

Checklist: Issues to cover in an Auspice Agreement

Legal information for community organisations

An auspice agreement is an agreement where the auspisor agrees to obtain funding on behalf of the auspicee in circumstances where the auspicee is prevented from obtaining the funding, including circumstances where the auspicee is not incorporated.

Not-for-profit Law has a template 'auspice agreement'. The following table explains those matters which are set out in the template agreement. The template agreement may need to be changed depending on the arrangements you want to put in place with the other organisation.

RELATED RESOURCES

See Not-for-profit Law's template auspice agreement at www.nfplaw.org.au/auspicing.

NOTE

The information contained in this checklist is intended as a guide only, and is not legal advice. There may be additional important issues that should be covered in your auspicings agreement. If you or your organisation has a legal problem you should talk to a lawyer before making a decision about what to do.



Issues to consider

Your organisation may wish to check any agreement for the following clauses:

Clause in contract	Explanation	
Parties	It is important that the agreement clearly names and identifies the correct contracting parties to the agreement. For instance, if the auspicee is an unincorporated association then an individual member (or members) of that association will be required to enter into the agreement on behalf of the auspicee.	<input type="checkbox"/>
Term	It should be clear when the agreement starts and whether the commencement is conditional on any particular event occurring. The duration of the agreement should be specified.	<input type="checkbox"/>
Details of the relevant funding activities	The agreement should clearly set out what the auspice arrangement is about. For instance, the agreement should set out the details of the relevant project for which funding is being sought and outline any relevant milestones or budgets in relation to that project.	<input type="checkbox"/>

Clause in contract	Explanation	
Obligations of Auspicee	<p>The obligations of the auspicee should be set out and may include:</p> <ul style="list-style-type: none"> • a requirement to assist the auspisor to secure adequate funding for the project or activities • securing insurances, providing financial records, references, etc. for the purposes of getting funding for the project • clauses about how the auspicee will seek the release of funds from the auspisor and account for the spending of those funds • the kind of reporting and documentation the auspicee agrees to provide to the auspisor (eg progress reporting, financial reporting, copy of insurance policy) • the extent to which the auspicee will be responsible for securing premises, equipment, staff, any consents or licenses for the project • requirements to comply with any policies of the auspisor or any restrictions placed on the auspicee by the auspisor for the duration of the agreement, and • general requirements to co-operate with the auspisor for the purposes of the project, which may include a clause that the auspicee be prepared to undertake any reasonable act asked of it by the auspisor. 	<input type="checkbox"/>
Obligations of Auspisor	<p>The obligations of the auspisor should be set out and may include:</p> <ul style="list-style-type: none"> • how funding will be applied for, kept (separate bank account) and administered • any support the auspisor agrees to provide in terms of office space, equipment, software, etc. • the extent the auspisor will commit staff (employee time) to the funded project and whether this will be paid from the funding or from the auspisor's own funds • any financial management services the auspisor will provide for the purposes of funding the project, administration of the project management account and preparing budgets and tracking against the budgets, and • the extent of the administrative, accounting, HR, fundraising and legal assistance that the auspisor will arrange. 	<input type="checkbox"/>
Funding and fees	<p>The agreement should set out any fees to be paid and the amount (for example, any fee the auspicee may have to pay the auspisor to cover its administration expenses) and circumstances pursuant to which the fee is payable.</p> <p>Also, if the project for which the funding is sought generates fees / surplus, the agreement should set out whether the auspisor shares in the fees / surplus.</p>	<input type="checkbox"/>
Non-completion of project	<p>The agreement should include a clause which determines what will happen if the auspicee does not complete the project or a stage of the project. The clause should set out in what circumstances the auspisor is able to withhold funds and in what circumstances the auspisor is able to use the funds to complete the project.</p>	<input type="checkbox"/>
Recognition	<p>The agreement may specify how both the auspicee and the auspisor will be recognised in relation to the funded project (including promotion, branding, acknowledgements and public announcements).</p>	<input type="checkbox"/>
Notice	<p>A notice clause will set out in what form and where notices are to be delivered to each party for the purposes of the agreement.</p>	<input type="checkbox"/>

Clause in contract	Explanation	
Dispute resolution	<p>Due to the nature of the relationship between the auspicee and the auspisor, it is often best to set out the dispute resolution procedures in detail, so that the relationship does not become unnecessarily adversarial in times of disagreement. You may wish to include a clause to indicate an intention that both parties will use their best efforts to resolve any disputes.</p> <p>The dispute resolution clause can set out alternative methods of dispute resolution (such as mediation) and require that the parties use those methods in the first instance, rather than court proceedings. You will need to decide whether you want decisions made in these alternative methods to be binding.</p>	<input type="checkbox"/>
Termination	<p>Because an auspice agreement is a legally binding contract, you need to document when it can be brought to an end. Usually agreements are able to be terminated early if one party fails to fulfil its obligations or otherwise breaches the agreement and is not in a position to remedy this.</p> <p>You may decide that there are other circumstances in which you should be able to terminate the agreement. For example, if the auspicee becomes incorporated after the commencement of the Agreement, it may no longer require the assistance of the auspisor (although you may still require assistance if you are dependent on access to grants by virtue of the auspisor's tax concessions). Alternatively, you may both simply agree that it is appropriate for either party to terminate the agreement upon reasonable notice. Of course, this may not be appropriate if you are co-operating on a discrete project unless the project itself cannot be completed.</p>	<input type="checkbox"/>
Obligations after termination	<p>The agreement should also set out the parties' obligations after the agreement comes to an end (either because the term has ended or due to termination).</p> <p>The parties will need to think about things such as payment of any outstanding amounts, confidential information, intellectual property and what is to happen to any remaining grant money (bearing in mind the grant agreement may require return of surplus).</p> <p>If the parties are working on a project together, you may like to consider who will bear the burden of any unfinished work.</p>	<input type="checkbox"/>
Confidentiality	<p>It is likely that both parties will be privy to confidential information of the other. For this reason, you should agree and document how each party (and their employees, volunteers and contractors) may (or may not) deal with such information.</p> <p>The agreement may also set out the manner in which parties are to deal with any public announcements or the media.</p>	<input type="checkbox"/>
Intellectual property	<p>A clause dealing with who owns the intellectual property created as part of the funded project should be included. The agreement should also clarify whether each party has a right to use the other party's intellectual property rights for the purpose of completing the project and if so, on what basis and if such rights persist following completion of the project. For more information about Intellectual Property rights and the law see Not-for-profit Law's IP page at www.nfplaw.org.au/ip.</p>	<input type="checkbox"/>

Clause in contract	Explanation	
Liability, insurance and indemnities	<p>The agreement should make clear:</p> <ul style="list-style-type: none"> • who is responsible for any loss or damage to any third (outside) party caused by any activity undertaken in the course of the agreement • whether one party agrees to (wholly or partly) indemnify or compensate the other party for any losses, costs or liabilities associated with the auspiced activities, and • whether insurance is required and which party is required to take out appropriate insurances. 	<input type="checkbox"/>
Warranties	<p>The agreement may include a provision which sets out warranties and representations made by the parties. If a warranty or representation made by a party later becomes untrue or inaccurate, then that party may be in breach of the agreement.</p>	<input type="checkbox"/>
Any employee obligations (tax, superannuation, insurance entitlements etc.)	<p>If the project for which funding is sought will (under the agreement) involve hiring employees, the agreement should specify who is responsible for the employment of the employees, and who arranges and pays the employees' legal entitlements.</p>	<input type="checkbox"/>
General provisions	<p>As with any other type of agreement it can often be helpful to include some general provisions to assist with the operation and interpretation of the agreement including:</p> <ul style="list-style-type: none"> • the governing law and jurisdiction applicable to the agreement • whether the agreement is the 'entire agreement' or whether any other project documents set out the terms of the parties' agreement • whether the parties are entitled to assign or subcontract their obligations • who bears the costs of any taxation or stamp duty payable in relation to the agreement or the project, and • which provisions, if any, will continue to bind the parties following the termination of the agreement. 	<input type="checkbox"/>
Execution	<p>The agreement should contain appropriate execution clauses that reflect the manner in which the parties are required to sign the agreement in order to make it binding.</p>	<input type="checkbox"/>

Resources

Related Not-for-profit Law Resources

The Not-for-profit Law website has further resources on the following topics:

- ✔ Working with other organisations – www.nfplaw.org.au/workingiwthothers
- ✔ Intellectual property for community organisations – www.nfplaw.org.au/ip
- ✔ Tax – www.nfplaw.org.au/tax
- ✔ Insurance – www.nfplaw.org.au/riskinsurance
- ✔ Employees – www.nfplaw.org.au/employees

A Not-for-profit Law Information Hub resource. Access more resources at www.nfplaw.org.au. Justice Connect Not-for-profit Law acknowledges the generous support of our funders and supporters. Find out more at www.nfplaw.org.au

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