ARMS Good Practice Guide for University to University Contracting.

It is surprising, but often stated, that the most difficult organisations to negotiate with by universties are other universities. A recent survey carried out by ARMS helped to identify some of the key issues. This guide builds on the findings from the sector with the aim of trying to reduce the time from first discussion to signature. What must be remembered overall is that the goal is to get research started and to provide an effective collaborative environment for excellent research to be delivered. The best agreement is one that allows the research to proceed effectively.

The principles are in three parts. Followed by a discussion which underpins the principles.

Good Practice Principles within your institution

- Be clear who is in-charge of the negotiation process within your institution and who is supporting.
- Have clear escalation procedures to resolve any blockages and identify any institutional deal breakers as early as possible.
- Understand the background material, the nature or the research work and the key goals of your institution's researchers.
- Engage with the researcher/s and agree how you will interact with and involve them.

Good Practice Principles as the Lead Administrative Institution

- Engage effectively, transparently and openly with all parties.
- Use an ARMS template agreement wherever possible, where you move away from a template explain why.
- Agree a timeline for the finalisation of the agreement

Good Practice Principles for all Parties

- Be collaborative and fair.
- Pick up the phone.
- Engage and Listen.

- Ensure the right to publish for all researchers, in particular for students, ensuring future rights to do further research for all involved.

- Use plain language wherever possible; do not try to over-complicate things and don't sweat the small stuff.

- Distinguish between public good and any potential commercial expectations.

- Don't try to second guess the IP outcome and who will contribute most significantly to the formal IPR outcomes.

A discussion around the principles

Universities are complex matrix organisations; the level of complexity varies between universities. When it comes to agreeing terms for collaboration the decision-making players are likely to be different in each university; they can involve the researcher, the head of group, head of academic unit, the dean, contracts team, the legal office, the finance office, risk office, research funding office, foreign interference compliance officer and more. The complex landscape within institutions was highlighted in the survey and this can often lead to confusion and delay. There is no right or wrong answer - but clarity is essential.

Most universities have clear delegations of authority as to who can sign but it is often less clear on the boundaries of responsibility to approve a document before it goes to the delegate for signature. Some questions to consider are:

- Who should be involved?
- Who is in the lead role in negotiation?
- Who is advisory?
- Who gets involved when?
- Who needs to know what?
- Do they know?

A lack of clarity can bemuse the researcher and lead to frustration.

The best way of tackling this is to develop a RASCI chart within your own institution ensuring clarity of who is responsible at which stage, who has the lead role in negotiations and who needs to be consulted, advised and informed. A good RASCI chart will also agree timelines for responses. RASCI involves identifying who is Responsible, Accountable and Supporting, and who needs to be Consulted and Informed.

Within the RASCI chart it is essential that one office is identified and agreed as the lead, this should ideally be the Research Contracts Office but that is an institutional choice. Whichever office is niominated they need clear internal guidelines empowering the negotiation, or setting clear boundaries. In their absence then, inevitably, every document starts from scratch and different offices may have to approve different parts of the document. Or worse the researcher selects they office that they feel gives them the quickest answer. Intellectual property rights is one such area; when does the technology transfer office need to be involved. Another area is referrals to legal; at what point and on what issues? On occasion

there will be disagreements within the university which need to be resolved. This must be done expeditiously and pragmatically. Who decides must be clear. Any escalation procedure should include a formal document, which lays out clearly the issue, where any disagreement lies and the risks inherent in each position. The escalation process can be highlighted within the RASCI.

The key document in the contracting process is the statement of work or proposal. This is usually an annex or schedule to the agreement. It really matters. This provides the over-arching context within which the contract sits. This will assist in identifying key issues which can cause complications if not understood. For example, you may be bickering over intellectual property when the proposal stated that open source is the way the researchers want to go for maximum impact, and this is expected by the funder. It may also highlight issues and complications relating to background materials. Ask the researcher to walk you through their role in the project and what they personally hope to achieve. Have any issues been discussed between the research team? Have any promises been made to various parties? Understanding this context will allow you to explain things more clearly to the researcher, and to engage effectively with partners. Negotiating is not an administrative process; it is a profoundly human one.

In university to university contracting there will, in most circumstances, be a head contract: read it. Do not make any assumptions. It sets boundaries. It should be shared with all partners openly. The covering multi-institutional agreement should be as brief as possible to give effect to the main contract. Some partners may not be fully engaged in the programme but only contributing a small component or in the case of some international partners providing advice and review. Consider the contracting process in terms of the materiality of a partner's level of engagement. In cases of limited involvement a letter of agreement maybe all that is necessary without exposing them to the full main contract terms.

Through the whole negotiation process the researcher needs to be kept informed. Involve them in the discussion. Talk to them – don't just use email. It is their research. Some of these conversations can be uncomfortable but if you can't explain why something matters to your own researchers, maybe it doesn't matter. The researcher can also be useful in ensuring that the researchers in partner institutions know what the issues are. Preferably there should be one point of contact with the researcher through which all communications are channeled.

The Lead Administrative authority has a particularly important role. This does not mean that they are in command of the project but that they are charged with ensuring the project runs effectively. Leads should not try and take undue advantage of an administrative position. A good lead will look after the interests of all partners; this is the route to effective research and collaboration. Competition within the project will bring pressures to bear and is likely to lead to poor collaboration and outcomes. This is even the case where a research lead is appointed (e.g. ARC Centre of Excellence); everyone needs to go on the journey together.

The Lead must ensure effective engagement with all parties through clear, but consultative decision-making processes. Communications should be shared with all parties. Divide and rule may seem a simple way to reach signature of an agreement but it is not a solid foundation for long term research partnerships. By preference decisions should be made by consensus just

as is required by Ethics Committees; this ensures all voices are heard and decision making is clear. If you are not the marginalised partner in this project you may be in the next!

The Lead should ensure lines of communication remain open, keeping all parties informed of progress. Be open and transparent. Try to keep things simple. Involve others and listen before talking.

There will often be multiple partners. In this increasingly complex world collaboration is more rather than less likely. When negotiating, use an ARMS template. The bulk of research terms are relatively standard but are much more about research management they have legal weight but rarely require fresh legal consideration. Don't move away from an ARMS template just because you didn't draft it. If there is good reason to move away from a template do not send a completely different document cold. Make contact with the other partners – explain your reasoning. Don't try and be sneaky. Be open and transparent. Involve all partners in all comments don't seek to play one partner off one against another; this is a sure way to raise temperatures.

If the project has a higher level of complexity it may be appropriate to produce a heads of terms for all to discuss. In these cases hold a meeting. Negotiation by email is ineffective in all but the simplest cases and, furthermore, leads to longer and longer replies and a struggle to reach conclusions. Keep emails for confirming discussion or simple communications after discussions. It will reduce your overall workload. The more emails you send the more replies you get!

One of the major issues in reaching agreement will always be intellectual property (IP). This is quite rightly the case. IP is the lifeblood of all research. Forgetting commercialisation and impact for a moment, getting IP terms wrong can harm academic careers. Follow the simple rule from research integrity: be fair. All contributors must be recognised, acknowledged and involved. Collaboration is complex but trying to avoid doing the straightforward and the obvious will cause weeks of pain; your partners may never trust you again.

If the research has a high chance of producing commercially valuable results involve your technology transfer office; the issues around IPR are complex and often compounded by unrealistic expectations and misunderstandings. IP terms are challenging to cover in an agreement many years before any IPR is created. Key principles can be agreed detailed commercial IP terms are almost impossible to create at the outset. This is another feature which may best be dealt with through the project management structure. Legal offices may often be uncomfortable in 'agreeing to agree' clauses but if there are clear decision-making procedures laid down then this can satisfy the legal need for clarity. At the end of the day it is about trust and equity. If you are a trusted partner you will build long-term relationships.

Every party should seek to be collaborative and fair. Seeking consensus and win-win arrangements wherever possible. Remember that your researcher/organization needs to have a great working relationship with the other contracting parties to achieve the contracted activity.

A cardinal sin with many contracts is seeking to address too many issues in advance. Research by its nature cannot be guaranteed; much is unknown. The larger the project the more effective the governance structure needs to be. Effective decision making[1] within the project is essential; it should be a collaborative not combative endeavour. By designing an effective decision-making structure the contract can remain silent on significant levels of detail regarding multiple possible scenarios. In designing a decision-making structure you need to take all researchers into the process in some way and ensure that discussion on challenging topics are addressed and understood. The agreement itself should recognise the existence of the governance structure and its remit but the agreement should not seek to solve all possible permutations.

There is a tendency in any negotiation to want to use words that you, or your institution has drafted. But any variation from a template has to be material. Don't seek to negotiate clauses that are not impactful (will there be a commercial output? If not, then a simple safety net commercialization clause is all that is required). Wherever possible if you make any changes they should improve the clarity of the document and you must be able to justify them. Any fine tuning should be to add clarity.

Through the whole process communication is essential.

A good first step in negotiation is for the lead to circulate the template stating clearly why it was chosen, with any changes highlighted and justified.

The second step is to ask if there are any key issues which need resolved before diving in to fine-tuning any wording. It is not advisable to use emails for complex communications or to negotiate; have a meeting. Use the phone, Teams or Zoom etc. Email is for wimps. It is often the case that some find it easier to send an email rather than to enter into discussion.

Finally, talk about time. Discuss who needs to be involved, be clear what is in your control and what is not. We all live in complicated organisations; be open about such matters. This will create understanding and trust. If there is something difficult to discuss, don't duck it, deal with it. If you don't have a solution to a problem, share the problem. It is a collaboration. You and your partners are in this together.

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[1] Guide to effective decision making and governance in research (the next in the series)