

What Lawyers Need to Know About Strategic Alliance Agreements

By Robert Porter Lynch, Founder & Chairman Emeritus, Association of Strategic Alliance Professionals

Message to Corporate Counsel: Your Contracts May Be Destroying the Value You're Trying to Create

This advisory is specifically for Corporate Lawyers who are negotiating Strategic Alliance Contracts.

(Note: this advice also works well for Complex Mega-Projects)

- What should you know about Alliance Contracting that is different from vendor contracts?
- How can the Alliance Contract increase your company's chances of success in their alliances?
- How can you negotiate and write contracts that helps ensure the alliance partners adapt to future changes that might not be addressed the contact?

Corporate lawyers face a profound paradox: the very contracting approaches you were trained to use—meticulously shifting risk, anticipating every contingency, protecting client interests at all costs—actually, but unknowingly, undermine the collaborative relationships essential for strategic alliance success.

It's time to reexamine and rethink how legal counsel approaches alliance agreements.

This advisory provides a roadmap for lawyers negotiating strategic alliance contracts to dramatically increase the probability of alliance success. The evidence is clear: alliances governed by collaborative legal frameworks that support a collaborative culture achieve 80% or higher success rates compared to less than 30% for traditional transactionary or adversarial approaches.

A large percentage of Strategic Alliances fail, often due to contract-related issues, ^{[1][2][3]} The Association of Strategic Alliance Professionals (ASAP) *Best Practices* have proven, time and again, that 80% of alliances can be successful, *if the Best Practices are followed*. Creating a Win-Win Contract is a fundamental component of building a successful alliance. Be sure to consult with your internal Strategic Alliance Professional to see a copy of the ASAP *Best Practices* (which is updated every several years). If they don't have a copy, insist they get one and share it with all those who will be working with alliances!

Your role as counsel is not simply to draft protective contracts—it is to architect legal frameworks that enable collaborative *value creation* while managing legitimate risks.^[4] This point must not be overlooked:

*The Contract should not just protect against risks – it should enhance the
CREATION of VALUE for BOTH Parties.*

*This implies that both Parties clearly identify the Value they wish to Create Together,
as well as the foundations of the Synergies they expect to cultivate.*

This advisory addresses the typical problems lawyers face when writing Strategic Alliance contracts and the best ways to approach the contracting process. Many of the ideas have come from lawyers themselves, but often as the result of a few hiccups along the way.

Note: this is strictly advice to lawyers only, and does not constitute giving legal advice by the author.

Use of this information should be provided to lawyers. Non-lawyers should not build Alliance Contracts based solely on this information.

Copyright 1995- 2025 Robert Porter Lynch (last update: Oct 2025)

Page 1 of 31

What Lawyers Need to Know about Strategic Alliance Contracting

Contents

Executive Summary: What Lawyers Need to Know About Strategic Alliance Agreements	3
The Lawyer's Dilemma: When Professional Training Conflicts with Alliance Success	5
The Traditional Legal Mindset: Risk Shedding and Protection	5
Why Traditional Contracting Destroys Alliance Value	5
The Research Foundation: What Works in Alliance Contracting	6
Alliance Failure Rates and Root Causes	6
Spirit of the Agreement: Overcoming Contractual Incompleteness Through Guiding Principles	7
Your New Role: From Risk Avoider to Value Architect	7
Mindset Shift 1: Accept Uncertainty & Incompleteness -- Design for Adaptation.....	7
Mindset Shift 2: Build Trust Through Contract Design.....	8
Mindset Shift 3: Create Aligned Incentives Through Gain-Share/Pain-Share.....	8
Mindset Shift 4: Establish Joint Governance with Shared Decision-Making	9
Mindset Shift 5: Evolution versus Exit Strategy	9
Mindset Shift 6: Changes in Personnel.....	10
Mindset Shift 7: Exclusivity, Pooling & Firewalls.....	11
Guiding/Operating Principles Framework: Making Values Actionable	12
The Joint Development Process: Creating Guiding & Operating Principles Collaboratively	12
Why Operating Principles Are Essential	12
The Eight Basics of Trust (FARTHEST Framework)	12
Structural Issues for the Legal Agreement.....	13
Coordinating the Legal Counsels	13
Final Review and Approval	14
The Lawyer's New Transformational Value Proposition	14
<i>From Contract Drafter to Alliance Architect</i>	14
Demonstrating Value to Business Leaders.....	14
Conclusion: Leading the Transformation	15
Appendices: Practical Drafting Guidance:	17
Detailed Advice on Key Contract Provisions for Alliance Success	17
Appendix One: Vision and Purpose Section	17
Appendix Two: Governance Structure	17
Appendix Three: Gain-Share/Pain-Share Structure	18
Appendix Four: Change Management & Adaptation	18
Appendix Five: Transparency and Communication	19
Appendix Six: Intellectual Property	19
Appendix Seven: The Joint Development Workshop Process	20
Appendix Eight: Dispute Resolution	21
Appendix Nine: Common Objections and Responses	22
Appendix Ten: Sample Operating Principles from Successful Alliances	23
Appendix Eleven: Distinguishing Adversarial, Transactional & Collaborative Systems.....	24
Appendix Twelve: The 12 Principles of Equity:	25
Reviving Ancient Wisdom for Modern Alliances	25
How to Incorporate the 12 Equity Principles into Contracts.....	26
Appendix Thirteen: Implementation Checklist for Lawyers.....	27
Key Resources for Collaborative Contracting.....	29

What Lawyers Need to Know about Strategic Alliance Contracting

Executive Summary: What Lawyers Need to Know About Strategic Alliance Agreements

Corporate lawyers face a critical challenge: traditional adversarial contracting approaches—designed to shift risk, anticipate every contingency, and protect individual client interests—actively undermine the collaborative relationships essential for strategic alliance success. With 60-70% of strategic alliances failing, often due to contract-related issues, legal counsel must fundamentally rethink their approach to alliance agreements.

The Core Problem

Traditional legal training emphasizes risk-shedding, exhaustive specification, and protective provisions. However, strategic alliances are **Relational Partnering Structures** requiring deep trust, information sharing, joint decision-making, shared risk/reward, and adaptability. Adversarial contracts systematically destroy these essential elements through:

- **"Poisoning the well"** during negotiations that creates toxic relationships before collaboration begins
- **The incompleteness paradox:** Complex contracts are inevitably incomplete (35-40% incomplete today versus 5% in 1960), yet lawyers pretend they can specify every contingency
- **Contractual rigidity** that prevents principled adaptation when unanticipated circumstances arise

The Evidence-Based Solution

Research demonstrates that alliances using collaborative frameworks achieve **80-100% success rates** compared to less than 30% for traditional adversarial approaches. Collaborative alliances deliver:

- 10% cost reduction
- 20% schedule improvement
- 87% reduction in lost work days
- 50% reduction in rework
- 68% reduction in claims
- 337% increase in value engineering innovations

Seven Critical Mindset Shifts for Lawyers

For lawyers to becoming Value Creators in the Strategic Alliance formation process requires:

- 1. Accept Uncertainty & Incompleteness --Design for Adaptation:** Stop attempting exhaustive specification. Instead, create frameworks enabling *Principled Adaptation* through explicit acknowledgment of uncertain strategic & operational conditions, flexible change management processes, and technology-neutral language.
- 2. Build Trust Through Contract Design:** View contracts as trust-building instruments using risk-sharing (not risk-shedding), open-book transparency, no-fault/no-blame provisions, and explicit good faith commitments beyond legal minimums.
- 3. Create Aligned Incentives:** Structure gain-share/pain-share mechanisms where parties share both savings and overruns (typically 50/50 within $\pm 10\%$ of target costs), creating "win-win/lose-lose" dynamics with capped downside risk.
- 4. Establish Joint Governance:** Create Alliance Governance Boards with equal representation and unanimous "best-for-alliance" decision-making authority, meeting weekly/bi-weekly to address issues collaboratively.
- 5. Plan for Evolution, Not Just Exit:** Design transformation strategies that enable alliance adaptation to changing circumstances, while structuring exits to be least painful for all parties. Avoid hair-trigger termination rights that encourage premature disengagement.

What Lawyers Need to Know about Strategic Alliance Contracting

6. Address Personnel Quality and Succession: Specify criteria for alliance leaders (requiring five integrative skillsets: strategic thinking, analytic insights, innovative thinking, relationship building, and practical implementation) and establish succession planning for long-term engagements.

7. Navigate Exclusivity, Pooling, and Firewalls: Structure intellectual property arrangements that enable collaborative innovation while protecting proprietary information through appropriate firewalls when necessary.

The Guiding Principles Framework: Overcoming Contractual Incompleteness

Nobel Prize winner Oliver Hart's research demonstrates that **formally incorporating guiding principles into contracts significantly outperforms both traditional "complete" contracts and informal relational norms**. Every strategic alliance agreement should also include:

Alliance Operating Principles: Jointly developed behavioral commitments translating abstract values into specific observable actions. Examples include "Act as One Alliance," "Win Together or Lose Together," "Transparent Communication," and "Default to Innovation."

The Eight Basics of Trust: Fairness, Accountability, Respect, Truthfulness, Honorable Purpose, Ethics & Excellence, Safety & Security, and Transparency.

The 12 Principles of Equity: Ancient equitable doctrines providing interpretive guidance when ambiguities arise—including "Do What Should Have Been Done," "Favor the Trustworthy," "Equity Abhors a Forfeiture," and "Equity Honors Time."

These principles must be **jointly developed by partners** (not imposed by lawyers), and referenced throughout the agreement as interpretive guides with equal weight to specific contractual provisions.

Your Transformed Role: From Risk Avoider to Value Architect

The legal profession stands at a crossroads. Corporate counsel must transform from contract drafters protecting against risk to **alliance architects** enabling collaborative value creation. This elevated role requires strategic thinking about relationship dynamics, facilitation skills for joint workshops, business acumen regarding value drivers, conflict resolution expertise, and change management capability.

When you help clients achieve 80-100% alliance success rates instead of 60-70% failures, your value becomes obvious and quantifiable—translating to hundreds of millions of dollars in value creation. **Your collaborative contracting expertise becomes a competitive differentiator for your organization.**

Implementation Imperative

This advisory provides comprehensive guidance including practical contract language for vision statements, governance structures, gain-share/pain-share formulas, change management provisions, transparency requirements, intellectual property frameworks, and dispute resolution processes. It includes responses to common objections, an implementation checklist, and examples from successful alliances.

Alliance contracts must enhance the **creation of value for both parties**. Regardless of length, cost, or detail, an agreement is only as valuable as the commitment and fairness of the parties behind it.

The research is clear. The frameworks exist. The evidence is compelling. The question is: **Will you lead the transformation to collaborative contracting, or continue applying 20th-century adversarial approaches to 21st-century collaborative relationships?**

Your clients' alliance success—and your professional relevance—depend on your answer.

The Lawyer's Dilemma: When Professional Training Conflicts with Alliance Success

The Traditional Legal Mindset: Risk Shedding and Protection

Your legal training emphasized adversarial thinking and protective contracting:^{[5][6]}

- **Anticipate Every Contingency** and draft provisions addressing each potential risk
- **Shift Maximum Risk** to the other party through extensive indemnities, warranties, and liability caps
- **Create Enforceable Remedies** through liquidated damages, termination rights, and litigation provisions
- **Protect Information** through restrictive confidentiality and non-compete clauses
- **Establish Clear Exit Strategies** to enable swift disengagement when problems arise

This approach makes perfect sense for transactional, arms-length commercial relationships.

But it is catastrophically wrong for strategic alliances.

Why Traditional Contracting Destroys Alliance Value

Strategic Alliances (and Complex Mega-Projects¹) are *not transactions* (otherwise known as “deals”); they are **Strategic Relationships** – organizational structures designed to create value that neither party could achieve independently. Thus, they require:^{[7][8][9]}

- **Deep Trust and Information Sharing**
- **Joint Decision-Making and Collaborative Problem-Solving**
- **Shared Risk and Reward**
- **Flexibility To Adapt as Conditions Change**
- **Long-Term Commitment and Investment**

Traditional adversarial contracts systematically undermine every one of these requirements:^{[10][4][5]}

If someone from Business Development or Strategic Planning walks into their corporate lawyer’s office and asks the question: “How do I structure this deal?” beware. The question itself shows a lack of understanding the contracting process in alliances.

First: The idea of “structuring” should come *after* it is clear what the strategic value is and *after* the critical functions (governance, leadership, core processes, etc.) have been determined.

Second: The use of the term “deal” should be avoided – this word will send the architects of the alliance down a transactional pathway, versus a necessary collaborative interaction.

Third: Alliance architects should be aware that an adversarial or transactional approach to negotiations can produce unintended consequences:

- **"Poisoning the Well" Before Work Begins:** When parties spend months battling over contract terms, each trying to shift maximum risk to the other, they create toxic relationships before collaboration even starts. The negotiation process itself becomes a trust-destroying exercise that signals "I don't trust you, and I expect you to act opportunistically."^{[11][10]}

What Lawyers Need to Know about Strategic Alliance Contracting

- **The Incompleteness Paradox:** Having spoken to scores of lawyers during my career, the preponderance of opinion is that seldom do the anticipated problems foreseen at the inception of the contract actually materialize; rather it was an unforeseen condition that was never anticipated.² Complex, long-term contracts are **inevitably incomplete**—you literally cannot anticipate and specify all future contingencies. The belief that you can draft a "complete" contract through exhaustive legal work is a costly delusion. Contract incompleteness has grown from 5% in 1960 to 35-40% today as business relationships become more complex.^{[12][13][14][9][7]} Long, arduous contracting also delays the launch of the alliance, wasting valuable time, thus, losing strategic competitive advantage.
- **Self-Serving Bias and Aggrievement:** When unanticipated events occur (and they will), parties interpret ambiguous contract provisions through self-serving biases. Each believes their interpretation is "reasonable" and "fair," but these interpretations diverge, leading to feelings of aggrievement, retaliatory "shading" behaviors, and deadweight losses that destroy value.^{[13][15][14][16]} Any contract that ends up in litigation is an alliance death sentence.
- **Contractual Rigidity in Dynamic Environments:** Alliances operate in uncertain, rapidly changing environments. Fixed contractual specifications that made sense at signing become obsolete or counterproductive as conditions evolve. Yet traditional contracts provide no principled way to adapt beyond formal amendments that require reopening difficult negotiations.^{[17][18][7]} This is especially important in the Age of Artificial Intelligence, where evolution and innovation is happening at an extraordinary rate of speed.

The Research Foundation: What Works in Alliance Contracting

Before prescribing solutions, lawyers need to understand the evidence base for what actually drives alliance success and failure. Research consistently shows 60-70% of strategic alliances (which don't use ASAP's *Best Practices*) fail prematurely. The primary causes include:^{[19][2][20][3][1]}

Alliance Failure Rates and Root Causes

Failure Cause	Description	Legal Implications
Misaligned Goals	Partners have conflicting objectives or success metrics ^[2]	Contracts must establish shared vision and aligned incentives
Poor Communication	Information barriers prevent coordination and trust-building ^[2]	Contracts must mandate structured communication and transparency
Inadequate Governance	Unclear decision-making authority and dispute resolution ^{[1][19]}	Contracts must establish joint governance with clear authority
Cultural Distance	Incompatible organizational cultures and operating principles ^[1]	Contracts must include jointly developed operating principles
Weak Trust Foundation	Inability to develop trust and collaborative behaviors ^{[19][20]}	Contracts must build rather than destroy trust
Rigid Contracts	Inability to adapt to changing circumstances ^{[1][19]}	Contracts must include adaptation mechanisms and guiding principles
Unequal Value Capture	One party perceives unfair distribution of benefits ^[3]	Contracts must ensure equitable risk/reward sharing

Notice that **every single failure mode has a contractual dimension**. The contract either enables or prevents alliance success.

What Lawyers Need to Know about Strategic Alliance Contracting

Spirit of the Agreement: Overcoming Contractual Incompleteness Through Guiding Principles

For the last thirty years I have insisted contracts include a section that addresses three core issues:

1. **Spirit of the Agreement:** Alliances have a core spirit of collaboration that inspires – provides and Esprit de Corps embodying the essence of the culture of the collaboration.
2. **Value Proposition:** What the parties expect to see in terms of Value. This is typically *more than financial return* – it includes the Strategic Return on Investment, such as new market share, innovations created, efficiencies of operation, new channels, etc.) In essence, the Joint Value Created is the Synergy of the Alliance.
3. **Guiding & Operating Principles:** The core values and ways in which people will work together that will engender trust and innovation (See Appendix for more detail)³

Your New Role: From Risk Avoider to Value Architect

Traditional Approach: Structure Deals, Reduce Risks, Win Litigation, show your strength and diminish the value of the “other side.” Attempt to identify every risk imaginable and mitigate against all risks. Call for Hold-Harmless provisions, no matter what the capability of smaller companies to share liability. Support unscrupulous practices if advocated by senior management.

Alliance Approach: Become a member of the Alliance Team, architecting the Legal Process that will increase chances of success (which is the most effective way of reducing risk), use the contracting process to build trust, understand Alliance Best Practices (some of which become incorporated in the legal agreement), and enable the Alliance to adapt to changing conditions during its evolution.

Note: These Mindset Shifts will invariably be met by objections from your fellow lawyers and your Alliance Partner’s Legal Counsel. See Appendix Nine for excellent Responses to Common Objections.

Mindset Shift 1: Accept Uncertainty & Incompleteness -- Design for Adaptation

Traditional Approach: Draft exhaustive contracts attempting to anticipate and specify every contingency. Bill hundreds of hours creating detailed provisions addressing remote risks.

Alliance Approach: Accept that the Alliance will sail in a sea where it must navigate unpredictable weather: volatile storms, unknown straits, changing tides and currents, pirate attacks, and favorable winds. Thus, the contract will be incomplete.⁴ Instead of attempting comprehensive specification, create frameworks that enable *Principled Adaptation*⁵ when unexpected situations arise.^{[13][7][14]} (See next section on Guiding Principles)

Practical Implementation:

- Include explicit contractual acknowledgment of incompleteness: *“The Parties acknowledge that this Agreement cannot anticipate all future circumstances and that the Parties’ relationship will require ongoing collaboration, good faith, and joint problem-solving to address unanticipated situations.”*^[14]
- Establish adaptation mechanisms including regular governance meetings, change management processes, and escalation procedures for resolving ambiguities^{[22][23][17]}
- Include flexible clauses that allow adjustment of scope, pricing, deliverables, and timelines based on changing circumstances without requiring full contract renegotiation^{[24][17][22]}
- Use technology-neutral language that accommodates future innovations without contract amendments^[24]
- An Alliance is a *living organism: its health is important to navigate uncertainty*. Prudent Alliance leaders conduct Annual Health Checks⁶ to ensure it is functioning effectively and the partners are aligned.

What Lawyers Need to Know about Strategic Alliance Contracting

Mindset Shift 2: Build Trust Through Contract Design

Traditional Approach: View the contract as protection against the other party's opportunism. Include extensive indemnities, warranties, termination rights, and enforcement mechanisms.

Alliance Approach: View the contract as a **trust-building instrument** that signals commitment, fairness, and good faith.^{[8][25][19]}

Practical Implementation:

Risk-Sharing Rather Than Risk-Shedding: Design contracts where risks are allocated to parties best able to manage them, with mutual pain-share mechanisms for uncontrollable risks. This creates "win-win/lose-lose" dynamics where parties succeed or fail together.^{[26][27][28][29][30]}

Open-Book Transparency: Include provisions requiring comprehensive financial disclosure, including actual costs, overhead, fee structures, and supplier pricing. This transparency builds trust and enables collaborative cost management.^{[31][32][33]}

No-Fault/No-Blame Provisions: Limit ability to file claims, requiring parties to work through governance structures to resolve issues collaboratively rather than adversarially. Example language: *"The Parties agree to resolve disputes through the Alliance Governance Board using collaborative problem-solving before resorting to formal dispute resolution procedures. In the event of an impasse, senior executive alliance sponsors agree to meet together in a non-litigious manner, to resolve differences in accordance with their Guiding Principles."* ^{[33][31]}

Commitment to Good Faith: Include explicit good faith obligations beyond legal minimums: *"Each Party commits to act in the best interests of the Alliance, even when such actions may not maximize that Party's individual short-term benefit."*^[14]

Mindset Shift 3: Create Aligned Incentives Through Gain-Share/Pain-Share

Traditional Approach: Fixed-price contracts or cost-plus arrangements with adversarial interests. Contractors profit from change orders; clients profit from squeezing contractors.

Alliance Approach: Shared risk and reward structures where all parties benefit from superior performance and share consequences of underperformance.^{[29][30][34][26]}

Practical Implementation:

Target Cost Development: Parties collaboratively develop target costs based on transparent cost models. Savings below target are shared according to agreed formulas (e.g., 50/50 split); overruns are similarly shared.^{[30][35][29]}

Performance Incentives: Structure bonuses tied to metrics beyond cost—schedule adherence, quality metrics, safety performance, innovation achievements, customer satisfaction.^{[36][30]}

Capped Downside Risk: Limit contractor exposure to prevent excessive financial risk that would deter participation, while maintaining incentives for cost control.^[35]

Example Gain-Share/Pain-Share Structure:^{[29][30][35]}

- Within $\pm 10\%$ of target cost: 50/50 split of gains or pains
- Between 10-20% variance: 70/30 split (client bears more)
- Beyond 20%: 90/10 split with client bearing majority of extreme outcomes
- Performance bonuses independent of cost outcomes

What Lawyers Need to Know about Strategic Alliance Contracting

Mindset Shift 4: Establish Joint Governance with Shared Decision-Making

Traditional Approach: Hierarchical authority with client making final decisions. Disputes resolved through escalation to senior executives or litigation.

Alliance Approach: Joint governance boards with representatives from all key parties/stakeholders making decisions collaboratively in the "best interest of the alliance".^{[37][19][33]}

Practical Implementation:

Alliance Governance Board: Establish formal board with equal (or proportional) representation from each party (e.g., 3 representatives from each company for a two-party alliance).^{[33][37]}

Decision-Making Authority: Grant board explicit authority to make binding decisions on scope changes, resource allocation, budget adjustments, schedule modifications, and performance issues.^{[37][33]}

Unanimous "Best-for-Alliance" Decisions: Require unanimous approval for major/capital decisions, with explicit commitment that board members will vote for what's best for the alliance rather than their individual companies.^{[38][33]}

Regular Meeting Cadence: Mandate weekly or bi-weekly governance meetings with structured agendas covering progress review, issue identification, decision-making, and forward planning.^{[33][37]}

Escalation Procedures: Create clear escalation paths to senior executives when governance board cannot reach consensus, with timelines ensuring swift resolution.^[37]

Default to Action: Provision for the Governance Board to take Prudent Action in the event of stalemates or prolonged delays, remembering the Principle of Equity: Time is precious; unnecessary delays violate equitable principles. Encourages prompt action and win-win decision-making

Mindset Shift 5: Evolution versus Exit Strategy

Traditional Approach: The Exit Clause is the most important clause in the document, because it limits risks and liabilities when the Alliance fails (also implying we expect it to fail). In the new world of multi-partner alliances and rapid changes in the strategic landscape, this traditional thinking is often ill-advised.

Alliance Approach: Do everything possible to help the Alliance succeed (which, by the nature of success, has the highest impact on risk reduction). Expect that there will be changes that transform the Alliance, thus it is vital to enable adaptation mechanisms to be in place that provide timely changes. In the event of a failure or need for one or more of the parties to exit, make the exit the least painful for all affected.

Practical Implementation:

Alliance Adaptation: Sometimes Alliances go stale; sometimes Corporate Strategy changes. But just as frequently, the Alliance must shift, adapt, change direction. Often there will be new partners coming into an Alliance and conflict of interest issues will require new firewalls to be built.

The Exit Strategy will be essential if the alliance collapses or no longer is strategically or operationally important or viable. The difficult questions the lawyer will ask will prevent our company from being victimized by a highly litigious former partner turned adversary. A well-formulated exit strategy will enable you to retract from the alliance without a detrimental impact.

What Lawyers Need to Know about Strategic Alliance Contracting

No Litigation: Litigation is nearly always a lose-lose proposition. Judges don't like win-lose decisions, which make the judge vulnerable to appeal to a higher court. Litigation takes a lot of time, diverts corporate focus, and sullies the reputation of both parties. Wisdom dictates prudent disengagement. The Exit Strategy should refer to the 12 Principles of Equity to ensure fairness applied by a neutral mediator.

Nevertheless, the exit strategy should be encompassed within a larger "transformation strategy".

The "Transformation Strategy" may not be a term familiar to the legal counsel. Transformation refers to how to adapt the alliance to major shifts in the strategic, operational, regulatory or technical environments. Flexibility is a critical factor in the long-term success of alliances. The transformation strategy helps reinforce trust by outlining how the partners will change the structure, direction, rewards formula, and roles and responsibilities when the conditions around the alliance shift. (And you should expect that they will shift -- the only questions are "when?" and "in what direction?")

Mindset Shift 6: Changes in Personnel

Traditional Approach: A typical contract traditionally does not address the issue of personnel managing or leading the Alliance or Complex Project. Because of this deficiency, often the wrong personnel are used, which is a key factor in failures.

In my experience: I once had to fix an alliance where one company had their Alliance Managers replaced on the average of every 100 days over the course of five years. No wonder it was a revolving door of second-rate personnel who "took their turn in the barrel." In complex projects where the culture was adversarial or transactional, we've seen 4-5 project managers fired before the project was complete because the culture caused continuous overruns of time and budget.

Alliance Approach: The quality of leaders and managers is one of the most important elements of collaborative success. Good Alliance Agreements often address not just the criteria for personnel assigned to the Alliance, but also how their replacements will be selected.

Practical Implementation:

Integration Skills: Experience over the last 40 years of alliance engagement has demonstrated that great alliance leaders and champions have five core "Integrative Mindsets/Skillsets":

1. Excellent Conceptual/Strategic Thinking: Big-picture, sweeping trends, future & past, long-view
2. Refined Analytic Insights: Logic, facts, data analysis, quantitative reasoning
3. Innovative Thinking: Creative Imagination to see possibilities & opportunities, experimentation,
4. Relationship & Trust Building: foster Teamwork, interpersonal skills, empathy, team dynamics
5. Practical Implementation Skill to convert ideas into action: Organization, planning, sequential processing, structured approaches

Succession Planning: Because Alliances and Complex Projects have long time horizons. This means the people who originate the alliance/project may likely be replaced along the way. Be sure to identify the qualities and criteria of new personnel to be added to the Alliance. In some cases, the Alliance Partner is given a role in selecting their counter-part to ensure both compatibility and quality.

CEO Engagement: CEOs and Senior Executive Sponsors are an essential part of the success of an Alliance. Without their support, the relationship, in reality, is no longer "strategic." When CEOs and Executive Sponsors change, it is of vital importance that a trust relationship be rebuilt with the new person. This should be addressed in the contract.

What Lawyers Need to Know about Strategic Alliance Contracting

Mindset Shift 7: Exclusivity, Pooling & Firewalls

Traditional Approach: Extract a high premium for exclusivity, ensure minimums are met or relinquish exclusive rights, strong Intellectual Property Protection.

Alliance Approach: Remain concerned about minimums, but acknowledge that there may be multiple partners in the alliance who also have strong Intellectual Property Rights, and many times the Alliance Partner may also have multiple personalities: Your best collaborator may also be a competitor, a supplier, and a customer as well. Intellectual Property will likely need to be pooled among the partners. The objective is not just to use existing IP, but, just as important, to *create new IP*.

Practical Implementation:

When Exclusivity Makes Sense: Often the issue of exclusivity will be a major negotiation point when structuring the alliance. Exclusivity means each of the partners will only have a relationship with one alliance partner in the target market area (much like fidelity in a marriage). The alliance manager should be aware of the situations when exclusivity makes sense:

- Both partners are very strong in the market
- Each partner as a highly competitive offering that, when combined with the other partner, is nearly impossible to duplicate
- Large segments of customers are enamored with the new joint market offering
- The partners will be capable of sustaining this competitive advantage for long periods of time

Advantages of Exclusivity: There are several advantages to an exclusivity arrangement:

- Creates a unique relationship/competitive offering
- Establishes deep competitive barriers
- No confusion in marketplace
- Few branding and image difficulties
- Little chance of confidential data bleed-through to competitors

However, exclusivity may not always be the best alternative if it fails to fulfill long term strategic needs, or if the partner's product/service does not have the features desired by customers, or if the partner's distribution is limited. Further, the future may work adversely on the exclusiveness if other new competitors enter the market with more powerful offerings, thus limiting our ability to be competitive. For these reasons, be very careful about including exclusivity provisions in the legal agreements, particularly if the exclusivity arrangement will create an adverse competitive advantage later.

Pooling: Frequently the Alliance will pool intellectual property, with the purpose of creating an *Integrated IP* or a *Next Generation IP*. Questions will arise about who owns the *next generation* and how *next generation* should be licensed to other parties into the future. *Key Principles* should be created for future evolutions.

Firewalls are established when there is a possibility/probability of bleed-through of intellectual property within one of the alliance partners to a competitor. The structure of the firewalls should be clear. Frequently the firewall is protected ensuring no overlap of documentation, computer networks, and no common personnel.

Mindsets are the most difficult things to change, primarily because they are founded on a core set of beliefs that reflect what both individuals and professions agree about what's true, valuable, and effective.

In the case of Strategic Alliance Contracting, the shift in Mindsets proposed above may seem uncomfortable at first. However, they are effective. Whenever wise legal counsel has adopted these approaches, the most common comments I hear is: "I wish I had known about these earlier! These would have changed my legal career. I wish they were taught in Law School;" and "We should take this approach far more often!"

Guiding/Operating Principles Framework: Making Values Actionable

The Joint Development Process: Creating Guiding & Operating Principles Collaboratively

Our experience over the last several decades, and now supported by more extensive research, has shown that having a set of Jointly Developed Principles for the Alliance is an important **Key Factor for Success**. (Note: see Appendix for Samples of Guiding & Operating Principles & ENDNOTES on *Principled Adaptation*)

Why Joint Development Is Essential

Operating principles must be **jointly created by alliance partners, not drafted by lawyers and imposed**. The core principle: ***People support what they help create.***^[39]

Joint Development:

- Ensures principles reflect both parties' values and cultures
- Builds ownership and commitment to the principles
- Creates shared understanding of what principles mean in practice
- Begins the trust-building process before alliance launch
- Identifies potential cultural incompatibilities early

Why Operating Principles Are Essential

Operating principles translate abstract values like "trust," "collaboration," and "transparency" into specific, observable behaviors that guide daily action. They serve critical functions:^{[39][40]}

- **Provide guidance when contracts are ambiguous or obsolete:** Operating principles fill gaps and resolve uncertainties
- **Bring new team members on board:** Principles clarify expected behaviors and cultural norms
- **Enable consistent decision-making:** When multiple solutions appear reasonable, principles guide choices
- **Create accountability:** Specific principles enable holding parties accountable for collaborative behaviors
- **Set parameters for collaborative culture:** Principles define "how we work together" beyond what work we do

Most importantly, operating principles activate the social norms that make the Hart-Frydinger framework effective in overcoming contractual incompleteness.^{[16][13][14]}

The Eight Basics of Trust (FARTHEST Framework)

Your alliance contracts should incorporate these foundational trust principles:^{[39][5]}

1. **Fairness:** Balance for the good of all; seek win-win outcomes
2. **Accountability:** Take responsibility; fulfill commitments
3. **Respect:** Honor the dignity & contributions of all parties, understand others' perspectives & constraints
4. **Truthfulness:** Speak truth; acknowledge mistakes, communicate completely and accurately
5. **Honorable Purpose:** Always operate with the highest purpose that create good for all
6. **Ethics & Excellence:** Keep the highest moral standards and value the highest level of excellence
7. **Safety & Security:** Create psychological safety for honest dialogue, keep people financially secure
8. **Transparency:** Share information openly and honestly, no hidden agendas

What Lawyers Need to Know about Strategic Alliance Contracting

Structural Issues for the Legal Agreement

Ultimately, the central issue in structuring the alliance will be how to distribute/allocate the “4 R’s” of structuring fairly

- **Risks**
- **Responsibilities**
- **Resources**
- **Rewards**

These four issues will need to be tailored to the particular needs of the alliance -- each has its own unique script. There are several questions to be weighed during the early stages:

- Who invests CASH, and how much?
- Who invests TIME, and how much?
- Who receives RIGHTS to:
 - Market or distribute products;
 - Manufacture products;
 - Acquire or license technology; and
 - Purchase future products or technology.
- Who receives TAX benefits?
- Who is RESPONSIBLE for specific accomplishments?
- What happens if more MONEY is needed?
- How are the PROFITS (and Losses) allocated?
- How is CONFIDENTIAL INFORMATION handled?
- What PRODUCTS are specifically included/excluded?
- What are the PATENT provisions?
- What GOVERNMENT REGULATIONS should be considered?

Coordinating the Legal Counsels

Traditional Worst Practices: One of the worst practices that creates innumerable problems in the long run is what is termed “Over the Transom” heaving of legal documents into the laps of the other legal counsel like lobbing a hand-grenade. It is not only threatening, but antagonizes the relationship, destroys trust, and, while seeming to be more efficient, actually, in the long-run, prolongs coming to agreement.

Alliance Best Practice: When the time is right, to bring the legal counsels for both parties, along with their key stakeholder (Senior sponsors, Alliance Leaders, Business Development, etc.) together for a joint legal planning session. While the best way is to make this meeting in-person, it may be necessary to do it via Zoom or MS Teams. The purpose is to ensure that the Legal Counsels are working collaboratively to create what is best for the Alliance. This is a mindset shift from representing their client’s best interests to representing the alliance’s best interests. This way the Legal Counsels are on the same page to draft a Win-Win agreement, not working cross purposes. Be sure the Legal Counsels have the same Outline for the Agreement before drafting the details.

Time Schedules: Inform both legal counsels what the time schedule is for finalizing the agreements. Gain an understanding of the importance that they hold firmly to the schedule.

Reviewing the Draft: Remember, the first drafts are just preliminary, they are for editing and refinement. Often the Draft is called a **Memorandum of Understandings and Principles** (MOUP). This becomes the working agreement for the alliance, which, for competitive advantage reasons, may want to launch prior to the legal agreement being formally signed.

What Lawyers Need to Know about Strategic Alliance Contracting

Review the Draft MOUP with the joint executive committee and other senior management, as necessary. A clear understanding of the final agreement is vital to gaining the future support of these constituencies. Use the following steps as a guide towards achieving the final review and obtaining the necessary approvals.

1. Meet with our legal counsel. Review MOUP and Operations Plan. (Include alliance partner's champion, alliance manager, and their legal counsel in the meeting, if advisable.)
2. Schedule appropriate approval meeting times. Inform legal counsel, partner, and core team members of timing for executive approvals.
3. Upon final executive approval of strategic and legal aspects, schedule a "closing."

Operations Plan: The Alliance should not be launched until there is a definitive Operations Plan (which should be appended to the Agreement). Determine with the legal counsel if the alliance can be "launched" before or after the closing. In some notable circumstances, launch precedes the closing if the alliance partners are sufficiently aligned, have completed a mutually agreed upon Operations Plan, have a high level of commitment and integrity, and have received top level support from both parent companies. Make sure that all parties to the alliance have agreed to all of the expectations laid out in the Operational Plan. Be sure and schedule all of the governance meetings out through the first six months to be sure everyone has the meetings on their calendars.

Final Review and Approval

Before signing any legal agreements: ensure that the authorities of both parties who have executive oversight approve the agreement. Their early engagement in the process will help speed things along and ensure they don't get out of the loop and feel offended or overlooked.

The Lawyer's New Transformational Value Proposition

From Contract Drafter to Alliance Architect

Your value as legal counsel fundamentally changes in collaborative alliances:

Traditional Value: Protect client through exhaustive contract provisions that shift risk and enable exit

Collaborative Value: Architect legal frameworks that enable trust, joint value creation, and principled adaptation to change

This elevated role requires:

- **Strategic thinking** about relationship dynamics and value creation
- **Facilitation skills** for joint workshops and collaborative negotiation
- **Business acumen** to understand alliance value drivers and success factors
- **Conflict resolution expertise** to enable collaborative dispute resolution
- **Change management capability** to shift organizational mindsets from adversarial to collaborative

Demonstrating Value to Business Leaders

When you help your clients achieve 80-100% alliance success rates instead of 60-70% failure rates, your value is obvious and quantifiable:^{[1][4]}

Value Metrics:

- **Cost performance:** 10% total project cost reduction^[4]
- **Schedule performance:** 20% schedule reduction^[4]
- **Safety performance:** 87% reduction in lost work days^[4]
- **Quality improvement:** 50% rework reduction^[4]
- **Relationship outcomes:** 68% reduction in projects with claims^[4]
- **Innovation:** 337% increase in value engineering^[4]

What Lawyers Need to Know about Strategic Alliance Contracting

These results translate to hundreds of millions of dollars in value creation for complex projects and strategic alliances. **Your collaborative contracting expertise becomes a competitive differentiator for your organization.**

Conclusion: Leading the Transformation

The legal profession stands at a crossroads. Traditional adversarial contracting approaches systematically destroy value in strategic alliances, contributing to 60-70% failure rates. Yet the evidence for collaborative alternatives is overwhelming—properly structured collaborative alliances achieve 80-100% success rates and deliver dramatic performance improvements across every dimension.

As corporate counsel, you have the opportunity—and the professional obligation—to lead this transformation by:

1. **Accepting contractual incompleteness** and designing for principled adaptation rather than exhaustive specification
2. **Building trust through contract design** rather than destroying it through adversarial provisions
3. **Creating aligned incentives** through gain-share/pain-share mechanisms
4. **Establishing joint governance** with shared decision-making authority
5. **Incorporating guiding principles**—the 12 Principles of Equity, jointly developed Operating Principles, and the Eight Basics of Trust—as binding contractual commitments
6. **Appending these principles** as contract schedules that activate social norms and enable gap-filling
7. **Facilitating collaborative negotiation** that builds relationships rather than poisoning the well

You transform **from risk avoider to value architect**—and dramatically increase the probability that your clients' strategic alliances will succeed.

The research is clear. The frameworks exist. The evidence is compelling. The question is:

Will you lead the change, or will you continue applying 20th-century adversarial contracting approaches to 21st-century collaborative relationships?

Ultimate Agreement

Regardless of the length, cost, or detail of the agreement, it is only as valuable as the commitment and fairness of the parties behind it.

If the parties have to refer to the agreement on a daily basis for direction or to solve many problems, then the venture is destined for failure.

The negotiations must end with both parties feeling they have obtained a good and fair deal if the partners are to have a successful marriage.

No alliance ever succeeded or failed solely because of the quality of the legal agreements.

However, if the alliance fails, legal documents will be absolutely essential to the reasonable dissolution of the agreement.

Your clients' alliance success—and your own professional relevance—depend on your answer.

What Lawyers Need to Know about Strategic Alliance Contracting

For more information contact:

Robert Porter Lynch

RobertLynch@warrenco.com

+1-239-537-6441



Appendices: Practical Drafting Guidance:

Detailed Advice on Key Contract Provisions for Alliance Success

Appendix One: Vision and Purpose Section

Begin every alliance agreement with a clear statement of shared vision and purpose: ^[41]^[P42]

Alliance Vision and Purpose

The Parties enter this Alliance to [specify shared objective that neither party could achieve independently]. Success will be measured by [specify shared metrics].

This Alliance represents a strategic commitment to collaborative value creation based on mutual trust, shared risk and reward, and joint governance.

The Parties acknowledge that achieving this Vision requires:

- *Deep collaboration and information sharing*
- *Flexibility and adaptation as circumstances change*
- *Joint decision-making in the best interests of the Alliance*
- *Commitment to the Guiding Principles even when difficult*
- *Long-term perspective prioritizing relationship health and value creation*

This vision section serves as the "North Star" when interpreting ambiguous provisions or making difficult decisions.

Appendix Two: Governance Structure

Alliance Governance Board

1. *The Parties establish an Alliance Governance Board (Board) consisting of [three] representatives from each Party.*

2. *Board Authority: The Board has authority to: ^[19]^[33]^[37]*

- *Approve and modify alliance work plans, budgets, and schedules*
- *Allocate resources and resolve resource conflicts*
- *Interpret ambiguous contract provisions*
- *Address unanticipated circumstances requiring contract adaptation*
- *Resolve disputes and performance issues*
- *Make all decisions affecting alliance operations and performance*

3. *Decision-Making Process:*

- *The Board shall make decisions by unanimous consent*
- *Board members commit to vote for what is best for the Alliance, not for their individual organizations*
- *Board members have authority to commit their organizations to Board decisions*
- *If the Board cannot reach unanimous consensus within [timeframe], issues escalate to [senior executive level]*

4. *Meeting Cadence: The Board shall meet [weekly/bi-weekly] with structured agendas covering:*

- *Performance review against metrics*
- *Issue identification and prioritization*
- *Decision-making on pending matters*
- *Forward planning and risk management*

5. *Operating Principles: Board members commit to operate according to the Alliance Operating Principles, particularly [list key principles].*

Appendix Three: Gain-Share/Pain-Share Structure

1. **Target Cost:** The Parties have collaboratively developed a Target Cost of \$[X] based on transparent cost models
2. **Gain-Share:** If actual costs are below Target Cost: ^{[30][35][29]}
 - For savings up to 10% below target: Parties share savings 50/50
 - For savings 10-20% below target: [Client] receives 40% and [Contractor] receives 60% to incentivize innovation
 - For savings exceeding 20%: [Client] receives 30% and [Contractor] receives 70%
3. **Pain-Share:** If actual costs exceed Target Cost:
 - For overruns up to 10% above target: Parties share overrun costs 50/50
 - For overruns 10-20% above target: [Client] bears 70% and [Contractor] bears 30%
 - For overruns exceeding 20%: [Client] bears 90% and [Contractor] bears 10%
 - Maximum Contractor pain-share is capped at \$[Y] to prevent excessive risk
4. **Performance Bonuses:** In addition to cost-based gain-share, [Contractor] may earn performance bonuses:
 - Schedule: \$[Z] for completion by [date]
 - Safety: \$[A] for zero lost-time incidents
 - Quality: \$[B] for achieving [quality metrics]
 - Innovation: \$[C] for accepted value engineering proposals
5. **Open-Book Accounting:** [Contractor] shall provide complete transparency of all costs, overhead rates, supplier pricing, and fee structures to enable collaborative cost management.

Appendix Four: Change Management & Adaptation

"Change Management and Contract Adaptation Flexibility Provisions:^{[17][22][24]}

1. **Acknowledgment of Change:** The Parties acknowledge that circumstances will change during alliance performance, potentially requiring modifications to scope, schedule, cost, or other provisions.
2. **Collaborative Change Process:**
 - Either Party may propose changes through written change request
 - The Alliance Governance Board shall evaluate changes using the Guiding Principles
 - Board shall approve, reject, or modify change requests within [timeframe]
 - Approved changes shall be documented in change order specifying modified scope, cost, schedule, and any other affected provisions
3. **Adaptation for Unanticipated Circumstances:**
 - When events occur that were not reasonably anticipated at contract signing, the Parties commit to collaboratively adapt the contract
 - Adaptation shall be guided by Equity Principle 1 (Do What Should Have Been Done) and the Alliance Vision and Purpose
 - Neither Party may refuse to adapt on grounds that changes are not specified in the original contract if adaptation is necessary to achieve the Alliance Purpose
 - Disputes over appropriate adaptation shall be resolved through the Alliance Governance Board
4. **Regular Contract Review:** The Parties shall conduct comprehensive contract review every [6/12 months] to assess whether provisions remain appropriate given current circumstances and shall make updates as needed.
5. **Technology Evolution:** This Agreement is technology-neutral and shall accommodate evolving technologies, methodologies, and industry practices without requiring formal amendments, provided such evolution serves the Alliance Purpose.

Appendix Five: Transparency and Communication

Transparency and Communication -- Information Sharing Requirements:^{[20][25][32][19]}

1. Open-Book Financial Disclosure: Each Party shall provide complete transparency regarding:

- All costs incurred in alliance performance
- Overhead rates and fee structures
- Supplier and subcontractor pricing
- Financial projections and budget forecasts
- Any other financial information reasonably requested

2. Regular Reporting: Each Party shall provide [weekly/monthly] reports covering:

- Progress against milestones
- Cost performance versus budget
- Risks and issues requiring attention
- Key decisions and actions

3. Communication Channels:

- Alliance Governance Board meetings: [frequency]
- Operational coordination meetings: [frequency]
- Co-location/Big Room sessions: [frequency if applicable]
- Informal communication: Encouraged and expected

4. No Information Hoarding: The Parties commit to proactive information sharing. Information shall not be withheld based on competitive concerns, blame avoidance, or other reasons inconsistent with the Alliance Purpose and Guiding Principles.

5. Confidentiality Balance: While maintaining appropriate confidentiality protections, the Parties acknowledge that alliance success requires extensive information sharing and commit to share information necessary for effective collaboration."

Appendix Six: Intellectual Property

Collaborative Intellectual Property Framework:^[41]

1. Background IP: Each Party retains ownership of intellectual property it brings to the Alliance (Background IP).

2. Foreground IP: Intellectual property developed jointly during alliance performance (Foreground IP) shall be:

- [Option A: Jointly owned with each Party having non-exclusive right to use]
- [Option B: Owned by [Party] with license to [Other Party]]
- [Option C: Determined case-by-case by Alliance Governance Board]

3. Use Rights: Each Party has the right to use Background IP and Foreground IP as necessary to perform this Agreement and achieve the Alliance Purpose.

4. Post-Termination Rights: Upon termination, [specify continuing use rights].

5. IP Disputes: Disputes regarding IP ownership, rights, or use shall be resolved collaboratively through the Alliance Governance Board applying the Guiding Principles, particularly Equity Principles 2 (favor the trustworthy) and 6 (fairness and balance)."

Appendix Seven: The Joint Development Workshop Process

Step 1: Individual Values Identification (1 hour)

Each party separately identifies their core organizational values. Examples: innovation, safety, customer focus, integrity, excellence, teamwork, respect.^{[40][39]}

Step 2: Shared Values Discussion (2 hours)

Parties share their values and identify areas of alignment and difference. Discuss what each value means behaviorally. Seek to understand, not judge, different value emphases.

Step 3: Translate Values Into Behaviors (3 hours)

For each shared value, identify 3-5 specific, observable behaviors that demonstrate that value.^[39]

Example: **Transparency**

- Behaviors: Share complete financial information; surface problems early; explain reasoning for decisions; admit when we don't know; make information accessible

Example: **Accountability**

- Behaviors: Do what we commit to do; hold ourselves accountable before blaming others; admit mistakes; take corrective action; track and report on commitments

Step 4: Draft Operating Principles (2 hours)

Consolidate behaviors into 10-15 operating principles using clear, specific language. Review examples from successful alliances (included in your Operating Principles document) for inspiration, but create your own—don't just copy.^{[40][39]}

Step 5: Practical Application Discussion (2 hours)

For each operating principle, discuss: "What does this look like in practice? What behaviors would violate this principle? How will we hold each other accountable?"

Step 6: Integration Into Contract (1 hour)

Finalize operating principles language for inclusion as contract appendix. Ensure contract references operating principles as interpretive guides.

Example Workshop Output

Alliance Operating Principles - [Client Name] and [Contractor Name] Alliance

We, the members of this Alliance, commit to the following Operating Principles:

1. Act as One Alliance

We will set aside organizational identities and make decisions based on what's best for the Alliance, not what's best for our individual companies.

2. Win Together or Lose Together

We share risks and rewards. We celebrate successes together and address failures together without blame.

3. Transparent Communication

We will share information openly, surface problems early, explain our reasoning, and avoid information hoarding or manipulation.

What Lawyers Need to Know about Strategic Alliance Contracting

4. Honor Our Commitments

We will do what we say we will do. When we cannot meet commitments, we will communicate early and work together on solutions.

5. Solve Problems Together

When issues arise, we will bring them to the alliance team for collaborative problem-solving, not retreat to our organizational silos.

6. Treat Everyone With Respect

We value every person's contribution regardless of organizational affiliation or role. We will listen with open minds and assume positive intent.

7. Make Decisions Quickly

We will make decisions at the lowest appropriate level and empower our teams to act. When escalation is needed, we commit to rapid resolution.

8. Default to Innovation

Before accepting trade-offs or compromises, we will first seek innovative solutions that create better outcomes for all.

9. Focus on Long-Term Value

We will prioritize long-term value creation and relationship health over short-term individual gains.

10. Learn from Everything

We will treat mistakes as learning opportunities, conduct after-action reviews, and continuously improve our processes and collaboration.

Appendix Eight: Dispute Resolution

Collaborative Dispute Resolution:^{[5][31][33]}

1. Commitment to Collaboration: *The Parties commit to resolve all disputes through collaborative problem-solving before resorting to adversarial processes.*

2. Escalation Process:

- *Step 1: Alliance Governance Board attempts resolution within [5 business days]*
- *Step 2: If unresolved, escalate to [senior executives] who shall meet within [10 business days] to resolve*
- *Step 3: If still unresolved, engage neutral mediator acceptable to both Parties*
- *Step 4: If mediation fails, arbitration under [rules] with arbitrator instructed to consider the Guiding Principles*

3. No Litigation During Performance: *Except for injunctive relief, the Parties waive the right to litigate disputes during alliance performance and for [time period] after completion.*

4. Limited Damages: *The Parties waive consequential damages and agree to limit remedies to direct damages actually incurred, except for breaches of confidentiality or intellectual property provisions.*

5. Guiding Principles Application: *All dispute resolution processes shall give due weight to the Guiding Principles, the Alliance Vision and Purpose, and the parties' pattern of past performance and collaboration.*

Appendix Nine: Common Objections and Responses

Objection 1: "This approach exposes my client to excessive risk"

Response: The evidence demonstrates the opposite. Traditional risk-shedding contracts create 60-70% failure rates, meaning your client loses the entire alliance value. Collaborative approaches achieve 80-100% success rates, drastically reducing the risk of total alliance failure.^{[2][11][4]}

Moreover, shared risk structures with capped downside (pain-share caps) actually limit financial exposure while maintaining incentives for performance. Your client's greatest risk is alliance failure, not the specific risk allocations in adversarial contracts.^[35]

Objection 2: "Contractual incompleteness leaves too much uncertainty"

Response: All complex contracts are inevitably incomplete—this is proven by Nobel Prize-winning research. The question is not whether the contract will be incomplete, but how you handle that incompleteness.^{[12][7][13]}

Traditional approaches pretend contracts are complete, leaving parties without principled ways to adapt when gaps emerge. The guiding principles approach explicitly provides frameworks for filling gaps and resolving ambiguities, actually **reducing** uncertainty.^{[15][13][14]}

Objection 3: "Courts won't enforce vague 'principles'"

Response: The guiding principles are not vague aspirational statements—they are specific, binding contractual commitments incorporated by reference. Courts regularly enforce good faith obligations, fiduciary duties, and equitable principles.^{[13][14]}

The 12 Principles of Equity have centuries of legal precedent—they are well-established equitable doctrines, not new inventions. Operating principles provide specific behavioral expectations that can be objectively assessed.^[6]

Furthermore, arbitrators specifically instructed to consider guiding principles will give them substantial weight. The goal is to avoid litigation entirely through collaborative governance.

Objection 4: "My client needs clear exit rights"

Response: Include exit rights, but structure them to protect alliance value. Options:

- Require notice periods that allow orderly transition (6-12 months)
- Include "work-out" periods where parties attempt resolution before exit
- Create buy-out provisions for partnerships with asset investments
- Distinguish between exit for cause (breach) and exit for convenience (change in strategy)

The key is avoiding hair-trigger termination rights that encourage parties to quit at the first challenge rather than working through issues collaboratively.

Objection 5: "This takes too much time upfront"

Response: Collaborative contract development requires 20-30% more time upfront than traditional contracting. But it **reduces total time to value by 50% or more** by:

- Eliminating months of adversarial back-and-forth negotiation
- Preventing disputes and claims during performance
- Enabling faster decision-making through joint governance
- Avoiding delays from trust breakdowns and information barriers
- Reducing or eliminating post-project dispute resolution and litigation

The ROI on upfront collaborative investment is extraordinarily high.^{[4][31]}

Objection 6: "Our standard templates don't support this approach"

Response: Your standard templates likely reflect traditional adversarial contracting and need fundamental revision. Leading organizations have developed collaborative contract templates that can be adapted:

- AIA Integrated Project Delivery agreements
- ConsensusDocs collaborative contracts
- Vested framework agreements
- ISO 44001-aligned collaboration agreements

Invest in developing your own collaborative templates that can be reused across alliances. The initial investment pays dividends on every subsequent alliance. Use this Advisory to create your collaborative templates.

Appendix Ten: Sample Operating Principles from Successful Alliances

The attached Operating Principles document provides numerous examples from successful alliances. Key principles include:^[39]

From Business Alliances

These are real Guiding/Operating Principles from real Strategic Alliances

From Procter & Gamble-HP IT Outsourcing Alliance:^[39]

- Operate as One
- Look and Strive for Win-Win
- Plan Jointly
- Provide Visibility to make effective business decisions
- Deliver on our Commitments
- Anticipate, Confront, Discuss and Resolve breakdowns quickly
- Default to Innovation First, before trade-offs
- Make Principle-Based decisions
- Treat all Employees as Valued Partners
- Share Accountability, Risk and Reward

From P&G-IBM Employee Services Alliance:^[39]

- Think Long-term: We think strategically and long-term in what we do
- Our partnership is led by joint business needs and not by a contract per se. The contract is a framework, not the first or main reference for our partnership.
- Think win-win, always
- Focus is on our user and customer
- Empower: We build a culture based on transparency, communication, decision making delegated to the people closest to the decision
- Build Productive Relationships: We treat each other with mutual trust and respect
- Operate with Transparency
- Communicate frequently and openly
- Drive Innovation: We always look for better way of doing things
- Build the success of our partnership via our people

From Complex Construction Project:

Integrity & Accountability: ^[40]

- Have integrity, Do what you say you are going to do
- Hold yourself accountable
- Admit mistakes and take visible blame
- Make commitments carefully and keep them

Communication:

- Listen before you speak. Understand, diagnose
- Communicate concerns, risks, and achievements transparently
- Give honest and frank feedback
- Explain reasoning behind a decision

What Lawyers Need to Know about Strategic Alliance Contracting

- Timely open communication No secrets

Honesty & Openness:

- Be honest, open and authentic
- Encourage open discussion, Share information
- Don't manipulate people, distort facts, or have hidden agendas
- Address the tough stuff directly
- Make things right when you're wrong

Respect & Autonomy:

- Respect the dignity of every person and every role
- Give freedom to explore and experiment
- Don't blame others or point fingers when things go wrong
- Allow people to solve their own problems or come to you for help

Appendix Eleven: Distinguishing Adversarial, Transactional & Collaborative Systems

	Adversarial	Transactional	Collaborative
Key Beliefs	Business is a "Psychological War Game;" Winning comes from Force of Position & Power	Deal-making, Trading, Bargaining, & Differential Views on Value Produces Economic Exchange	Extreme Value is Generated when people work in teams to Push the Envelope on Performance
Behaviors	Argumentative, Polarization, Money Rules, Use Fear, Age, Experience, Position or Budget to get your way, "dog eat dog"	Squeezing & Positioning enables you to get the best result in Negotiations, throw a bone to sweeten the deal. Hierarchical Superior-Subordinate	Co-Creative, Teamwork, Trustworthiness, Highly Ethical & Honest; Maximize what's in the best interests of the whole
Rules of the Game	Pressure others; Winning is a result of Cunning, Craftiness, Manipulation; Don't Trust Others or you will get screwed; Hype your importance; Protect your backside; Everything is Win-Lose.	Take advantage of every opportunity, Exploit weaknesses; Timing is critical; Perception is everything; Trust but verify; Use lawyers to ensure protection; Everything is the "deal;" Very low transparency	Create value & competitive advantage by using Teamwork (internally) & Alliances (externally). Close integration between operating units, suppliers & Close attention to customers/client; Strive for Win-Win.
Information	Horde Information – It is Power Manipulate & Distort Data	Contractor responsible for interpretation of information	Share Information to create more new ideas, insights, & possibilities.
Trust Level	Distrust, Deception, Aggression, & Manipulation Prevalent	Caveat Emptor (buyer beware) Trust is elusive and unsustainable	Trust is essential to generating a continuous stream of new value

Appendix Twelve: The 12 Principles of Equity:

Reviving Ancient Wisdom for Modern Alliances

Your contracts should explicitly incorporate the 12 Principles of Equity as interpretive guides when ambiguities arise or unanticipated situations occur. These principles, which have proven the test of time, provide a philosophical and ethical foundation that complements the operational specificity of operating principles.^[6]

1. Equity Directs: Do What Should Have Been Done

- When contracts contain errors, ambiguities, or misconstructions, equity directs parties to perform what should have been agreed upon, not what was inadvertently written or left out.
- Corrects drafting mistakes and fills gaps based on parties' evident intent

2. Equity Favors the Trustworthy

- Parties who demonstrate honesty, transparency, and good faith receive favorable treatment
- Opportunistic behavior receives no equitable relief

3. Equity Supports Fiduciary Responsibility

- Alliance partners owe each other duties of loyalty and care
- Self-dealing and undisclosed conflicts violate equitable principles

4. Equity Abhors a Forfeiture

- Prevents unjust enrichment and disproportionate penalties
- Liquidated damages and termination provisions should be reasonable, not punitive

5. The Wronged Shall Not Suffer Inequity Without Remedy

- Ensures legitimate grievances receive appropriate redress
- Goes beyond strict contractual remedies to achieve fairness

6. Equity's Aim is Fairness, Justice, and Balance

- Solutions should be proportionate and complete
- Equity delights to do justice, not just by halves

7. One Who Seeks Equity Must Do Equity

- Parties seeking equitable relief must fulfill their own obligations
- Cannot demand fairness while acting unfairly

8. He Who Comes Into Equity Must Come With Clean Hands

- Parties guilty of wrongdoing in the transaction cannot claim equitable relief
- Encourages honest dealing throughout

9. Equity Aids the Honest Vigilant, Not the Shrewd Indolent

- Protects those who act promptly and honestly
- Does not reward those who sleep on their rights or act opportunistically

10. Equity Does Not Tolerate Frivolity, Maliciousness, or Fraud

- Prevents abuse of legal and dispute resolution processes
- Maintains integrity of alliance relationship

11. Equity Follows the Law

- Supplements but does not supersede legal requirements
- Works in harmony with contractual and statutory obligations

12. Equity Honors Time

- Time is precious; unnecessary delays violate equitable principles
- Encourages prompt action and decision-making

What Lawyers Need to Know about Strategic Alliance Contracting

How to Incorporate the 12 Equity Principles into Contracts

Section 1: Interpretive Framework

Include a contract section establishing these principles as interpretive guides:

"Guiding Principles for Contract Interpretation and Performance

- 1. The Parties acknowledge that this Agreement cannot anticipate all future circumstances and that ambiguities or gaps may arise requiring interpretation and gap-filling.*
- 2. When interpreting this Agreement or addressing unanticipated situations, the Parties commit to apply:*
 - *The 12 Principles of Equity (attached as Appendix A)*
 - *The Alliance Operating Principles (attached as Appendix B)*
 - *The Eight Basics of Trust (Fairness, Accountability, Respect, Transparency, Honesty, Empathy, Safety, Truthfulness)*
- 3. These Guiding Principles shall be given equal weight with the specific contractual provisions in determining the Parties' rights, obligations, and appropriate courses of action.*
- 4. In the event of conflict between a strict reading of contractual language and the application of these Guiding Principles, the Parties commit to resolve such conflict through the Alliance Governance Board using collaborative problem-solving.*
- 5. The Parties may invoke these Guiding Principles in any dispute resolution process, and arbitrators or courts shall give due consideration to these Principles in rendering decisions."*

Section 2: Append Full Principles as Contract Schedules

Attach two appendices to every strategic alliance agreement:

- **Appendix A: The 12 Principles of Equity** (full text from your document)^[6]
- **Appendix B: Alliance Operating Principles** (jointly developed by the parties)^{[40][39]}

Section 3: Reference Principles Throughout the Contract

Incorporate principle references in key contractual provisions:

Performance Obligations: *"Each Party shall perform its obligations in accordance with the letter and spirit of this Agreement, applying the Guiding Principles to resolve ambiguities and address unforeseen circumstances."*

Change Management: *"When changes to scope, schedule, or cost are required due to unanticipated circumstances, the Parties shall collaboratively develop solutions that honor the Guiding Principles, particularly Equity Principle 1 (Do What Should Have Been Done) and the Operating Principle of Win-Win Outcomes."*

Dispute Resolution: *"Before initiating formal dispute resolution, the Parties commit to good-faith negotiation applying the Guiding Principles. Any mediator, arbitrator, or court shall consider these Principles in resolving disputes."*

Good Faith Obligations: *"Each Party's obligation of good faith and fair dealing extends beyond legal minimums to encompass the Guiding Principles, including particularly Equity Principles 7-9 (clean hands, honest vigilance, and acting equitably when seeking equity)."*

Appendix Thirteen: Implementation Checklist for Lawyers

Pre-Negotiation Phase:

- ☐ Meet with client business leaders to understand alliance strategic objectives
- ☐ Explain collaborative contracting principles and success evidence
- ☐ Gain leadership commitment to collaborative approach
- ☐ Identify internal resistance and address concerns
- ☐ Prepare for joint operating principles development workshop

Partner Selection Support:

- ☐ Advise on evaluating potential partners' collaborative capability
- ☐ Review partner track record with alliances and collaborative relationships
- ☐ Assess cultural compatibility and alignment of values
- ☐ Ensure partner commitment to collaborative approach before proceeding

Initial Negotiation:

- ☐ Facilitate joint operating principles workshop
- ☐ Co-create alliance vision and purpose statement
- ☐ Establish shared understanding of collaborative contracting principles
- ☐ Develop preliminary governance structure and decision-making process
- ☐ Identify key risks and discuss collaborative risk-sharing approaches

Contract Drafting:

- ☐ Draft vision and purpose section reflecting shared objectives
- ☐ Include explicit acknowledgment of contractual incompleteness
- ☐ Incorporate guiding principles framework (Equity Principles + Operating Principles + Trust Principles)
- ☐ Append full text of 12 Principles of Equity as Appendix A
- ☐ Append jointly developed Operating Principles as Appendix B
- ☐ Draft governance structure with joint decision-making authority
- ☐ Create gain-share/pain-share risk and reward sharing provisions
- ☐ Include transparency and open-book accounting requirements
- ☐ Draft flexible change management and adaptation provisions
- ☐ Create collaborative dispute resolution process with principle-based guidance
- ☐ Review entire contract to eliminate adversarial, trust-destroying language
- ☐ Ensure consistent *Principled Adaptation* references throughout contract

What Lawyers Need to Know about Strategic Alliance Contracting

Negotiation Process:

- ☐ Conduct negotiations collaboratively, not adversarially
- ☐ Focus on joint problem-solving, not positional bargaining
- ☐ Apply Operating Principles during negotiation itself
- ☐ Address concerns through principle-based discussion
- ☐ Avoid "poisoning the well" through aggressive negotiation tactics

Alliance Launch Support:

- ☐ Facilitate alliance startup workshop with all key personnel
- ☐ Train alliance team on operating principles and their application
- ☐ Establish governance board and conduct first meeting
- ☐ Set up communication channels and reporting structures
- ☐ Create principle-based decision-making guides for common situations
- ☐ Address periodic Alliance Health Checks – Why, What, When, Who, and How Diagnostic Feedback will be delivered and utilized
- ☐ Address change in personnel criteria and how Human Resource Departments will handle training and selection of Alliance Teams to ensure high performance
- ☐ Ensure all Alliance Personnel are committed to using the Association of Strategic Alliance Professionals *Best Practices* in the establishment, management, and evolution of the Alliance

Ongoing Legal Support:

- ☐ Participate in periodic governance board meetings as advisor
- ☐ Help interpret ambiguous provisions using guiding principles
- ☐ Support collaborative change management processes
- ☐ Facilitate principle-based conflict resolution
- ☐ Ensure conducting of Annual Health Assessments and updates
- ☐ Document lessons learned and refine approach for future alliances
- ☐ Work Collaboratively with the Legal Counsels of each of the Alliance Partners to ensure healthy adaptation to Strategic, Operational, and Corporate Personnel Changes

What Lawyers Need to Know about Strategic Alliance Contracting

Key Resources for Collaborative Contracting

- Association of Strategic Alliance Professionals (ASAP) resources and certifications
Strategic-Alliances.org
- ISO 44001: Collaborative Business Relationship Management Systems
- International Collaborative Leadership Institute (over 100 Collaborative Articles)
ICLIInstitute.org/Resources/Publications
- Hart & Frydinger, "Overcoming Contractual Incompleteness: The Role of Guiding Principles"
www.nber.org/papers/w26245
- AIA Integrated Project Delivery Guide
www.aia.org/resource-center/integrated-project-delivery-guide
- Robert Porter Lynch, Business Alliances, The Hidden Competitive Weapon, Wiley & Sons, 1993

REFERENCES

1. <https://www.abacademies.org/articles/causes-of-strategic-alliance-failure-among-healthcare-partners-the-role-of-knowledge-sharing-in-alliance-performance-a-review-pap-13055.html>
2. <https://www.enlighta.com/blog/top-3-reasons-why-strategic-partnerships-fail/>
3. <https://www.linkedin.com/pulse/from-collaboration-dissolution-why-strategic-fail-chenneesvar-k-s>
4. <https://iclinstitute.org/wp-content/uploads/2023/03/Future-Path-for-Industrial-Mega-Projects-Updated-Version-July-2015.pdf>
5. Collaborative-Law-Workshop-Robert Porter Lynch Sept-2016.pdf
6. <https://iclinstitute.org/wp-content/uploads/2020/10/The-12-Principles-of-Equity.pdf>
7. https://en.wikipedia.org/wiki/Incomplete_contracts
8. <https://golab.bsg.ox.ac.uk/the-basics/relational-contracting/>
9. https://www.worldcc.com/Portals/IACCM/resources/files/9487_unpacking-relational-contractingv19-oct-11-2016.pdf
10. <https://www.wambetilegal.com.au/blog/2024/august/epc-contracts-adversarial-nature/>
11. <https://www.linkedin.com/pulse/psychology-behind-construction-disputes-why-contracts-david-smith-hflvf>
12. <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1634&context=caselrev>
13. https://scholar.harvard.edu/files/hart/files/overcoming_contractual_incompleteness_013122.pdf
14. <https://cepr.org/voxeu/columns/overcoming-contractual-incompleteness-role-guiding-principles>
15. <https://www.forbes.com/sites/katevitasek/2019/09/22/follow-guiding-principles-to-a-successful-contract/>
16. https://www.nber.org/system/files/working_papers/w26245/w26245.pdf
17. <https://www.linkedin.com/advice/1/how-do-you-write-flexible-contracts-adapt>
18. <https://www.tandfonline.com/doi/full/10.1080/09537287.2024.2348518>
19. <https://pubsonline.informs.org/doi/10.1287/orsc.2021.1437>
20. <https://fiveable.me/strategic-alliances-and-partnerships/unit-4/relational-governance/study-guide/v4LxJA48Qk2ubfrf>
21. <https://blogs.law.ox.ac.uk/oblb/blog-post/2023/01/overcoming-contractual-incompleteness-role-guiding-principles>
22. <https://www.cobrief.app/resources/contract-clause-library/change-order-management-clause-copy-customize-and-use-instantly/>
23. <https://www.apps365.com/blog/contract-change-management-explained/>
24. <https://www.linkedin.com/pulse/your-contract-future-ready-heres-how-futureproof-kalpna-muthireddi-csqzc>

What Lawyers Need to Know about Strategic Alliance Contracting

25. <https://www.tandfonline.com/doi/full/10.1080/17452007.2020.1811078>
26. <https://energyprojectexecution.com/risk-sharing-agreements-a-new-standard-for-collaborative-projects/>
27. <https://www.linkedin.com/pulse/unlocking-exceptional-project-outcomes-power-contracts-alan-coppin-bhlte>
28. <https://www.dlapiper.com/en/insights/publications/2020/10/new-risk-sharing-models-for-privately-financed-infrastructure-projects>
29. <http://constructionblog.practicallaw.com/painshare-and-gainshare-provisions-in-alliancing-contracts-the-benefits-of-pulling-together/>
30. <https://lpclawyers.com/railway-series-part-3-pain-share-gain-share-in-railway-projects/>
31. <https://www.mckinsey.com/capabilities/operations/our-insights/collaborative-contracting-moving-from-pilot-to-scale-up>
32. <https://www.payapps.com/blogs/5-ways-to-generate-trust-in-construction/>
33. <https://www.mastt.com/blogs/alliance-contracting>
34. <https://oboloo.com/glossary/pain-share-gain-share-mechanism/>
35. <https://lpclawyers.com/sharing-is-caring-gainshare-and-painshare-payment-models/>
36. <https://growingcrummmasters.co.uk/keywords/pain/gain-share/>
37. <https://www.torys.com/en/our-latest-thinking/torys-quarterly/q4-2023/collaborative-contracting-for-large-projects>
38. https://www.infrastructure.gov.au/sites/default/files/migrated/infrastructure/ngpd/files/National_Guide_to_Alliance_Contracting.pdf
39. Operating-Principles.pdf (See author for more details)
40. <https://iclinstitute.org/wp-content/uploads/2023/03/Leadership-in-Complexity-Global-Alliance-of-Project-Professionals-FINAL-2.pdf><https://weagree.com/clm/contracts/contract-types-explained/alliance-or-collaboration-agreements/>
41. <https://www.genieai.co/en-us/blog/structuring-an-alliance-agreement>
42. <https://www.jmuirandassociates.com/business-contract-lawyer-miami>
43. <https://www.contractsafes.com/blog/contract-change-management/>
44. <https://www.contractsacounsel.com/l/t/us/florida/strategic-alliance-agreement-lawyers>
45. <https://www.businesscounselor.com/practice/strategic-alliances/>
46. https://ncmahq.org/Web/Shared_Content/CM-Magazine/CM-Magazine-April-2024/Change-Management--Navigating-Change-With-Precision-and-Purpose.aspx
47. <https://www.sioe.org/news/williamson-and-relational-contracts>
48. <https://www.pmlawfla.com/practice-areas/commercial-law-business-litigation/breach-of-contract/>
49. <https://www.hyperstart.com/blog/contract-change-management/>
50. <https://www.amundsendavislaw.com/services-Joint-Ventures>
51. <https://www.elliottlegal.com/business-commercial-law/contract-review-drafting>
52. <https://cobbbcole.com/blog/contract-negotiation-strategies-for-corporate-entities/>
53. <https://dxc.com/us/en/insights/perspectives/dxc-leading-edge/adaptable-scope-contracts>
54. <https://www-2.rotman.utoronto.ca/facbios/file/Governance.pdf>
55. <https://www.forbes.com/sites/kimberlywhitler/2014/10/24/why-strategic-alliances-fail-new-cmo-council-report/>
56. <https://www.sciencedirect.com/science/article/abs/pii/S0166497223001396>
57. <https://knowledge.insead.edu/strategy/ten-stages-successful-strategic-alliances>
58. <https://fiveable.me/strategic-alliances-and-partnerships/unit-4>
59. <https://executiveeducation.wharton.upenn.edu/thought-leadership/wharton-at-work/2011/02/successful-alliances/>
60. <https://www.kjib.org/EN/10.6049/kjibyc.2021030642>

What Lawyers Need to Know about Strategic Alliance Contracting

ENDNOTES

¹ A Mega-Project is typically greater than \$1 Billion or more, and will last 2-7 years in construction. In this sense, the construction project is really a strategic alliance with a finite life-span.

² This has been confirmed by research by Nobel laureates Oliver Hart and Oliver Williamson

³ This has been confirmed by research by that Nobel Prize winner Oliver Hart and attorney David Frydinger published groundbreaking research demonstrating how parties can overcome contractual incompleteness through a revolutionary approach: **formally incorporating guiding principles (social norms like loyalty, fairness, and equity) into contracts along with structured communication mechanisms.**^{[15][14][21][16][13]} Their research, based on both mathematical models and case studies, shows that contracts incorporating guiding principles **significantly outperform both traditional "complete" contracts and informal relational norms alone.**^{[14][15]} The mechanism works as follows:^{[16][13][14]}

- **Parties explicitly acknowledge** that the contract is incomplete and cannot anticipate all contingencies
- **Guiding principles are formally incorporated** into the contract as binding commitments
- When unanticipated events occur, **parties apply the guiding principles** to determine reasonable outcomes
- **Structured communication processes** ensure alignment on how principles apply to specific situations
- **Social norms are "activated"** through both advance commitments and ongoing dialogue, reducing self-serving bias

⁴ In the days of sailing, the ships were typically owned by Joint Ventures, made up of multiple owners, each holding a share of the ship. The sea captain was given orders by the owners to visit only certain ports of call. However, the captain had the authority to exercise his discretion with prudent discretion in order to protect or enhance the interests of the owners. This meant the captain was required to change ports of call if uncertainties arose – such as damage to the ship, the crew getting sick, countries declaring war, and so forth. So too with the long voyage of an alliance.

⁵ *Principled Adaptation*: This concept is worthy of note. The idea of “law” embraces the concept of something certain and inviolate. On the other hand, “principles” invoke the concept that wisdom is the core guidance system, embracing a variety of issues to navigate the “grey, in-between spaces” where one *cluster of principles* may override another *cluster of principles*, taking into consideration the uniqueness of *conditions and contexts*. This is precisely why we have Guiding and Operating Principles as a core element of the Alliance Contract.

⁶ The Annual Health Check is a diagnostic process, normally conducted by an outside third party. Being able to understand what is going well, or poorly, in an alliance is critical to all alliance practitioners, particularly when many alliance members are spread around the globe and things have a propensity to change rapidly. A good diagnostic instrument must be a powerful tool providing an ability to see deeply into the inner workings of an alliance just as an MRI combined with lab tests and blood samples, see into a human being. The most frequent use of diagnostics has been to determine the *health* of an alliance, thus providing a snapshot of key issues and a handle on how to fix problems. We look for several key factors that will tell us the health of the alliance, and pinpoint key areas that are either malfunctioning, or, conversely, functioning effectively. Periodic surveying of the relationship can create benchmarking data to determine *trends*: which dimensions of the alliance are improving or deteriorating.