



Services General Conditions – Additional Clauses Managing records of outsourced activity

1. INTRODUCTION

1.1 Overview

The Public Record Office Victoria has issued *PROS 10/10 G2 Managing Records of Outsourced Activities Guideline* which explains how agency contract managers can manage recordkeeping obligations by including records management clauses in contracts with organisations performing activities on behalf of government.

This guideline applies to the development of records management clauses for inclusion in contracts or agreements for outsourcing activities to external service providers. It can also be helpful when drafting legislative instruments to privatise government functions.

This guideline has been used to draft this additional clauses document.

The link is as follows:

<https://www.prov.vic.gov.au/recordkeeping-government/document-library/pros-1010-g2-managing-records-outsourced-activities>

1.2 Definitions

In this Contract, the following terms have the meanings indicated, unless inconsistent with the context:

the Record means any document within the meaning of the Evidence Act 2008 (Vic), including:

- (a) anything on which there is writing; or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

Record keeping means making and maintaining complete, accurate and reliable evidence of business transactions in the form of recorded information;

2. ADDITIONAL CLAUSES

2.1 Ownership & Custody

The Victorian Government retains legal ownership of all records of the services provided by the outsourced organisation under Council's Specification. Upon termination or completion of this Contract, the beneficial ownership of all records of the services provided by the outsourced organisation under Council's Specification will be transferred to the Victorian Government.

2.2 Intellectual Property

The outsourced organisation will own all Intellectual Property with the exception of records of services created by the outsourced organisation as detailed in Council's Specification. The intellectual property of these records will be owned by the State of Victoria.

The outsourced organisation is granted a perpetual, world wide, non exclusive, non-transferable licence for use of intellectual property owned by the State of Victoria contained in records as detailed in Council's Specification.

2.3 Creation & Control

The outsourced organisation will implement and administer a record keeping system that creates and maintains full and accurate hard copy and / or electronic records for all services provided by the outsourced organisation as detailed in Council's Specification in accordance with Standards issued under the Public Records Act 1973.

2.4 Storage

The outsourced organisation will store the records created and maintained for services provided by the outsourced organisation under Council's Specification in accordance with Standards issued under the *Public Records Act 1973*.

2.5 Security

The outsourced organisation will ensure the security of records created and maintained for services provided by the outsourced organisation under the Council's Specification in accordance with Standards issued under the *Public Records Act 1973*.

2.6 Access

The outsourced organisation must immediately provide access to records relating to services provided by the outsourced organisation under Council's Specification in any of the following circumstances:

- (i) in accordance with the requirements of the *Public Records Act 1973* and all relevant legislation, including *the Privacy and Data Protection Act 2014 (Vic)*, Freedom of Information Act 1982, Health Records Act 2001 and Evidence Act 2008;

- (ii) to the Victorian Auditor general or Victorian Ombudsman upon request in writing;
- (iii) to a Government representative upon request in writing; or
- (iv) for the purposes of performance monitoring

2.7 Disposal

The outsourced organisation must only dispose of a record in accordance with standards issued under the *Public Records Act 1973* and in accordance with any specific instructions provided by the Victorian government from time to time. When transferring custody of records to the agency the outsourced organisation must transfer the records in a format and manner which allow the records to be quickly and easily retrieved, reviewed and utilised by the Victorian government.

2.8 Contract Completion

Upon completion, expiry or termination of the contract, the outsourced organisation will transfer all records created and maintained for services provided by the outsourced organisation under Council's Specification to the agency in a format and manner which allow the records to be quickly and easily retrieved, reviewed and utilised by the Victorian government.

2.9 Indemnification

The outsourced organisation indemnifies the Victorian government against any claim by any person for loss or damage in respect of a breach of the record keeping requirements.