

Introduction to Collaboration Agreements

MARK D. KULLER

Adjunct Professor, Widener University Delaware Law School

General Counsel, AlgiKnit Inc.

Partner, CarriageWay LLC

MarkDKuller@gmail.com



Widener University
Delaware Law School

Overview

Types

Goals/Commercialization

Working Together

Untangling

Consideration

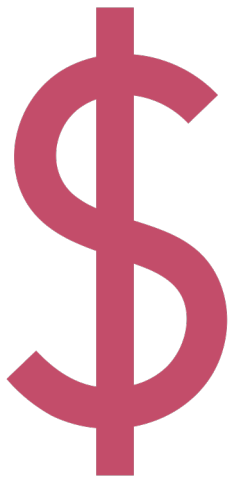
Intellectual Property

Addressing Risks

Reaching Agreement

Is collaboration the right approach?

Distinguish - Consulting or Services Agreement



Generally if you are paying someone to do work, you should own the results of the work

- Paying Someone to Conduct R&D, etc. -> Consulting or Services Agreement
- Note that a Collaboration Agreement can include an exchange of money to share or offset costs

Common Types of Collaborations

Vertical Customer-Supplier

Examples:

- *Supplier trying to introduce a new or improved product*
- *Addressing a customer need*

Horizontal Competitors

Examples:

- *DuPont-Honeywell developing a new coolant for automobiles based on European regulatory changes*
- *Small companies working together to develop a product for a specific market*

Commercialization

Each party's goals/ Advantages gained through relationship

- Early or earlier market entry
- Testing whether a product is suitable for the market
- Exclusivity or lead time - *length?*
- *Overcoming a hurdle*

Concerns (Examples)

- Supplier doesn't want to be locked out of a market by terms
- Don't want to hand over a competitive advantage to competitors
- Need for a second source

Making it Workable - During

HOW WILL YOU
MANAGE THE
EFFORTS?

HOW WILL YOU
WORK
TOGETHER?

WHAT
INFORMATION
DO YOU SHARE?

TOOLS

- Management Teams & Leaders
- Technical Teams & Leaders
- Milestones – Rigid vs Flexible
- Stage-Gate Processes & Reviews
- Assessing who is best suited for various tasks
- Mechanisms for sharing information
- Mechanisms for protecting information (shared, isn't shared or is shared judiciously)



PRE-NUPTIAL
ANALOGY



SUCCESS!



FAILURE



ONE OR BOTH
PARTIES WANT
OUT

Untangling

Consideration

Is carrying out the work enough?

Balancing workloads

Payments/No Payments

- Compensation to balance effort
- Compensation for equipment of supplies
- One party needs money to carry on work

Intellectual Property Ownership & Licensing

- Know-How Ownership & Use
- Patent Ownership & Access
- Owning vs Licensing
 - Individual vs Joint
 - Risks/Benefits
 - Costs



Managing Risks

- Assigning Responsibilities
 - *Work*
 - *Testing*
- Quality Standards
- Representations & Warranties
- Insurance
- Other

Reaching Agreement



Workflows - Streamlining process

- ✓ Early alignment of goals & responsibilities
- ✓ Use of term sheets
- ✓ Assessing compatibility

Negotiation

- ✓ Natural flow of negotiation
- ✓ Tendency to overstate your weaknesses/others' strengths

Advisors

- ✓ What types of advisors will be beneficial?
- ✓ Working with legal counsel –
when/what/where/deliverables/costs
- ✓ Timing

Is Collaboration the Best Path Forward?

- Working with other(s) vs going it alone
- Value of the project to each party
- Risks v Rewards
- Does size of each party matter?
- BANTA

Thank you!



The future of the chemical, material, agriscience and industrial biology industries is in innovative and sustainable technologies and building a new legacy of ChemTech. DESCA programs support future prosperity by leading the way to innovative solutions in these industries.

Widener University Delaware Law School

Delaware Law School is a vibrant community with a diverse student body in both full and part-time programs, a distinguished faculty, and a dedicated staff. The only law school in the state, Delaware Law School is enmeshed in Delaware's unique legal culture which prizes civility and respect within the bench and bar. Delaware's preeminence in corporate law, bankruptcy, and intellectual property, combined with the Law School's influential presence in Pennsylvania and New Jersey, give students abundant opportunities for clerkships, externships, pro bono experiences, and permanent employment after graduation. Nearly 12,000 alumni practice locally and throughout the world; among them are current and past presidents of the Delaware, Pennsylvania, and New Jersey bar associations and 195 sitting judges, including a sitting Justice of the Delaware Supreme Court and a sitting Justice of the New Jersey Supreme Court.



Introduction to Collaboration Agreements

Widener University
Delaware Law School

MARK D. KULLER

Adjunct Professor, Widener University Delaware Law School
General Counsel, AlgiKnit Inc.

Partner, CarriageWay LLC

MarkDKuller@gmail.com

<https://www.linkedin.com/in/markdkuller>