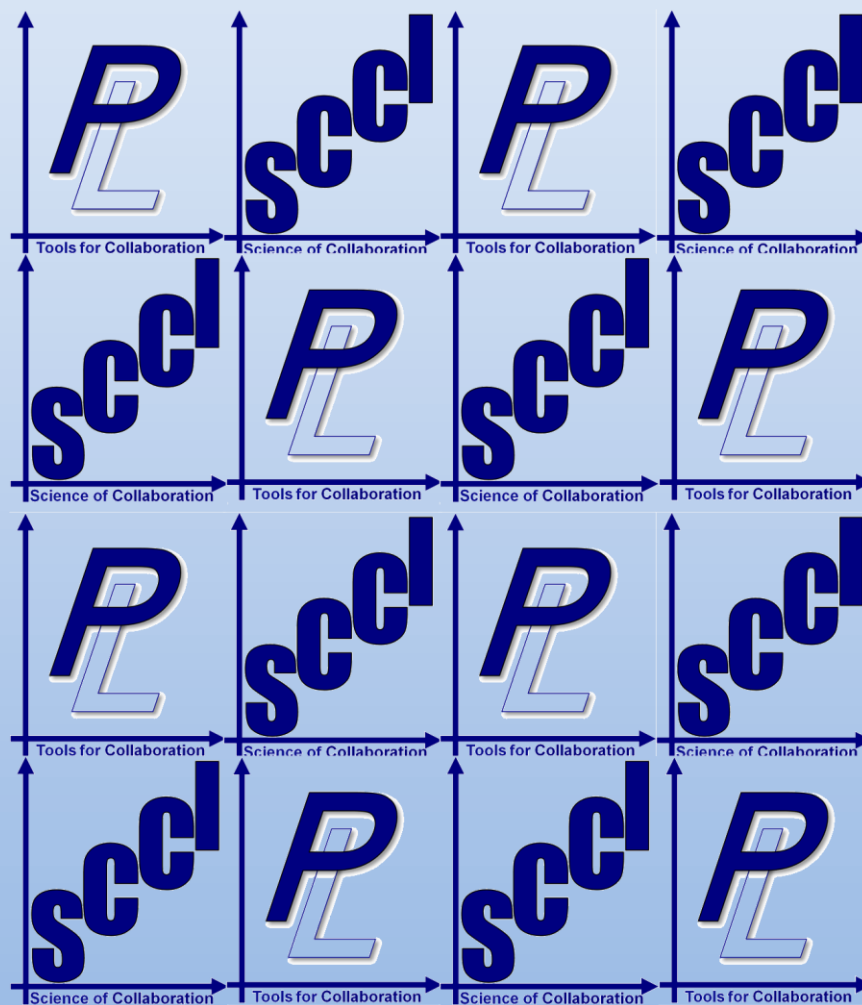


# Are Contracts the Enemy of Good Relationships in Outsourcing?



Andrew Humphries & Linda McComie



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## Are Contracts the Enemy of Good Relationships in Outsourcing?

By Andrew Humphries & Linda McComie

*"I lost a deal of \$20M, the contract was over 50 pages and incomprehensible to the parties needing to do the business. The attorneys for the two organizations remained at loggerheads because neither understood the other's position, and one did not understand the technology involved."*

**CEO, MNSA**

The position of contracts in collaborative relationships is a controversial issue. Organisations traditionally write contracts to make clear what each party is required to deliver and this is fine and appropriate. However, in a cut and thrust capitalistic society over time contracts have accumulated many layers of terms and conditions that essentially signify self-protection, risk aversion and distrust - exercises in interpretation for advantage. One alarming result is that managers abrogate their responsibilities for relationship management because they believe this will be taken care of by the contract. As a consequence commercial officers often add even more safe-guards into so called collaborative contracts. So where does the contract fit with relationship management? All the quotations below have been taken from a lively LinkedIn discussion that we started.

- **Contracts are not appropriate for collaborative relationships where a "hand-shake" should suffice.**

*"The most helpful document is what I call a teaming agreement which captures the essence of the relationship and is used for the day-to-day management of the alliance."*

**CEO, Strategic Alliance Development**

*"The secret of success in a collaboration is the relationship. If we let the contract rule that is a recipe for disaster."*

**President, Association of Strategic Alliances Professionals UK**

*"Mostly, it [the contract] stays in a drawer, as we focus on the business at hand and achieving our common, shared objectives."*

**CEO, MNSA**

*"Most alliances fail to achieve their full value-creating potential and this is mostly due to failure in relationship. If we want to turn things around, achieve higher success rate, we need to address relationship issues head-on."*

**CEO, Strategic Alliance Development**

*"At the end of the day it comes down to trust and trust requires two way communications. If both sides can effectively discuss issues there won't be surprises that lead to tension and communication breakdown."*

**IT Support Consultant**

*“When a written agreement is in place where the interests of both parties are carefully considered, this gives a great framework for a great collaboration.”*

**Product Manager - Clinical devices**

*“Government is not mature enough to partner; nor are we.”*

**John Owen, Head of Strategic Markets at Serco**

- **Companies often rely on detailed specifications and, contract terms and conditions to manage suppliers.**

*“Things happen that are out of the partners’ control and contracts help to mitigate this risk. Trying to cover every single situation and nuance is not realistic, can dilute the relationship and most certainly will bog down progress.”*

**CEO, The Renner Group LLC**

*“The contract must cover the tangibles but, it also includes all those intangibles which can only be addressed and developed when there is a strong and deep-rooted relationship built on trust and a shared vision. If the relationship is strong enough, then the contract simply becomes a ‘tick box’ exercise.”*

**Corporate Development Manager at Market Force Information**

*“Wouldn’t you want to know where you stand in a situation? A one page contract leaves so much ambiguity that it would probably not be worth drawing up, let alone signing. We are always happy, skipping along with the way we are working, until we are burnt. Then, we wonder why we didn’t do things correctly.”*

**Leadership & Management Development Consultant**

*“The contract is less about suing but more about clarity up front.”*

**Director - Target HR and Training Ltd**

*“Collaborate when you can and contract when you must! Contract when cost of the contract is less than predicted cost of breach. If one feels the need to contract, there may be too much risk and too little value: walk away and do something more worthwhile!”*

**Clinical Educator**

*“If you actually need to fall back on one page, it wouldn’t stand up in court, or most likely, would be trodden all over by the other side.”*

**Advisor at European Bank for Reconstruction and Development (EBRD)**

*“One government client must have spent a quarter of the entire value on constructing an impenetrable 24-page document. As the needs changed halfway through we quietly agreed to ignore the contract anyway and just got on with the new brief, so all ended happily (except for the poor taxpayer).”*

**Leadership & Management Development Consultant**

- **Formal contracts impair the efficiency of collaborative relationships. They signal distrust of your partner and encourage rather than discourage opportunistic behaviour such as actively looking for “holes in the small print” and finding ways of minimising the profit you have to share.**

*“The legal eagles would skip all the commercial clauses and focus on ones dealing with liabilities i.e., how would these clauses stand up in court? “*

**CEO, Plans to Reality**

*“Harnessing the expertise of suppliers to create better solutions can be hampered by an overly contractual approach, and overcoming that is one of the most significant challenges buyers of services face.”*

**Managing Director of Effective Facilities**

*“I’ve been involved in the fallout of contract negotiations where each side has the same wording, but the underlying assumptions behind the words have been completely different and needless to say non compatible. “*

**I.T. Manager, Dentsply**

*“Typically lawyers are too risk averse and want to ‘cover all the bases’, rather than focusing on the value and the significant risks to both parties, and ensuring that both benefits and risks are equitably balanced.”*

**Project Manager, Bristol City Council**

*“I’m not sure I’d want to pin the blame on lawyers; they are only putting into words the intentions of the contracting parties.”*

**Corporate Governance Consultant**

*“It seems that people who distrust contracts don’t actually understand them and risk running afoul of verbal agreements. The public sector get themselves into difficulty through insisting on fully-fledged contracts which give little wiggle-room for either side. The slightest change can lead to exorbitant variation fees.”*

**Leadership & Management Development Consultant**

These views seem to be pointing in the same general direction. There is a need for a framework contract which is sufficiently flexible to allow the collaborative relationship to develop and adapt over time. The importance of a relational focus is also emphasised. From our experience and research we believe a formal management structure is also needed to co-ordinate all the business activities that are essential to the success of a joint/multi-party endeavour. We call this Enterprise Relationship Management.

*“I found that drafting these contacts and discussing the various clauses with the other party was a great way to start the collaborative relationship with a new customer. By then we ‘were in it together’ and so both parties had a stake in seeing that the partnership was successful.”*

**CEO, Plans to Reality**

**Further Reading:**

Andrew Humphries & Linda McComie (2022), **Implementing and Managing Collaborative Relationships – A Practical Guide for Managers**

Routledge, New York, ISBN 978-1032-1173-86

155 pages

Andrew Humphries and Linda McComie, **Contracts or Relationships - What's Right for Collaborative Outsourcing?**

White Paper, [sccindex.com](http://sccindex.com), library



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