

MODULE 4: RECORDS MANAGEMENT

Purpose of module

Records management is presented in its own module to highlight its importance. Even though records management is not a specific *stage* of contracting, it is an essential activity that should be constantly happening throughout the life of any contract.

This module has the following objectives:

- To summarise the key record keeping obligations that attach to contracting on behalf of the University; and
- To emphasise the importance of good records management in contracting.

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A. The importance of an evidence trail – why record keeping matters

Keeping good records is an integral part of contracting activity. Records serve as evidence of the University's activity – evidence that we can produce at any stage in the future, provided it is well preserved and properly managed.

Such evidence is particularly important in the context of contracting. As discussed in previous modules, in any contracting situation, the intentions of the parties are paramount. Being able to identify those intentions – and being able to provide tangible evidence of those intentions at a later stage – is crucial not only to understanding contract negotiations as they are happening, but also to interpreting a contract once it has been formally agreed. And if any aspects of a contract were challenged in the future, having clear and accessible evidence of the University's intentions and the journey of the negotiation process could become crucial in defending our position.

It is important to properly file and manage documents exchanged between the parties during the contracting process (such as letters, emails and their attachments), but it is equally important to *create* written records capturing any discussions that constitute representations, decisions or undertakings by or to the other contracting parties. This will form an *evidence trail* of the parties' intentions and negotiations.

Remember, the contracting decisions of a single staff member in a single School or area may well bind the University as an institution, imposing "University" obligations. This makes it particularly important for those staff members with first hand knowledge to document the negotiation and formation of those obligations. As in all aspects of contract management, what constitutes "adequate" records is a matter of judgment that will vary depending on the value, duration, risk and complexity of an agreement.

A systematic approach to recordkeeping from the very beginning of the contracting process and throughout the life of the contract will assist you and the University to:

- Provide evidence of business conducted and decisions made;
- Manage legal and other risks;
- Keep focused on the contracting goals, and constantly keep evaluating, as a contracting situation unfolds, whether those goals are being advanced – an analysis that is made easier by actively creating records of what is happening at each stage;
- Meet accountability obligations;
- More easily enforce the University's rights against other parties; and
- Satisfy regulatory records management obligations (under the State Records Act).

More information on good records management, and the University's Records Management Policy, can be found in the Records Management Handbook (<https://www.adelaide.edu.au/records/handbook/>).

B. University Records Management Policy

The University's Records Management Policy (www.adelaide.edu.au/policies/606) applies to all records that are created and received in the course of developing and managing a contract, whether paper based or electronic. It is also important to record in writing any discussions that constitute representations, decisions or undertakings by or to the other contracting parties.

C. Key records management obligations

While records management is not a specific *stage* of contracting, it is an essential activity that should be happening constantly throughout the life of any contract. For convenience, the key records management obligations at each stage of the contracting cycle are set out here.

Preparation phase

Your preparation should set the tone for the whole contract management process, and help you determine what level of formality and management is appropriate in the circumstances. It is therefore prudent to make notes summarizing your preparatory thought-processes. This will help you defend later why you took the approach you took, if things are challenged. It will also force you to think actively about why the contract is happening and how you wish to proceed, which will help you go into the negotiations more focused and prepared.

When documenting the contracting process, ask yourself:

Would someone reading this in the future, who doesn't know anything about the situation, understand what happened?

For instance, by making a note of your answers to each questions in the Preliminary Checklist (refer **Module 1.1**), you will have created an instant and succinct summary of the why, who, what, when and how of the impending contracting process. It will not take much time, but will provide a useful reference point that you can keep returning to throughout the life of the contract.

Similarly, documenting your "P.A.N." positions (preferred, acceptable, not-negotiable – refer **Module 1.4**) in advance of any negotiations can help you focus on the issues most important to the University during the negotiation, and ultimately reach the best possible arrangement.

For more complex agreements, more detailed preparation may be required and should be documented as thoroughly as possible. See **Module 1.5** (*Pre-agreement evaluation matrix*) for more guidance.

Negotiating the deal

Even in the simplest of agreements, where no separate written contract is required, there will always be some form of negotiation. For instance, you might go back-and-forth with the other party over the price or some other condition. Where any such negotiations occur, you should make sure that the negotiation has been transparently recorded (for instance, through emails or letters) and keep those records on a University file. Even simple agreements can ultimately lead to disagreements, so it is important to be clear on how they were reached.

For more complex agreements, where the negotiations might involve many people and extend over a period of time, it becomes even more important to keep a tangible evidence trail describing how the negotiations unfolded. This could become crucial if some aspect of the contract were challenged in the future. As you're making records, ask yourself "would someone reading this in the future, who doesn't know anything about the situation, understand what happened?"

Maintaining records of the negotiation process while it is happening also helps to keep everyone on the same page *during* the negotiation process. This increases the chance that the parties will reach a consensus acceptable to everyone. It also helps reduce the chance that there may be confusion around

exactly when the parties move from the negotiation phase to being bound by the terms of a formal contract (as discussed in **Module 1.3: How and when a contract forms – the importance of negotiation**).

Finalising and formalising the contract

It is a good idea to keep any old drafts of the formal contract document, and to keep a record of any changes requested or negotiated – again, because it transparently records the negotiation process. If you have a lawyer assisting you, they may retain those records for you. Keep records of any internal University approvals that were required before formalising the contract, such as committee endorsements, management sign-off and legal check. You should also keep some record of consultations with other affected areas of the University (such as emails or meeting notes discussing the contract with them).

You must store the signed contract in the Records Management Office (see “Storage of signed contract” below). And even after the contract has been finalised and signed, you should retain and file key documents, drafts and other evidence from the negotiation process on a University file.

Storage of signed contract



ALERT:

University Policy Requirement

The University’s Records and Archives Management Manual prescribes that all executed contracts (excluding employment contracts) must be lodged with the Records Management Office (RMO) to ensure secure storage and central traceability.

The importance of this step cannot be understated. Given the decentralized nature of the University’s operations, centrally lodging final executed contracts is the only means through which the University can keep track at an institutional level of its contractual commitments.

To lodge an executed contract with RMO, complete the Legal Document Lodgment Form and submit it with the executed contract. RMO will then register it as a Legal Document on HPE Content Manager (where it will be allocated a legal document reference number) and make a hardcopy for you. The metatags of all Legal Documents will be searchable on HPE Content Manager. This will enable users across the University to see if other areas within the University have entered into similar types of arrangements, or agreements with any particular party.

More information, and a link to the necessary forms, can be found in Module 2 (**Module 2.8: Sealing the deal – signing the contract**) or on the Record Services website here:

<https://www.adelaide.edu.au/records/services/forms>

Managing the contract

In managing ongoing obligations under the contract, it is important to keep evidence of what the University is doing to hold up its end of the bargain. If you are having issues getting the other party to perform its obligations, it is similarly important to document any communications, in case you are required later to show what attempts were made to remind them of their obligations and to get them to cooperate.

Any variations to a contract *must* be in writing (refer to **Module 3.6** for more details). It is also important to record the details of any discussions relating to a dispute over the contract at any stage. This will protect the University’s position and provide tangible evidence of the resolution steps taken, in the event that legal proceedings eventuate.

A succinct way to keep key details of a contract throughout its life is to use a Contract Register – a quick and relevant snapshot of what each contract is about, what is required to be done and by when, who is involved, and key dates and contacts. Depending on the complexity of your area’s contracting activity, such registers may be in the form of a simple Excel spreadsheet, or maintained through specific contract management software.

Contract Registers are discussed specifically in **Module 3.3** of this Handbook. However, the following is a summary of the kind of information that is most valuable to keep in your contract register.

Contract register – typical contents

The following details should typically be recorded in the contract register, for each contract (or at least each major contract) in the Faculty/School/Branch:

- **Commencement and expiry dates**
- **Milestones and milestone dates**
- **Cut-off dates or contract review dates**(e.g. if the contract has an automatic roll-over provision, what is the last date by which you can give notice to terminate?)
- **Any requirements that must be fulfilled by certain dates** (e.g. obtain licence or approval from a regulatory body, provide a report on progress, provide a final report)
- **Significant obligations**– not only those the University must meet, but also any that the other party must meet which would cause the University problems if they were not met (e.g. if by the other party failing to meet its end of the bargain, the University would then be unable to meet *its own* commitments to another party or funding body)
- **Financial arrangements under the contract**
- **Names and contact details** of the other party's contract representatives
- **Notes** as to whether the contract has been extended or varied

For more information about managing contracts, refer to **Module 3: Ongoing Management**.

Finishing or ending the contract

The most common way a contract ends is naturally – through completion of the agreed tasks, or upon its stated expiry date. However, contracts may also be terminated in a number of ways, which are discussed in **Module 3.7: The end of a contract**.

In terms of records management, there are several housekeeping steps that should be taken at the end of a contract, including:

- Request the return or destruction of any University documents, material or confidential information that were provided to the other party for the purposes of performing the contract.
- Record any intellectual property rights arising from the contract that the University gains ownership of (or a licence to use) pursuant to the contract, including any relevant documentation, technical data or reports that enable the University to use that intellectual property.
- Update the contract register to record when the contract was completed or terminated.
- Tidy up and archive the records associated with the contracting process.

D. Some final hints on records management

If something is confidential, mark it as confidential – If something you record is confidential between the parties, then be sure to mark the record “confidential” and store it in a manner that respects and maintains its confidentiality. This will help to identify it as confidential, and protect it from unwanted disclosure, such as if the University is subject to a freedom of information request relating to the contract.

Keep records as you go, don't wait until the end of a contracting process – Records are far easier to create and maintain if you make and manage them continuously, as part of your day-to-day work. This is particularly true in the case of contracts, where you may spend lots of small amounts of time on a

negotiation, talking to the other party, or managing an ongoing issue, amidst all your other work. If you keep a simple, written track of what is happening each time you *do* something on the contract, then you will be maintaining an accurate and complete record without imposing any real burden on your workload. However, if you let records get behind, and only make notes of things and organize your contract files every few months, it will require a lot of effort and time to catch up. It will also most likely be incomplete, as you may not remember everything that happened in conversations that occurred several weeks or months earlier. Delaying or constantly “putting off” your records management not only creates a more onerous and time-consuming task for you, it also reduces the reliability and usefulness of the evidence trail associated with the contract.

Records management is largely common sense, so you should listen to your instincts – if in the course of negotiating or managing a contract something doesn’t quite feel right, that should be a cue to make a note of it and to follow it up.

Remember that records management is about transparency and enabling the contracting process to be understood in the future, in case something goes wrong – so, when documenting the contracting process, it is always good practice to ask yourself *“Would someone reading this in the future, who doesn’t know anything about the situation, understand what happened?”*