

Top 10 Tips on Negotiating Efficiently with Industry

By Sherylle Mills Englander

University-industry collaborations are in an exciting phase, reaching new levels of activity across the country. There are many advantages to both sides in working together – universities are able to provide companies with high quality research on targeted projects on an as-needed basis, while introducing the company to some of the country's best and brightest emerging scientists and engineers. Companies provide streamlined funding opportunities (no formal proposals or nine month peer view periods), potential jobs for graduating students and an opportunity to work on exciting projects that are not necessarily fundable through traditional federal sources. At times, getting that research agreement in place can take significant effort. In this time of doing more with less, an increase in new industry contracts can quickly become a big challenge. How do you get negotiations with industry accomplished in the most efficient manner? Perhaps these Top 10 Tips can help:



1. Did the company send the right agreement? If the agreement does not seem to make any sense or will require hours of detailed revisions, ask yourself whether the company sent the right template. Perhaps the company sent a private consultant agreement, the agreement they use to purchase “widgets,” or, in the case of life sciences, a clinical trial agreement instead of a basic research agreement. In these situations, it is much more efficient to call the company negotiator to request the right template or send your own research agreement for consideration rather than spend hours converting the proffered draft into the “right” agreement.

2. Know when to call and when to email. If you are dealing with overarching principles or complex ideas, if you need to understand why cer-

tain terms were included or if you need to know the other side's expectations, it is usually most efficient to talk on the phone. And before the start of any complex negotiation, a “kick off” teleconference is invaluable to establish rapport and understand the expectations of each side. In contrast, if you are choosing more precise wording or making a series of minor modifications,

sending a revised draft via email will be sufficient. If you try to email about complex ideas, or if you get on the phone describing routine or minor changes, you lose efficiency.

3. Identify true “dealbreakers” up front, before detailed redlines. As a breed, negotiators hate using the word “dealbreaker” since it pretty much ends the normal give and take and changes the dynamic to a “take it or leave it” scenario. That said, if you are truly faced with one or more dealbreakers that your university simply cannot accept, it is better to get on the phone and identify the dealbreakers up-front to see if the company has any flexibility rather than spend hours on detailed redlines, only to have the deal fall through after all that work due to fundamental principles (Of course, let your PIs know if you

are in this situation to prevent them from receiving a shock!). And, sometimes, a project is so close to the company's “crown jewels” that it is simply not appropriate for the open, decentralized university environment. Again, better to know that at the beginning.

4. Know WHY a change is requested and articulate it. Instead of relying on a citation of university “rules”, provide an explanation, with examples, of why the contract term causes significant problems in the university environment, how it can create unreasonable or undesired results, or how it can cause legal angst for the university. Typically, a negotiator does not feel particularly compelled to change standard terms just because the other side has decided to make a unilateral rule about it. Most university policies and practices are based on logical, reasonable rationales and the practical realities of the university research environment – know the rationales and realities and educate your counterpart about them to give the company negotiator a logical basis to make the requested change the first time you request it. And, if you get a change from a company negotiator that you do not understand, ask them for the purpose of the change before getting wrapped up in extensive re-wording or wholesale rejections – sometimes if you know the explanation, a quick solution is right under your nose.

5. Make it easy for the company to accept your change. Sending an email or letter that outlines all of your requested changes (e.g., “in Section 5, change 30 days to 60 days”), instead of a redlined contract, creates a lot of busy work for the company negotiator because each agreed-upon change has to be entered manually by the company negotiator into the draft agreement. In this situation, it is only human for an overworked

What's on my DESK

David Kennedy's Desk

My desk has been a mess since February 1. That is the date that the Office of Management and Budget (OMB) published proposed updates to the administrative, costing, and audit circulars. Eight federal circulars applicable to higher education institutions, state, local and tribal governments, and nonprofit organizations were combined into a consolidated circular – i.e., “OMB Circular A-81.” The OMB proposed guidance, plus supplementary materials, totaled over 700 pages of voluminous federal text, requiring a page-by-page read, analysis, and comment. Thankfully, responding to the OMB proposed guidance was not a one-man job. COGR Board and Committee members, plus at-large volunteers from the higher education community, worked as a team to produce a 104-page “COGR Response” to OMB. Comments were due on June 2nd, and now the waiting game begins. Since it may take months for OMB to review the comment letters and reach out to our community, this should give me plenty of time to clear my desk.

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negotiator to resent making any changes at all. Make it easy for your counterpart to accept your requests by sending a redlined draft of the agreement. If a modification to the language is needed, take the time to draft new language directly into the agreement so the company negotiator does not need to spend time creating the language necessary to accommodate your request. They can then quickly “accept” or “reject” as they read through the draft. (Hopefully doing more “accepting” than “rejecting”!)

6. Put explanatory comments directly into the draft agreement. Just like you, a company negotiator will often need to get approvals on changes from multiple sources. Putting the background of why you need a particular change directly into the draft agreement next to highlighted change (i.e., using the “Comment” feature in Word) saves you time by allowing you to comment as you draft and eliminating the need for you to draft an explanatory cover email or letter. The company negotiator is also able to communicate the background to his or her stakeholders efficiently since the comments are incorporated directly into the draft agreement. Help the company negotiator by using a form that lets the people “behind the scenes” immediately understand and evaluate why the request was made without the need to refer to multiple documents or communications (Make sure to tell them in your cover email that the comments are in the agreement!).

7. Enlist the help of your PI. It is fairly unusual for contract negotiators to know each other before the negotiation. In contrast, there is a good chance that your PI already knows his technical contacts at the company from previous projects, conferences or even graduate school. And, the company’s technical contacts were graduate students themselves and often understand the university’s core academic needs, such as protecting the right to publish. If the company’s technical contacts understand the negotiation challenges, they may be willing to work closely with the company negotiators to find work-arounds.

8. Know the company’s history with your university. Did they sponsor research before? If so, can you simply use the same terms as the last agreement? Nothing is simpler or more efficient if you can do that. If you have a solid agreement from a previous interaction, let the company negotiator know you are willing to bypass negotiations and work under the same terms as last time. There’s a good chance they will appreciate your efficiency.

9. Consider master agreements, when appropriate. If you work regularly with a particular company and have arrived at a set of terms that work well for both parties, consider putting a master agreement in place. Master agreements let you add new projects through a simple amendment or task order – once the scope of work and budget are agreed-upon, just add it to the master and get started on the research!

10. Use your NCURA connections! If you are experiencing negotiation challenges and know another university has worked with the same company, reach out to that other university. There’s a good chance they may have already faced the same challenges – and perhaps even solved them. After over a decade in this field, I can definitively report that legal constraints may have limited the amount of information that could be provided, but I have never had a plea for help go unanswered from an NCURA colleague. You have a great community – let them help you! [N](#)



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