



Workshop East London Business Place Setting Up A Consortium

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29 September, 2009

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Introduction

- Introduction
- Pre – Agreement – Key Issues
- Consortium Agreement
 - Scope and Nature
 - Roles & Responsibilities
 - Warranties & Undertakings
 - Management/Steering Committee
 - Confidentiality
 - Overriding Conditions
 - Risk, Liability and Change Control
 - Indemnity
 - Intellectual Property
 - Data Protection
 - Outputs and Deliverables
 - Exit Routes
- Other Agreements
- Conclusion

Pre Agreement – Key Issues

Pre-Agreement – Key Issues

- **Before entering into a Consortium, there are a number of issues that must be considered including:**
 - **Why?**
 - Why is the consortium being set up?
 - **Who?**
 - Who are the best partners to give effect to the purpose of the Consortium?
 - **What?**
 - What exactly will the consortium be seeking to achieve?
 - **How?**
 - How should the consortium be established? (CA)
 - How will the consortium meet its objectives?
 - **When?**
 - When should the consortium be established?

Pre-Agreement – Key Issues (Cont/d)

- **A *Memorandum of Understanding (MOU)* or Heads of Agreement should be drawn up, which would set out the key terms upon which the parties to the Consortium intend to agree (by way of the Consortium Agreement).**
- **The MOU could include non-disclosure provisions and a separate *Non-Disclosure Agreement (NDA)* should be signed by all prospective parties to the Consortium.**
- ***Due Diligence* should be carried out on all parties to the Consortium – the extent of this is dependent on the nature and scope of the consortium.**
 - **Risk assessment/GAP Analysis on potential partners**



Consortium Agreement – Key Issues

Consortium Agreement (CA) – Key Issues

- CRUCIAL agreement for any consortium
- Success of the consortium largely dependent on the CA
- Fundamental for the avoidance of confusion and to provide solutions when disputes arise
- Promotes management of expectations
- Allows exit routes
- Satisfies funders/benefactors (where applicable)

Consortium Agreement (CA) – Key Issues (Cont/d)

- **What are the KEY provisions/inclusions in the CA:**
- Partners – who are the project partners?
 - Important to clearly define who the project partners are
- Roles and Objectives – what are the roles/objectives of **each** partner?
 - To avoid a breakdown of the consortium, each partner should know exactly what its roles and objectives are
 - Contributions to the consortium (monetary)
 - Implications for time of removal of partners
- Warranties and Undertakings
 - Commitment to the consortium by each partner
 - Duty to act in the best interests of the consortium
 - Warranty in relation to IPRs and right to use/exploit such IPRs

Consortium Agreement (CA) – Key Issues (Cont/d)

- **What are the KEY provisions/inclusions in the CA:**
- Management – Who will make up the Management/Steering Committee?
 - Important for the smooth co-ordination of the consortium
- Confidentiality
 - Ongoing confidentiality obligations for **each** partner
- Overriding Conditions
 - Has the consortium any commitments to third parties which should override the agreement between the partners? (e.g. commitments to funders)
- Risk, Liability & Change Control
 - Who would be liable and for what?
 - Intra-partners' liability
 - Limitation of Liability
 - Management of changes
 - **To Agreement**
 - **To Project**
 - **To Outputs and Deliverables**
 - **Partners**
- Indemnity
 - Who should be indemnified?

Consortium Agreement (CA) – Key Issues (Cont/d)

- **What are the KEY provisions/inclusions in the CA:**

- Intellectual Property Rights (IPRs)
 - Ownership of IPRs
 - 'Background' IPRs
 - Ownership/authority to use and/or exploit IPRs
 - Assignment or Licence to the consortium?
 - Royalty payments to partner owning Background IPRs
 - 'Foreground' IPRs
 - Ownership/Joint Ownership of IPRs
 - Use/Exploitation – who will exploit?
 - Sub-licences
 - Protection of Foreground IPRs
 - Know-How
 - Lack of clarity in this area could have implications for exploitation later

Consortium Agreement (CA) – Key Issues (Cont/d)

- **What are the KEY provisions/inclusions in the CA:**
- **Data Management**
 - Data Collection
 - Production and collection of data
 - Data Maintenance
 - Maintaining project archives
 - Data Protection
 - Partners are likely to process personal data of individuals
 - Who is the data controller?
 - Data Controller Agreement
 - Processing personal data for a particular purpose
 - Data Processing Agreement
 - Other measures may be required to ensure security and integrity of data

Consortium Agreement (CA) – Key Issues (Cont/d)

- **What are the KEY provisions/inclusions in the CA:**

- **Output and Deliverables**
 - Ownership
 - Protection
 - Exploitation

- **Exit Routes – The Way Out**
 - How does a partner leave the consortium?
 - Need an exit strategy
 - How is the return on investment obtained by the exiting partner?
 - IPR issues?

Other Agreements

Other Agreements

- **When setting up a Consortium a number of other agreements may be required simultaneously or shortly after establishment including:**

- Agency Agreements
- Distribution Agreements
- Clinical Trials Agreements
- Collaborative Agreements
- Consultancy Agreements
- Intellectual Property Licences and Assignments
- Licensing Agreements
- Non-Disclosure Agreements
- Research & Development Agreements
- Shareholders Agreements
- Web Agreements

Conclusion

CONCLUSION

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