Contract Management:
Design Parameters and Challenges to Implementation

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1   What is Contract Management?

Contract management is a perspective, discipline and systems approach which looks to actively manage the contracting process end-to-end for the benefit of the organization. In particular, it is intended to:

°   reduce the fragmentation that characterizes the contracting process in so many organizations;
°   increase and improve
          - quality control,
          - consistency,
          - compliance with law and organization policy, and
          - efficiency (reducing cycle time and transaction overhead); and
°   enable better collection of information for improved strategic decision-making, including better customer-supplier relationship management and increased responsiveness to the market.

Contract management is about affirmatively managing these processes, as a closed information loop with appropriately controlled gating and channeling, to produce optimal results for the organization.

2   Why is Contract Management Important?

Contracts represent key assets (or liabilities). What do an organization's contracts mean to it? How fundamental are they? Even a minute's consideration provides the answer: They are as fundamental a core asset, liability and process as any the organization may have. Every relationship with a customer, supplier or employee is governed by some type of contract, mutual understanding or legally imposed conditions.

   Contract management is part of risk management, quality control and compliance programs. Our world is increasingly dominated by the information and service business model, and more and more business interactions are occurring in an electronic medium. Litigation costs, liabilities for violation of laws, and potential risks for senior management if they do not understand and control what is going on in their organizations are greater than in the past. Contract management is one of a converging set of management themes defining the challenges of operating successfully in that world, including risk management, quality control and compliance.

   An organization cannot be said to have an effective risk management and compliance program in place if it does not understand and control the contracts it is entering into. Contract management is part of the more managed and transparent business environment that senior managers and investors are demanding, and quality control initiatives tend to require effective management of contracts. These themes converge, and require increased scrutiny of core business processes like contracting.

Systems capabilities – at least theoretically – facilitate a higher level of contract management than was available in the past. Most organizations have still a far way to go to realize anything like the full scale of benefits possible through information technology as applied to understanding and operating their own businesses. However, there is a growing acknowledgment of this, as well as a growing acknowledgment that the uncontrolled proliferation of electronic communications – email especially – creates significant downside risk. This has been a particular phenomenon in the United States, where indiscreet email messages have provided the "smoking gun" in a number of high profile cases, and where the inability to manage the electronic "paper trail" of email messages (either file deletion found to constitute destruction of evidence, or inability to respond appropriately to discovery orders) has given rise to significant fines or liabilities. The formerly pedestrian function of librarian, records manager or archivist of the enterprise has a new urgency in this environment, and elements of basic corporate housekeeping, such as building and maintaining organized document repositories, have new importance.

In addition to the focus on electronic records retention, there is also the ability (again, at least theoretically) to link key IT (information technology) systems such as transactions systems (or more comprehensive systems such as ERP (enterprise resource planning) systems) with client relationship management systems, and to pull together and then deliver "business intelligence" within the enterprise. Contract management is part of understanding and then managing the whole of the customer or supplier relationship.

3   Elements of a Contract Management System

Though people tend to think of contracting as being about documents, a contract management system is much more than that, and also comprises people, processes and systems support. The contracts themselves may take many forms, and they have a life within this larger system.

It is important to understand that an organization *has* a set of contract processes in operation for its various contracting activities, and within a given context these may be good or they may be poor. Thus the first step in thinking about contract management is to ask a series of questions:

°   What kinds of contracts does my organization enter into?
°   Who negotiates and signs off on those contracts for the organization?
°   Are the people who are negotiating and signing off on contracts for the organization working within an established set of guidelines and control structures, are they more or less on their own, or is the reality somewhere in between?
°   What do the contracts look like? Are they written? Are they standard forms used in the industry? Are they our forms or the other party's?
°   Where are our contracts? If we had to find them in a hurry, could we? If we had a particular risk situation come up, how long would it take to figure out our position?

°   What happens after contracts are signed? Are we pretty good about following up on our commitments in an organized way? Are we pretty good about making other people follow up on their commitments?

°   Does the organization have good systems in place to make sure it is taking advantage of volume discounts and rebates and early payment discounts? Does it sometimes happen that contracts roll over under automatic renewal clauses without review?

°   Does the organization have a way to assess contract performance for purposes of making decisions about future contracts?

°   How do all of these questions play out across different business units and different geographical regions?

°   How do we treat these questions at my organization – are they important questions viewed as essential to profitability and risk management? Or are they mostly ignored until things go wrong? Or is the reality somewhere in between?

For most organizations, the answers to these questions are going to be all over the board. Some areas of the organization's contracting activities might be pretty tightly controlled, held firmly within business units that have strict approval procedures, that model risk scenarios on a disciplined basis and that are actively advised by knowledgeable, regular counsel (in-house or outside). Other areas run on a far less controlled basis. A firm with business all over the world has the usual issue of country or regional decision-making to deal with as it relates to contracting policies and authority. And in many organizations, contracts with vendors and customers are still kept in binders and file cabinets, or in lawyers' offices.

Even a simple and superficial assessment may indicate that contracting processes at the organization are not running to best effect, and that a contract management initiative may be warranted. If this is the case, the starting point should be setting the high level design parameters.

4   High Level Design Parameters for a Contract Management Project

High level design parameters for a contract management project are:

°   the identification of contract control points from a risk management and business optimization standpoint,

°   creation of a closed information loop,

°   determining the "shape" of the contracts,

°   deciding on policies regarding control, flexibility, exception handling and override.

4.1 Identification of Key Contract Control Points

An important step in contract management is to identify the key control points in the contract process from a risk management and business optimization perspective. By this we mean determining the most critical features of the organization's contracts, establishing appropriate parameters for those features, and then deciding how to make sure the contracting process will enforce the parameters. More generally, the control points for contract management make sure that the organization's contract processes deliver what it needs in terms of its contractual rights, and do not give rise to disproportionate obligations, costs and liabilities.

Taking a risk management approach to contracts entails focusing on the aspects of the contract and the contracting process that can generate big downside if not properly controlled. A classic gating mechanism in procurement is spend authority, for example. Procurement operations have also found that an item that if not monitored properly generates costs is the automatic renewal clause. Damages and liability clauses in contracts represent potentially big risks, as does a failure to fully map out and understand the consequences of breach under the background governing law.

Business optimization requires figuring out which terms in contracts, or which aspects of the contracting process, are most likely to determine whether the contract is ultimately of value to the organization. This view of contracting may take you outside the contracting function and into a review of how that function interacts with other parts of the organization. An organization may find that a disconnect can be costly.

One way to start to get a handle on the subject is to collect experiences, bad and good. Bad experiences can be particularly instructive. From the buy-side, this may have included paying for things you do not need, failing to take full advantage of volume pricing and the like, and failure to lever the full relationship with the vendor. From the sell-side, this may have included the failure to fully cost the goods or services to be provided or to check the credit of the purchaser. Transcending buy and sell side issues is the matching generally of the organization's purchasing operation to its sales and marketing operation. What contract terms and practices have ended up costing the organization?

It is appropriate to review from time to time even those terms or practices that have worked well in the past, since that is not necessarily a good measure of how well they will work in the future. For this purpose, or when launching a new business or product, contract managers in collaboration with business managers, lawyers and other professionals will need to work as a team to analyze various scenarios and contingencies. (See Appendix 1.)

4.2 Creation of a Closed Information Loop

Implicit in the preceding discussion is the notion of experience capture. For contracts that have clear costs and benefits that are tracked and reported on by the accounting system, there is some ability to measure direct profitability. However, that may be a very limited picture of the contract's total value to the enterprise. In fact it is just such a localized system that can encourage line sales

agents to write contracts that generate near term profit without regard to the larger institutional cost or longer term cost to the organization.

Even more problematic are situations where there is no accountability for entering into the contract, and no look-back whatsoever at the cost of the contract and what the organization got in exchange for the cost. In circumstances like these, the organization cannot learn from its contracting mistakes and avoid them in the future. So good design of a contract management system requires making sure there is an explicit step to close the information loop, as well as sufficiently comprehensive report design.

4.3   Determining the "Shape" of the Contracts

A body of contracts may, in terms of volume, density and variability, be "broad and shallow" or "narrow and deep". Or even "broad and deep" or "narrow and shallow". Spot trading contracts for a company with a large trading book would be "broad and shallow" – many contracts (that is high along the volume dimension), but with only a few key term variable among them, while a company's key financial agreements may be few in number but contain many custom-designed terms, and varying significantly from the financial agreements that other companies enter into.

The volume of contracts, the number of contract terms, and variability of the terms determine how much centralized control can be exercised over contract terms, and how much the contracting process can or should be automated, as well as the type of automation support.

4.4   Control, Flexibility, Exception Handling and Override

Concepts of control, flexibility, exception handling and override can be very useful in keeping a contract management initiative or function in scope. We have already discussed the concept of control points, and the importance of managing those. Control also means that the permissible borders of a contract are clearly established (e.g., taking a position that the enterprise does not indemnify counterparties for third party claims).

On the other hand, permitting and indeed accommodating in a friendly fashion likely alternative scenarios and demands of counterparties means that the line contracting professionals are supported in their negotiations and can work efficiently. This level of flexibility is easy enough to put in place and maintain if line professionals report back to the center and collaborate (with a collating and managing "editor") to develop consistent responses to the ever-changing demands of the marketplace. In concrete terms, providing flexibility is as simple as keeping a running commentary and library of annotations on key contract points.

Even this form of support system falls short of meeting all requirements, so the mechanism for exception handling and override should also be explicit. Prompt flagging up of exceptions for senior decision-making is the goal here, and what the system should avoid is a process that continues invisible to senior management until too late, after the enterprise is committed.

5   Steps in a Contract Management Initiative

1.   The first step should be a mapping of the contract lifecycle and making a baseline assessment of existing processes, ideally in graphical form, and with detailed specifications – e.g. as to volumes of various communications, documents and other records. At the same time the project team can develop a survey of existing technology infrastructure. (See Appendices 2 and 3).

2.   Second should come a review of the existing processes to identify inefficiencies and missing control parameters.

3.   Then the project team can design an optimal system. This is still all at the level of process mapping, and the processes can include manual and paper-based steps. Map out the ideal contract process for the group of contracts, including post-execution management for performance and compliance, including e.g. change orders and amendments. At each stage, indicate who is involved, what processes are involved, what data is collected and where it is to be stored, what documents are generated and how they are worked on, what processes are off-line and manual by their nature (e.g. senior management or compliance review and approval). Timing and volume indicators should be noted toward the development of technical specifications.

4.   With a process map in hand the team is in a position to assess opportunities for optimization through automation. The decision to move to an automated environment can be to the effect that a one-time encompassing initiative that delivers the optimal system is the most likely to succeed and be supported. Alternatively, it might be possible to grow a system incrementally, and organically, and it might be right to decide that portions of the process should not be automated (See Appendix 4.)

5.   In order to get documents into an electronic repository with some amount of useful coding (database fields or metadata), the key data points will have to be captured as the documents are constructed or afterwards manually. This requires getting people to cooperate to do something that they did not have to do in the past. IT cannot make disproportionate demands on users if the system is to succeed. Deciding exactly which fields should be included, which are mandatory and which are optional, and how the coding will actually happen is an important and nontrivial task.

6.   A specific plan for dealing with legacy contracts needs to be developed. This can be a big hurdle unless people are willing to make some judgments about what they are trying to achieve and how much investment is justified.

7.   Points of integration with other systems should be identified. For a procurement contract management system, for example, these would typically be to the organization's accounting systems (for the matching for payables and receivables).

8.   In any case, normal project management techniques, such as the designation of a dedicated team with adequate time to devote to the project, a budget and other resource allocation, timelines and milestones and so forth, should be applied and administered with discipline by business executives charged with accountability. To ask people with line functions to work on projects of this type in their down-time is an invitation to disaster: money will be

spent, the weeks and months will roll by, nothing will be accomplished and it will be no one's fault. Instead, a project team involving all the invested groups should be formed, and each member must have sufficient time freed up to keep the project on course. A round-robin of stalls due to the unavailability of this or that person can create indefinite delay. The team needs a leader and a management structure to report to. For portions that require IT development, detailed design based on prototypes, mock-ups and specifications should precede coding, and a frequent back and forth between IT developers and business clients should be part of the process.

9. Testing of system modules on a stand-alone basis comes next. Then they can be pieced together, and finally integrated with other systems, for a pilot program. It is very important to allow enough time for the pilot program and to further expect to dedicate time and resources to resolving user comments from the pilot.

10. Rollout involves training and communication. There can never be too much of this. Designers of the implementation program need to think about all the constituencies whose cooperation is required for success, and bring them into the program. It is very important to allow enough time for the pilot program and to further expect to dedicate time and resources to resolving user comments from the pilot.

11. During training and initial rollout, there will be setbacks, so the design and implementation team needs to be able to respond to these and make adjustments as necessary. Failure to follow through on the behavioral side will keep the program from being adopted.

12. Lastly, a regular program for review for constant improvement should be instituted. Any system that is not kept up will fall into disrepair, and eventual disuse.

6   Challenges in Implementation

Laid out in a page or two of reasonable-looking text, a contract management project or initiative seems pretty straightforward. But managing implementation of a contract management system in practice is a challenge. It involves translating business needs into a series of sensibly scoped and executable projects, at least some of them involving information technology. Establishing ultimate accountability for success and failure is difficult, and it is easy to fail. No different in this from any other area involving complex processes and many different players, each with vested but differing interests, making changes in how people go about their work is not easy. In the area of contract management we can identify a number of misconceptions or hurdles – some specifically relating to technology and others that do not – that potentially stand in the way of success.

6.1 Information Technology Solutions Should Not Be the Driver

A strong contract management culture and organization is not dependent on or a product of automation, but indeed is a prerequisite. Automation is just a tool. It may be that in applying the rigor necessary to provide automated support to contract management, policies and processes are scrutinized and may be improved over the status quo – by virtue of visibility if nothing else. Nonetheless the acquisition of a software product should not be the reason for taking on contract management as a serious undertaking, but vice versa.

Starting with software, and letting the IT organization lead the effort, raises the stakes and the risk considerably because many, if not the majority of, software projects fail. Common reasons for failure in software development projects are:

°   inadequate involvement of users in the requirements phase; in particular, users and designers do not spend enough time figuring out in detail exactly what it is that the user expects to be getting;

°   users misunderstand the nature of prototypes they may be shown; the dummied up prototype for getting a sense of the user interaction and user needs is just a façade, but sometimes users think the product is done and develop unrealistic ideas about delivery dates, or may misunderstand what is going on ""behind the scenes" of the interface, and what it will take to achieve full functionality;

°   users do not understand, and it is not explained to them, which of their requests are difficult to implement from a technological standpoint;

°   failure to publicize plans and progress; and

°   the failure in the first instance to eliminate unnecessary functionality and thereafter to monitor and minimize "feature creep" and "scope creep".

Avoiding these pitfalls requires above all significant management involvement in designing and directing a contract management initiative. Directors of the project must thoroughly understand the content to be managed and the business outcomes or goals to be achieved. These goals should be stated in terms that have nothing to do with information technology but instead describe the desired results, in concrete terms, without using jargon.

Guidelines or principles are insistence on simplicity, especially from the standpoint of the user experience; bias toward standardization (even if this means falling short of 100% coverage of all situations and variables); use of modular construction whenever possible (for efficiency); avoiding excess functionality (which not only complicates implementation but burdens ongoing use); design according to principles of usability (which means that the "shape" analysis is very important); having realistic expectations about what will comprise adequate testing and adequate training; having realistic ROI (return on

investment) expectations; and understanding that whatever is designed at the outset will need to evolve, based on regular review and reconsideration.

6.2   *Database (Metadata) Design is Difficult; Coding is Important but Tedious*

Full text searching tends to return too much that is off point and is never a good substitute for locating things in a well-indexed library. Therefore in order to build an electronic document repository (a "contract library"), contracts must be coded or tagged with metadata. Coding or sorting of information is a perennially difficult problem. Views of what is important differ, and you can never satisfy all of the people all of the time. This is the nature of developing a taxonomy but there is no shortcutting the need to do this and to make sure the result satisfies some of the needs of many of the users of the document library.

After the taxonomy or coding protocol is established, there is another hurdle: making sure that documents actually get into the library and are properly coded. No one has yet figured out how to make content "self-coding" in an acceptable fashion. Manual coding of documents is tedious; those who understand the content enough to do it well never sit still to do it at all. But if it is done improperly, the system loses integrity.

There is a possible or partial answer where a contract automation (document assembly) solution is in place: that is, the same terms that generate the contract will populate the database fields associated with the contract. In this situation, there is no need for separate, manual coding or indeed entry of the document into the repository. End to end contract management automation is most powerful when the terms of a contract are both used to generate the contract and entered into a database in association with that contract – that is, when the document production aspect of contract creation is both "closed" and fully integrated with the rest of the information systems.

The reality tends to be a bit messier than that, except in high volume businesses with relatively simple contracts where the "owner" of the contract system also has significant leverage over counterparties. Complex contracts tend to "exit" the system at some point during the course of negotiation and exchange of drafts, at which point the associated data captured at the time of their creation within the system loses its integrity. Furthermore, some contracts (those done on the other party's documentation) never enter the system at all, except by manual scanning and coding.

6.3   *The Nature of the Electronic Documents and Communications Environment*

When documents and communications escaped the paper world, they became significantly more unmanageable. Two aspects of this phenomenon are particularly worth noting as relevant to contract management.

First, even where a "document management system" has been implemented – theoretically enabling version control, access restriction and lockdown – users are very likely to evade the protocols. In concrete terms, they do not fill in profile fields, do not distinguish between versions and new documents, and do

not manage redlining, changes and edits in an organized fashion. In large part it is because these systems are too demanding of ordinary users. Most critically, people do not lock down their documents to indicate which version is final (as executed or agreed) and that that version is read only. This means that "final" documents can be altered, and that people may make reference to documents that are not the final documents thinking that they are definitive.

The second issue, but one that overwhelms in significance most other challenges in this area, is the use of email. The fact is that email is just too easy and too useful. It creates a near-comprehensive record of all that goes in and out of (or around) an organization, but is not generally either managed or organized. Email filing for archival purposes is not all that well adopted in most organizations; backup policies and their impact on intended deletions is not well understood; and to avoid losing evidence many organizations have retreated to a "keep everything, search later as necessary" strategy.

The impact of the use of email on the swapping of documents and on the evidence of what has been agreed is significant. The implications for the integrity of the documentary record and the primacy of the official documentation have not yet been fully taken in. Certainly processes and controls have not been adjusted to deal with the new reality.

6.4   *Confidentiality and Access Policy*

Anyone working in the area of documents or communications management (and thus anyone working in the contract management space) will run head on into the question of confidentiality and access policy. Again, this subject has not traditionally been viewed as a core responsibility of senior management, but when information becomes more readily available management tends to become interested in who can see it. Obviously the failure to protect sensitive information is likely to get the attention of senior management but by no means in a positive way.

It is a mistake in these cases to replicate the old, closed-up environment of information gatekeepers by loading up the system with lots of complex confidentiality restrictions. On the other hand, there is a duty to the organization not to share the "crown jewels" with outsiders or with people who are not obligated to keep the confidences of the organization or are not serious about those obligations.

If the policy is not structured from the top down to be as simple and self-executing as possible, trying to get it right on an ad hoc basis for a contract management initiative becomes itself a major undertaking.

6.5   *Failure to Follow Through on Information Delivery to Line Users*

It is all very well to set up a system that captures, organizes and holds information, but if the information is not then pushed out to the line users so that they can get at it, the cost will likely outweigh the perceived benefits. The user participation required to get the system up and running and keep it going will not be there, and thus the system falls into disrepair and disuse. Hence it is important that any work users are required to do to put information in the system be

matched immediately or nearly so with the tools to reap the benefits at their desktops.

6.6   *Resistance to Technology Solutions*

In many organizations there is continued resistance to technology solutions to long-standing business issues and problems. In some cases this has to do with an attachment to the old ways, to one's own working space, to the lack of transparency and accountability to seniors, and one's role as information gatekeeper. In some cases there is a lingering discomfort with technology itself.

However, in many cases, the remaining impatience or frustration with technology solutions is a response to the fact that they are not as good as they should be. This can be because of design errors, inadequate attention paid to communication and education in rollout, or inadequate support. Sometimes budgetary constraints cut in at the very point of improving usability, with unfortunate and ultimately wasteful consequences.

6.7   *Limits on Automation – Culture, Law, Language and Trust*

A more fundamental limitation on the ability to automate contract management is that there are important contract management goals, especially for an international organization, that do not directly benefit from strictly applied automated support, especially if it is centrally dictated and inflexible.

Cultural context can determine many contracting processes, which are not too susceptible to rigid process maps. Especially in managing cross-border and international contracting, the professionals involved need to determine what of their processes could be improved – feasibly and in the near term – with centralized support and an improved information technology infrastructure, and which need to remain outside the scope of such an initiative. For example, it might advance contract management for an organization 80% over where it is today if contracts were more widely available in an electronic repository, and it might be a very substantial and important project to do only that, or even to create a central physical library of the paper contracts.

More concrete technical challenges to contract management on an international scale are how to address different languages and different legal systems. A truly multilingual contract automation initiative would be a significant undertaking for most enterprises, and could well run out of steam before completion if people did not properly understand the scope and the nature of the project. Of course it is also a prerequisite to taking a contract initiative across borders to address local law.

Finally, of critical importance is the human and social element of the contracting process. In a global business environment, cultural factors as understood and worked by creative and motivated individuals are just as real as any others and perhaps more determinative of the outcome than most. Key communications, both internal and outside, may be in person or on the phone, and should remain so. Market circumstances change constantly, and in some cases, rapidly – too rapidly for rigid infrastructure to keep up, and the ability to be responsive to the market is critical to success. A contract management system

is not just a machine with pulleys and gears, but first and foremost about fostering open and rapid communication for the health of the enterprise. Flexibility and the ability to translate – both literally and figuratively – across national and cultural borders to create trust are critical elements in the design, and centralized control and automation should not reduce or distort the necessary human element.

6.8   *Balancing Centralized Control with Distributed Autonomy*

Thus, the design and implementation of a complex system like a contract management system requires a constant balancing and rebalancing of centralized control with distributed autonomy. Simplicity and efficiency and translatability push in the direction of centralized control, but too much of that is counterproductive. What a central office produces for "universal" use may not be all that universal. This is particularly true in a multinational context, as international marketers and international producers of retail products have realized over and over again. Some concepts travel well, others do not. In the case of contracting, an obvious impediment to a universal model is the disparity among nations of their law relating to contracts!

On the other hand, many demands to recognize "local" differences may be no more than an expression of desire for local autonomy generally and resistance to the "foreigners". People and systems that can bridge the gap are increasingly valuable institutional assets.

7   Conclusion

Contract management is an approach to an organization's contracting processes intended to optimize results for the organization while improving transparency and efficiency. It is principally about creating and maintaining information and control loops, and information technology support can be very valuable in strengthening contract management. However, information technology is not a driver but is instead only a tool.

Key design parameters in putting together a contract management system are control points dictated by risk management and business considerations, the need for a closed information loop, understanding the overall volume, content and variability of the contracts and deciding on principles of control, flexibility, exception handling and override availability.

Though a contract management project requires the normal project management toolset, there are special technical challenges in this area that include database/taxonomy design; the difficulty of manual coding; the relative indiscipline of the electronic document and communication environment and the complexity of formulating and then managing a confidentiality and access policy. These are overlaid against the more garden variety issues: resistance to change management and information projects, working within different languages, legal systems and cultures, and balancing central control against local autonomy.

In sum: this should remain a challenging area for managers for some years to come, but the old-fashioned virtues of patience, attention to detail and doggedness can yield valuable dividends.

Appendix 1 – Suggested Checklist for Contract Control Points

Identify control points based on loss experiences
　　Counterparty risk – creditworthiness
　　Counterparty risk – ability to perform
　　Mispricing
　　Missed deadlines to renew or terminate.
Errors attributable to a particular person, or office, or region, or type of contract?
Risks and liabilities not fully understood, controlled and priced.
Typical buy side control points: matching demand, optimum price, scope of work definition, assuring performance, adequacy of remedies, including consequential damages and third party claims.
Typical sell side control points: credit risk and credit support, overcommitment and overextension, scope of work definition, cost not fully priced, limiting liability, especially for consequential damages and third party claims.
Corporate functions:
　　Finance: amount, term (maturing) coupon; conditions precedent; covenants and events of default.
　　Fixed assets: finance control points plus buy side/sell side points.
　　Intellectual property: subject matter; scope (time and geographic); pricing (fixed or royalty).
　　Employment: title and duties; salary and other compensation; benefits; term and termination; noncompetition.
　　IT: scope; risk of specification and suitability for purpose intended; pricing pricing and payment; standards of service and support; term and renewal; compatibility and integration; escrow of source code.
　　Legal and compliance: e.g. KYC (know your customer) requirements such as those imposed under anti-money laundering regulatory schemes; insider trading prevention; Sarbanes-Oxley controls; regulatory compliance; disclosure requirements.
Portfolio view: matching needs to sourcing; global counterparty risk across all exposures; leveraging counterparty relationships; event risks; tracking trends and patterns.

Appendix 2 – Mapping the Contract Lifecycle

Over the course of its life cycle, the contract may take on a different form and be subject to different rules and processes. These are all familiar to contracting professionals.

The preliminary agreement. Almost every contractual arrangement that is in any way material is preceded by a phase during which the parties feel out the boundaries of their agreement and settle on the basic terms. This may take place in the context of a formal RFP (request for proposals) or other highly structured, and possibly lengthy, bidding or tender process. On the other hand in a spot market it may be more a matter of the implied background, where the stage is set, so to speak – the majority of contract terms fixed and known without the need to speak of them, and from initial contact to binding contract taking only as long as it takes for one party make a signal and other to acknowledge it – for example, at a fine art auction or on a trading floor.

For any given contract management scenario, it is important to define the preliminary agreement process, and in particular to understand what the "background" contract is, and which terms become binding and when. The joke about the neophyte at the fine art auction who scratches his nose at the wrong moment is a propos.

Contract negotiation and execution. Again, in most material contract situations, the contract is reduced to written form over the course of a negotiation. It may be contained a single formal contract, a group of writings, exchanges between the parties (increasingly in electronic form), or in a printed form, with attachments, riders or marked-in changes. In other contexts, oral contracts are binding – for example in some phone-based trading of financial instruments, though even here it is customary to record the phone call. In the insurance industry, policy coverage commences on the basis of an oral binder, but documents follow.

All of these ways of documenting a contract are fine, in principle, so long as the parties are agreed and have the blessing of legal counsel. At some point in the process though, it is clear that the haggling and other preliminaries and formalities are completed and that a binding contract is in place. This point in time is usually called execution, with the activities that come before called pre-execution and post-execution. In many organizations, contract management has a focus either pre- or post-execution but not end to end. Where this is the case, the organization has not created the closed information loop of an optimal contract management system.

Conditions precedent. For some contracts, execution is not the final step in making the contract fully operative. These contracts contain a set of conditions that need to be met before the parties become required to perform. Such conditions precedent many include various formalities or third party consents. For example, a merger have to be approved by government antitrust authorities before it may close. Conditions precedent may also relate to real world events and conditions, e.g. that there is no disruption in world financial markets.

Post-execution: performance, milestones, approvals, consents, amendments. After the contract is executed and becomes effective, there is still usually a timeline of events, some prescribed or anticipated, and others in response to

changes. The timeline may be as simple as delivery and payment, or it may be as complex as the milestones and certifications typical of a turnkey construction project. During the operative period of the contract, both parties need to be able to refer to the contract – to know what it says and act accordingly.

Survival – contract terms that live on. For most contracts, there is a point in time post-performance when the contract can go on the shelf. People responsible for administering the contract or delivering performance under the contract are finished, and no longer need to be referring to it day-to-day. But it still might be relevant as a precedent. Furthermore it is likely that the contract is not totally dead. Representations and warranties outlive delivery, though they may eventually have a cut-off date. Confidentiality and non-competition provision are nearly always intended to outlive the term of active contract performance. Liabilities in tort or grounded in fraud or the like tend to outlive the underlying contracts, and to extend beyond the express terms of the contract. In sum, the contract may retain relevance for the parties long after the essence of the contractual arrangement has passed into history.

At each stage of the process applicable to an individual contract, various people within the organization may be involved. These can include: sales and marketing personnel; contracting and procurement or outsourcing professionals; finance and legal functions; operations professionals, engineers and designers; senior management or other employees charged with strategic management; possibly outside lawyers and accountants; and of course the other parties to the contract.

There are or ought to be several corporate or management functions that sit outside the life cycle of a particular contract but apply to the organization's contracting activities in general, including: systems for knowledge capture (so that what is learned through experience is shared, retained and used again); corporate controls (so that management decisions are implemented); and decision support (so that aggregate and trend information is available for management decision-making). All of these are elements in the ideal information and control loop for contracting activity, though reality may fall short.

Appendix 3 – Baseline Assessment Checklists

 Baseline assessment of contract management for a particular type or group of contracts:

What is the subject matter of the contract?
How many contracts are executed per year?
How many contracts are in effect at any given time?
How often is there need to have reference to old contracts no longer in effect?
How is agreement memorialized?
How important is it to record communications leading up to contract execution or the history of negotiations?
How complex do the contracts tend to be?
How long are the contracts?
Whose form is used?

How much variability is there among the contracts?

Does the organization currently have or use standard forms?

If there are standard forms, are they commented on, with clause libraries and fall-back positions noted?

What languages are the contracts in?

What meta-data is captured about the contracts?

What governing law or standard terms govern the contracts?

Are there policies in place about governing law and standard terms?

In general, how much written guidance do contract professionals have to work with, or is contracting know-how mostly tacit?

How much training do contract professionals receive?

How much training and back-up do contract professionals have access to in the course of their work, and what is the form that this takes?

How formal and centralized is the contract management function? What is the organizational structure?

What are the control points (e.g., spend level delegation) in place?

What is the role of legal and compliance in the contracting process?

Is there a mechanism for capturing "lessons learned"?

What causes the biggest losses under this group of contracts?

What characterizes the most profitable contracts?

What is the life cycle of this group of contracts?

What is the cycle time from beginning to end for each contract? Are some parts of the process less efficient than they might be?

Are cycle time and other performance aspects of the contracting process captured and monitored?

What decision support or other types of analytics are harvested with respect to this group of contracts?

What is the RFP or bidding process like?

How are potential counterparties identified and qualified?

If a contract repository is built, how will legacy contracts be handled?

Baseline assessment of available systems support.
    Assess the following features of the IT infrastructure:

1   Network and email – internal.
2   Network and email – external.
3   Other use of communications/collaboration formats for communicating with and working with counterparties: e.g. recorded phone conversations, external collaboration tools.
4   Word-processing, editorial and internal collaboration tools; any contract automation capabilities or systems.
5   Generic SQL (Structured Query Language – a standard language for working with relational databases) database.
6   Document management system, including metadata features and/or other electronic document repository.
7   Access interfaces to the document management system, including search and report capabilities.

8   Business process capabilities (either facility to design workflow elements using generic web-based tools and email or a business process software system)
9   Database capabilities underlying business process capabilities, including the capture of performance data and interface for queries and reports
10   Customer relationship management systems, including present capture of counterparty qualification features
11   Accounting and ERP systems to record contract performance and measure against contract requirements

Appendix 4 – Automation of Contracting Processes?

Moving toward automated support of contract management entails providing optimal support of the portions of the contracting processes that can benefit from automation. Many elements of the contracting process are likely to be manual or dispersed at the start of a contract automation initiative, and some will remain manual in any case – e.g. subjective approvals. Systems support for these processes typically include document production systems of some sort, communications (workflow) and some sort of database, including a document repository. Automated support for contract management generally can also include computer-based drafting tools – that is, computer-assisted creation of contracts (or at least first drafts of contracts) from a form or questionnaire. Substantive elements of a contract automation system are template and questionnaire, variables, logic, clause library, business rules, and instruction and commentary (annotations).

   Thus, the elements of software support for contract management are an automated document creation system, a workflow for the automation of the business processes associated with the contract throughout its life-cycle and databases to capture information from these, including a document repository. Functionally, these elements break down into software tools that are generally available in generic or multipurpose form. Most large organizations today have internal IT networks, including an intranet, and a presence on the internet, including possibly an extranet site – a password-protected portion of its website for customers or suppliers. XML (extensible markup language) is being used for tagging information so that it can be shared among parties who have different internal IT systems – creating database-like characteristics for information shared over the internet. Email is ubiquitous as a means of communication but also document delivery, and there are also web-based collaboration tools for sharing and working on documents. Microsoft Word is a near universal business medium for word-processing and it includes editorial capabilities, such as commenting and redlining features. Most substantial businesses have some sort of generic SQL database. Some organizations have invested in document management systems to help them keep track of their documents, using metadata.

   Alongside these systems, organizations typically have management information systems focused on the transactions processing and developed to

support accounting and financial needs. They may also have customer relationship management systems.

Where an existing IT infrastructure of this type may fall short in terms of full support of contract management would tend to be:

° workflow (business process) automation,

° more sophisticated contract creation (automated document assembly) capabilities

° more sophisticated document management systems, which include version control and lock-down features,

° the systematic capture and use of meta-data regarding contracts

° integration of these features with each other and with other information systems.

The benefit of dedicated contract management software applications is that they tie all these systems and features together. Contract management software packages include business process capabilities, but workflow (net-based communications including forms, emails, collaboration workspaces and message boards backed up with an integrating database that can capture data, enforce rules and measure performance by logging events) can also be developed using standard web programming tools and a SQL database, or by using a general purpose workflow or business process product.

The upside of setting up the machinery for an IT-supported contract management system is that its functional elements have so much wider applicability within most organizations. Business process automation is a pretty general need, as is the need for "ticklers" of various types, as is the need to store and find documents, as is the need to figure out, quickly, what documents say on key terms. If a pilot contract management implementation is done well, other groups are likely to want to sign on for other business process automation projects.