

Approach to Contract Negotiation and Pricing of Research and Knowledge Exchange Activities

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A. Introduction

1. Engagement with external organisations is an important element of the University's research and knowledge exchange activities, in support of its Strategic Plan. The Department of Innovation, Universities and Skills (DIUS) published in 2007 a report to the Funders' Forum on "Streamlining University / Business Collaborative Research Negotiations"¹, which makes a number of observations about the way negotiations are undertaken, with messages for all parties involved. Elements of these messages have been repeated in the Government's "Higher Ambitions"² and the CBI's "Stronger Together"³ reports, both 2009. This document provides the University's contract negotiation and pricing policy, recognising the conclusions of those reports.
2. This policy applies to all research and knowledge exchange agreements, whether styled as contracts or not.

B. Contractual Position

3. A distinction should be drawn between the negotiation of the shape of a deal, and the detailed discussion of contractual terms. It is important that the former happens before the latter begins, and that the detail does not drive the activity in an unintended way. In some circumstances it is best practice to use a "heads of agreement" in order to allow resolution of any issues in advance of final agreement preparation.
4. The significant elements of the University's normal position, as expressed in its standard contract terms and conditions, are listed below. These are recognised as a reference point for negotiations, rather than being absolute. Hence each agreement is likely to have variations from this standard position.
 - i) Ability to publish the results of the work, with limited restrictions on time scale (with respect to notice periods and total elapsed time) to enable the protection of the results or for the funder to publish the formal report first;
 - ii) Ability to continue research in the area, working with other relevant organisations;
 - iii) Time-limited mutual confidentiality of the information;
 - iv) No warranty for the results of the work nor their uses;
 - v) Funder to indemnify the University for loss, liability or damage, except for University negligence or wilful misconduct;
 - vi) Full or partial payments in advance, or against key milestones;
 - vii) Termination by 90 days' notice on either side, with payment for all outstanding and non-cancellable costs;

¹ <http://www.berr.gov.uk/files/file41123.pdf>

² <http://www.bis.gov.uk/higherambitions>

³ http://highereducation.cbi.org.uk/uploaded/CBI_HE_taskforce_report.pdf

viii) Either:

- a) Funder ownership of the foreground intellectual property (IP), with a royalty-free, world-wide, perpetual licence to the University for educational and research purposes and for exploitation outside the funder's field of interest, an expectation / obligation that the funder makes positive use of the IP, and agreement that lump sum or royalty payments will be reasonably negotiated in the event of successful exploitation by the funder;

Or

- b) University ownership of IP generated from the activity, with an option (exclusive for a defined period) for the funder to license in relevant fields where appropriate.

In both cases, use of University background IP is additional and subject to negotiation and terms. It is recognised that approaches to IP management necessarily differ between industrial sectors, and the form of the IP.

5. For a number of funders (in particular certain Government and charitable bodies), the University has agreed to accept their standard terms and conditions. These terms will be reviewed on a regular basis by Research and Enterprise Services (RES) to ensure that any variations are identified and addressed if required, potentially in liaison with other institutions.
6. Negotiation of a contract necessarily involves variation from the University's standard position. The decision on acceptability of an agreement (including price) lies with the academic line management (i.e. Head of School, PVC, or VCEG, as identified by the risk assessment process), suitably advised by the investigator(s) and RES.
7. Signature of contracts, tender submissions and similar is by duly authorised officers only, and does not generally include academic staff, Heads of Department and Heads of School. Details of delegated authorities are available from the University's web site.⁴

C. Escalation Process

8. Where agreement cannot be reached between the University and the funder, the matter can be escalated up the academic management line, with advice being taken from more senior staff in RES, as necessary. Escalation should take place expeditiously, to enable agreement, but should not be used so frequently or so immediately that it becomes the norm.

D. Pricing

9. The approach to setting the price of work varies between regulated and unregulated markets. For regulated markets, the basis of the price is already determined, such as being a proportion of full economic cost (e.g. Research Council funding), or directly incurred costs and a fixed proportion contribution to indirect costs (one version of European Commission Framework funding). For work undertaken in unregulated markets (e.g. interactions with industry and with many parts of Government), the price is negotiable, and should take account of the full economic cost of the work, along with

⁴ [Web site address to be added.]

the market value of the activity to the customer and the academic value to the University.

10. Contracts in an unregulated market may be priced at less than cost where there is clear strategic importance to, and agreement by, the relevant school, with recognition that it is therefore subsidising the activity. Pricing at less than cost is generally not advisable when numbers of the standard contractual positions are not met, as this is unlikely to be in the University's strategic interests (e.g. if publication is not permitted, or future research in the area is overly constrained). Also, given that any subsidy is likely to be met from public funds (i.e. the Funding Council core research grant, QR), any potential issues of inappropriate use of public funds should be considered. Under the Charities Act 2006, public benefit will need to be shown, otherwise the activity will need to be treated appropriately.

This policy was approved by Council on 2 July 2010.