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How to Dance with a Partner Without Being Stepped On

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Introduction

Now that the squeeze is on to be leaner and more efficient than ever, companies are turning to "partners" to help market, distribute and develop their products. The premise is simple: you can spread the word about your products by taking advantage of connections another company has created. In today's highly networked world, the notion makes sense. If you have a core product or competency, partner with another organization that can add value and market your products to their customers. Take a tip from Nike: success is not achieved by stem-to-stern control of a product. Rather, success is achieved by networking with the right companies so that each company assumes responsibility for a segment of a product's life cycle.

Partnering is one way to increase your company's sales and marketing efforts without adding to company overhead. Partnering, however, is a tricky proposition. You provide another company with access to your proprietary assets. You want your partner to help you exploit your assets. You don't want your partner to steal your assets or your customers or your competitive edge. At best, you want to create a win—win scenario, in which each party benefits from mutual collaboration. At worst, you want to avoid a lose—win scenario, in which you lose by having your partner win over your niche in the marketplace.

Agreement

To protect your company's assets, before entering into a venture with a partner, you should agree on a written set of terms and conditions that, at a minimum, address these items:

1. **Partners' Duties**. A partner agreement should describe the activities each partner will undertake. The description should be sufficiently detailed so that if your partner doesn't perform as expected, you can point to the agreement to show the deficiencies.
2. **Payment Obligations**. An agreement should state in detail how your partner is to be paid. Is it a fixed fee arrangement or a royalty based arrangement, or a hybrid? If royalty based (most are), address issues like: Are commissions based on orders, or on receivables? If your partner arranges an on-going relationship between you and a client, does your partner get a cut of your fees in perpetuity or for a finite period? Is there a ceiling to the partner's payments?
3. **Fee Tail**. If you strike a deal with a party identified by your partner do you owe the partner money, even after the agreement terminates? If so, is there an end to the obligation tail?
4. **Reporting Obligations**. Your partner should be required to provide regular reports describing their activities and the organizations contacted on your behalf.
5. **Exclusivity**. If your partner has an exclusive relationship with you, you should define performance objectives that must be met for exclusivity to be maintained. If the arrangement is exclusive, have geographic, demographic or use-based parameters been defined? In general, you want to narrow the scope of exclusivity as much as possible.

Most likely, you will disclose to your partner some of your company's confidential and/or proprietary information. Make sure to protect it.

6. **Intellectual Property**. If your partner is modifying your product and repackaging it (like an OEM), you should address ownership of derivative works. If your partner is creating work products on your behalf (promotional material, videos, etc.) you should have intellectual property rights to the material created.
7. **Confidentiality**. Most likely, you will disclose to your partner some of your company's confidential and/or proprietary information. Protect it with a non-disclosure agreement that survives termination of your partner relationship.
8. **Dispute Resolution.** Set up an efficient dispute resolution mechanism to deal with problems not addressed in your agreement. Specify that all disputes are to be resolved in your jurisdiction, not your partner's.

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9. **Termination Provisions.** Be clear on what happens when your relationship terminates. Require that all material you have provided be either returned or destroyed. Protect yourself from having your partner engage in a competitive business with you after termination of your relationship.

Summary

A partner relationship can bring benefits to a company, but it can also expose a company to risks. Inevitably, despite the overall goal of cooperation, conflicts arise in partnership transactions that involve multiple parties. Each hopes to maximize its return on investment; each may way want to lead, not follow. Sometimes a new entity should be created to carry out the objectives of the joint venture, but typically that can wait until you have gotten to know one another better. It is always wise for both parties to have a written agreement that defines their respective roles and helps them separate amicably when the music stops playing. ■