Receiving Awards from Foreign Sponsors

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Foreign Sponsors & Activities

- Accepting foreign funding for either domestic or international Sponsored Research can pose unique challenges.

- Many business and cultural differences can affect the project logistics and intent of the relationship.

- Funding may be subject to foreign laws, regulations, and practices that conflict with U.S. standards. Don’t assume anything.

- The world is still a pretty big place! Many social norms may exist that differ from our own, and risks can be present in all shapes and forms.

- Global relationships and international diplomacy climates can shift causing trickle-down effects.
Case Study #1

• Prof. H2O is a high-profile researcher in the field of natural conservation.

• She and her team will travel to Myanmar to study natural water sheds and how local businesses can benefit from sustainable water management practices.

• The Sponsor is a large NGO with worldwide reach and is interested in promoting a “green” economy in the emerging country.

• The study will last 3 years and includes several field trips to rural areas of Myanmar.
Case Study #1: Risky Terms

- **Sanctions Relating to Myanmar** Grantee represents and warrants that it will comply with all applicable sanctions, export, and similar laws and regulations and that it will carry out the Project Activities in compliance with those laws and regulations, including but not limited to the Executive Order of July 11, 2012, “Blocking Property of Persons Threatening the Peace, Security, or Stability of Burma.” Grantee will take all necessary steps to ensure that it does not and will not provide material support or resources, or enter into any transaction with, any individual or entity whose property and interests in property are blocked under government sanctions relating to Burma.

- **Government Officials & Employees** As limited to the performance of the Project, Grantee hereby certifies that no assistance, project funds, or anything of value (monetary or non-monetary), shall be made, promised, offered in contravention of any applicable law or regulation.
Case Study #1: Risky Terms

- **Compliance and Laws**  Grantee agrees to comply with all applicable laws, including all local labor and *social laws*. Further, Grantee accepts sole responsibility for any claims arising from any alleged non-compliance with laws.

- **Indemnification**  Grantee hereby indemnifies Sponsor against any claims, losses, damages, and other liabilities, arising in connection with this Agreement, except to the extent the claim, loss, damage, or other liability is due to the fault of Sponsor. Grantee will not be liable for any indirect, consequential, punitive, exemplary, or special damages of Sponsor.
Case Study #1: Risk Analysis

- Myanmar ranks 156 out of 175 countries on the 2014 transparency international corruption index. Export control officials and customs brokers are often involved in corruption and requests for bribes.

- Project personnel were planning to stay in Myanmar for extended periods of time, needing significant amounts of cash to travel through the country.

- No subcontractors or consultants needed to be hired.

- Study was observational only for water management data collection.
Case Study #1: Mitigation Plan

- Anti-Terrorist Compliance Plan Training for PI and project personnel.

- Cross-referencing every project expenditure with Office of Foreign Assets Control (OFAC) sanctions list.

- Cash expenditures limited and receipts kept for cross-referencing.

- PI’s School agreed in writing to accept unknown financial liability of one-way indemnification to Sponsor.

- Ultimately, as a U.S. entity we are subject to U.S. laws and sanctions anyways, and any contractual risks towards the Sponsor were in addition to our federal obligations. The department agreed to be responsible for the medium risk terms of the Sponsor’s contract.
Case Study #2

- Dr. Wonderful has been awarded a contract from an international non-profit to study effective TB treatment options in the Democratic Republic of Congo.

- The study team will collaborate with the Sponsor on travel logistics and local village patient recruitment and treatment.

- The Sponsor has a special division devoted to coordinating international programs in the DRC due to the exceptional safety risks.

- The PI has not worked with this Sponsor before, yet regularly travels to other high-risk countries for her research.
Case Study #2: Risky Terms

• Responsibilities and Obligations Sponsor will provide support of the project for matters of coordination, translation, and logistics. A pre-deployment briefing will include a security assessment to managing personal safety and security in the field, establish clear guidelines, and behavioral recommendations. Grantee and Grantee’s Agents will work in good faith with Sponsor and will agree to reasonably follow Sponsor policies while in the field, provided that such policies and guidelines do not conflict with Grantee-mandated policies and guidelines which will take precedence in the event of conflict to Grantee and Grantee’s Agents. Notwithstanding the foregoing, Grantee and Grantee’s Agents shall follow Sponsor’s security guidelines and mandates while in Africa for the project.

• Indemnification Each party shall be responsible for its negligent acts or omissions and the negligent acts or omissions of its employees, officers, directors, students, agents, or representatives to the extent allowed by law.
Case Study #2: Risky Terms

• **Waiver and Release** Grantee shall ensure that all individuals who are physically present at the project location sign and deliver the Waiver and Release Form. Grantee acknowledges that there are unusual and grave risks of serious bodily injury, illness, death, and property damage or loss in participating in the project. These risks include communicable disease, acts of terrorism and war, acts of random violence, exposure to chemical or biological weapons, hazardous travel conditions, and other risks.

• **Liability** Except for such workers’ compensation benefits, Grantee personnel hereby waives, releases and discharges Sponsor from liability for bodily injury, illness, death, and property damage or loss related in any way to travel to or from or presence in Africa. No action taken by Sponsor, whether by providing Grantee personnel with rules and directions, medical care, or otherwise, shall constitute an assumption by Sponsor of liability to Grantee personnel.
Case Study #2: Risk Analysis

- Sponsor has their own code of conduct policies regarding security and safety while in the DRC and Stanford personnel will follow their instructions while on-site (however at any time Stanford personnel can follow Stanford's policies in the event they feel uncomfortable with Sponsor's policies or such policies conflict with Stanford's).

- Sponsor cannot provide outright indemnification for their safety instructions and practices, per their non-profit status.

- Project personnel are required to sign a waiver of release against Sponsor before travelling.

- The international location and duration in the Congo was something considered exceptionally risky.
Case Study #2: Mitigation Plan

- Regardless of the individual Waiver and Release Form, Stanford employee's are still protected from individual liability under the blanket protection between the Institutions.

- Stanford carries emergency international evacuation insurance. Additional insurance was purchased by the Department for this project.

- The PI registered the trip with the U.S. Department of State and the Office of International Activities here at Stanford to ensure additional coverage while in the Congo.

- Obtained and reviewed Sponsor’s security and safety policy guidelines to confirm adequate coverage and information in-line with Stanford policies and practice.
Case Study #3

- Dr. Smith will be a collaborating site under a clinical study to test a blood-thinning drug (over-the-counter) in patients with a special heart condition.

- The protocol was written by a popular U.K. University. The funding is provided by a U.K. Foundation.

- Dr. Smith will be contributing patient information to a centralized study database, created and managed by the U.K. University.

- There are other international Site’s that will be recruiting patients and collaborating with Dr. Smith.

- All Site’s will sign a single collaboration agreement.
Case Study #3: Risky Terms

• **Payment** The Grant is paid in installments in accordance with the milestone payment plan agreed between the Parties. The total available funding amount for each Site is £100,000, and any currency conversion rate will be effective as of the date of each separate payment.

• **Fees** The Sponsor does not accept and process invoices, and VAT, interest, default interest, bank and payment fees, etc. cannot be added to the installments, and such expenses are therefore payable by each individual Site.

• **Information Sharing** Each Site confirms that by signing this Agreement the Site will adhere to the legal principles of information sharing, including but not limited to the principles set out in the Data Protection Act 1998.
Case Study #3: Risky Terms

• **Privacy** The Human Rights Act of 1998 provides that the Sponsor may infringe on a patient's private information in the interests of national security, public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

• **Order of Precedence** In the event of any conflict between the terms of this Agreement and the appendices, the latter shall prevail. If there are any inconsistencies between the original language version of this Agreement (including the appendices) and any translated version, then the original language version shall prevail.

• **Governing Law** This Agreement will be governed by and interpreted in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.
Case Study #3: Risk Analysis

- Conversion rate of GBP to USD can vary depending on the global climate on the date of transfer. A longer period of performance could significantly reduce the overall funding.

- Wire transfers incur bank processing fees that could be charged to the project budget without proper consideration.

- Consent of patients is “Opt-In” under the Data Protection Act of 1998 and requires significant data security, use, and privacy obligations. Opposite of U.S. standards.

- U.K. English version contains confusing terms with different intent and interpretation.

- While the U.K. is relatively low risk, consider the place of performance and the logistics of going into disputes/trial with them.
Case Study #3: Mitigation Plan

• Limited number of payments to reduce risk of conversion loss and minimize wire transfer fees

• De-identify U.S. patient data before sending to Sponsor to eliminate burdensome privacy and protection laws. Required a revision to the scope of work.

• Standardized U.S. English version of Agreement for purposes of Stanford’s involvement.

• While project location was at Stanford, institutional relationship with Sponsor was good and risk of any formal disputes or trials was low enough to accept Agreement.
Summary

Know your sponsor
• Is the country/sponsor in good standing with the U.S.?  
• What regulations are they subject to?  
• What are their standard business practices?

Know your project
• Is the work observational or invasive?  
• What are the deliverables?  
• Location, Location, Location

Know the bigger picture
• Do U.S. laws apply regardless of contractual obligations?  
• Does your institution have any policies or relationships which may be influential?  
• Who is to benefit from the science?