



# CO-CREATION AGREEMENT MODELS AND FRAMEWORKS

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# 1. CO-CREATION AGREEMENT MODELS AND FRAMEWORKS

This guideline outlines key considerations for managing contracts and Intellectual Property Rights (IPR) in co-creation projects. Co-creation, unlike traditional collaboration, involves multiple parties actively participating in the creation of value, with the intention that the generated results will be further developed by the individual parties for their own use and potential commercialisation. This necessitates a tailored approach to contractual agreements and IPR management.

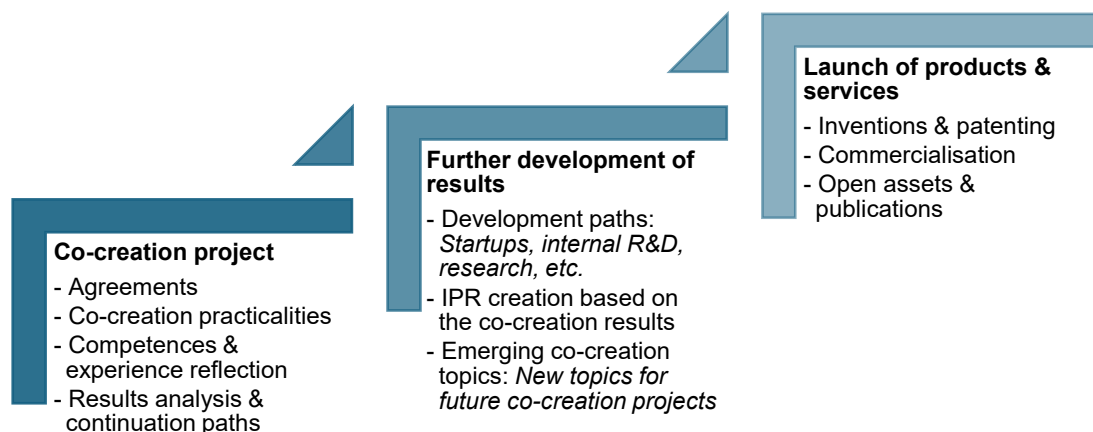
## 1.1. Understanding co-creation

Co-creation projects bring together diverse stakeholders, such as companies, startups, or research institutions, just to name a few, to jointly develop new ideas, solutions, or knowledge. The key differentiator from a typical customer-provider relationship is the shared ownership of the creative process and the expectation that all participating parties will benefit from the outcomes.

## 1.2. Co-creation Process and Subsequent Development

In a typical co-creation scenario, multiple parties collaborate on a defined project. The output of this phase is often not a finished product or service, but rather insights, prototypes, or foundational knowledge that each party can then take and develop independently. Finally, these independently developed outputs may lead to classical licensing agreements or direct sales in the market.

### Co-creation as part of IP creation



## 2. KEY ELEMENTS OF A CO-CREATION AGREEMENT

A well-defined co-creation agreement is crucial for setting expectations, clarifying roles, and ensuring a fair distribution of rights and responsibilities. The following topics should be addressed:

### 2.1. Background: Why do we start this?

This section should clearly articulate the reasons and motivations behind initiating the co-creation project. It sets the context and provides a shared understanding of the underlying needs and opportunities that the project aims to address.

- **Example:** *"This co-creation project is initiated to explore innovative solutions for sustainable packaging in the food industry, leveraging the expertise of [Party A] in material science and [Party B] in food production."*

### 2.2. Objectives: Where are we going with this project and what are the objectives and guiding principles?

This section defines the specific goals and desired outcomes of the co-creation project. It should outline what the parties aim to achieve and the principles that will guide their collaboration. Clear and measurable objectives are essential for tracking progress and evaluating success.

- **Example:** *"The primary objectives of this project are to:*
  - *Identify at least three novel sustainable packaging concepts.*
  - *Develop functional prototypes for the most promising concepts.*
  - *Evaluate the feasibility and potential impact of these concepts on the environment and cost-effectiveness.*
  - *Guiding principles include open communication, mutual respect for each party's expertise, and a focus on creating mutually beneficial outcomes."*

### 2.3. Roles of the parties: How do parties contribute to the project and what resources and assets do they bring to the table?

This section defines the responsibilities and contributions of each participating party. It should specify the resources, expertise, and knowledge that each party will bring to the project. This ensures clarity and avoids misunderstandings about expectations.

- **Example:**
  - *Party A: Will contribute its expertise in biodegradable polymer development, provide access to its laboratory facilities, and assign two research scientists to the project team.*
  - *Party B: Will contribute its knowledge of food packaging requirements, provide insights into consumer preferences, and allocate a marketing specialist to the project.*

### 2.4. Background material and IPR: How do we handle background material?

This section addresses the treatment of pre-existing intellectual property and materials that each party brings to the project. The principle here, in co-creation projects, is usually that each party retains ownership of its background IPR. These materials can be used within the scope of the co-creation project, but no rights are transferred to other parties. A clear inventory of background material and a strict NDA are crucial. All background material shall be returned or destroyed upon project completion.

- **Example:** *"All pre-existing intellectual property, including patents, trademarks, know-how, and materials owned by each party prior to the commencement of this project, shall remain the sole property of that party ("Background IPR"). No rights or licenses to the Background IPR are granted or implied beyond the scope of this project, and all Background Material provided by a party shall be returned to that party upon the termination or completion of this Agreement."*

## 2.5. 3rd party IPR: The agreement shall define the process how possible 3rd party material or IPR can be included in the project or not.

This section outlines the process for identifying, evaluating, and potentially incorporating third-party intellectual property into the co-creation project. It's crucial to establish clear guidelines to avoid future disputes regarding ownership and usage rights. The agreement should specify who is responsible for identifying and clearing any necessary third-party rights.

- **Example:** *"If the parties identify a need to incorporate third-party intellectual property into the project, they will jointly evaluate the terms and conditions of use. Any inclusion of third-party IPR will require mutual written agreement from all parties. The parties will jointly determine the responsibility for obtaining any necessary licenses or permissions and the associated costs. No third-party material shall be incorporated into the project without ensuring that such use will not hinder the future utilization, development, or commercialization of the project results by any of the parties."*

## 2.6. Rights to the results: Defining rights to the results is of course the essence of agreeing on a setup for co-creation (project).

This is a critical section that defines how the intellectual property rights to the results generated during the co-creation project ("Project Results") will be handled. Given that the aim is for parties to further develop these results independently, various models can be employed:

- **Shared Ownership with Non-Exclusive Rights:** All parties could jointly own the Project Results, with each party having a non-exclusive right to use, further develop, and commercialize them independently. This model works well when contributions are relatively equal and all parties intend to actively pursue further development.
- **Ownership by the Main Contributor with Licenses:** The Project Results could vest in the party that made the most significant contribution (e.g., provided core technology or substantial resources). Other participating parties could then receive non-exclusive (or in some cases, limited exclusive) licenses to use and further develop the results within agreed-upon fields or territories. The agreement should clearly define the criteria for determining the "main contributor."

- **Specific Rights Based on Contribution:** The agreement could define specific rights for each party based on their individual contributions to particular aspects of the Project Results. This requires careful tracking and documentation of individual contributions.

#### **Important Considerations for Defining Rights:**

- **Contribution Assessment:** Establish a clear and fair method for assessing each party's contribution to the project. This could involve evaluating the value of their resources, expertise, and time invested.
- **Scope of Rights:** Clearly define the scope of the granted rights, including the field of use, geographical territory, and duration.
- **Freedom to Further Develop:** Ensure that the chosen model does not unduly restrict any party's ability to independently develop and commercialize the Project Results. The focus should be on enabling further innovation.
- **Mechanism for Exclusive Rights:** The agreement can include a clause outlining a process by which one party (typically a corporate partner) can negotiate and potentially acquire exclusive rights to the Project Results. This clause should specify the decision-making process (e.g., mutual agreement, predefined milestones) and the principles for determining fair compensation for the transfer of these exclusive rights.

#### **Example Clause (Ownership by Main Contributor with Non-Exclusive Licenses):**

*"The intellectual property rights to the Project Results shall vest in [Party A], who is recognized as the main contributor based on their provision of core technology and significant research resources. [Party B] is hereby granted a non-exclusive, royalty-free license to use, and further develop the Project Results within the field of [specify field] and territory of [specify territory]. This license shall commence upon the completion of the Co-creation Project and shall continue for a period of [specify duration]. [Party B] acknowledges that this license does/does not grant the right to sub-license the Project Results without the prior written consent of [Party A]."*

#### **Example Clause (Option for Exclusive Rights):**

*"During a period of [specify timeframe] following the completion of the Co-creation Project, [Party C] shall have the option to negotiate in good faith with [Party A] to acquire exclusive worldwide rights to the Project Results. The terms of such exclusive rights, including the compensation payable to [Party A], shall be determined through mutual agreement. If the parties fail to reach an agreement within [specify timeframe], this option shall expire."*

## **2.7. Patentable inventions: In technical projects, it is good to include a definition of how patentable inventions are handled. Of course, here confidentiality is important as well.**

This section addresses the ownership and management of any patentable inventions that may arise from the co-creation project. It should outline the process for identifying, disclosing, and potentially filing patent applications. Confidentiality is paramount during the invention process to protect potential patent rights.

- **Example:** *"Any patentable inventions conceived or first reduced to practice jointly by the parties during the term of this project shall be promptly disclosed to all parties. The parties will then discuss and agree on the strategy for patent filing, including which party will be responsible for the preparation, filing, and prosecution of patent applications, and the allocation of associated*

*costs. All discussions and disclosures related to potential patentable inventions shall be treated as confidential information."*

## 2.8. Budget: Do the parties bring budget to the project or pay something for the other party?

This section details the financial aspects of the co-creation project. It should clarify whether each party is contributing a budget, providing in-kind resources, or if there will be any financial compensation between the parties. The potential use of a facilitator to manage the project and co-creation process should also be considered and addressed in the agreement, including the allocation of any associated costs.

These budget contributions are often considered in, e.g., corporate – startup or corporate – university setup to compensate other party's significant contribution to the joint project. Also, possible use of facilitator might be considered to help manage the project and the co-creation process.

- **Example:**
  - *"Party A will contribute a budget of [amount] to cover the costs of materials and external consultants.*
  - *Party B will contribute its employees' time and access to its facilities as an in-kind contribution.*
  - *Party C will pay Party A a sum of [amount] as compensation for their significant technological contribution to the project.*
  - *The parties agree to jointly engage a facilitator, [Facilitator Name], to assist with project management and coordination. The costs associated with the facilitator will be shared equally between Party A and Party B."*

## 2.9. Confidentiality: In co-creation projects, the confidentiality refers typically especially to the background material possibly brought to the project.

This section outlines the obligations of each party to maintain the confidentiality of sensitive information disclosed during the co-creation project. While it often focuses on background material, it should also cover any other information that the parties agree to keep confidential, including project results before they are publicly disclosed. A clear definition of confidential information and the duration of the confidentiality obligations are essential.

- **Example:** *"Confidential Information shall include, but not be limited to, each party's Background Material, proprietary information, technical data, business plans, customer information, and any other information disclosed by one party to the other(s) during the term of this Agreement that is marked as confidential or should reasonably be understood to be confidential. Each party agrees to protect the Confidential Information of the other parties with the same degree of care that it uses to protect its own confidential information, but in no event less than a reasonable degree of care. The obligations of confidentiality shall survive the termination or expiration of this Agreement for a period of [specify duration]."*

This section defines the extent to which each party will be liable for any damages arising from the co-creation project. It typically includes clauses that limit liability for indirect, consequential, or punitive damages. It's important to carefully consider and negotiate these limitations to ensure a fair allocation of risk.

- **Example:** *"To the maximum extent permitted by applicable law, neither party shall be liable to the other for any indirect, incidental, special, consequential, or punitive damages arising out of or in connection with this Agreement, regardless of the cause of action (whether in contract, tort, or otherwise). The total aggregate liability of each party to the other under this Agreement shall not exceed [specify amount or formula]."*

## 2.11. Term: What is the term of the project and which period is considered to be project duration? What is done if the project is delayed?

This section specifies the duration of the co-creation project, including the start and end dates. It should also address the procedures to be followed in case of project delays, such as potential extensions or termination clauses.

- **Example:** *"This Agreement shall commence on [start date] and shall continue in full force and effect until [end date] (the "Project Term"). If the project is reasonably expected to be delayed beyond the Project Term, the parties shall meet and negotiate in good faith to agree on a potential extension of the term. If the parties are unable to agree on an extension, either party may have the right to terminate this Agreement upon [specify notice period] written notice to the other parties."*

## 2.12. Governing law: Selection of the governing law is important, especially in international co-creation projects.

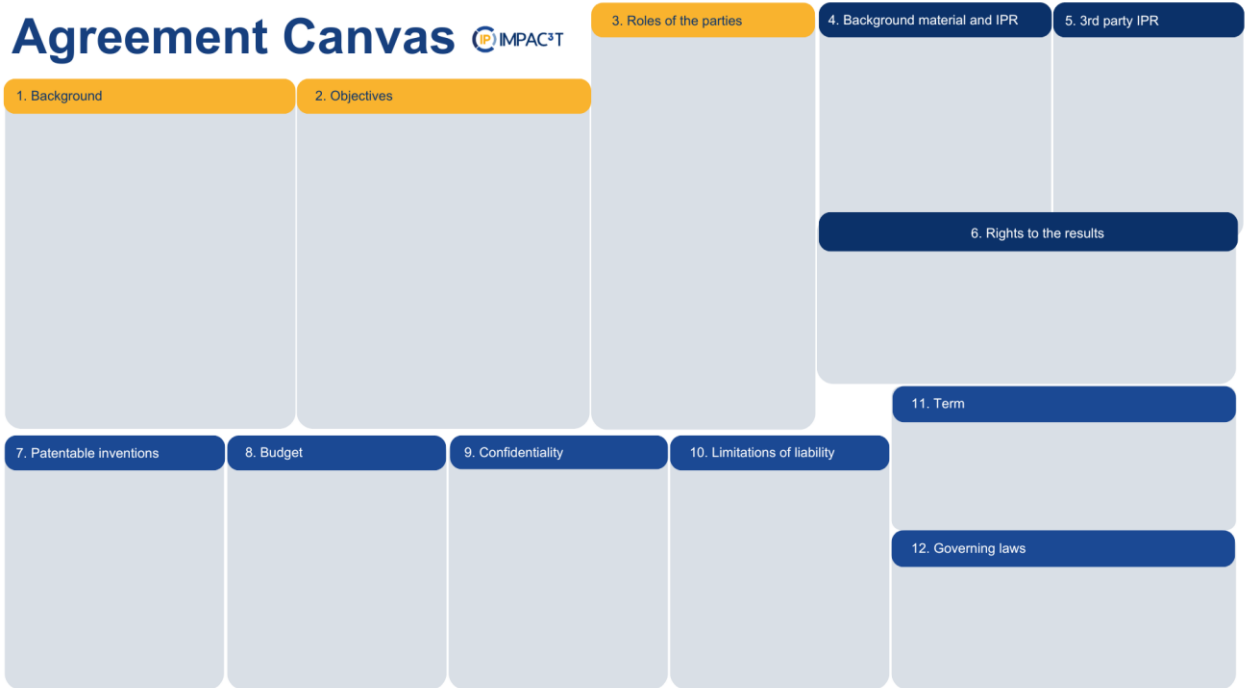
This section specifies the jurisdiction whose laws will govern the interpretation and enforcement of the co-creation agreement. Selecting a clear and mutually agreeable governing law is crucial, especially in international collaborations, to avoid potential conflicts and ensure legal certainty.

- **Example:** *"This Agreement shall be governed by and construed in accordance with the laws of [specify jurisdiction], without regard to its conflict of laws principles. Any dispute arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of [specify jurisdiction]."*

By carefully addressing these key elements in a comprehensive co-creation agreement, parties can establish a clear framework for their collaboration, protect their respective intellectual property rights, and foster a successful and mutually beneficial co-creation project. Remember that this guideline provides a general framework, and the specific terms of each agreement should be tailored to the unique circumstances and objectives of the particular co-creation project. Consulting with legal counsel is highly recommended when drafting and negotiating such agreements.

# 3. Agreement Canvas

Agreement Canvas can be used as a support element to facilitate discussion among parties about the agreement's content described in Chapter 2, as well as to document the made decisions transparently.



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