SWISS HLG
MORE THAN NETWORKING

GOOD PARTNERING PRACTICES

VERSION 1.4

AN INITIATIVE OF THE

SWISS HEALTHCARE

LICENSING GROUP

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Dear Colleagues,

In 2015, the Swiss HLG introduced the Good Partnering Practices (GPP) initiative through talking tables. This initiative has been further presented and discussed at various conferences in Europe such as the Swiss HLG Winter Conference, the German PLCD and the EPLS in Brussels in 2016 and Madrid in 2017.

The valuable contributions from over 500 business development executives are gathered in these "Good Partnering Practices" and we are proud to share them with you. We have grouped them in different chapters which give you a SCENIC overview of the deal process:

SCENIC chapters:

- SCouting and Prospecting
- Evaluation and Due Diligence
- Negotiation and Execution
- Integration & Alliance Management
- Conflict Resolution and Termination

We hope that these guidelines will facilitate your business development and deal making activities.

Enjoy the read!

Swiss HLG

Good Partnering Practices

Ensure internal alignment and readiness

- Define deal strategy in line with overall organization strategy
- Ensure internal alignment on deal strategy and readiness to enter into a transaction
- Clearly define targets, based on ideal matching criteria, thus fulfilling own strategy (in or out-licensing targets)
- Conduct necessary research to obtain market data on the product/technology/indication
- Perform own valuation of the asset (e.g. NPV, benchmark)

Prepare Materials and Documentation

- **Constitute team with required partnering expertise. External support and expertise could be considered**
- Prepare all materials before engaging into any scouting & prospecting activity (e.g. executive summaries, teasers, presentations)
- Categorize materials into non-confidential and confidential ones
  Create checklists if you feel they are useful (for scouting or prospecting - screening, discrimination factors, "killer" questions to evaluate targets)

Initial Interaction

- Allow sufficient time to get to know each other and evaluate potential strategic and cultural fit
- Favor face to face interaction as early as possible in the discovery process (including on-site visits when possible)
- Ensure preparation and readiness for first meeting e.g. agenda, attendees, objectives
- Be ready to share any needed material
- Define communication channels & points of contacts

Ensure Mutual Qualification

- Qualify the interest and motivation of the other party's organization
- Qualify the other party's capabilities (e.g. track record, expertise, resources, network)
- Share transparently objectives and expectations for potential transaction
- Align on scope of collaboration and potential deal structure (e.g. exclusivity, geography)
- Ensure that you discuss with the right stakeholder and that upper management is fully aligned and supportive
- Clarify (by asking) the decision-making process including the timing and the different stakeholders involved (e.g. board reviews)
- Do not enter into confidentiality prior to successful initial qualification/alignment (however, disclose enough to qualify each other)
- Discuss and agree on when to switch into confidentiality
- Ensure a mutual understanding of terminologies and key next steps
- Commit to giving feedback in case there is no interest to pursue in a reasonable timeframe.
- Ensure commitment of the other Party to enter into a transaction
- Ensure the other Party commits to opened, transparent, timely communication and undertakes to provide prompt and honest feedback
- **Agree to proceed with further discussions according to GPPs**

Good Partnering Practices

Non confidential vs confidential stage

- Parties should consider the different cultural approaches to confidentiality and more specifically the various understanding of the importance to execute a CDA
- Differentiate between critical & confidential information and non-critical & non-confidential elements
- Establish internal guidelines on what and how to communicate before CDA is signed
- Reasons & context of transition from non-confidential to confidential exchanges have to be explicitly discussed:
  - What do we want to discuss further?
  - Does it really require a CDA?
  - What are the mutual intentions?
- Potential licensee should list information needed and evaluate with licensor what truly requires to be protected.
- Switch from non-confidential to confidential has to be formalized via a CDA (Confidential Disclosure Agreement)

In any case, Trust remains the cornerstone of any discussion, with or without CDA.

Confidentiality Disclosure Agreement

- Generate template(s) of CDA of a reasonable size (i.e. longer is not always better)
- Adapt CDA to actual case (e.g. unilateral versus bilateral, duration)
- Envisage staggered disclosure of information to protect very sensitive information and manage resources. Establish related framework and prepare CDA template
- Envisage use of third party expert to review (to prevent "contamination").
- Have both business and legal review CDA
- Have CDA signed by people knowledgeable of and accountable for the commitments; **this may include checking entitlement of signatory(ies) (e.g. power of attorney)**
- Potentially execute internal insider confidentiality agreement and/or establish firewall

Preparation/Capabilities/Commitment/Rules of Interaction

- **Set-up a due diligence Team led by BD function**
- Ensure adequate resources for the process
- Ensure commitment of both sides to a potential deal (ideally, identify decision-makers/champions)
- Importance of preparation meeting (with check list)
- Communicate list of questions ahead of meeting
- Agree to regular updates and feedback
- State broad principles for mutual respect

Good Partnering Practices

Information Sharing

- Generally, an E-data-Room is recommended as less resources-intensive (especially, if licensor is SME)
- Possibly have a third party "stress-test" the data-room, before providing access to potential licensees
- Have a standard table of contents for E-data rooms (allowing flexibility for technology, stage, etc…)
- Allow printing/downloading to facilitate review, but keep track of activities
- Importance of introduction and guidance by Licensor
- Added value of on-site DD, especially for:
  - technical assessment (e.g. manufacturing)
  - people interaction
- Have guidelines for maintaining confidentiality about ongoing negotiations and for issuing public communication about a signed deal
- **Debrief due diligence process after deal is signed (external debrief can be of interest but not always accepted)**

Good Partnering Practice

Communicate each party's objectives and processes

- Transparently present company's strategy, organization and employees responsibilities and background.
- Explain decision making power & process (in particular in the case of auction), including role and responsibilities of negotiators from each side.
- Pro-actively communicate in case of changes in company's objectives, processes or organization during the negotiation

Appoint a deal champion

- Deal champion to be appointed to:
  - advocate the other party's position in its own company
  - consolidate feedback (both internal and external)
  - expedite the process as needed
- The champion must have either decision-making power or experience to take positions, which have a high probability of being validated through the internal approval process

Negotiate with good faith and ethics

- Share mistakes and obvious inconsistencies which can lead to future disputes on interpretation
- Be mindful of cost and importance of the negotiation for the other party (e.g. external attorney fees)
- Share if an individual from one party has insights on the other party (e.g. has been working in the company before, understand the language from the other)
- Use of track changes in a transparent way

Use term sheet as a non-binding instrument

- Use term sheet as a tool to:
  - align on deal objective and to qualify the deal structure
  - document and summarize the discussions
  - highlight deal breakers
  - facilitate negotiation of the definitive agreement
- In the term sheet discussion, involve only BUT all functions, who have input critical for the deal structure and final decision making
- Use other instruments such as Memorandum of Understanding (MOU) or Letter Of Intent (LOI) in case the execution of a binding pre-contract (other than CDA) is needed, while ensuring up-front understanding and agreement on terminologies & objectives of such tools

Meet face to face

Face to face negotiation meetings are essential to:

- build relationships and trust (at least one face to face between lead negotiators before initiating the negotiation discussions)
- discuss deal breakers
- re-clarify company objectives
- expedite the finalization of a definitive agreement

Good Partnering Practices

Plan Integration

- BD&L is not only about closing the deal; integration and implementation are often underestimated within the BD&L community
- Critical importance of the integration phase. Planning of post-closing activities needs to start ahead of deal execution. Integration and implementation plan has to be ready at the time of deal signing
- Integration represents one specific aspect of Alliance Management (AM) activities – this initial role is short term and process driven and should be completed as quickly as possible!
- Conduct post-deal assessment with deal maker/BD&L. Depending on integration milestones, one or more meetings between AM and BD&L up to 6 months after the deal is closed
- Establish link and knowledge transfer between due diligence team and project organization

Establish alliance governance

- Important to have Alliance Management established as a dedicated function/role within the organization and separated from project organization and product teams
- Alliance Management to be involved in late stage negotiations to influence governance provisions
- Establish governance bodies as outlined in the contract and as soon as possible upon deal closure (e.g. Joint Steering Committees; Joint Operational Teams)
- Strive for appropriate senior management representation and get commitment for continuous participation in JSC meetings and events
- Ahead of each meeting, arrange for optimal briefing of JSC members on contract as well as project matters
- Establish clear responsibilities between Alliance Management and project organization

Focus on long term

- Alliance Management role is critical and necessary to guarantee the overall and long-term success of the partnership (different from short-term integration)
- Alliance Management is very specific, and alliance set-up should be tailored, depending on organizational structure and size of partner company
- Alliance Management is less about processes, but more about best practices and guidelines to be applied in a flexible way, depending on internal and external needs
- Understand the partner’s interests and needs: Important to align with partner on scope and overall objectives of the alliance
- Ensure alliance managers have specific skill set including experience, collaborative mind set and ability to “lead from behind”

Good Partnering Practices

Foster collaborative mindset

- Build and keep mutual trust between partners through various and regular personal interactions: e.g. kick-off meetings, joint interactions, talking, social events, etc.
- Establish, nurture and constantly try to improve the relationship between alliance partners – Alliance Management as “partner DNA”
- Establish alliance standards and ensure implementation within own and partner organization (e.g. Alliance charter, code of conduct, compliance rules)
- Foster a collaborative mindset and pro-active thinking in alliances
- Set-up of Alliance Management specific training for all team members and partner delegates involved in an alliance project
- Manage internal stakeholders by communicating regularly to both senior management and project team
- Maintain trusted partnership to prepare for alliance expansion and further deal opportunities

Plan for risk mitigation

- Manage issues and potential conflicts proactively
- Keep alliance partner close to read early signs of deviations by developing a sense of anticipation for potential conflicts
- Responsibility and risk sharing can mean risk mitigation. There are however, “disadvantages”:
  - Alignment with partner necessary → “paying a tax” for partnering
  - Conflicts more likely
  - Strategic option limitations
  - Shared value

Use Learnings

- Use learnings from one alliance into the BD&L organization, to set-up and improve new/other alliances and deals
- Integrate (“loop back”) learnings into the BD&L organization for implementation into future deals
- Establish regular Alliance health surveys with partners to check status and potential issues of the Alliance
- Share learnings with partners and implement measures for improvement

Good Partnering Practices

Use escalation procedures to avoid litigation

- Contractually build-in escalation procedures for any conflict or dispute (from management to senior management, to top-level management). This will increase the pressure on both parties to settle early, before slipping into litigation
- Escalation procedures allow time to manage internal & external expectations and provide critical lead time needed to avoid unexpected dispute
- Escalation procedures force management attention on the conflict
- Agree on notice and reply periods (not exceeding 30 days) to avoid procrastination in such escalation procedure
- Escalation procedure needs to be mandatory: no litigation without prior escalation

To avoid disputes: distributed responsibility is better than shared

- Clearly define and distribute responsibility between the parties (with final say for one party) rather than shared responsibility in any given area. This is less likely to lead to disputes
- It might be difficult to negotiate and decide on separate, exclusive areas of responsibility upon entering a project, but still less cumbersome than to deal with the disputes or litigation afterwards
- We cannot "agree to agree"

Understand cost of own position

- If a conflict becomes a "question of principle", then the cost of such a rigorous approach might become unsustainable
- Objective assessment of the cost of your own position in a conflict (direct and indirect), should be performed by someone not previously involved
- The cost of internal attention to a continuing dispute is often underestimated
- Knowledge of the real cost of the conflict, often makes the settlement of a dispute more appealing

Use built-in rules and scenarios for termination

- Termination inherently is associated with failure - by providing clear set rules in the negotiation of the agreement, the negative connotations can be largely avoided
- Give careful consideration to the likely effects of termination - in most cases, these are known when entering into a project. They are less cumbersome to deal with earlier, rather than upon termination

Always allow "termination at-will", but define its cost or conditions

- Keeping an unwilling partner provides no benefit. The commonly used prohibition of an "at-will termination" leads to lukewarm contract execution and missed alternative opportunities with another partner
- If the cost of an at-will termination is known, or can be determined from the onset, by establishing a mechanism to calculate it into the agreement, termination becomes an option to be reckoned, with reduced economic insecurity for counterparty
- Thoroughly assess if financial penalties are relevant for termination at-will
- The right to "at-will termination" may be conditional on:
  - intellectual property transfer or license
  - presenting a substitute partner

Good Partnering Practices

Communicate frequently to read early signs

- To read early signs, frequent formal and informal communications, have to take place, or else termination can come as unpleasant surprise; depriving management of the critical lead time to prepare and mitigate potential damages.
- An excuse to communicate should not be necessary, even on unrelated (non-business) matters. By scheduling communications on a regular basis, a trusted relationship is maintained
- Reading early signs might allow you to consider alternatives to termination, such as:
    - Scaling back a project
    - Refocusing a project
    - Allowing additional time or money

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