agreement can be signed by both parties according to appropriate authorisations.  **Getting advice from Department directorates**  Please contact Business Engagement and Development if you are unsure if this is the right template to use, the external party has requested any changes to the section titled Terms or any additional conditions are required.  Advice from Legal Services will need to be obtained in some cases, including if the parties will be developing a resource that may later be commercially sold or licensed. Business Engagement and Development can help determine if this is required.  **Document history**  This template was issued in March 2022. |

Collaboration Agreement

Schedule

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| **Parties to this Collaboration Agreement** | | | | |
|  | **Department** | **State of New South Wales by its Department of Education as represented by** | <*Insert name of School, Business Unit or Directorate*> |
|  | **Department contact** | **Name and title** | <*insert name and title of key Department contact*> |
| **Email** | <*insert email address*> |
| **Phone** | <*insert phone number*> |
|  | **Collaborator** | **Name** | <*Insert the name of the person/company the Department will be collaborating with for this project. If this is a company, enter their registered name eg ABC Pty Ltd*> |
| **ACN/ABN** (if applicable) | <*Insert collaborator ACN/ABN* *if they are a business*> |
| **Address** | <*insert address of collaborator*> |
|  | **Collaborator contact** | **Name and title** | <*insert name and title of key collaborator contact*> |
| **Email** | <*insert email address*> |
| **Phone** | <*insert phone number*> |
| **Project description** | | | | |
|  | **Project title** | *<Insert name of project or complete as “Not applicable”>* | |
|  | **Brief summary**  Describe in a few lines the purpose, objectives and/or main activities of the collaboration  Use Annexure A if more space is required | <*Replace with a summary of the project/activities to which the collaboration arrangement relates, eg school initiative, description of activity etc. If more space is required complete as “As further described in Annexure A”>* | |
|  | **Agreement period**  This is the period the parties will collaborate on this project.  Obtain Business Engagement and Development approval if you need more than 24 months | **Start Date** | *<Insert start date of collaboration which might be date of signing or another date>* |
| **End Date** | *<Insert date that collaboration will end. This must be a fixed date that is not more than 24 months after the Start Date>* |
| **Timeline and what each party will do or contribute to the project**  This section is to give a brief understanding of what both parties expect for the project timing, objectives for the collaboration, what each party will provide and how they will manage the collaboration. If a more detailed description is required, this can be added to Annexure A and these items 8 to 10 can say “See Annexure A”. | | | | |
|  | **Project timeline and management**    Use Annexure A if more space is required | **Timeline**  Complete with any key events, milestones or stages, planned timing and if any approvals are required to proceed from one event to another.   |  |  |  | | --- | --- | --- | | **Key event (e.g milestone or stage)** | **Planned Timing** | **Are approvals needed to go past this event?** | | <*e.g. Parties will have planning workshop, or parties will conduct risk assessment or Department will notify consents and other planning required*> | <*insert details*> | <*insert Y/N and name of party that provides approval*> | | <*e.g. Workshop/Resource/Event to be conducted*> | <*insert details*> | <*insert Y/N and name of party that provides approval*> | | <e*.g. Progress report on outcome of project*> | <*insert details*> | <*insert Y/N and name of party that provides approval*> | | |
| **Promotion/Publicity** (See also clause 4)  *<Parties to consider and complete with any agreed ways that the parties may refer to their involvement in the project, project outcomes or the other party. If this cannot be determined at the time of signing complete as “To be agreed in writing prior to any promotion or publicity being carried out.”>* | |
| **Meetings**  *<Insert details of any planned meetings eg monthly planning meeting. If the type and frequency is not known then complete as “As required and agreed between the parties from time to time”>* | |
| **Decisions about the collaboration**  *<Insert information about how the parties make decisions about how the project should proceed. For example, do the parties make decisions about whether a milestone has been met together or can one party make decisions>* | |
|  | **Department contributions**  Describe the Department’s role in the project and any specific contributions activities.  Use Annexure A if more space is required | **Brief description:**  *<Insert a high-level description of the Department role in the project (for example the Department will organise something, or the Department will make its personnel available for an activity, or will arrange any consent forms required for proposed activity). Limit this to a few lines>* | |
| **Specific contributions/activities**   |  |  |  | | --- | --- | --- | | **Contribution/Activity** | **Planned timing** | **Does the Collaborator need to approve the contribution?** | | *<Insert details of what the school/business unit/directorate is committing to do or provide>* | <*insert details>* | <Y/N> | |  |  |  | | |
|  | **Collaborator contributions**  Describe the Collaborator’s role in the project and any specific contributions activities.  Use Annexure A if more space is required  Complete for any external organisations that the Collaborator will bring along to perform their role | **Brief description:**  *<Insert a high-level description of the Collaborator role in the project (for example the Collaborator will organize x, or the Collaborator will make its personnel available for y). Limit this to a few lines>* | |
| **Specific contributions/activities:**   |  |  |  | | --- | --- | --- | | **Contribution/Activity** | **Planned timing** | **Is Department approval needed?** | | <*Insert details of what the Collaborator is committing to doing or providing. eg access to facilities, equipment, goods or services. Progress reports at x frequency*> | <*insert details>* | <Y/N> | |  |  |  | | |
| **Third parties supporting the Collaborator (if there are any)**  These are external organisations that may support the Collaborator’s contributions/activities.   |  |  |  | | --- | --- | --- | | **Name including ABN** | **Role of third party** | **Intellectual Property** | | <*Insert details of any third parties that will be supporting the Collaborator perform its obligations including ABN*> | <insert description of work | <*Insert details of any IP that the party will bring and use as part of the collaboration e.g music* > | |  |  |  |   Note: See clause 6.4 for Intellectual Property rights to third party IP. | |
| **Where project delivery will occur and any equipment** | | | | |
|  | **Location details and any equipment to be made available** | * + 1. <*Insert details of where project will be performed (eg workshop at the school) and any facilities or equipment that will be provided (eg school room x or computer devices, sporting equipment, musical instruments).*     2. *If each party is to perform its obligations at its offices and with its own equipment then complete as “Each party to perform at its offices and with own equipment”*     3. *If the location or equipment is not yet known then complete as “To be reasonably agreed by the parties in writing”*> | |
|  | **Rules for access or use of location or equipment**  Use Annexure A if more space is required | <*Insert any specific conditions relating to access to locations, facilities (eg no access before x time or must return security passes immediately after use) or equipment (eg cannot use sporting equipment for x purpose) or complete as “To be reasonably agreed by the parties or notifed by the party in control of a location, facility or equipment”*> | |
| **Rights to material that is used in the project or made as part of the project**  The standard position in this agreement is that:   * the Department can only use IP brought by the Collaborator, during the Project. It can’t use it afterwards; * IP created by the Collaborator for the Project will be owned the Collaborator. However, the Department gets a license to use that IP afterwards.   The Collaborator must ensure it has rights/licences/clearances to use any IP it makes available for the Project (including any from third parties).  Please speak with the Department’s Legal Services Directorate if the Department:   * needs to use IP that is brought by the Collaborator after the Agreement Period; * does not want the Collaborator to use IP created by it during the Project, after the Project finishes. | | | | |
|  | **Intellectual property** | <*Insert alternative intellectual property clause or complete as “Not applicable”. Advice from the Legal Services Directorate should be obtained before inserting an alternative IP clause*> | |
| **General** | | | | |
|  | **Master Collaboration Agreement** | Select ‘Yes’ if this Agreement has been entered into as part of a Master Collaboration Agreement with the Department   |  |  | | --- | --- | |  | **Yes –** This Agreement is subject to the Master Collaboration Agreement between the Departmentand the Collaborator | |  | **No –** This is a standalone agreement | | |
|  | **Department policies**  Insert any specific Department policies in addition to:  - Commercial Arrangements, Sponsorship and Donations  - Code of Conduct  - Values in NSW Public Schools  - Working with Children Check  - Covid-19 protocols | <*Insert any policies and procedures that apply in addition to those specified in clause 2.4*> | |
|  | **Special Conditions**  If more space is required use Annexure A  If left blank then no Special Conditions apply | <*Replace with any special conditions relating to the contribution or project. These maybe additional terms where something is not already covered. Advice from Business Engagement and Development must be obtained before agreeing to any changes to the default terms.*> | |

**Executed as an agreement**

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| Signed for and on behalf of the Department by its duly authorised person | Signed for and on behalf of the Collaborator by its duly authorised person |
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| **Signature** *I confirm I have sufficient authority to enter into this Agreement* | **Signature** *I confirm I have sufficient authority to enter into this Agreement* |
| **Name and title (print)** | **Name and title (print)** |
| **Date** | **Date** |

1. **Collaboration period**
   1. This Agreement starts on the Start Date and ends on the End Date in Item 7 (Schedule). A new agreement will be required for further period.
2. **Conduct of the Project** 
   1. The Department and the Collaborator agree to work together to carry out the Project.
   2. Each party will:
      1. conduct the Project in a diligent and competent manner, and with skill and care
      2. provide contributions as detailed in the Schedule
      3. provide reasonable assistance for the Project; and
      4. comply with any special conditions set out in Item 16 (Schedule).
   3. The Collaborator will:
      1. contribute its personnel to conduct the Project as set out in the Schedule
      2. only engage third parties (e.g subcontractors) as approved in advance by the Department. The Collaborator will be responsible for third parties it engages; and
      3. work cooperatively with Department personnel and minimise disruption.
   4. The Collaborator will comply with all relevant Department policies and guidelines at: <https://education.nsw.gov.au/policy-library> as amended from time to time. This includes policies and guidelines relating to:
      1. Commercial Arrangements, Sponsorship and Donations
      2. Code of Conduct
      3. Values in NSW Public Schools
      4. Working with Children Check Policy, and
      5. any other specified in Item 15 (Schedule).
   5. Each party must ensure that no Conflict of Interest exists. Each party must notify the other party immediately if it becomes aware of the existence or possibility of a Conflict of Interest.

**Conflict of Interest** means any perceived or actual conflict of interest including engaging in any activity, or obtaining any interest which restricts or is likely to conflict with the performance by the relevant party of its obligations under this Agreement.

* 1. The Department and its students have no obligation to buy anything from the Collaborator.
  2. Nothing in this Agreement gives any exclusivity for any type of activity or project.

1. **Publicity and marketing**
   1. The parties will discuss and agree how they may make public statements and use promotional materials (**Approved Promotions**). This will include how the Collaborator may use the Department’s name and logos (if any). The Approved Promotions must comply with the Department’s Branding Guidelines and policies.
   2. The Collaborator may only make public statements and use promotional materials according to any Approved Promotions. Use is not allowed after the end of this Agreement.
   3. The Collaborator must not, in its public statements or promotional materials, allow any:
      1. endorsement by the Department of the Collaboratoror its goods or services (if any)
      2. promotion or publicity of the collaboration without the Department’s prior approval.
   4. The Department may at any time retract any agreement or approval it has provided under this clause. If this happens, the parties will negotiate in good faith new arrangements.
   5. The Collaborator acknowledges that nothing in this Agreement restricts:
      1. the Department and NSW Government from complying with NSW Government policies and procedures around public statements; or
      2. the Department personnel or NSW Government officials or ministers from making any statements they decide.
   6. If there are any updates or changes to the Collaborator’s logo and/or materials during the term, the Department will use its best efforts to implement any updates or changes. The Department will not be required to reprint any previously printed hard copy materials.
   7. The Department may only use the Collaborator’s logo and materials until this Agreement ends.
2. **Confidentiality** 
   1. Each party (the **Disclosing Party**) must:
      1. keep the other party’s Confidential Information confidential
      2. only use the other party’s Confidential Information for this Agreement
      3. only disclose the other party’s Confidential Information to the Disclosing Party’s personnel who need to know the Confidential Information for the purposes of this Agreement and who have been directed to keep it confidential
      4. notify the other party if there is an actual or suspected breach of confidentiality; and
      5. comply with all reasonable directions given by the other party concerning its Confidential Information.
   2. **Confidential Information** means all information that is disclosed by one party to other, regardless of form, that relates to its operations and is either:
      1. stated or marked by the respective owner as confidential; or
      2. is of a confidential or sensitive nature.
3. **Personal Information and other data** 
   1. **Personal Information** has the meaning given to it in applicable Privacy Laws. It includes ‘Sensitive Information’ such as health information.
   2. The Collaborator must comply with:
      1. privacy laws that apply to it;
      2. laws that apply to the Department including *Privacy and Personal Information Protection Act 1998* (NSW) and *Health Records and Information Privacy Act 2002 (*NSW)). It must comply with these laws as if it is a ‘public sector agency’

(these are **Privacy Laws**).

* 1. In relation to Personal Information and other data about the Department, Department Personnel, students and/or parents, the Collaborator must:
     1. only collect, hold, use and/or disclose that information to the extent required to perform Agreement obligations or with the Department’s prior approval
     2. only allow its personnel to access that information if they need to access it for the purposes of this Agreement; and
     3. not sell, commercially exploit, let for hire or otherwise disclose, dispose of or use for external funding that Personal Information.

1. **Intellectual property**
   1. Each party retains ownership of existing Intellectual Property rights it makes available for the Project, including modifications made by either party.
   2. The Collaborator is responsible for ensuring that it has sufficient rights to use any Intellectual Property (including any it obtains from third parties) it makes available for the Project.
   3. New Intellectual Property for the Project (**Project IP**) will be owned by the party that created it.
   4. To the extent that it is not owned by the Department, the Collaborator grants the Department a royalty free, perpetual, non-exclusive, irrevocable and non-transferable licence to use the following for the Department’s purposes:
      1. Project IP;
      2. material developed as part of the Project including Intellectual Property in the material that the Collaborator (including third parties) makes available for the Project.
   5. The Department may deliver projects or programs that are similar to the Project and using know-how learnt through the Project. Nothing restricts this.
   6. This clause is subject to other arrangements set out in Item 13 (Schedule).
   7. **Intellectual Property rights** includes patents, copyright, performance material and choreography, designs, trademarks, know-how and the right to keep information confidential.
2. **Access to premises, facilities and equipment** 
   1. Before a party (**Visiting Party**) attends the premises or uses the facilities or equipment of the other party (**Host Party**), it must ensure that its Personnel undertake any induction or training required by the Host Party.
   2. The Visiting Party must only use the premises, facilities or equipment for the Project and comply with all reasonable directions, policies and procedures notified by the Host Party.
   3. Unless otherwise agreed by the parties, the Visiting Party will not pay for access to the Host Party’s premises, facilities and/or equipment. The Visiting Party must pay additional or unusual costs that arise because of its use of those premises, facilities and/or equipment (e.g. damage or additional or unusual cleaning).
   4. The Collaborator must ensure that any of its premises that students attend as part of the Project are suitable, secure and safe.
3. **Consents for activities involving students** 
   1. The Department may require written consent from parents prior to students participating in Project activities. This includes consent before:
      1. the collection or use of Personal Information in relation to a child or their parent
      2. capturing of any images or recording; or
      3. activities away from the school.
   2. The Department is responsible for the process of requesting consents, unless otherwise agreed. The template document used must be approved or notified by the Department.
   3. A reference to a **parent** includes a guardian or other person having the custody or care of a child.
4. **Child protection**
   1. **Personnel checks**

The Collaborator must, at its cost, ensure that any of its personnel that will perform child related work for the Project obtain a working with children check and valid clearance. The Collaborator must provide evidence of clearances if requested.

The term **child related work** will be as defined in child protection legislation unless a higher standard is imposed by the Department’s policies.

* 1. **Notification requirements**
     1. The Collaborator must notify the Department within 1 Business Day if it is aware that a member of the Collaborator’s personnel involved in the Project has been referred to, or charged by police, or found guilty in respect of an offence in Schedule 2 of the *Child Protection (Working with Children) Act 2012* (NSW).
     2. If the Collaborator reasonably believes it has information that would assist the Department to make any decision, assessment or plan, or conduct any investigation or provide any service relating to the safety, welfare or wellbeing of the child or a class of children, the Collaborator must promptly provide that information to the Department.

1. **Research**
   1. **Process for research and publication** 
      1. Before the Collaborator commences work on a research activity or related publication the Collaborator must first provide a written outline of the scope (the **Concept**). The parties will then meet to discuss the Concept including any Department State Education Research Applications Process (SERAP).
      2. The Department will consider whether to approve the Concept (**Concept Approval**) including any conditions such as acknowledgements.
      3. The Department will review and, if agreed, approve a publication prepared in accordance with any Concept Approval. There will be no ‘deemed’ approval.
      4. The publication must not disclose Confidential Information, Personal Information and health information (as defined in applicable Privacy Laws) of students, parents or Department Personnel.
   2. **Department not restricted**

Nothing in this Agreement restricts the Department from conducting its own research and analysis about its operations. The Department is not required to consult with the Collaborator.

1. **Insurance** 
   1. The Collaborator will maintain public liability insurance of at least $20m per occurrence, and workers compensation insurance (as required).
   2. The Collaborator will provide the Department evidence of such insurances if requested.
   3. The Department is a member of the NSW Treasury Managed Fund, a self-insurance scheme created by the NSW Government.
2. **Termination** 
   1. A party may immediately terminate this Agreement in whole or in part by notice if:
      1. the other party breaches this Agreement and does not remedy the breach within 14 days of being notified in writing receiving written notice of the breach
      2. the other party breaches this Agreement and that breach is not capable of remedy; or
      3. in good faith it determines that, events have occurred which make it impractical for the Project to continue.
   2. The Department may end this Agreement, in whole or in part, for any reason or no reason, by notice of 3 months in writing.
   3. If it is indicated in Item 14 (Master Collaboration Agreement) that this Agreement has been agreed under a Master Collaboration Agreement, then any right the Department has to end the Master Collaboration Agreement includes a right to terminate this Agreement.
   4. On ending of this Agreement:
      1. each party must stop using any Confidential Information, Personal Information or Intellectual Property of the other party
      2. each party must, at the other party’s option, return or destroy any Confidential Information, Personal Information or Intellectual Property of the other party; and
      3. the Department will use reasonable endeavours to stop referring to the Collaborator. The Department may need to continue referring to the Collaborator if it is not reasonably able to change collateral.
   5. The Department has no liability to pay any loss or damage including reimbursing any contribution made, arising out of the ending of this Agreement.
   6. Ending of this Agreement for any reason will otherwise be without prejudice to any rights which either party may have accrued before ending.
3. **General and interpretation** 
   1. **Electronic signing and counterparts**: Subject to applicable laws, the parties may execute this Agreement electronically and in one or more counterparts.
   2. **Assignment**: A party cannot assign any of its rights under this Agreement without the prior consent of the other party.
   3. **Variation:** An amendment or variation is not effective unless it is in writing by the parties (including by an exchange of emails). To be clear, this includes anything that may be otherwise agreed by the parties.
   4. **Relationship**: Nothing in this Agreement constitutes any relationship of employer and employee, principal and agent, or partnership between the Department and the Collaborator.
   5. **Warranty:** Each party warrants that performing its obligations under this Agreement will not contravene any law or infringe any Intellectual Property right of any person.
   6. **Governing law and jurisdiction**: The law of New South Wales governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
   7. **Waiver, approval and consents:** A party’s failure or delay to exercise rights under this Agreement, will not operate as a waiver.
   8. **Notices**: A valid notice must be written and served on the other party by delivering it by hand, prepaid registered post, or email.
   9. **Standalone arrangement**: The Collaborator may not request any other benefit from the Department, including any related to other commercial arrangements.
   10. **Survival**: clauses 3, 4, 5, 6, 10, 12 and 13 survives ending as well as any right or obligation, which, by its nature is intended to survive ending.
   11. **Interpretation**: In this Agreement, unless the contrary intention appears:
       1. a reference to a document includes any variation or replacement of it
       2. the words including, for example or such as are not words of limitation
       3. a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the provision; and
       4. to the extent a document agreed after this Agreement is inconsistent with this document, this Agreement will take priority unless agreed otherwise.

Annexure A

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| **About this Annexure A:** This is an optional annexure if further space is required to complete items in the Schedule. Complete with any additional information or leave in template form. |

Project description (Item 6 (Schedule))

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| **Summary of Project** |
| <insert description> |

Project Timeline (Item 8 (Schedule))

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| **Key event or milestone** | **Timing** |
| <insert description> | *<insert description>* |
|  |  |

Department Contributions (Item 9 (Schedule))

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| --- | --- |
| Specific contributions/activities | Planned Timing |
| <insert description> | <insert description> |
|  |  |

Collaborator Contributions (Item 10 (Schedule))

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| --- | --- |
| Specific contributions/activities | Planned Timing |
| <insert description> | <insert description> |
|  |  |

Special Conditions (Item 16 (Schedule))

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| <insert description> |

Additional Project information

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| <insert description> |