



# NEGOTIATING RESEARCH CONTRACTS

CREATING OPPORTUNITIES FOR STRONGER  
RESEARCH AND INNOVATION SYSTEMS





## AUTHORS

Danny Edwards, Jacintha Toohey, Carel IJsselmuiden

## ACKNOWLEDGEMENTS

This work was supported by the African Health Initiative of the Doris Duke Charitable Foundation.

In this booklet are selected case studies that serve as examples of strategies for effective negotiations, which we have highlighted with annotations. We would like to thank BioVentures for Global Health (BVGH), the authors of the IP Handbook, Public Interest Intellectual Property Advisors (PIIPA), the INDEPTH network, and The Kumasi Centre for Collaborative Research in Tropical Medicine for their gracious contributions and for allowing us to feature their experiences in this booklet.

This guide was the result of a collaborative effort of the Fair Research Contracting Consortium members, a group of people from both low and high-income countries and institutions. For full acknowledgement, please visit [www.cohred.org/frc](http://www.cohred.org/frc)

We are grateful to Cathy Garner (COHRED Board) and Renata Curi (FioCruz) for providing guidance in the development of this resource.

We are also grateful to Glaudina Loots (Department of Science and Technology, South Africa) and Bratislav Stankovic (PIIPA), who helped us in the expert review process.

## DISCLAIMER

The content of this document is intended as generic guidance and should not be seen as a substitute for legal advice. Readers are advised that, wherever possible and practical, they should seek expert legal advice when entering into negotiations leading to legally binding contractual arrangements.

For more information, go to [www.cohred.org](http://www.cohred.org) see also [www.cohred.org/frc](http://www.cohred.org/frc)

## KEYWORDS

Fair research contracting, negotiation, collaborative partnerships, intellectual property rights, technology transfer, capacity-building, data and sample ownership, indirect costs, and legislative framework.

## FEEDBACK

This is the first version of this guidance note, and we constantly strive for improvement. In the next phase, we will be transforming our contracting guides into a web-based decision support system. We would be pleased to receive your feedback, comments or suggestions for further improvement on this guides, or for the future of this project. Please send your feedback to: [cohred@cohred.org](mailto:cohred@cohred.org)

Copyright © Council on Health Research for Development

Permission granted to reproduce for personal and educational use only. Commercial copying, hiring and lending are prohibited.

Design and layout: Stephanie Vasko

Published: June 2014, Geneva

Version: 1.0

# INTRODUCTION

International collaborative research is key to improving global health. It is also creates opportunities for institutions to expand their own ability to engage in research and innovation, through the creation of a stronger research environment, and through further utilisation of the outputs of joint research endeavours.

This booklet provides guidance for improving the outcomes of negotiations leading to collaborative research partnerships. It is presented in a three-stage approach, based upon the lifecycle of a research contract.

This booklet is aimed at researchers and research organisations that may have little experience of the contracting process, and little access to legal expertise. The approach presented suggests steps to take to improve negotiations, with emphasis placed on practical action, rather than technical advice, which can be found in other COHRED contracting guidance at [www.cohred.org/frc](http://www.cohred.org/frc).

Negotiation is the interaction that takes place between potential partners with a goal to reach mutual understanding. Often regarded as a difficult process to navigate, the process of negotiating is in fact based on a set of practical skills.

Key to understanding negotiation is appreciating that:

1. Simply because something arrives in a pro-forma contract, does not mean it is non-negotiable. With the right approach, many things can be negotiated.
2. A mutually beneficial relationship means that partners enter negotiations with mutual respect and balanced power. This is particularly important when partners might assume they have different levels of bargaining power.
3. As a negotiator in a potential research partnership, you have the right to ask for your fair share of the benefits of a joint endeavour.

Keep in mind exactly what it is you bring to a joint endeavour, and what you need to get out of it in order to make the arrangement worthwhile for you and your organisation. While it will not always be a perfect arrangement, the overarching goal of negotiations in research contracts should always be to strive toward a mutually fair and beneficial partnership.

The basis for a good collaboration should be trust and openness. A well-negotiated contract will ensure that all partners achieve a fair share of both the benefits and the costs. It is worth spending time on, and will help to ensure minimisation of problems in project execution further on.

We hope this booklet will help you, through the provision of insights and descriptive case studies, in the negotiation of fairer contracts and the formation of solid partnerships.



# CONTENTS

STAGE 1: PRE-CONTRACTING	7
1. Clarify your needs and boundaries	8
2. Identify potential partners	10
3. Clarify your ideal outcomes from the engagement	12
4. Be prepared for the negotiation	14
5. Understand and establish internal processes	16
6. Seek advice	18
7. Be aware of different styles of negotiation	20
8. Consider strategies for difficult negotiations	22
STAGE 2: THE CONTRACT	25
1. Formalise negotiations	26
2. Contracting basics	28
3. Set timeframes	30
STAGE 3: POST-CONTRACTING	33
1. Execute the contract	34
2. Close-out the research project	36
REFERENCES	38
GLOSSARY & TAXONOMY OF PARTNERSHIPS	39

# STAGE 1:

## PRE-CONTRACTING

# CLARIFY YOUR NEEDS AND BOUNDARIES

Before you engage in the process of partner identification and partnership development, the question of how your organisation intends to benefit from collaboration, and any restrictions or limitations your organisation may have in such collaborations, should be clearly laid out. It is essential to map out you need from a partnership, and also what you can bring to it:

- What is your value proposition?
- What are your unique strengths and resources?
- An understanding of the reputational risk of failure;
- A clear mandate from your organisation for pursuing a partnership.

To be an effective negotiator, you need to have a good sense of your asks and your strengths.

Establishing your organisation's needs, expectations and boundaries includes having an understanding of:

- Your current capacity and capacity gaps (training, resources, equipment);
  - Your expectations (output, impact) and needs from a partnership;
  - Your organisation's internal policies, principles, values and priorities and consideration of how these might be impacted by other organisation(s);
- By going through this process, you not only establish what you might need to ask for, but you also start to recognise more clearly the limits you might need to place on the partnership.
- Securing internal support strengthens your position in negotiations, assisting you in knowing how far you can go and whether you are able to take on the partnership. It is essential in negotiations to know that your organisation is completely behind you. Knowing this also allows you to refer upwards when it is strategically sensible.



# IDENTIFYING POTENTIAL PARTNERS

The identification of potential partners should be based in the first instance on your identified needs and boundaries.

In identifying your potential partners, you should:

- Gather all available information about them, map out what they offer you and review their fit in terms of their aims and objectives. This should include information on their interests, needs, priorities, policies, opinions, strengths, weaknesses and resources.

In addition to this, you need to:

- Assess whether the potential partners share the same values and mission as your organisation, or whether there is the possibility their organisation's values might subvert your objectives. What is their opinion on issues that are important to your organisation?

This process will mean investing time in getting to understand their perspective and what they want out of the potential partnership, as well as what resources they have to offer (i.e. conducting a 'suitability match test'). It is worth researching contacts you have who may have collaborated with your potential partner in the past to gain additional insight.

Do not jump into a partnership without doing the due diligence to make sure that the fit is right, and that your partner can deliver as promised. Think about whether the effort you put into the process of negotiation and ultimately into research collaboration/partnership is likely to pay off.

There are organisations that are able to help you identify partners based on your particular needs. Especially helpful is when these partners can also act as a neutral, trusted broker during the negotiation process. An example of a mechanism for partnership facilitation is the WIPO re: Search Partnership Hub, administered by Bioventures for Global Health (BVGH).

# CASE STUDY

## IDENTIFYING A PARTNER

Dr. Dennis Liotta is Professor and Director of the Emory Institute for Drug Development. Dennis and his colleagues developed an antiviral drug called Emtriva™ that is now used by more than 90% of all HIV-positive patients in the United States. Dennis was interested in connecting with an expert in dengue biology, and used WIPO re: Search and Bioventures for Global Health (BVGH) as a mechanism for doing this.

Dennis believed the RNA-dependent RNA polymerase inhibitors he had developed had promise as new therapies against dengue fever. “My lab had developed polymerase inhibitors among other antivirals, but different viruses have different RNA-dependent RNA polymerases, so it wasn’t clear whether or not the inhibitors would demonstrate sufficient activity against dengue polymerases. We knew we needed to connect with experts in dengue biology that could help us test our compounds,” said Dennis.

BVGH met with scientific administrators and program officers at the National Institutes of Health (NIH), including Dr. Cristina Cassetti, Program Officer for Acute Viral Diseases. She explained that the NIH could help support Dennis’s drug discovery efforts. A teleconference was arranged to connect Cristina and Dennis so they could discuss the dengue project and how Dennis could gain access to in-kind support from NIAID. One critical aspect of the support offered by NIAID was its ability to perform in vitro antiviral screens against the four dengue virus serotypes.

Following the discussion, the NIAID and Emory signed a ‘non-clinical evaluation’ agreement that would allow NIAID-funded contractors to test the compounds in vitro for efficacy against dengue viruses. Some of the compounds are looking promising against Rift Valley fever virus and Dennis is now considering how to collaborate to develop them further.

**This simple case study illustrates how engaging partners can complement your identified research needs. It illustrates how having a ‘neutral broker’ facilitating the relationship can be invaluable.**

# CLARIFY YOUR IDEAL OUTCOMES FROM THE ENGAGEMENT

Prior to engaging in negotiation with an identified partner, you should, based on your identified needs, map out how you expect to benefit from this particular collaboration, and what you bring to that particular partner. This means:

- Identifying and fully costing (meaning considering both direct and indirect costs) your needs from the engagement,
  - Establishing what access to the benefits of the research project (e.g. publications, patents) you think is fair, and
  - On the basis of your organisation's capacity-building strategy (if you have one), identifying what opportunities for optimising the system of your organisation there might be with this partner.
- You should only be prepared to disclose this information with a potential partner as negotiations progress, always starting with the ideal objectives.
  - If a partner is not willing to meet your ideal set of objectives, then you can negotiate your next level of objectives.
  - Where a potential partner is not willing to accept your minimum set of objectives, this should serve as a red flag. Accepting a partnership that does not meet your minimum set of objectives bears the risk of the arrangement being a net cost to your organisation. You should decide at this point whether to walk away from the negotiations.
  - The establishment of a full range of possible acceptable outcomes provides you with a useful reference frame of how far to go with negotiations, when to present the next level, and importantly, when, if needed, to end negotiations.

Both sides have strengths and weaknesses and are engaging in the partnership in order to capitalise on/address these. It is important to remember that they see something of value in engaging with you. Having a mutual understanding of what each partner's objectives are, and the benefits which each partner brings will help achieve a mutually beneficial outcome.

It is good practice to prepare a range of outcomes for negotiations covering the range of ideal, acceptable, and minimum sets of objectives.

The risk of maintaining negotiations with a partner who does not accept your minimum objectives or presents a completely different set of objectives means placing your research activity and institution at a disadvantage through wasting precious resources, financial or otherwise. Remember that not every negotiation you enter will end in a partnership.



## CASE STUDY

Projects can be particularly challenging when multiple partnerships are involved. In the case of one of their collaborations, project, the organisation PATH was able to avoid some pitfalls by carefully selecting its partners and being very clear about its objectives, what it could offer and what PATH needed from the partnership. For example, because PATH came forward with links to clinical researchers and policy-makers, and because it had a solid understanding of the specifications that, in this example, any new cervical-cancer-screening test would need, PATH was able to attract industry partners that had the expertise and capacity to move product development forward. In return, these partners were attractive to PATH because they owned proprietary control of the key reagents needed for their specific technologies.

PATH also provided access to clinical specimens from countries outside the industry partner's normal research networks. In addition, PATH offered the opportunity for major field-based clinical assessments of final products, assessments that would be sufficient for product registration in those countries.

As a result, industry partners realised that working with PATH would provide an opportunity to reengineer their product (in the case of one partner) or develop a new product (in the case of the other partner) to address lower-price market segments. In both cases, the partner gained valuable inroads into markets they previously did not have access to. Without the PATH program incentives, it is unlikely that either company would have undertaken these major efforts to adapt and develop their technologies for use in developing countries.

*(Taken from Krattiger A, RT Mahoney, L Nelsen, JA Thomson, AB Bennett, K Satyanarayana, GD Graff, C Fernandez and SP Kowalski. 2007. Editor's Summary, Implications and Best Practices (Chapter 17.17)).*

# BE PREPARED FOR THE NEGOTIATION

Preparation and conducting due diligence are essential before entering into any kind of negotiation with a potential partner. Take the time, as described previously, to assess your negotiating position and to gather information about your potential partner. Try to anticipate all the paths down which the negotiation might go. The information gathered should involve a thorough investigation of facts, figures, documents, pro forma contracts and priorities, including information about collaborations your potential partner has already engaged in. Any additional information that could potentially have weight on the negotiation should also be close to hand.

Information (not exhaustive) you should gather can include:

- All pre-negotiation communication: emails, documents, et cetera.
- Pro-forma contracts, if applicable.
- A clear understanding, gathered from preparatory conversations, of the partner's expectations and needs from the partnership.
- An understanding of all clauses in the contract.
- Key information gathered about your partner gathered from prior research and through your networks.
- A clear understanding of the costs of the research to your organisation, both direct and indirect
- A clear understanding of the intellectual property at hand, both what is being brought to the table and what might be generated from the partnership.
- A clear understanding of the possibilities for publication, expectations of authorship, acknowledgements and the time and resources needed to achieve publication.
- A clear understanding and access to your organisation's established policies and procedures (for example, a data sharing policy).
- A clear understanding of the possibilities for capacity-building.
- An understanding of the approval processes needed by the partner organisation.
- A proposed timeline for the negotiation.

Prepare to succinctly present your case to the potential partner, highlighting how they benefit from a partnership with you.

No matter what your style of negotiating, it is important to have prepared relevant data and material in negotiations to support or convey your negotiation points in a factual and evidence-based manner.



# UNDERSTAND AND ESTABLISH INTERNAL POLICIES AND PROCEDURES

Learn what you and your partner organisations' internal policies and procedures are.

Understanding the contracting procedures of your organisation and those of the potential partner are essential. Know who the authorised person is for entering into negotiations and that you are dealing with them. Who has the legal authority to sign contracts? Establish early on in the negotiations what the internal approval processes are within the potential partner organisations. You need to be sure you are dealing directly with the relevant person, or with a person who has delegated authority to enter into negotiations.

Developing and agreeing upon institutional procedures and policies in key areas also puts you in a stronger position in negotiations. For example, having an agreed capacity-building strategy, or a clear policy on data sharing in collaborative research has multiple benefits. Firstly, it co-ordinates collaborative activities with your organisation's needs, maximising the effectiveness of the partnership. Secondly, the ability to refer directly to your organisation's policies and strategies during the negotiation, gives your asks greater weight.

# CASE STUDY

## ESTABLISHING A DATA-SHARING POLICY – THE INDEPTH EXPERIENCE

“Having a data sharing policy in place helps you when establishing terms for data sharing in research collaboration.

For example, the INDEPTH policy provides template license agreements to use in the case of data producers making data available for sharing on the INDEPTH Data Repository. As well, it provides a template for data use agreements between the Network and a secondary data user.

Before the policy was established, there was a long-standing discussion amongst INDEPTH members, starting as early as the 2005 Annual General Meeting of the Network in Durban, South Africa, on how to responsibly, efficiently and widely share public health research data within and beyond the Network in a sustainable manner. This process culminated in the appointment of the INDEPTH Data Access and Sharing Committee (iDASC) at the 2009 AGM in Pune, India, which was tasked with drafting a data sharing and access policy under the auspices of the INDEPTH Board. A primary input to the policy were the discussions held during a joint INDEPTH-COHRED meeting in Nairobi, 28-29 July 2011 which was attended by 22 INDEPTH member centres. The outcome of the meeting was an INDEPTH-COHRED position paper on sustainable data sharing in public health research.<sup>1</sup>

The INDEPTH data access and sharing policy builds on existing Network and centre-specific data access and sharing policy documents and identifies various categories of data and access levels associated with each. It also stipulates the terms, conditions, scope and time frame for accessing and sharing the different data categories equitably, ethically and efficiently. The scope of this Network policy is restricted to the sharing of those data (falling under different data types mentioned in this policy document) that are submitted by member centres to the Network.”

– Kobus Herbst (Principal Investigator) INDEPTH iSHARE2 Project, INDEPTH Network

---

1. [http://www.indepth-network.org/index.php?option=com\\_content&task=view&id=1262&Itemid=595](http://www.indepth-network.org/index.php?option=com_content&task=view&id=1262&Itemid=595)

# SEEK ADVICE

Map all the internal components of your organisation that you may need to access in order to put a contract in place (e.g., the business office, the technology transfer office, the legal office) and take internal advice where it is available. In particular:

- Consult a specialist in the area where it is mandated (such as a research ethics committee where human subjects are involved).
- If your institution has a legal unit, or an individual responsible for legal affairs, involve them from the earliest possible stage of negotiations. They can provide useful assistance throughout the partnership process, from clarifying terms in the contract phase, to during the negotiations themselves. However, in order to do so, they will need a complete understanding of what the partnership is designed to achieve.

If there is no legal unit, make sure you seek advice, if needed, from different organisations that can provide assistance with the contracting process. For example, pro bono organisations exist, such as PIIPA. They have a network of Intellectual Property lawyers, who may be able to help you think through elements of the draft contract and their implications. The World Intellectual Property Organization also has a range of resources for thinking through intellectual property considerations. Organisations such as Bioventures for Global health (BVGH) can help to identify, and then introduce you to, possible partners. The Council on Health Research for Development (COHRED) has a range of publications aimed at supporting research organisations with limited contracting capacity.

Other valuable skills can be sourced from other institutions in your local and regional networks – other scientists, accountants and project managers who may have experience in negotiations and contracting in the research environment.

## EXAMPLES OF IMPORTANT SOURCES OF ADVICE –

**Public Interest  
Intellectual Property  
Advisors (PIIPA):**  
[www.piipa.org](http://www.piipa.org)

**Council for Health  
Research and  
Development (COHRED):**  
[www.cohred.org/frc](http://www.cohred.org/frc)

**World Intellectual  
Property Organisation  
(WIPO):** [www.wipo.int](http://www.wipo.int)

**BIO Ventures for Global  
Health (BVGH):** [www.bvgh.org](http://www.bvgh.org)

## CASE STUDY

"What we do at PIIPA is unique. We operate a global pro bono service that pairs those who need advice with volunteers and teams who provide advice on a wide range of IP matters, from access and benefit sharing agreements, to the resolution of disputes, through to licensing agreements and the negotiation of agreements, which support access to medicines. We work in global health, in genetic resources and a range of other sectors.

It really is important to understand when to seek the advice of a third party, to admit when you need extra assistance, and to obtain an alternative viewpoint. IP can be a complex matter to understand, and it is important to get it right during the contracting phase.

PIIPA is working on some really interesting cases at the moment. Recently, we had an inquiry from natural resources official from the Mariana Islands who was looking for assistance in drafting a contract to protect biological resources taken from the ocean nearby. We referred to PIIPA's manual on bio prospecting contracts, where he was able to find a sample contract that met his needs. We also have two current cases where assistance seekers are looking for help with contracts, one to develop a Nobel Laureates' voluntary information sharing website, and another from an inventor who is looking at licensing his device, which PIIPA had previously helped him to patent.

I would encourage anyone entering into a contractual arrangement where the clauses are opaque, and the implications unclear, to seek the advice of a third party. PIIPA is a great example of a network of individuals who are interested in helping parties get the best outcome out of joint collaboration."

- Bratislav Stankovic, PIIPA

# BE AWARE OF DIFFERENT STYLES OF NEGOTIATION

There are many styles of negotiation. These can include: competing, collaborating, compromising, avoiding and accommodating. (Shell, 2006)

Direct communication of interests, expectations, beliefs and concerns is the best approach. This approach can also include disclosure and/or exchange of certain documents/information and perspectives to build joint understanding. As well, when problems are encountered, this approach can include mutual brainstorming of different methods to reach joint solutions and encourage open, honest discussions.

Try to be aware of different types of negotiators: soft bargainers, hard bargainers and principled bargainers. Both soft and hard bargainers start with established positions. Soft bargainers trust the other side, and are open about their bottom line, valuing preservation of the relationship above the outcome. Hard bargainers see the other side as a combatant, and will see achieving concessions from the partner as a win.

Consider then, employing a principle-based bargainer's approach to negotiation. Principled negotiation focuses on differences in interests, and is used as a tool for much dispute resolution. It concentrates on creative problem solving and fair accommodation of diverse interests (Bammer, 2008, p. 880). Principle-based negotiation requires both parties to focus on, and communicate effectively, their central interest in engaging in the partnership, away from specifics. This shift in focus can create the space for different goals and diverse perspectives to be integrated to achieve cooperative objectives and outcomes. If both parties understand each other's core interests in forming a partnership, they can more easily invent a collaborative joint approach.

Cross cultural and cross-linguistic differences can often cause people to misunderstand each other. It is important to approach negotiations with the notion that partners will have different styles and values in negotiating, and it is important to research that beforehand.



## CASE STUDY

"The Kumasi Centre for Collaborative Research in Tropical Medicine has been working for 17 years, focused on research areas such as infectious disease, including HIV research, malaria, buruli ulcer, and increasingly, we are looking at non communicable diseases. We believe that the strength of our centre is not in pitching one against the other in science but in collectively pursuing an agenda that seeks to break the vicious cycle of ignorance, poverty and consequential disease, through building partnerships. In collaborative research, we partner each other to conceptualize, plan and implement our collective research agenda to answer specific research questions with the hope that by so doing, we promote the collective good of our study populations.

I believe that in any research partnership it is important to begin with the values of mutual respect and collegiality front and centre. With these values providing a firm foundation, this will enable you to be more open and clear during the discussions about what your objectives from the joint endeavour are, and will also allow you to come to better, joint understanding about the objectives of the partnership. I also believe that it is important for scientists to be aware of basic negotiating principles, and to understand the discussions they are having with their partners - about IP, about data ownership and about costing. It helps to be able to refer to a legal team, but they are not always available or present.

Scientists tend to be focused on the immediate objectives of publication. However, a longer-term view must also be kept in mind - the IP that might be ultimately be generated from the project, the capacity that might be built in their centre by the collaboration. Keeping these factors in mind will contribute to the overall value and sustainability that the partnership presents."

*Dr Owusu-Dabo, Scientific Director, Kumasi Centre for Collaborative Research in Tropical Medicine (KCCR)*

# CONSIDER STRATEGIES FOR DIFFICULT NEGOTIATIONS



There are instances in negotiations where partners cannot agree or for some reason negotiations are disrupted, put on hold or dropped completely. When this takes place, you should plan for how they could be handled. Ideally, you should have a strategy established beforehand, identifying what you think the likely pressure points will be and how to approach conflicts.

If a partner takes a strong position that they are not willing to move away from, it could

mean that instead of issuing an ultimatum, which could halt or dissolve negotiations, you instead clarify and rationalise your approach to your partner on the basis of the evidence and documentation you have collected, or in the light of your organisation's existing policies and strategies. Both parties should try to be clear about their interests – taking a principle-based approach to negotiation – allowing greater flexibility to come to a mutually acceptable conclusion. In essence, the interest-based model mentioned

previously focuses on detaching the person from the problem, and then focusing on the resolution.

You might consider re-entering the negotiation with an alternative/fall-back position (also known as BATNA, best alternative to negotiated agreement (Fisher & Uri, 2011)). The key is to have an approach that is acceptable to you, which does not lose focus of your main objectives and interests and which brings both partners to a fair

and mutually beneficial outcome so that neither is disadvantaged. A BATNA course of action can be seen as a point of leverage in negotiations, rather than a direct concession.

Difficult issues that could potentially cause major obstacles to a research activity should be tactfully raised early during the negotiation phase. This way, you are able to deal with each other's perspectives and potentially uncover problems and explore solutions early.





# STAGE 2: THE CONTRACT

# FORMALISE NEGOTIATIONS

Formalise all negotiations in writing in a contract, binding all partners to its requirements by the signatures of all authorised signatories to the contract. Where arrangements are made and not formalised in the contract, it gives rise to complications and misunderstanding between partners. Disagreement may arise over issues that were discussed and not documented.

Written agreements, translated into contracts, are important mechanisms for formalising what is agreed to during negotiations. This ensures that all partners understand each other. A contract is not just a piece of paper that must be signed. It should be viewed as a vital document that continues to exist during the lifetime of the joint endeavour, and is referred to during, and often after, the lifespan of the partnership itself.



# CONTRACTING BASICS

- Be careful of pro-forma contracts.
  - Understand clearly the obligations and the final objective before looking for a model of contract. They may have unnecessary clauses or absent terms that need to be added. Examine prior contracts to understand what you might need to include when completing the contract. Remember to seek advice.
  - Many funders often prefer to use their own template agreements, but it is always good to check if this is the appropriate type of contract and that it addresses your needs. Simply because it is a pro-forma contract does not mean its terms are non-negotiable.
- Be sure that the contract/agreement is not in direct conflict/contradicts any of the interests/objectives that have been established in the pre-contracting phase. If there is a conflict then this should be weighed against the legitimate expectations of both partners and a decision should be made to either pursue further negotiation or to 'let-it-go'.
- Be sure that the contract is not ambiguous, i.e. it is not reasonably subject to more than one interpretation. If a contract is ambiguous, it is better to resolve prior to signing by the parties through further discussions. After signing, and following disagreement, ambiguity may need to be resolved through dispute resolution.
- Be simple, clear and precise while discussing the terms of the contract through any means, especially written. Your words might later become the means through which the terms of the contract are interpreted.
- If you do not understand a concept in the negotiation, a request of your partner, or a term or phrase in the contract, have it clarified, and the answer documented. A relationship can break down when there is misunderstanding over even the most minor issues. If you do not understand something now, a third party may also have difficulty interpreting it later.
- Ensure all deliverables are clearly set out, and the status of any benefits (authorship, data, IP) is clear.
- Identify the signatories empowered to sign the contract.
- Keep a record and store the signed contract in a secure, accessible place.

- Compile a historical record of all the information and communications shared during negotiations.
  - Make sure all conversations (letters, faxes, emails, Skype, etc.) are kept. They represent the intentions of both parties and can be useful if any clarification is necessary or for a third party or a new partner to understand the agreement in the future.
  - Institutional memory is important for contracts. Remember that people leave and join organisations regularly as part of normal attrition and recruitment, and may not be able to be consulted with again or may not understand what has happened before they joined.
- It is important that each partner carefully reads and confirms the terms of the contract to ensure that which was agreed upon during negotiations is clearly communicated in writing before it is finalised and signed. Ultimately, a written contract should conform to what was agreed/intended during negotiations.
- If the contract is more complex, prepare a checklist with the necessary information you will need. Improve this checklist and create others according to the new agreements you discuss during negotiations.

#### SOME ADVICE ON MODELS OF CONTRACTS

- A good place to start for help with contract basics is the “Lambert Review” (HM Treasury, 2003) for a set of standard agreements/contracts. This project was set up to assist in collaborations taking place between industry and universities.
- In addition to this, Chapter 7 of the IP Handbook ([www.iphandbook.org](http://www.iphandbook.org)) has guidelines and samples of contract templates that can be used.
- Further, the website of the World Intellectual Property Organization ([www.wipo.int](http://www.wipo.int)) has sample contracts that can be considered.

# SET TIMEFRAMES

Consider the importance of timelines in two contexts: the timeline for negotiating the contract, and the agreed-upon timeline for completing the collaborative research activity.

- Be aware of timeframes and deadlines for preparing for, negotiating and finalising the research contract. Negotiating is a process that requires the luxury of time. The more time you have, the more opportunity to create solutions to barriers and reach a mutually acceptable conclusion. It is always good practice to set negotiating timeframes for partners to work within as this can impact a project's commencement point and deliverables.
- Project timelines should be included in the research contract. Timelines are critical when considering the execution and closure of research activities, reaching milestones, when the payments of funds are made and received, deliverables completed and a timeframe during which researchers are given an opportunity to publish the research outcomes.





# STAGE 3:

## POST-CONTRACTING

# EXECUTE THE CONTRACT

A woman in a white lab coat is seated at a desk, looking down at a tablet. She is gesturing with her right hand, palm up, as if explaining something. The background is a bright, slightly out-of-focus laboratory or office setting.

Throughout the lifecycle of the research project, research partners should ensure that everything relates back to the requirements of the contract and what has been negotiated. For example, when are payments received, deliverables executed and preserved timelines.

If there is another person in your institution who will conduct the project established through the contract, make sure that that person understands the obligations. If necessary, make a short resume of the agreement with a list of what your institution needs to deliver, by when and what to expect.

Pay attention to the validity of the agreement. If there is a need to extend the obligations, it can be done while the contract is still in place through a no-cost extension. Otherwise, it may mean setting in place an entirely new agreement that can be a difficult and lengthy exercise to carry out, and risk re-opening issues which were considered settled in the original contract.



## CASE STUDY

### THE AFRICAN AGRICULTURAL TECHNOLOGY FOUNDATION APPROACH TO IP MANAGEMENT - EXECUTION OF AGREEMENTS

For smallholder farmers in Africa, yields of major staple crops (maize, sorghum, millet, cassava, cowpea, bananas/plantains) have remained stagnant, or even declined, in the past 40 years. Numerous biotic and abiotic stresses have contributed to this dire trend. Local research efforts to overcome these stresses have been hampered by declining support for agricultural research, limited access to elite genetic material and other technologies protected by IP rights and the absence of commercial interest in these crops from private owners of agricultural technologies.

The African Agricultural Technology Foundation (AATF) is a new initiative addressing the challenge of reversing the negative trend in agriculture by negotiating access to proprietary technologies and facilitating their delivery to smallholder farmers in Sub-Saharan Africa. ***AATF believes it is essential and indeed good IP management practice to finalize all contractual terms, set them out in writing, and have an agreement duly signed by the authorized representatives of the parties before commencement of any engagement. Therefore, AATF ensures that all arrangements with third parties associated with the access to or the creation, use, or exploitation of IP protected materials are appropriately documented.***

Documentation for the Cowpea Improvement Project, for example, will involve several agreements between AATF and its collaborating partners. First, AATF obtained a license from Monsanto, and thereafter sublicensed the licensed Bt gene to CSIRO and IITA, in order to introduce the Bt gene into the cowpea genome. The AATF, potentially, will sublicense the resulting successful transgenic events to African agricultural research institutions, which will introgress the Bt gene in cultivated cowpea varieties. These varieties would then be licensed to commercial, nongovernment, humanitarian or public institutions charged with disseminating the improved cowpea varieties in Africa.

(Access online via <http://www.iphandbook.org/handbook/ch17/p18/> on 23 April 2014)



# CLOSE-OUT THE RESEARCH PROJECT

Effective research administration over the life of the contract will help eliminate problems at closeout. During closeout the parties to the contract must submit all required financial, performance and other reports as required by the contract, and liquidate all obligations incurred under the contract. It is helpful to prepare a closeout checklist.

When a contract reaches the end of its life cycle, the partners still have various legally-binding obligations toward each other. For example, in some instances, non-disclosure and confidentiality clauses may outlive the specified contract period. The extent to which each party fulfils its obligations may directly affect the success of future deals, so both administrative and management staff must be familiar with the obligations of all parties.



## REFERENCES

- Afsana, K., Habte, D., Hatfield, J., Murphy, J., & Neufeld, V. (2009). *Partnership Assessment Toolkit*. Canadian Coalition for Global Health Research.
- Bagshaw, D., Lepp, M., & Zorn, C.R. (2007). International research collaboration: Building teams and managing conflicts. *Conflict Resolution Quarterly*, 24, 433-446.
- Bammer, G. (2008). Enhancing research collaborations: Three key management challenges. *Research Policy*, 37, 875-887.
- Bradley, M. (2008). On the agenda: North-South research partnerships and agenda-setting processes. *Development in Practice*, 18, 673-685.
- CCGHR (n.d.). *Building respectful and collaborative partnerships for global health research*. Ottawa: Canadian Coalition for Global Health Research.
- Costello, A., & Zumla, A. (2000). Moving to research partnerships in developing countries. *British Medical Journal*, 321, 827-829.
- Cross, R., Nohria, N., & Parker, A. (2001). The Magazine. Decision making. <http://www.negotiator magazine.com>
- Fisher, R., & Ury, W. (2011). *Getting to Yes: Negotiating agreement without giving in*. New York: Penguin Books.
- Fowler, A. (Ed.). (2013). *Striking a balance: A guide to enhancing the effectiveness of non-governmental organisations in international development*. Routledge.
- Hake, S., & Shah, T. (2011). Negotiation skills for clinical research professionals. *Perspectives in clinical research*, 2(3), 105.
- HM Treasury (2003). Lambert Review of Business-University Collaboration, available at [http://www.eua.be/eua/jsp/en/upload/lambert\\_review\\_final\\_450.1151581102387.pdf](http://www.eua.be/eua/jsp/en/upload/lambert_review_final_450.1151581102387.pdf).
- James, R. (1994). Strengthening the capacity of Southern NGO partners. Oxford: Intrac.
- Jentsch, B. (2004). Making Southern realities count: research agendas and design in North-South collaborations. *International Journal of Social Research Methodology*, 7, 259-269.
- KFPE (2012). A guide for transboundary research partnerships: 11 principles. Berne: KFPE.
- Lehmann, L.S., Kaufman, D.J., Sharp, R.R., Moreno, T.A., Mountain, J.L., Roberts, S., & Green, R.C. (2012). Navigating a research partnership between academia and industry to assess the impact of personalized genetic testing. *Genetics in Medicine*, 14, 268-273.
- Make, Y. (2007). Principles and Tactics of Negotiation. *Journal of Oncology Practice*, 3(2), 102-105.
- Marais, D., Toohey, J., Edwards, D., & IJsselmuiden, C. (2013). *Where there is no lawyer: Guidance for fairer contract negotiation in collaborative research partnerships*. Available at: <http://www.cohred.org/wp-content/uploads/2012/04/Fair-Research-Contracting-Guidance-Booklet-e-version.pdf>
- Migot-Adholla, S., & Warner, M. (2005). *North-south research partnerships: A guidance note on the partnering process*. London: Overseas Development Institute.
- Reddy, P., Taylor, S.E., & Sifunda, S. (2002). Research capacity building and collaboration between South African and American partners: The adaptation of an intervention model for HIV/AIDS prevention in corrections research. *AIDS Education and Prevention*, 14, suppl B, 92-102.
- Ross, L.F., Loup, A., Nelson, R.M., Botkin, J.R., Kost, R., Smith, G.R., & Gehlert, S. (2010). The challenges of collaboration for academic and community partners in a research partnership: Points to consider. *Journal of Empirical Research and Human Research Ethics*, 5, 19-31.
- Shell, G. R. (2006). *Bargaining for advantage: Negotiation strategies for reasonable people*. Penguin.
- Sodeke, S., Turner, T., & Tarver, W. (2010). The ethics of good communication in a complex research partnership. *Journal of Health Care for the Poor and Underserved*, 21, 35-45.

Tomlinson, M., Swartz, L., & Landman, M. (2006). Insiders and outsiders: Levels of partnership collaboration in research partnerships across resource divides. *Infant Mental Health Journal*, 27, 532 – 543.

The American Management Association seminar: Negotiating to Win. Registration information available at <http://www.amanet.org>

Trosborg, A. (1989). Strategies in negotiation. *Hermes*, 3, 195-218.

White, I. (1999). The Successful Physician Negotiator: How to Get What you Deserve. *Canadian Journal of Anaesthesia*, 46, 404-404.

- **See also** <http://www.iphandbook.org/index.html>
- **See also** [http://www.wipo.int/sme/en/index.jsp?sub\\_col=sme-cs](http://www.wipo.int/sme/en/index.jsp?sub_col=sme-cs)
- **See also** <http://www.wipo.int/research/en/partnership/>
- **See also** <http://www.cohred.org/>

## GLOSSARY & TAXONOMY OF PARTNERSHIPS

### KNOW YOUR PARTNER:

#### Types of research partnerships

Different types of partnerships may raise different kinds of contractual issues. The type of institution and the sector they are positioned in (for example, private or public) will influence the extent to which the issues covered in this guidance document factor into the contract negotiations. A research partnership taking place between a private and a public organisation will have different parameters to one between two public institutions. A private-public partnership is increasingly seen as an effective model for achieving health gains, but can raise particular issues around research ownership, benefit sharing and intellectual property. It is important to be aware of the context of the partnership and the parameters or drivers of each partner's research agenda.

The interaction point between two or more partners in a partnership will be influenced by the different requirements of each organisation in terms of the rationale or purpose of the research, the intended contributions or the input by each partner, the expected outputs or benefits for each partner, and the policy and legislative context in which each institution operates. Note, too, that partnerships are often between more than two organisations; there are networks and multiple pathways through which contributions are made. It might be helpful to identify other partnerships involving local or similar institutions, and find out what challenges were encountered in negotiating and implementing the contract and how these were resolved. (Marais, D. 2013. p8).



### **Council on Health Research for Development (COHRED)**

1 – 5 Route des Morillons  
PO Box 2100 1211 Geneva 2  
Switzerland  
Tel: +41 22 591 89 00  
Fax: +41 22 591 89 10 E  
Email: [cohred@cohred.org](mailto:cohred@cohred.org)

### **COHRED Africa**

P/Bag 00265  
Plot 50654,  
Machel Drive Maranyane House (BOTEC)  
Gaborone  
Botswana  
Tel: +267 369 64 27  
Fax: +267 391 32 89  
Email: [mokgatla@cohred.org](mailto:mokgatla@cohred.org)  
Contact: Boitumelo Mokgatla-Moipolai

### **COHRED representatives also available in:**

#### **Brazil**

Mr Bruno Coelho  
Rua Quintino Bocaiuva 504,  
Apto 202 Santa Rosa, Belo Horizonte – MG, Brazil  
CEP: 31255-550  
Tel: +5531 8388 0944  
Email: [coelho@cohred.org](mailto:coelho@cohred.org)

### **Find us on:**

[www.twitter.com/cohred](http://www.twitter.com/cohred)  
[www.facebook.com/cohredgroup](http://www.facebook.com/cohredgroup)  
[www.flickr.com/photos/cohred](http://www.flickr.com/photos/cohred)  
[www.youtube.com/cohredgroup/](http://www.youtube.com/cohredgroup/)