



Beyond the Handshake: Key Issues in Management of International Agreements and Contracts

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KEY ELEMENTS OF CONTRACTS


What is a contract?

- A legal obligation between two or more parties.
- AIRC's Resource Library, a free resource for members, includes sample agency contracts

[Konitshek](#), 2015



A contract defines...



How	<ul style="list-style-type: none">• Expertise• Tactics
Who	<ul style="list-style-type: none">• Help meet goal• Expand capacity
What	<ul style="list-style-type: none">• Goal• Limitations

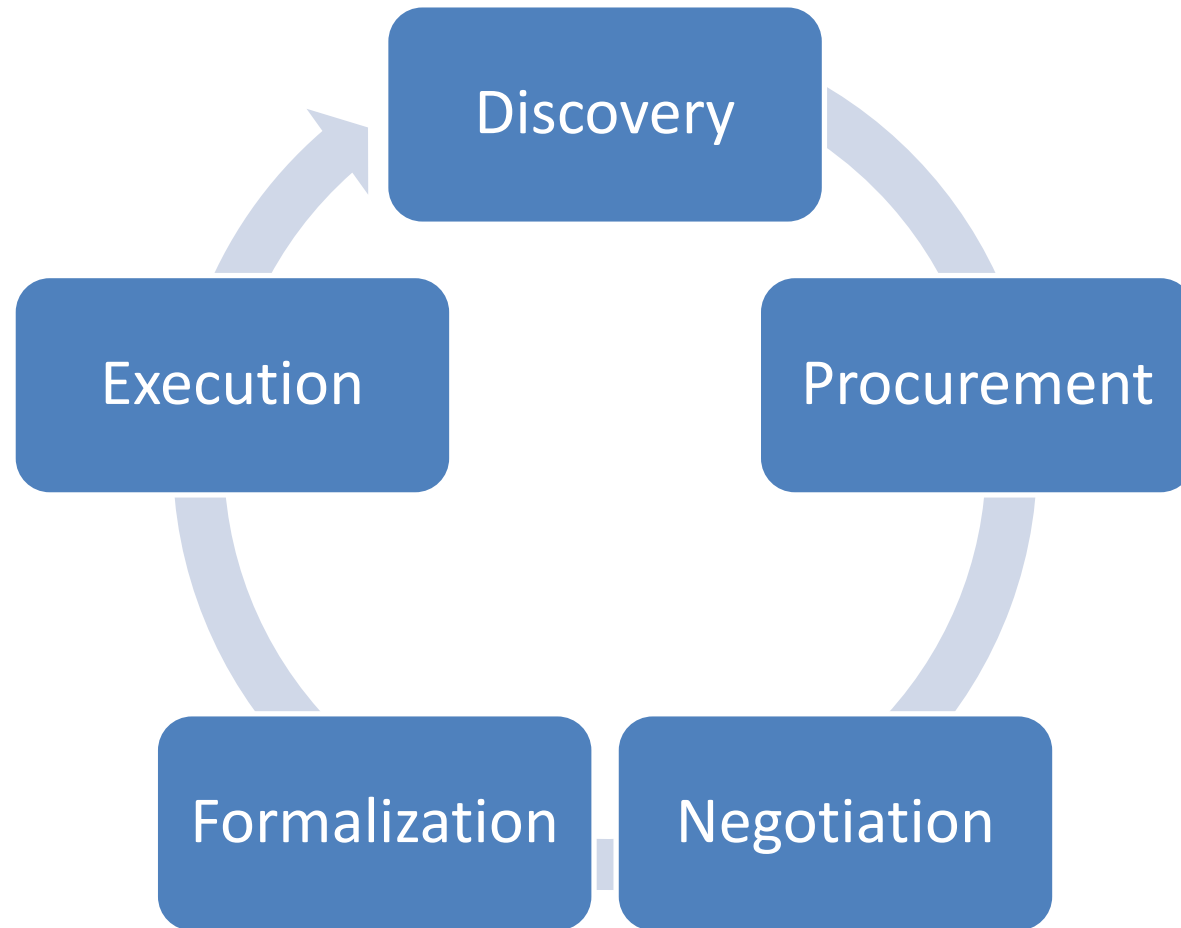
9 Key Elements of Contracts

- Finances and Incentives
- Mediation and Modifications
- Information and Resource Sharing
- Governance and Interpretation
- Evaluation
- Duration and Termination
- Parties
- Obligations
- Protections (Insurance, Indemnification)



CORE PHASES OF THE CONTRACT LIFE-CYCLE

Contract Life-cycle



Adapted from International Association for Contract and Commercial Management, 2013

Discovery Phase

- What needs are we trying to meet?
- What risks are we trying to avoid?
- How do we compare to our peers?
- Is this initiative a good fit for us?
- Do we have internal and external approval to move forward?



Procurement Phase

- Must we issue a Request for Proposals (RFP) or can we justify this contract as a sole source?
- Can parties deliver on what they propose?
- How will we evaluate proposals?

UMBC
AN HONORS UNIVERSITY IN MARYLAND

**REQUEST FOR PROPOSAL
FOR
DESIGN/BUILD CONTRACTOR WITH GMP
FOR THE
PATAPSCO HALL ADDITION PROJECT
AT
THE UNIVERSITY OF MARYLAND, BALTIMORE COUNTY**

RFP #BC-20632-T
ISSUED: OCTOBER 8, 2009

PRE-PROPOSAL MEETING:	Monday, October 19, 2009 at 3:00 p.m. Engineering Lecture Hall #5 University of Maryland, Baltimore County (See http://www.umbc.edu/aboutumbc/campusmap/) (Note: The site visit will be conducted in conjunction with this meeting.)
TECHNICAL PROPOSAL	Monday, November 2, 2009, on or before 4:00 p.m. UMBC PROCUREMENT OFFICE 1000 Hilltop Circle, Room 301- Administration Building Baltimore, Maryland 21250
PROCUREMENT/ISSUING OFFICE:	UMBC Procurement Office University of Maryland, Baltimore County 1000 Hilltop Circle, Room 301 Administration Building Baltimore, Maryland 21250
PROJECT MANAGEMENT:	UMBC Office of Facilities Management University of Maryland, Baltimore County 1000 Hilltop Circle Baltimore, Maryland 21250

NOTE: All Addenda to this procurement will be posted on the UMBC Procurement website. All potential proposers must notify the Procurement Office of their interest in order to be kept informed of any and all information regarding this procurement. Please contact **Terry Cook** via e-mail at tcCook@umbc.edu and provide the Name of your firm, Address, Contact Person, Phone Number and E-mail Address.

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Negotiation Phase

- Who has authority to negotiate?
- What is our negotiation stance?
- What is our Best Alternative to a Negotiated Agreement (BATNA)?
- What is the other party's BATNA?

[Konitshek](#), 2015

CONTRACT NEGOTIATION STRATEGIES

-  1. Break the negotiation into pieces
-  2. You're only asking for what's "fair"
-  3. Look beyond the negotiating party to see what or who the real interest is.
-  4. Control the location, timing, topic and pace of the negotiation.
-  5. Wiggle Room. Your negotiation position should always leave you room to offer concessions.
-  6. Prioritize your revenues and risks.
-  7. Research the negotiation. Information is power and power gives you leverage.
-  8. Use facts, not feelings during the negotiation.

POWERED BY **LAWGIVES**

Formalization Phase

- Issue and accept final contract.
- Identify key contacts.
- Update publications, webpages, etc.
- Establish onboarding schedule.



Execution Phase

- Execute terms of agreement.
- Maintain communication.
- Review opportunities, threats and results regularly.
- Assess for renewal.

Farcus

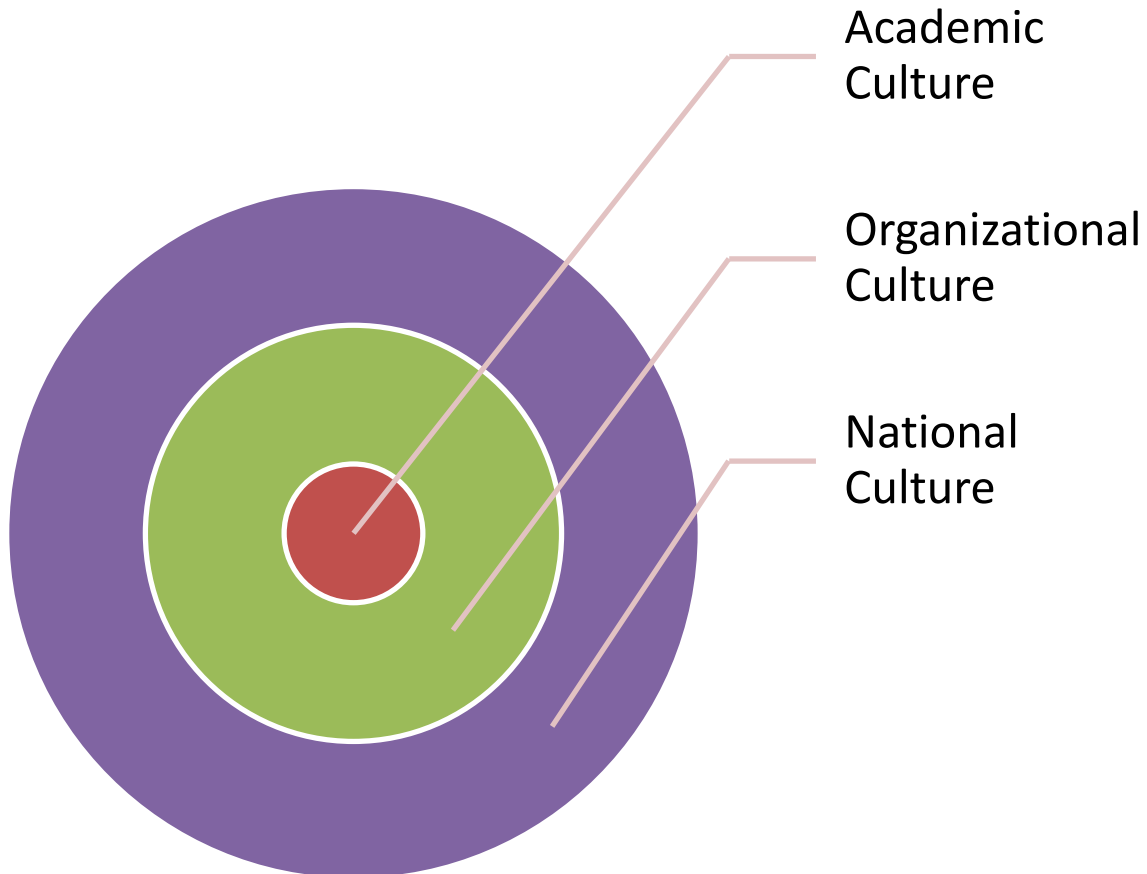
by David Waisglass
Gordon Coulthart



"What conflict of interest?!
I work here in my spare time."

NEGOTIATING CONTRACTS ACROSS CULTURES

Cultures Influencing Negotiations

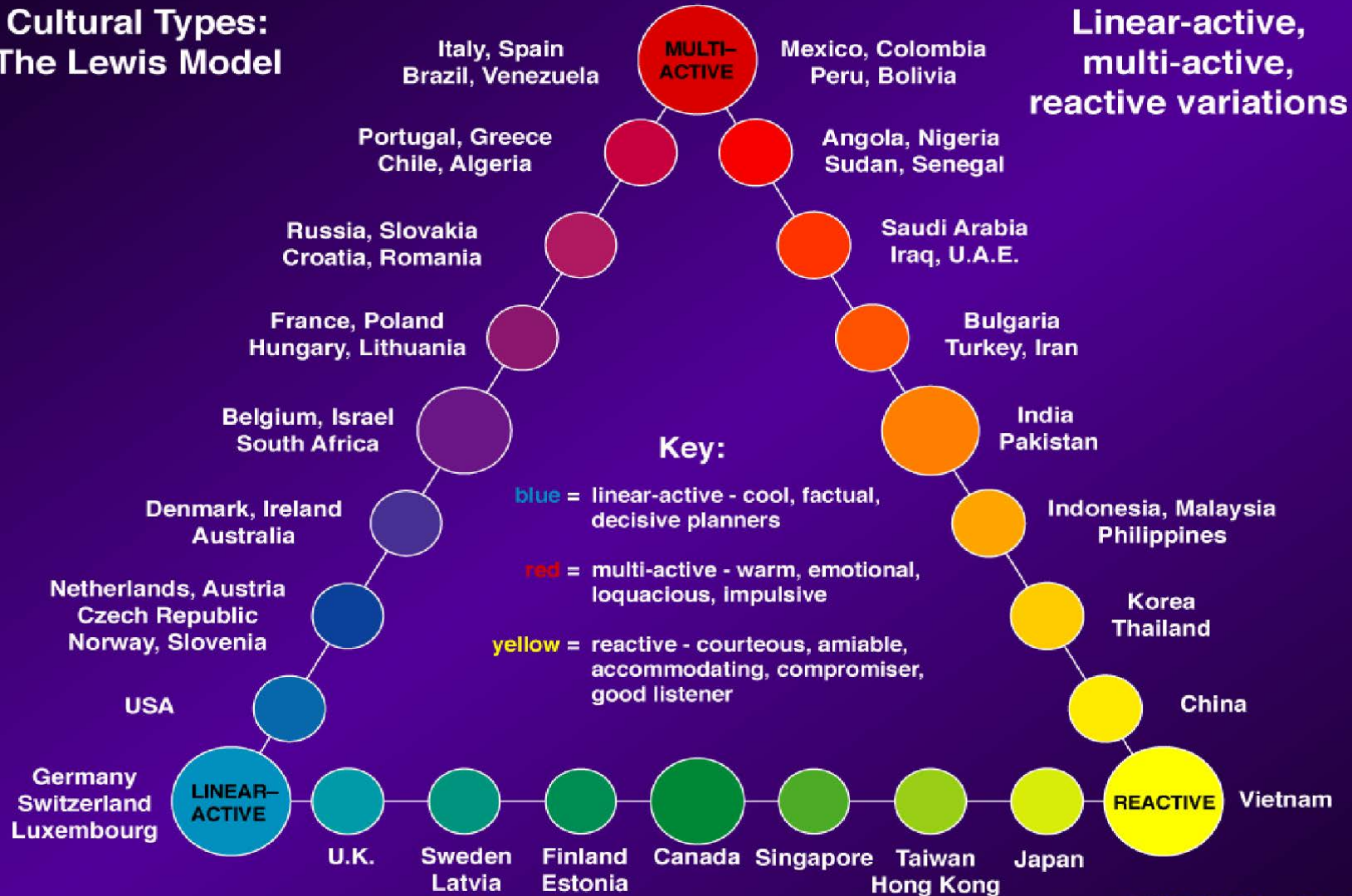


The Impact of Culture on Negotiation

Trait

Goal	Contract ↔ Relationship
Attitudes	Win/Lose ↔ Win/Win
Personal Styles	Informal ↔ Formal
Communications	Direct ↔ Indirect
Time Sensitivity	High ↔ Low
Emotionalism	High ↔ Low
Agreement Form	Specific ↔ General
Agreement Building	Bottom Up ↔ Top Down
Team Organization	One Leader ↔ Consensus
Risk Taking	High ↔ Low

Cultural Types: The Lewis Model



© 1998, 2012 Richard D Lewis

University Perspective

Jane Gatewood, PhD

Vice Provost for Global Engagement

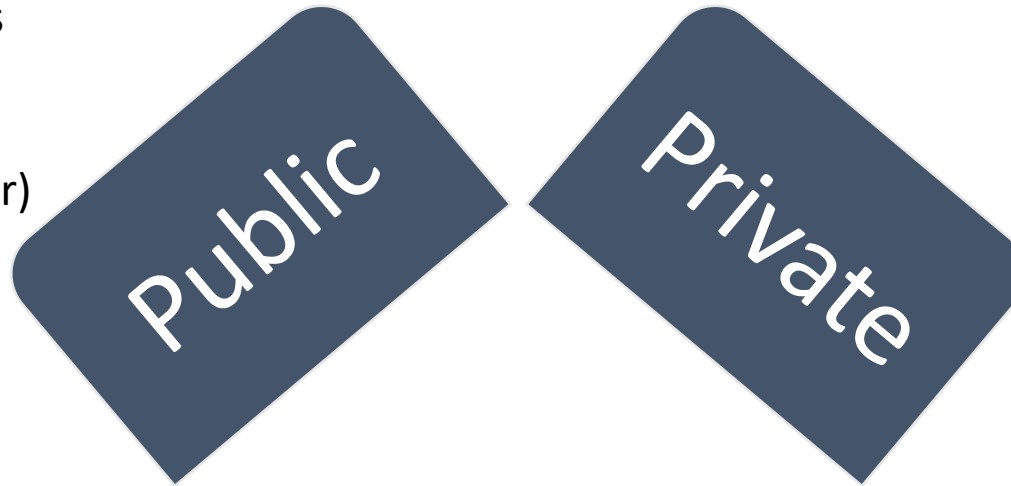


UNIVERSITY of
ROCHESTER



Institutional Type & Contract Management

- May reject indemnification and hold-harmless clauses
- Signature authority may extend from state (via a Board of Regents or similar)
- Sovereign immunity or other state/province-specific regulatory clauses may be present
- May be subject to “open records” and state or national retention practices



- May have specific criteria for insurance minimums for third-party providers, e.g. \$1mil USD liability coverage
- May have standard indemnification and hold-harmless clauses

Contract Management in Higher Ed

Review

- Dependent upon organizational model
- Good practice = international office coordinating review
 - Legal counsel, research, procurement, etc.

Signature Authority

- Dependent on organizational model
- Good practice = establish signature authority for international agreements and contracts and follow consistently

Retention & Archiving

- Dependent on organizational and institutional model
- Good practice = follow existing institutional practices for contracts & agreements; if none exists, work with counsel and univ archivist to create

Agreement Types

“Agreements of Intentionality”

- Letter of Intent (LOI)
- Memorandum of Understanding (MOU)
- Collaboration Agreement
- Cooperation Agreement
- Affiliation Agreement

“Agreements of Implementation”

- Joint Teaching
- Joint Research
- Student, Faculty, & Staff Exchanges
- Cooperative Degrees
- Degree-delivery agreements
- In-country offices/operations agreements

Source: Gatewood & Sutton, “[International Partnerships: Definitions & Dimensions](#),” *ACE Internationalization in Action*, 2016: 15-17.

Agreements of Intentionality: when to use?

There has been significant discussion among potential partners and all relevant decision makers on both sides are in agreement.

&

The institution has clear goals for engaging with the partner, and will soon (if not immediately) be moving toward one or more implementation agreements.

&

Goals or conversations cannot continue without a formalized general agreement

OR

Signing an agreement serves some larger public relations or diplomatic purpose

Source: Gatewood & Sutton, "[International Partnerships: Definitions & Dimensions](#)," *ACE Internationalization in Action*, 2016: 16.

Agreements of Implementation: when to use?

When either (or both) party will commit significant:

Time

Resources

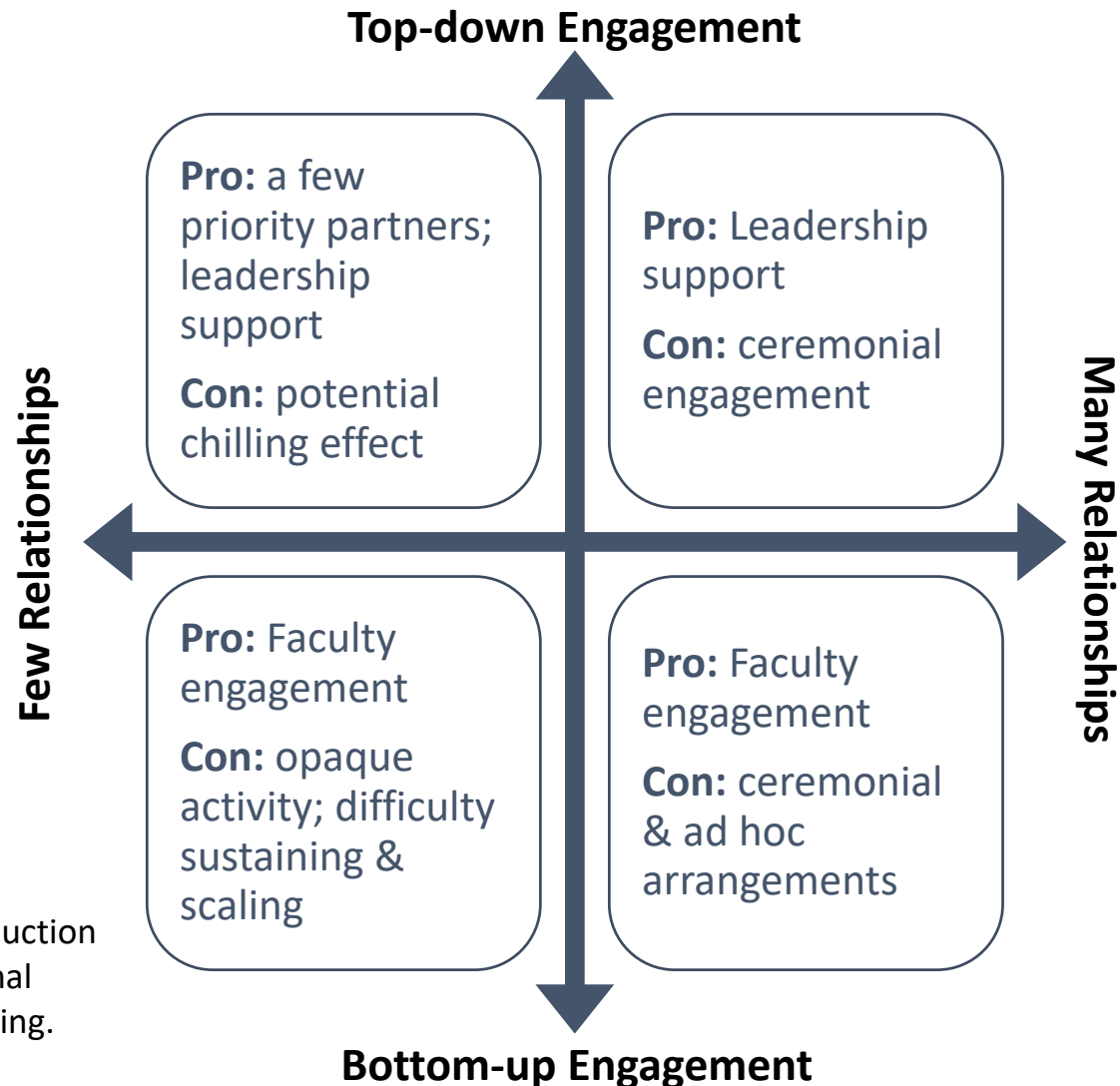
Facility Access

Curricular
Development/
Support

Other specific
commitments

... ideally, for a regularized period of time.

Partner Engagement Framework



Source: Jane Gatewood, "Introduction to NAFSA's Series on International Partnerships," NAFSA: forthcoming.

AIRC Perspective

AIRC as a Standards Development Organization

- 40 Standards
- Certification
- Best Practices for Institutions

Common Points of Tension Observed

- Transparency (Website and Publications)
- Training and support expectation
- Designated contact person
- Application/Enrollment Processes
- Placement Policy or Conditions
- Legalities (Liabilities)

Contracts Outline Responsibilities

Agency's Responsibilities

- Recruit students (non immigrant status) in accordance with University procedures, requirements and programs
- Provide prospective students with accurate information about University academic program requirements, U.S. immigration regulations
- Recruit students in an honest, ethical and responsible manner based on AIRC standards
- Assist student applicants through all the application process to ensure students are in possession of all evidence and documents required for application
- Only undertake promotional and marketing activities expressly authorized by the University
- Take no action that will result in the University being in non-compliance with U.S laws, regulations or national laws or regulations of the country in which the Agency operates

Institution's Responsibilities

- Provide the agency sufficient information about the University to enable it to conduct its services
- Communicate any changes made to policy and procedures
- Continuously provide new and updated promotional materials and information

Contractor Fees

- University Commission rate or
- Percentage of U.S. non-residential tuition paid in full by enrolled students
- Marketing Allowance
- Flat-rate
- Commission

Discussion