



Joint Venture Toolkit

Plain Language Guide: Understanding the Management Agreement



This document has been prepared by Jackson McDonald in collaboration with the Waalitj Hub and is funded by the National Indigenous Australians Agency.

This document is intended to provide a limited summary and overview of certain information to assist in the establishment of a joint venture or other commercial arrangement. This document has been put together having regard to the typical interests of Indigenous businesses but does not take into account any particular persons interests or circumstances and it is not intended to be comprehensive.

This document is not legal advice and must not be relied on as legal advice or as a substitute for legal advice. It is recommended that a person seeks professional legal, financial, tax and commercial advice in relation to their specific situation and circumstances. The law and other relevant circumstances may change, and no representation is made that this document is complete, accurate or up-to-date.



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Background

A management agreement is a contract between the JV company and a person or entity who will look after the day to day activities of the JV company (**Manager**). The Manager is often a shareholder of the JV company.

The template Management Agreement is specifically designed for circumstances where a shareholder of the JV company is contracted to provide the management services.

This document provides a summary of the key provisions of the template Management Agreement and addresses some 'frequently asked questions' that arise in respect of management agreements.

Where a term or phrase in this document uses capital letters (e.g. Services) then that word or phrase has the meaning given in the Management Agreement.

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Summary of provisions

Clause	Topic	Notes
1	Definitions and interpretation	This clause sets out the definitions of key terms used in the Management Agreement and explains the rules for interpreting certain words and phrases that are used in the Management Agreement.
2	Services	The Manager must supply particular Services to the Company in accordance with the terms and conditions of the Management Agreement. The Services that must be provided are listed in Schedule 1.
3	Term	The Management Agreement will apply for the period starting on the Commencement Date and ending on the End Date, unless the parties agree to end the contract sooner. If the Manager continues to provide the Services after the End Date then the terms of the Management Agreement will continue to apply until a new contract is signed or the Company terminates the Management Agreement.
4	Manager's Obligations	The Manager agrees that they have the skills and experience needed to deliver the Services (clause 4.1). The Manager is responsible for its staff, and the Manager's staff are not employees or contractors of the Company (clause 4.2). The Manager must tell the Company if it could have any conflicts of interest that might impact on its ability to deliver the Services (clause 4.3). The Manager cannot engage someone else to deliver the Services without permission from the Company (clause 4.4). The Manager is authorised to take the steps needed to follow the Board's instructions, including implementing the Business Plan and opening a bank account. However, the Manager must not enter into any contracts on behalf of the Company, take out any loans on behalf of the Company or commit the Company in any way without the prior consent of the Board (clause 4.5).
5	Management Fee	The Company must pay the Management Fee in respect of the Services provided by the Manager. The Management Fee is a percentage of the net revenue of the Company (see item 8 of Schedule 1) (clause 5.1). The Management Fee is deferred (i.e. not payable by the Company straight away) if the Company suffered a loss during a particular period. The Management Fee will only be payable when the Company is making a profit (clause 5.2). To calculate the Management Fee, the Manager must prepare management accounts for the Company on a monthly basis (clause 5.3).

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Clause	Topic	Notes
5	Management Fee <small>From previous page</small>	<p>The Management Fee actually paid will be reviewed at the end of each Financial Year to make sure that the right amount has been paid. If the amount paid is incorrect, then the parties will fix it (i.e. the Company pay more or the Manager repay any extra) (clause 5.4).</p> <p>All payments under the Management Agreement must be made by electronic funds transfer (i.e. deposited directly into bank accounts) (clause 5.5).</p> <p>The Manger must issue an invoice to the Company in respect of the Management Fee (clause 5.6).</p> <p>The Company must pay the Manager's invoices within 30 days (clause 5.7).</p> <p>If the Company thinks an invoice is incorrect then it does not need to pay the amount that it thinks is incorrect (clause 5.8).</p> <p>If there are errors in the invoices, then the Company and the Manager will review the invoices together (clause 5.9).</p> <p>The Manager must only use the Company's money, other than the Management Fee, for the purpose of providing the Services (clause 5.10).</p> <p>The process set out in clause 5.11 must be followed if there is a dispute about the Management Fees. This involves the parties trying to resolve the dispute on an informal basis or appointing an Independent Expert to review the matter in dispute (clause 5.11).</p>
6	Intellectual Property	All intellectual property rights in the materials prepared under the Management Agreement belong to the Company.
7	Access and record keeping	<p>The Manager must maintain proper records of what it does to deliver the Services. Copies of these must be provided to the Company and the Shareholders as reasonably required by them (clause 7.1).</p> <p>The Manager must give the Company, and the Shareholders, all assistance that is reasonably requested for the Company, and the Shareholders, to be able to verify that the Manager is complying with the Management Agreement (clause 7.2).</p> <p>The Manager must maintain proper records about expenses incurred in delivering the Services, and provide copies of these to the Company (clause 7.3).</p>
8	Privacy Laws	The Manager must comply with all Australian privacy laws.
9	Confidentiality	The parties must keep Confidential Information (things that aren't generally known by the public) confidential. The processes in this clause must be followed if Confidential Information is disclosed.

Clause	Topic	Notes
10	Insurance	The Manager must maintain all appropriate insurances.
11	Indemnity	The Manager will pay the costs that the Company may be required to pay where the Manager has: <ul style="list-style-type: none"> breached its obligations under the Management Agreement; not properly performed the Services; or hurt a third party or damaged a third party's property.
12	Dispute resolution	Any disputes that arise under the Management Agreement must be resolved in accordance with the Dispute Resolution process in the Shareholders Deed (see clause 22 of the Shareholders Deed).
13	Default and termination	The Company can end the contract for any reason by giving the Manager 30 days' notice (clause 13.1). The Company can end the contract immediately if the Manger: <ul style="list-style-type: none"> has breached the Management Agreement and it can't be fixed (or it hasn't been fixed within 14 days); or becomes insolvent (clause 13.2). Once the contract has been terminated, the Manger must stop performing the Services, return all property to the Company and do everything else reasonably required by the Company. The Manager is only entitled to those Management Fees that have been properly invoiced, or would be payable on the date the contract ends (other than any fees that have been deferred until the company has generated a profit) (clause 13.3).
14	GST	This clause explains how GST will be calculated on any payments that are made under the Management Agreement.
15	Notices	This clause sets out the process that must be followed to issue a formal notice under the Management Agreement.
16	General	This clause sets addresses a number of standard matters that may be needed in certain circumstances (e.g. how to change the contract, how the contract can be signed, which laws apply to the contract).

Frequently asked questions

How much does the Manager get paid?

What the Manager get paid depends on how much money the Company makes.

The Manager will get an agreed percent of the Net Revenue that the Company makes each year (see Item 8 of Schedule 1).

The fee is paid monthly or quarterly (see Item 5 of Schedule 1). But if the Company made a loss in a particular month or quarter, the Company doesn't need to pay the Manager (see clause 5.2).

At the end of the financial year, the Manager and the Company will review the fees that have been paid to the Manager and make any corrections needed to make sure that the Manager received the right percent of the Net Revenue for the financial year (see clause 5.4).

How do we make sure the Manager is doing their job?

The Management Agreement contains a number of different things to help the Company keep an eye on the Manager.

These include:

- setting out clear guidelines about what the Manager is required to do (see clause 4.1 and Item 6 of the Schedule);
- requiring the Manager to keep detailed records about what its doing, and to give copies of these records to the Company (see clause 7.1); and
- letting the Company, or shareholders of the Company, access to the Manager's premises, staff and documents to make sure the Manager is complying with the Management Agreement.

Can we change the Manager?

Yes, the Company can terminate the contract with the Manager for any reason. The Company must give the Manager 30 days' notice that the Management Agreement will end, unless the Manager has breached the Management Agreement or gone bankrupt (see clauses 13.1 and 13.2).

The Board of the Company is responsible for making decisions about the Management Agreement. When making any decisions about the Management Agreement (including changing the Manager) any directors of the Company who represent the Manager do not get to vote on the decision (see clause 10.8(b) of the Shareholders Deed).