

Endgame provisions and signatures. Does the contract work?

Transcript of video

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A contract can end either happily or unhappily. In either event, the contract must deal with the consequences of the end of the contract.

The provisions that govern the end of the contractual relationship are often referred to as 'endgame provisions' and typically include defaults, remedies and termination.

When drafting endgame provisions, think through what should be the financial consequences of ending the contract.

A typical friendly termination of a research contract is when the research project has been completed and results either patented or published. The consequences of a friendly termination can be final monetary transactions, final report, obligations that the parties return material and data that have been used in the project, or other exit strategies. It may also state which provisions survive the termination of the contract, for example provisions regarding confidentiality that binds the individuals to keep knowledge they have received during the project period confidential longer than the duration of the contract.

However, another possibility is that the research project does not go as planned, and you will also have to think about the endgame provisions that deal with unfriendly terminations.

What will happen if the project comes to a halt due to a pandemic like Covid-19? Or if one of the leading scientists quits her position or dies? Or what if one of the parties fails to perform?

We often speak of breaches where a party has done something wrong, for example failing to transfer money in the project or deliver reports. However, a contract can also be terminated because of events that are not contract related, like death and bankruptcy. These events are referred to as defaults.

You will have to consider what should happen in case of a breach or default of the contract. Shall the defaulting party have the right to fix the problem or shall the contract come to an end?

Once you have decided on which defaults can occur during your relationship, you need to think about what would be the appropriate remedy for each default. Contractual remedies include damages, contract termination and indemnification.

Another issue to consider with regards to termination of the contract are provisions that govern potential litigation of contractual disputes. These provisions are more important in international

contexts, rather than contracts between parties with the same nationality. The most important elements to mention here are to consider which language should be used in proceedings, the choice of law governing the agreement, and whether the dispute shall be taken to court, mediators or arbitrators.

Before signing, take a moment to do a final review of the contract. Check whether the contract meets your needs and whether there are any errors in the contract that need to be amended, like names of the parties, spelling mistakes, wrong financial numbers etc.

The last part of the contract is the signatures. The contract must be signed by someone with authority to accept contract terms and conditions on the university's behalf. Often this authority is delegated to various individuals in your organisation, allowing each a limited authority to accept and sign certain types of contracts.

Once you are done with signing the contract, make sure that your employees in the research project know their obligations and communicate the terms and risks to those who need to know.

The contract regulates both scientific and administrative activity in the project. Ensure that you schedule in project meetings and reporting deadlines. The contract will normally also regulate how dissemination of results shall be conducted. This might involve informing the consortium before the manuscript is sent for review, a time delay if there is a need for protection of results by patenting, or business secrets to take into account. Often sponsors also have provisions in the contract on how they should be mentioned in publications.

It is important to inform the administrative project support about deadlines for financial transactions in the projects, including updates if the project is delayed or otherwise changed. They will take care of the financial transactions – when and how. Normally deadlines for economic transactions can be adjusted due to an unfavourable currency exchange rate.

The contract should also accommodate changes that are likely to happen in the project. As most research projects evolve over the project period, it is beneficial to have some kind of mechanism in the contract to allow for minor changes, like reallocation of tasks from one party to another, or from one budget item to another.

Once the research project has commenced, take a look at the contract again and see if there are elements that don't work and need to be renegotiated and changed in the contract. Be aware that renegotiation of a contract often takes as long as when first entering into the contractual relationship with the party.

Although drafting a contract may be perceived as not being central to what you are going to work on in the research project, a contract will help to reduce further disagreements and regulate any potential conflicts. Therefore, it will also be a greater probability that the research collaboration will be successful.