

# Auspice Arrangements for JR

## Guidance

### Disclaimer

This guide provides information on collaborating with other organisations. This information is intended as a guide only and is not legal advice. If you or your organisation has a specific legal issue, you should seek legal advice before deciding about what to do.

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## What is an auspice arrangement?

An auspice arrangement is a form of sub-contracting. It is a legally binding arrangement where one entity provides support, sponsorship and/or guidance to another entity. Most commonly it occurs when one entity applies for and administers funding (and often other forms of support), on behalf of another. The entity that applies for and administers the funding is known as the auspisor, and the entity that undertakes the project activities is known as the auspicee.

## When is an auspice arrangement used?

An auspice arrangement is used when an entity requires support to undertake its activities. This can include a wide variety of circumstances. For instance, this could include financial-only support to host a one-off community event, or more involved support such as providing an unincorporated community group access to the operational services, infrastructure, technical advice, and expertise of a larger Not for Profit Organisation (NFP) to support them to incorporate into their own NFP.

## How long can you use an auspice arrangement?

Although there is no fixed time frame on how long an auspice arrangement can be in place for, it is intended as a temporary arrangement to overcome immediate barriers to accessing funding and/or support. As a result, an auspice arrangement should not be created to operate on a permanent basis and/or to permanently avoid meeting the legal and/or tax requirements of conducting project activities. If you enter into an auspice agreement but the nature of your relationship is different (i.e. not to sponsor or support on a temporary basis), you may become subject to unwanted de facto obligations (such as the legal and/or tax obligations of an employee/employer relationship or formal partnership as described in our partnership guide).

## Who can use an auspice arrangement?

Both incorporated and unincorporated entities can work under the auspice of another entity, for a wide range of reasons. This can include operating under the auspice of another for the entirety of their activities, or for the purposes of their activities under a specific project. Reasons why they might seek to work under the auspice of another can include to:

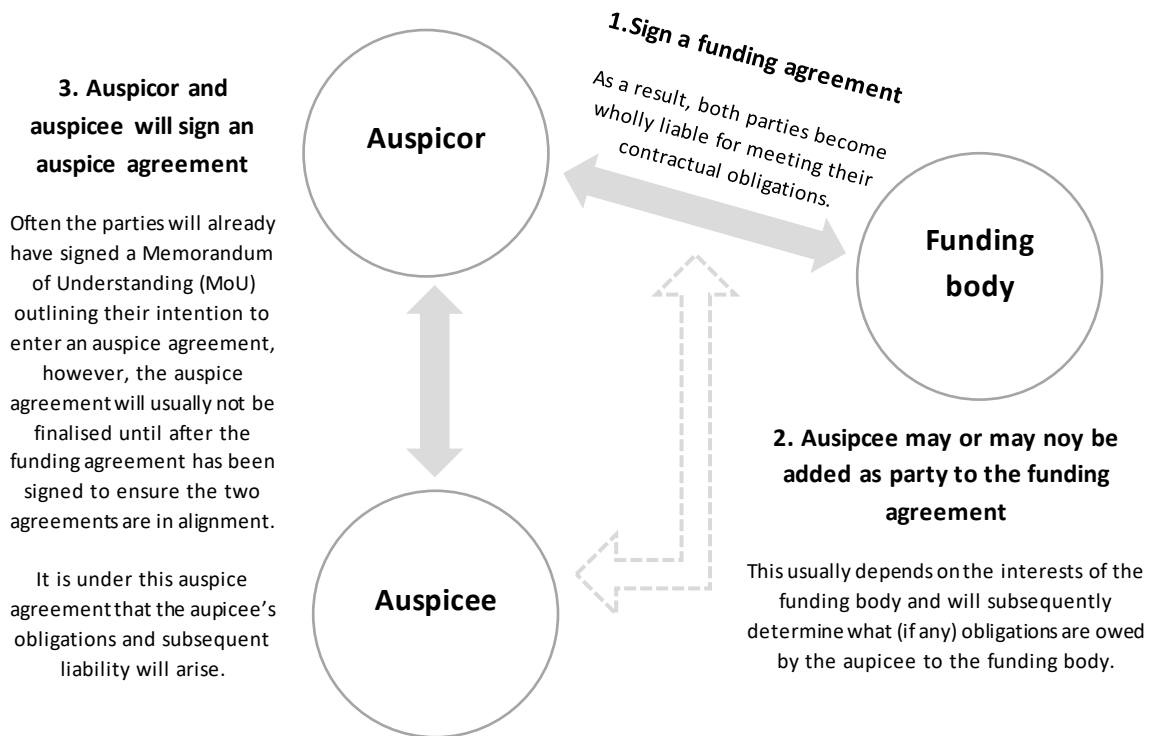
- Satisfy grant funding requirements that they otherwise would be unable to (e.g. gaining insurance for a specific type of activity).
- Seek the assistance and/or benefit from the management, infrastructure, insurance protection, technical advice, expertise and/or resources of the auspisor.
- Seek tax endorsements such as deductible gift recipient (DGR) status (e.g. DGR can make the auspicee eligible and/or more likely to receive funding from funding bodies).

### What are the typical obligations of each party?

Each auspice arrangement is unique so the only authoritative source for the obligations of each party is the unique auspice agreement the parties have created.

To guide you in considering what obligations you might seek to include within your own auspice arrangement, we have provided some examples in the sub-sections below. However, first we have developed a visual diagram to map out the key relationships that emerge under an auspice arrangement as each relationship will give rise to different obligations. See our visual diagram below.

**Figure A: visual diagram of the relationships that arise under an auspice arrangement**



It is also important to take extreme care when drafting an auspice arrangement to ensure you fully understand and are capable of fulfilling your legal and tax obligations to each party under each of the contracts created, along with ensuring you have sufficiently protected yourself in the event of a dispute in one or more of the contractual agreements.

### *For the auspisor*

#### **...to the funding body**

The auspisor's primary obligation to the funding body is to comply with the terms of their agreement. This includes ensuring delivery of all project activities and other project deliverables such as reporting and/or evaluating on the performance of grant activities through a written and financial report, referred to as an 'acquittal'. They will also be required to establish a separate bank account to hold the grant funds.

#### **...to the auspicee**

The auspisor will typically provide a form of project management assistance to the auspicee. This may include financial advice, equipment, office space, IT, HR, communications and/or accounting services, along with managing the insurance and legal compliance requirements of undertaking the project activities. The auspisor will typically charge a fee for this service in the form of either a flat fee or a percentage of the total grant funding received.

### *For the auspicee*

#### **...to the auspisor**

The auspicee's primary obligation is to complete the project in compliance with the requirements of both the auspisor and funding body. This is why alignment of the two agreements is so critical. Although the scope of responsibilities will vary according to the terms of each agreement, the auspicee's obligations will often include providing strategic direction, coordination and performance of the project activities. For example, the auspicee may convene a community workshop, invite community members to attend the workshop, identify and engage a consultant to speak at that workshop and negotiate a suitable fee for the consultant's services, however, payment of that fee and other costs will be made and authorised by the auspisor using the funds held in the auspisor's bank account.

#### **...to the funding body**

Whether the auspicee owes any direct obligations to the funding body will depend on the terms and conditions of the funding agreement entered by the auspisor and funding body. For instance, the



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auspicee may not be listed as a party to the agreement, or the agreement might state that the auspisor is ‘wholly responsible for the delivery of grant activities’.

For example, under the National JR Program, only the auspisor will be party to the funding agreement and hold full liability for delivery of grant activities. If an issue were to arise, the Commonwealth (as the funding body) could not initiate action against the auspicee directly, only the auspisor. The auspisor, however, may be eligible to initiate their own action against the auspicee, depending on the terms and conditions of their auspice agreement and the nature of the dispute at hand.

This is why it is important to always align the auspice agreement to the funding agreement to ensure all parties understand and can be held accountable for fulfilling their obligations under the project.

### *Unwanted and/or unintended obligations*

Commonly the auspicee will undertake nearly all project activities themselves, however, other times the auspicee and auspisor may work closely together to complete these activities. Whilst collaboration can be beneficial and add value to your project, you must be careful to ensure your relationship remains one of support and sponsorship. If your relationship steps beyond this threshold (e.g. by acting as equal partners and/or as coworkers working on the same project), you can give rise to de facto obligations for that type of relationship. These obligations can be unwanted and may differ from what is specified in your auspice agreement but may nonetheless be enforceable under law. The way to avoid this is by first familiarising yourself with the different options for collaboration, to make an informed choice on the type of collaboration relationship that is best suited to your intended activities. If you make this decision, you should then be mindful that your relationship continues to operate in that way (i.e. if you chose to enter an auspice arrangement you must ensure your way of working does not overstep from support and sponsorship). We provide further information on deciding what arrangements might be right for the nature of your collaboration in our JR Governance Starter Kit and guides. We also encourage you to seek legal advice that can accurately advise on the unique nature of your circumstances.

## How to decide if an auspice arrangement is right for you

### *Potential benefits*

#### For the auspisor

- Offers a way to support new projects, diversify your activities, and bring a fresh perspective and energy to your organisation.

#### For the auspicee

- Provides critical advice and support not otherwise available to your entity.
- Allows you to benefit from the auspisor’s infrastructure, resources, operational and



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- Promotes the purposes of your organisation while providing mentoring to a less established entity.
- The opportunity to build your network and profile with potential funders, key stakeholders and potential partners you may otherwise not be engaged with.
- administrative support (including certain insurance and legal protection) that you otherwise could not access.
- Access to the auspisor's expertise, experience, reputation, mentoring and/or support as you build/strengthen your own.
- The opportunity to build your network and profile with potential funders, key stakeholders and potential partners you may otherwise not be engaged with.

### Potential risks

#### For the auspisor

- Introduces new risks, personalities and extra administrative burdens to your organisation. This should be considered in the terms of the auspice agreement and appropriate insurance, risk management and other guidelines should be developed to reduce and manage this risk.
- Additional costs due to increased demand on operational infrastructure (such as office space, IT, HR and finance services). Although this is usually mitigated by charging a fee for the auspice, the fee may be insufficient to cover all costs associated with the auspice arrangement.
- If the relationship between the parties is or becomes problematic, it may result in a negative outcome, create stress, and potentially damage the relationship not only between the parties but also critical stakeholders such as the funding body.
- Increased liabilities and risks due to being wholly responsible and accountable to the funding body for the grant activities and

#### For the auspicee

- Losing a degree of ownership and control over the project, especially financial control.
- Needing to comply with the conditions of the auspice arrangement, which could lead to administrative burdens and/or inefficiencies (e.g. reporting to more than one governance structure, reporting in different formats to various bodies, etc).
- Following policies and procedures that are implemented by the auspisor, which may affect your ability to undertake the project in the way you had intended to.
- Providing more regular and/or detailed progress reports to the auspisor than may otherwise be required if funded directly.
- If the relationship between the parties is or becomes problematic, it may result in a negative outcome, create stress, and potentially damage the relationship not only between the parties but also critical stakeholders such as the funding body.

- funds that are being primarily carried out by another entity.
- Multiple governance structures and teams can complicate project management and decisions, resulting in inefficiencies, increased liabilities and/or disputes.
  - The auspice relationship may, in certain circumstances, give rise to an employment relationship which could impose unwanted legislative and tax burdens.
  - The auspicee may lack the necessary resources to comply with obligations under the auspice agreement. This may increase the liability and burden on the auspisor to complete project activities and/or damage the auspisor's reputation if project activities are not completed.
  - Incurring additional costs associated with the project that may not be recovered or reimbursed (e.g. the cost of the auspice fee may outweigh the cost of engaging those services directly from another source).
  - Depending on the arrangements, you may not be able to deal directly with the funding body which could affect your ability to develop a relationship with the funding body. This may also create delays in obtaining the required permission to undertake certain tasks.
  - The auspisor may lack (or dedicate) sufficient resources to provide the level of support required or desired by your entity to complete the project, causing delays and other issues.

### *Finding the right auspice partner*

There are many potential risks to entering an auspice arrangement, however, with the right relationship it can offer an incredibly valuable and worthwhile benefit to the work you are doing in your community.

It is therefore important to find the right auspisor to ensure that the objectives, goals, values, and ideals of the two parties align and that the parties can work together effectively to ensure the completion of the relevant project(s).

Some key issues to consider when considering if another entity is the right auspice partner includes:

- **Consistent purposes:** an auspisor can only auspice projects that are consistent with its purposes and may need to get legal advice to decide this.
- **Legal and tax status:** an auspisor will need to have the correct legal and tax status to fulfil the grant application requirements (e.g. an incorporated NFP and/or an entity with DGR status). They will also need to ensure their tax concessions are not jeopardised by the proposed activities. They may need to get legal and/or tax advice to decide this.
- **Power to auspice:** an auspisor will need to review its constituent documents (i.e. constitution, rules, by-laws) and any relevant funding agreements to ensure that entering the auspice arrangement is consistent with the purposes and powers of their organisation, and that there are no conditions, prohibitions or limitations preventing it.
- **The ability to deliver intended obligations:** it is important to consider whether both parties have the ability, time, expertise and sufficient resourcing to deliver on their obligations in the



agreed timeframe. If the project fails to complete, this may damage the reputation and/or increase the liability of both parties. You may also consider putting protections into the auspice agreement to cover any potential liabilities in the event either party fails to fulfil their duties.

## Preparing for an auspice arrangement

Both parties will need to consider the terms of their arrangement and relationship.

### *For the auspicator*

An auspice agreement is essential to ensure that the auspicee can deliver the project without jeopardising and/or unfairly burdening the auspicator's organisation.

In negotiating the auspice agreement, the auspicator will need to:

- Clearly state the areas and extent of support you will provide to the auspicee.
- Include effective 'pass through' provisions that allow you to pass on the risks and liabilities of the project to the auspicee where it is appropriate to do so, noting that you will remain legally responsible for the terms and conditions of the grant agreement.
- Ensure the terms of the auspice agreement are consistent with the terms of the grant agreements.
- Ensure the auspice agreement does not impose obligations which are contrary to your governing documents (e.g., the purpose set out in your Constitution).

This should be done with legal advice and support.

### *For the auspicee*

An auspice agreement is essential to ensure that the group has a legal right to access and use the funds which are granted to the auspicator for the purposes of the project and anything else needed such as access to offices and equipment.

In negotiating the auspice agreement, the auspicee will need to:

- Consider the level of control it requires over the project and to make sure this is clearly documented in the agreement.
- Ensure that it is able to comply with all of the obligations which are proposed in the auspicing agreement and should negotiate changes to obligations which it considers will negatively impact the successful completion of the project.

## Drafting an auspice agreement

It is important to have a written auspice agreement so that all parties understand their roles, responsibilities and liabilities under the auspice relationship. Remember, it must be drafted with extreme care as the auspicator is taking legal and financial responsibility for the project, including its responsibilities under a separate grant agreement and as the auspicee will become reliant on the



auspicator to achieve their project. The best way to take care is by seeking legal advice that is unique to your circumstances.

### *Terms and conditions to consider*

For general guidance only, we have provided examples of the common provisions that will be included within an auspice agreement. However, every auspice relationship will be different and will need to reflect and respond to the unique circumstances and needs of the parties involved.

**When** **Project timeline:** Specify the intended start and completion date for key project activities and deliverables, including the completion of the project as a whole.

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**What** Specify each party's obligations, particularly in relation to:

**Project activities and deliverables:** For example.

- Is there a shared vision for what this work will achieve.
- Is there a shared vision for how the parties intended to work together to achieve this.
- Who, how and when will certain roles and responsibilities be carried out.
- What is the budget.
- What are the decision-making, project management and approval processes and requirements.
- What are the reporting, deliverables and/or other requirements.

**Financial administration:** For example.

- Decision-making and approval processes, including financial delegation.
- Management processes, systems and time frames (e.g. when and how invoices and other disbursements be paid, how will surpluses be distributed, etc).
- Division of roles in relation to grants funding (e.g. who will apply and liaise with funders, who, how and when will expenditure be tracked and reported, etc.)

**Project operations and/or administration:** For example.

- Delivery of IT, HR and financial services. Who, how and when will these services be provided, and how has this been budgeted for (i.e. included in the fee, or accounted for separately in the project budget).
- Ownership, control and use of operational infrastructure. This may include access to and use of premises, ownership and use of laptop, IT systems and other equipment.

**Policies and procedures:** For example, this can include obligations to comply with any HR, WHS or other organisational policies and procedures.

**Liabilities, insurance and indemnity:** The parties need to consider whether there are any specific insurance requirements in relation to the activities of the project (e.g. workers compensation, public liability insurance, volunteer personal accident insurance and insurances to protect assets and equipment). It may be OK for the auspicee to be covered by the auspisor existing insurance coverage. Alternatively, the auspicee may need to purchase a specific policy to cover the project. In addition, a party may agree to indemnify the other from and against loss, damage or liability suffered as a result of the project.

**Fees:** How much, if at all, will the auspisor charge for its services?

**Intellectual property and confidentiality:** Who retains intellectual property rights and how will these rights be managed. E.g. is approval required before certain information is used/shared, etc.

**Recognition:** How will the roles of all parties (including the funding body) be recognised in promotional material?

## Who

Specify which individuals from each party are:

**The project manager(s):** For example.

- Who is responsible for managing the implementation of the project.
- Who is authorised to make critical project decisions (and in what areas).
- Can decision-making authority be delegated – to who and under what circumstances/conditions.

**The financial controller(s):** Who is responsible for authorising payments, including the process the project managers must follow to obtain approval for entering into financial commitments.

**Person(s) responsible for communicating to the Funding body or other key stakeholders:** As the auspisor has the legal and financial responsibility to account to the Funding Body, it may expect to either be informed/involved and/or control the process of responding to requests from the Funding Body (or other key stakeholders) for information about the project. The response processes could differentiate between project related communications (that deal with creative and other project issues such as changes to key personnel)

and grant related issues (that deal with financial matters and issues related to compliance with the terms of the grant including changes in the budget or changes to start or end dates of the project).

**Person(s) responsible for responding to media releases about the project:** The parties should establish a process for preparing/responding to media releases, this may include consultation and/or approval from both parties.

**Person(s) responsible for the preparation of progress reports and acquittal reports:** Although input from the project managers and other members of the auspicee will be necessary when reporting to the Funding Body, the auspisor will may expect to control the process of preparing progress and/or acquittal reports as they hold ultimate responsibility and liability for their delivery.

*What if* However unlikely, it is crucial to plan for circumstance when the project can veer of course and/or go wrong. This may include:

**Requirements not met:** What kind of sanctions apply if a party does not meet its obligations?

**Termination:** What conditions apply if a party wishes to terminate the Agreement?

**Dispute Resolution:** Should a dispute arise, how will the parties deal with it?

### *Guide to understanding common provisions*

Clause	Explanation
<b>Parties</b>	<p>Clearly name and identify the parties to the agreement so it is binding on the right persons or entities.</p> <p>For instance, if the auspicee is an unincorporated association, an individual member (or members) of that association will be required to enter into the agreement as representative of, and on behalf of, all the individuals who make up the auspicee.</p> <p>If the auspicee is a legal entity, confirm the ABN/ACN to ensure you have the correct legal reference.</p>
<b>Term</b>	<p>The agreement must have a start date and a termination date (or clarify the circumstances in which the agreement may be terminated).</p>

If the start and termination dates are conditional on a particular event occurring (such as signing the grant agreement), this should be made clear.

To account for possible delays, some agreements detail how the agreement can be extended.

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#### **Details of the relevant funding activities**

The agreement should clearly set out the scope of the auspice arrangement. For instance, the agreement should set out the details of the relevant project and outline timeframes, milestones and budget in relation to that project.

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#### **Obligations of auspicee**

The obligations of the auspicee should be set out and may include:

- a requirement to assist the auspisor to secure funding for the project.
  - ensuring the execution and completion of the project.
  - 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, and when (e.g. progress reporting, financial reporting, financial acquittal documentation, final report)
  - the extent to which the auspicee will be responsible for securing premises, equipment, staff, consents or licenses for the project.
  - requirements to comply with any policies of the auspisor / sponsor or any restrictions placed on the auspicee by the auspisor.
  - 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 / sponsor.
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#### **Obligations of auspisor**

The obligations of the auspisor should be set out and may include:

- compliance with the terms of the grant arrangement.
- how funding will be applied for, kept (separate bank account) and administered.
- allocating funds to the auspice as agreed or required.
- any support the auspisor agrees to provide in terms of things like office space, equipment, and software.
- 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.

- the extent of the administrative, accounting, HR, fundraising and legal assistance that the auspisor will arrange.

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**Funding and fees** 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 under which the fee is payable.

Consider whether there is a need to specify expectations for how the parties will cooperate to submit applications for funding. For example, clarify who will do the research and drafting of funding applications, and what the approval process is before applications may be submitted to funding bodies.

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**Non-completion of project** 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.

In particular, the agreement should set out the circumstances in which the auspisor is able to withhold funds (or even request the remaining funds be returned) and use the funds to complete the project itself.

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**Recognition** The agreement may specify how both parties will be recognised in relation to the funded project (including promotion, branding, acknowledgements and public announcements).

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**Notices and correspondence** A notice clause will set out in what form and where notices and correspondence are to be delivered to each party for the purposes of the agreement.

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**Dispute resolution** It is best to establish a mutually acceptable approach to resolving disputes at an early stage.

The dispute resolution procedure should be set out in detail, so that the relationship does not deteriorate 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.

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.

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**Obligations after termination** The agreement should also set out the parties' obligations after the agreement comes to an end.

The parties will need to think about things such as payment of any outstanding amounts, confidential information, intellectual property, and who may bear the burden of any unfinished work

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**Confidentiality** It's 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.

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**Intellectual property** A clause dealing with who owns the intellectual property created as part of the funded project should be included. This should cover the arrangement while the agreement is in place and also after it has ended.

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.

You may also wish to consider including a provision addressing Indigenous Cultural and Intellectual Property

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**Liability, insurance and indemnities** The agreement may also address:

- who is responsible for any loss or damage to any outside party caused by any activity undertaken under 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 project.
- confirmation of liability arising from contractual obligations entered into for the purposes of the project.
- whether insurance is required and which party is required to take out appropriate insurances.

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**Warranties** 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

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**Employee obligations** If the project will involve hiring employees, the agreement will usually specify who is responsible for the employment of the employees, and who arranges and pays the employees' legal entitlements such as tax and superannuation.

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**General provisions** 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:

- 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.
- which provisions, if any, will continue to bind the parties following the termination of the agreement.

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**Execution**

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.

**More information**

For access to more resources on how to establish your JR initiative, [visit our resources hub](#) on the Justice Reinvestment Network Australia website, or contact the JR Partner team on [justicereinvestment@nintione.com.au](mailto:justicereinvestment@nintione.com.au).