

Heads of Terms Checklist for a Partnership Agreement

What are heads of terms?

The aim of these heads of terms is to help consortium members to agree the key legal and governance principles that underpin the consortium. It also helps to flush out any key issues which could lead to disagreements further down the line.

For music hub consortia a well-developed heads of terms can be drawn on to demonstrate in the ACE application their approach to the partnership and delivery of the music hub activities, particularly in the sections on partnerships and governance and management, as well as the partners table.

It will also make it much easier to draft the partnership agreement (setting out in more detail many of the heads of terms principles) which ACE will require to see before disbursing any funding, helping to avoid protracted negotiations at the post award stage when time is tight.

We have set out some of the key provisions we would expect to see in heads of terms below.

How can we use these heads of terms?

The idea is that you go through each of these terms, working up an agreed approach between the consortium parties.

Once these have been fleshed out you may want to make these legally binding, or at least those terms which have the most relevance over the next few months before the collaboration is place, by including them in a legally binding agreement (sometimes called a bidding agreement).

You can then leave the other provisions as a statement of intent in this agreement to be developed further and included in the more detailed partnership agreement.

This helps the parties ensure that certain issues, like the obligation to respect each other's confidentiality, are legally binding during the period up to the award being made.

How can we help?

Bates Wells can help with preparing more detailed heads of terms tailored to your consortium, as well as preparing a bidding agreement and a partnership agreement.

We can also help prepare some of the policies/documents which ACE require such as a commissioning policy and a data sharing agreement.

If you want to talk through these with us you can do so through the Music Mark 1-2-1 support session by contacting **Gary Griffiths**.

If you have already taken advantage of this session and/or would us to help with any follow on work or to draft any of these documents, please do get in touch with **Augustus** or **Erica** at Bates Wells.

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Sample heads of terms

Purpose of consortium	set out the aim of the consortium and how it links to the activities to be delivered and whether/how its scope extends beyond the ACE grant
Compliance with ACE grant terms and monitoring/reporting requirements	identify the lead organisation and its obligations under the head agreement; agree the allocation of an appropriate share of the risk for each delivery party to take on; set out provisions relating to key obligations in the head agreement such as reporting, monitoring, intellectual property, data collection and branding
Bidding process	set out the rights and obligations of the parties in the bidding process
Governance, communication and decision making	set out how the consortium is managed and decisions made and recorded by delivery partners – for example, the roles, responsibilities, obligations and contributions required of each party, the terms of reference for the steering group; the role, composition and terms of reference for the hub board and how it relates to the steering group
Communication	set out how communication will be maintained between the parties and how external communication is managed
Delivery	set out clear, measurable deliverables setting out who will do what and by when

Payment

set out clear payment mechanisms (including timeline) linked to delivery with clarity on how the lead manages payments, and what deliverables to be completed before payments made. In particular, clarify % of HLO costs and how calculated, with a mechanism for any additional HLO costs

Performance

set out standards for performance, monitoring of and rectifying poor performance

Intellectual property (IP) and branding

set out how IP is owned and used, including IP developed during the agreement (e.g. relating to the consortium as a whole such as the consortium's branding and that relating to local activities developed by each of the parties) and pre-existing IP. This will need to link to exit/entry (below) – as the consortium will need a framework for what happens to IP related to the partnership after termination

Exit/entry

deal with any conditions attached when a party leaves the consortium and how new parties are admitted

Confidentiality

set out provisions governing disclosure of confidential information

Liability and indemnities

agree how liability is shared between parties – for example by linking it in proportion to the funding received and level of services provided - and dealing with non-performance

Duration and termination provisions

set out how the partnership can be brought to an end - when, by whom and for what reasons, and what happens to assets (e.g. property, staff, data) after termination

Insurance

set out what minimum levels of insurance parties should have in place and how this is linked to limitation of each party's liability

Exclusivity

agree if/how parties can work with other organisations on competing bids/activities

Disputes

set out procedures to deal with these e.g. mediation

Staff

agree who employs/supervises any employees taken on to support the consortium's activities and who has responsibility for them on exit/termination

Policies and procedures

set out required policies and minimum requirements (note the minimum ACE requirements for these)

Data privacy

set out how parties collect and share personal data to ensure legal compliance (note ACE's recommendation for a data sharing agreement – this could be a free standing agreement or part of the partnership agreement)

Changes and variations

agree how to changes and variations to the agreement can be made



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