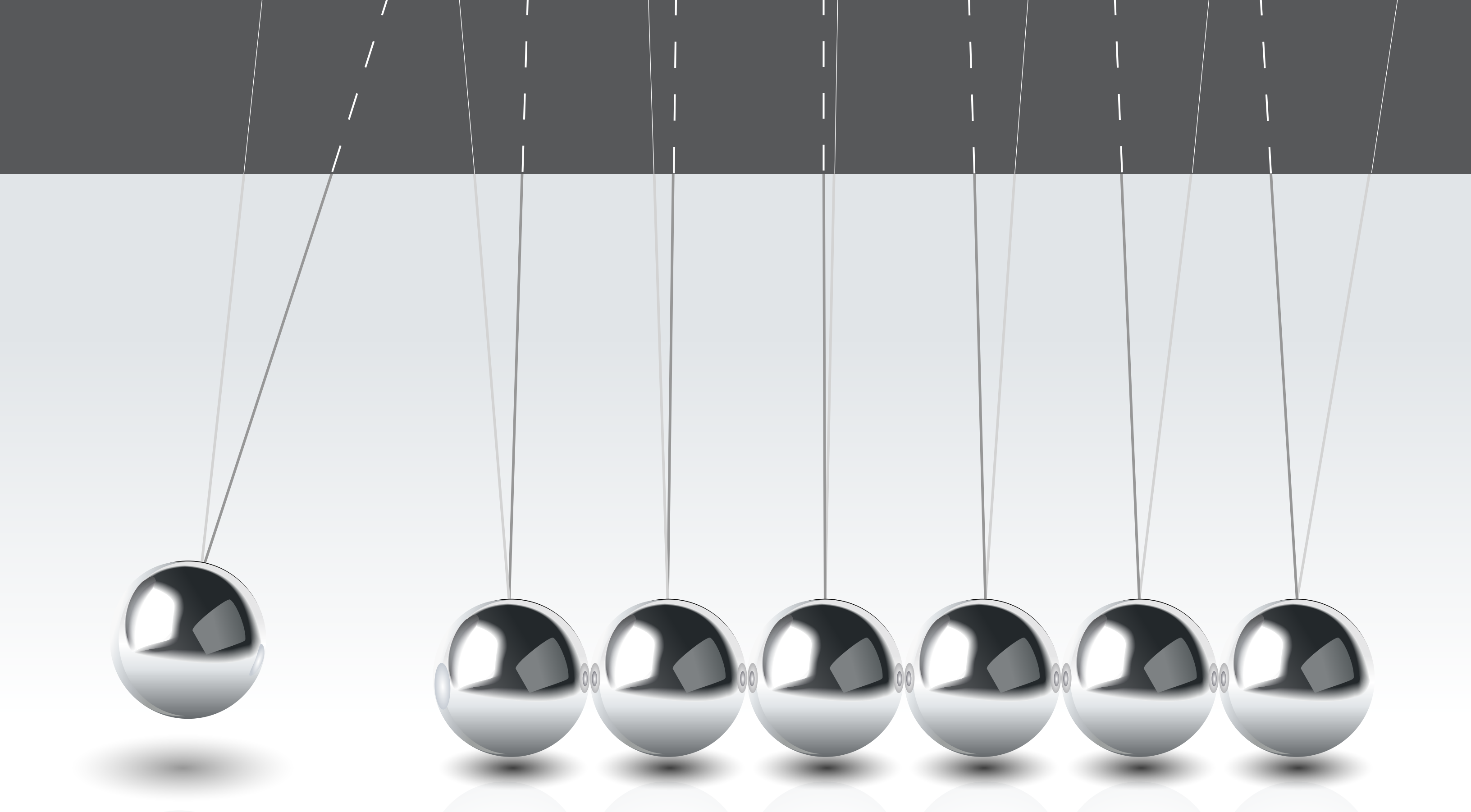


Manage Contractual Obligations the Right Way

The Contract Lifecycle Management (CLM) industry and its solutions are being assessed incorrectly. Supply Chain Management, Buy-Side Solutions, and Sell-Side Solutions are each artifacts of the past, unnecessary categories and terms which should be eliminated from discussion and benchmark measurements of CLM solution feature sets. This terminology is a result of the historical perspective of what Contract Lifecycle Management currently is, contrasted to what it should be.

J David Montgomery
VP Solution Architecture
CLM Matrix

It's time for change.

A Contract is simply an agreement between two or more parties that establishes a set of obligations defining each party's compliance requirements. Furthermore, obligations, outside of party-to-party compliance, are required by government sources, such as city, state, federal and international regulations. Note: one party's obligation may be another party's right. Meaning, if one party has the obligation to pay compensation, then the other party has the right to receive that compensation. For purposes herein, the terms "obligation" and "right" are synonymous and are considered one and the same.

A CLM solution should be unconcerned with its direction of travel: Buy-side, or Sell-side. Instead, these solutions should be concerned with the stated obligations, provide features to ensure obligations are met by both parties, and be accessed as such. To provide framework, new terminology is proposed:

Obligation Management is the ability of an organization to manage its obligations throughout the delivery of its products or services.

Obligation Traceability is the ability of an organization to trace and monitor the Policies, Processes, Procedures, Contractual Clauses, and Personnel who are involved and accountable for the delivery of obligations.

What are Obligations?

An Obligation is a requirement, a bond, a promise; something that must be done.

Legal terminology stipulates the use of "shall" and "must" to state firm obligations in a contract or regulation. The terms "will" and "may" are also used to indicate less firm commitments, but are none the less important for each party to track. Contracts and regulations state obligations which should be managed and monitored throughout the contract lifecycle, and frankly, across the entire business.

A contract must contain two essential components to be legally binding: 1) an agreement, and 2) consideration. Broken down, these include an assortment of provisions that encompass the legality of the contract: Terms, Conditions, and Performance. Each of these are stated as firm obligations, implied obligations, discretionary obligations, or entitlement obligations. Furthermore, as mentioned previously, some may refer to a party's rights.

Contract Lifecycle Management solutions should be measured in total by how well they manage obligations, and how well each provides Obligation Traceability in the organization. As important, CLM solutions should be accessed by their ability to be incorporated and integrated into existing legacy systems. Obligation Management and Traceability span the organization; henceforth, a CLM solution should be required to have agile and numerous integration strategies that can be used in provider/consumer data exchange models with other functional components throughout the organization.

Contract Management Today in Business Operations

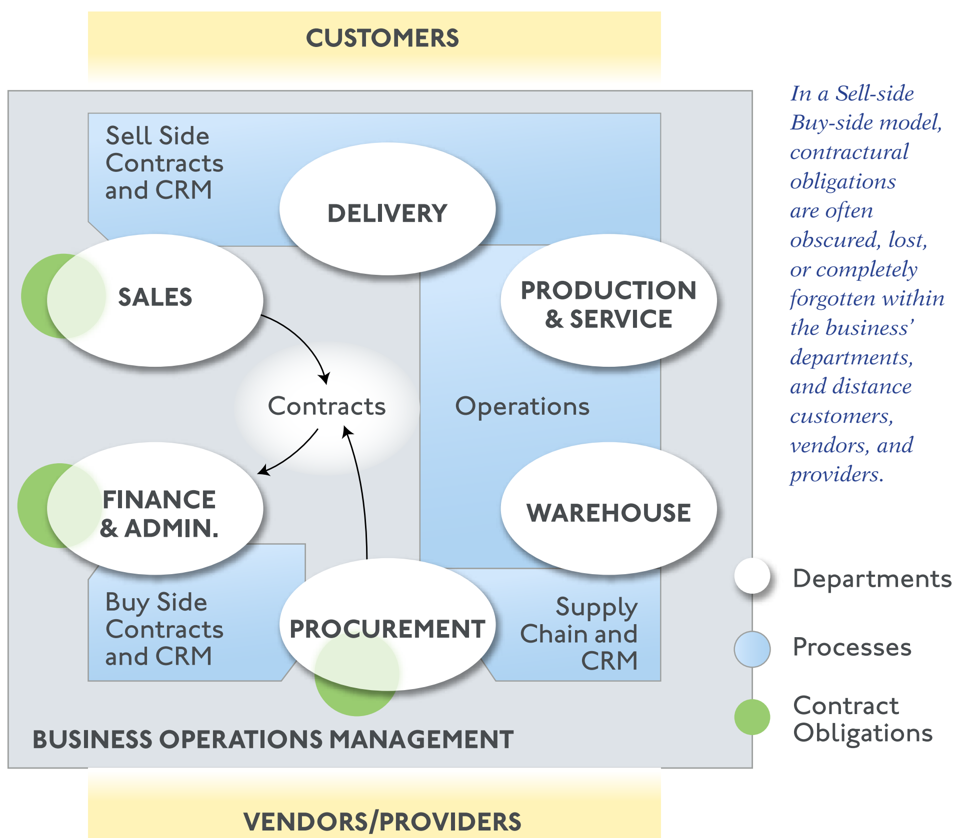
Most businesses today view contracts and contract management as a file storage of paper documents, from file cabinets, to expensive document management systems. Their contracts and their contractual obligations are not necessarily integrated into business operations. At best, most have manual procedures and document stores to track expirations dates with maybe some technology-assisted alert mechanisms. But, expiration dates or renewal dates are only a small fraction of the complete set of obligations stated in a contract. All obligations are important.

Human analysis of contracts is performed to ensure process-centric business operations meet all of the required obligations. However, this is done without a direct link connecting the process, the policy enforcement and the obligation, because the contractual document is not directly interacting with the processes taken as a whole; it is stored separately from the cross-departmental operational processes put in place.

Best Practice Teams can only do their job after the fact; spending significant time manually reviewing contract terms, trends in using contract terms, and post analysis of operational costs associated with the use of such terms.

Fundamentally, here is the current way most businesses view contracts and contract management within their organization, as a contract data store:

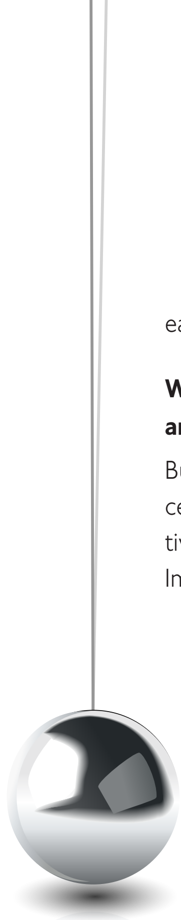
Note the lack of interoperability between a contract data store, and the other operational processes in a business. There is a complete lack of visibility into how a



In a Sell-side Buy-side model, contractual obligations are often obscured, lost, or completely forgotten within the business' departments, and distance customers, vendors, and providers.

single contract obligation affects other business operations and cost. Unfortunately, visibility of this information is achieved using manual efforts of teams of people reviewing line-by-line contracts within the contract repository, or data mining methods across several legacy systems.

The most important point made herein is that obligations are the driving force in everything a business does, in every policy stated, and in every process executed. Contracts should not be hidden in file cabinets or document storage applications. Contract obligations should be integrated into all business operations. Obligations should be traceable across the entire organization to obtain the corresponding cost impact of policy and process decisions. Obligations are the topmost performance metric all organizations should follow.



> "Obligations are the driving force in everything a business does, in every policy stated, and in every process executed."

Obligations are the driving force in everything a business does, in every policy stated, and in every process executed.

What is needed is a direct linkage between the obligation and the business operations. What is needed is a direct linkage between the contractual obligations and customer relationship, financial, supply-chain, and operational processes. What is needed is a direct way to ensure obligations are being met, where they are being met, how operations may be improved to meet them, and a means to measure and reduce the cost of meeting each contractual obligation.

What is Happening Today and Why it is Wrong

Business operations are overly concerned with their processes. Executives are focused on Business Process Improvement and Business Process Reengineering to maximize efficiencies. Unfortunately, this approach has limitations as this focus is incomplete and is solely at the execution-level of the organization. We need to ask ourselves: "Why do processes exist in the first place?" Business processes exist to meet obligations and to enforce policies in a repeatable, auditable way. Obligations (regulatory, contractual and board directives) are stated requirements; bound commitments.

There is no decision-making process surrounding stated obligations; each is a business requirement. But, business policies are designed to ensure obligations are met. They are defined by executive-level decision makers. A policy statement is the result of a decision-making process. Today, how do executives know their crafted policy statements are correct, are the most efficient, and are integrated into their organization's business processes, if at all? What are today's methods and technology solutions for Policy improvement?

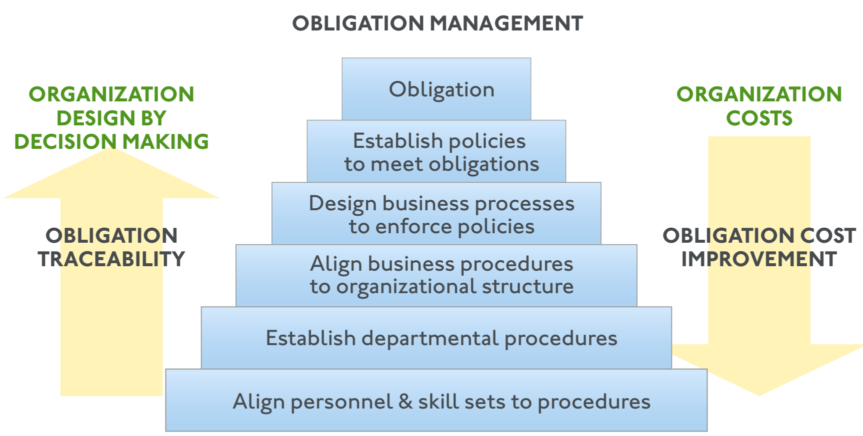
Acknowledging that obligations are business requirements, and policies, processes, procedures and personnel assignments are organizational designs, how do decision-makers measure the affects of their decisions? The design could be incomplete, wrong or inefficient. Furthermore, these designs translate into organization costs. There needs to be a way for executives to measure the organizational costs and efficiencies associated with their policy and process decisions. There needs to be a way for executives to determine how much it costs to meet an obligation; or said another way, if the obligation were no longer required, what would the financial impact be to the organization? For example, what is the organization's obligation cost associated with meeting Federal Acquisition Regulation (FAR) 28 dealing with insurance and bond provisions? Or, if FAR 28 were no longer required, no longer an obligation, how much money would the organization save? I highly suspect the answer to this type of question is: "I don't know."

It is amazing how much the simple answer to a Yes or No question, while going through the contracting process, ultimately affects organization cost and profit margin. Organizational leaders today need to insist on answers to what should be simple questions. They should require solutions to drive transparency and traceability into the obligations met through the contracting process, and which ultimately affect organization cost and profit margins.

There needs to be a way to determine how much cost is associated with each and every company obligation. The only way to do that is to directly link each contract obligation to its policy statements, policies to the business processes and procedures that enforce them, and personnel to the processes and procedures. This perspective puts obligations "on top" of the business execution model, and is in fact what Obligation Management with technology-assisted solutions is all about.

The Obligation Management Model

What we need is a new model to provide a benchmark framework for accessing CLM solutions, centered on Obligation Management and Traceability and the solution's ability to facilitate integration strategies. The answer lies in the CLM solution's capability to embrace Obligation Management and Obligation Traceability, and as a result, Obligation Cost Improvement. The following illustration depicts this new model:



Lor susant et prerspieniae iduciatque nis simus earibus doluptas que eatur mos denis esti doluptat asime lacimi, cum sunt aut aut omni sim Lenienis receprorecto vel ium quatate.

By putting Obligations on top, with the vision of Obligation Traceability, business leaders will have a better view of just how much it cost to implement a negotiated obligation, a regulation, a self-imposed contractual obligation (board decision), a clause in a contract, and where those costs occur in the organization.

While this article focuses on CLM solution capabilities and features, there are obvious parallels to other business operations in general, accompanied with associated benefits. The core of the Obligation Management Model infers shifting the focus from Business Process Improvement to Obligation Cost Improvement.

Obligation Cost Improvement

Given the Obligation Management Model, business executives wll now have the ability to trace the impact of a contractual obligation throughout the organization by policy definition and enforcement, cross-functional processes, and procedures. They will be able to establish policy and measure just how much the policy decision drives obligation costs in their organization; whether the obligation be regulatory, contractual, or board directive.

Fundamentally, business process improvement by itself is simply not a high enough focus to provide reasonable improvements to organizational efficiencies. Obligation Management, combined with Obligation Traceability, tells executives exactly where the costs are, where they need to be improved, gives them input for policy improvements, and gives them visibility into employee skills and hiring requirements.

Business decisions will be more effective, profit margins will improve, and properly skilled personnel can be hired and positioned. In addition, metrics can finally be gathered to answer questions such as:

1. "If I increase the cost it takes my organization to meet an obligation by hiring more personnel, will that improve my product/service throughput and increase my margins?"
2. "If I reduce my obligation cost, does that negatively affect throughput?"
3. "Can I improve my business policies to elevate efficiencies?"

The Affect on Contract Lifecycle Management

So why have CLM solutions been bound to buy-side vs. sell-side evaluations? History explains why. Many contract management vendors have evolved from their legacy technology and have tried to fit their solutions into a Contract "Lifecycle" Management story. Being bound by their prior R&D investments, they jumped into the CLM market space trying to get return on their investments with a less than complete feature set. And further investment has not resulted in return, causing several contract management vendors to have significant financial commitments. Historically, being addressed as such, buy-side solutions and sell-side solutions became a benchmark measurement. Many CLM solution providers have extensive hardcoded software built on decade-old technology and simply cannot afford to start over.

In an article I wrote October 2007[1] explained the need for Policy-centric solutions. In this article, I explained the evolution of contracts and how they have been managed. Process-centric solutions are simply not enough for a business needing to enforce policy. Their policies are embedded "somewhere" in a business process with little or no direct linkage for monitoring. Significant dollars have been spent on SAP, Oracle, Seibel, and

"One of the primary missions of a CLM solution is to orchestrate obligation management and traceability tasks as these thread across the organization."

JD Edwards-like solutions to implement enterprise Process-centric execution into the organization. Policies, as they change over time, require companies to invest more dollars on these hardcoded process-centric solutions to implement the new/changed policy.

Contrarily, Policy-centric solutions constructed to define and track policies facilitate not only the evolution of policy change, but also provide business leadership with traceability and greater knowledge of where a policy is being implemented in their organizational processes. Understanding how business management has matured over time clarifies why Contract Lifecycle Management solutions are currently misevaluated. Many have categorically missed looking at the bigger picture.

What if contractual obligations were individually linked to every policy-centric operation in a business? What if this direct linkage could provide visibility into the operational costs associated in meeting the obligation? What if this technology-assisted insight were available to help businesses improve their policies, their processes, and their costs?

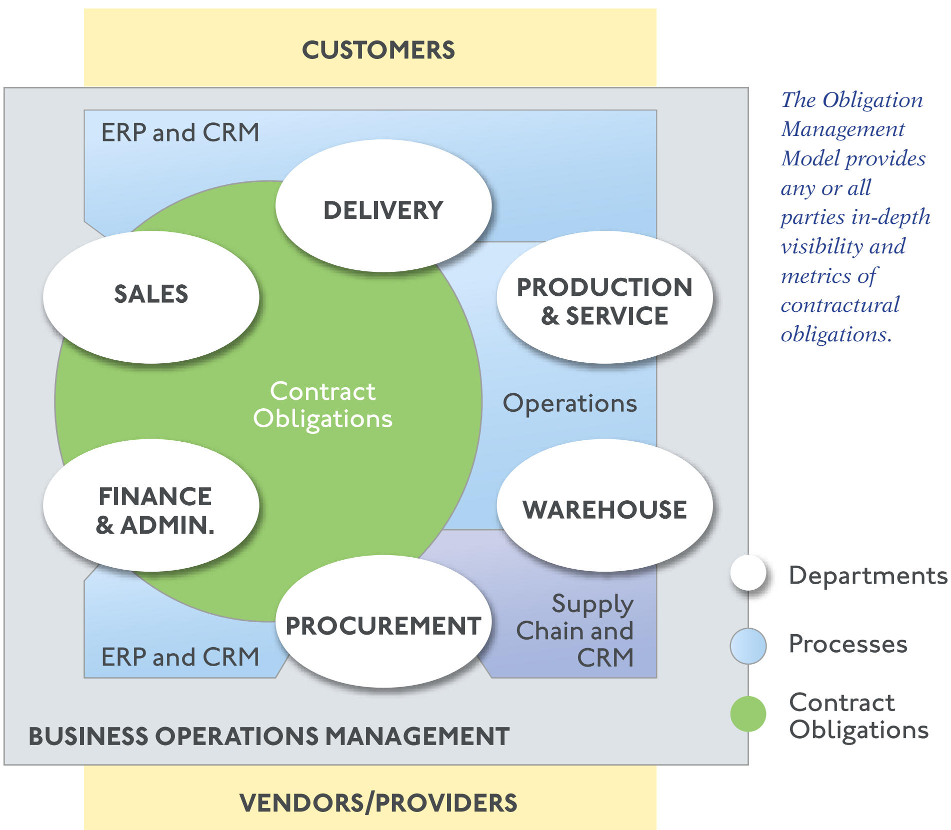
One of the primary missions of a CLM solution is to orchestrate obligation management and traceability tasks as these thread across the organization.

With the experience of working government contracts for 8 years, Requirements Definition and Requirements Traceability became engrained into my mental thought process. The importance of requirements traceability throughout a development project then drove me to create technology that would automatically manage and monitor requirements as they were defined and as they flowed through the development process - ultimately being verified in the delivery of the project's solution. This same model applies to managing business obligations. These are requirements that have been or need to be stated, monitored, tracked and verified throughout the process of delivering the company's obligated product or service, and in the process of buying products or services from a supplier. As a result, I would offer a revised definition of Contract Lifecycle Management:

Contract Lifecycle Management is the formation of multi-party agreements combined with the management of a company's obligations and their direct relationship to company policies, processes, and organization personnel that execute their procedures, review and approve work, negotiate, and execute a contract while acknowledging the importance of cross-functional integration to achieve total concept of operation.

A contractual obligation is stated in a binding agreement. So Obligation Traceability must be driven down from executive-level policy decisions to the exact clause or clauses that are put in place to ensure obligations are met. Business leadership does not yet have the ability to ensure obligation delivery down to contract clause-level statements. Analogous to government contract development, where Requirements Management and Traceability are necessary to connect a system requirement to a software module, Obligation Management and Traceability are necessary for commercial businesses to track obligation fulfillment throughout their organization to the specific costs and role-based resources that are responsible for meeting the obligation.

Obviously, the concept of Obligation Management spans the entire organization. Whether selling or buying products or services, there are enterprise pieces to the solution. CRM (Sales/Support) and ERP (Finance) activities are necessary in executing buying and selling transactions. Binding contracts are prevalent and necessary in both directions and these activities need to be integrated and work together as part of an overall Obligation Management solution.



The Obligation Management Model provides any or all parties in-depth visibility and metrics of contractual obligations.

Note how the above diagram illustrates the direct relationship with key organizational, functional components.

What is needed is a CLM solution, an obligation management function, to manage, monitor, collect and disperse obligation/policy-centric data with the other functional components in the organization. A CLM solution with obligation management and traceability features is an integral component on par with Sales and Finance components. It is proposed that one of the primary missions of a CLM solution is to orchestrate obligation management and traceability tasks as these thread across the organization.

Obligation Traceability means the obligation needs to be stated and linked to business policy, process, procedure, and personnel. Government regulatory requirements are as well stated, for example FAR requirements or Generally Accepted Accounting Principles (GAAP). Business leaders need technology-enabled visibility into the organization mechanisms that provide insight into how their business meets, tracks, monitors and audits its obligations - which is the essence of Obligation Traceability.

A Contract Lifecycle Management solution should provide greater visibility into these direct relationships.

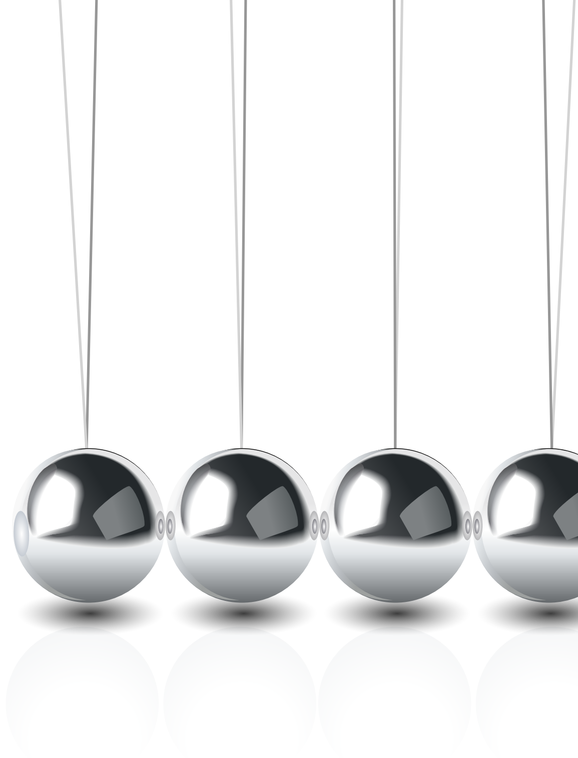
Contract Lifecycle Management Benchmark Analysis

Industry leaders who follow the CLM space should embrace the bigger picture and assess how well CLM solutions provide the ability to manage obligations and policies. Is the CLM solution configurable such that the solution can deliver these features? Adaptability across business lines, industries, and business operations is critically more important than analyzing if a solution can address the features of sell-side contracting. It's time to step out of what has been, and step into what is needed.

For discussion purposes, business operations are herein viewed by size and maturity. Small businesses manage their operations with either verbal or written procedures to follow. Without consciously knowing, they are establishing procedures to meet their business obligations. Mid-size businesses manage their operations with cross-departmental processes to establish chronological flow, checkpoints, lower level procedures and duties among the personnel involved with the given process. Without consciously knowing, or maybe so, they define and implement processes to meet their policies.

Mid and large size businesses manage their operations by establishing policies, implementing processes to meet policies, and employing department-level procedures to fit into the process model. Without consciously knowing, or maybe so, they define policies to make sure their business obligations are met: be they contractual, regulatory or business obligations established by Board-level decision-makers.

How do business leaders ensure obligations are being met? Do they have organizational visibility into who, when and where these obligations are being met? What is their confidence level that obligations are met? To reiterate a central point, it does not matter if the obligation is buying or selling; it is fundamentally and simply an obligation.



Contract Lifecycle Management: The Future of Business Contract Operations

The Obligation Management Model proposes a different framework for accessing CLM solutions. It proposes a structural change in the way business requirements are managed and information is gathered. It is a different perspective of the industry. It is profound in that it moves contractual and business obligations out of filing cabinets and into the executive office, while directly providing in-depth visibility and metrics for business improvement and return on investment. Obligations are the reason why businesses do what they do. Obligation Management, Traceability and the capability to provide visibility into Obligation Cost Improvements are new key fundamental concepts in business operations and in future CLM solutions.

Acknowledging the need for policy management and implementation, more advanced technology solutions have created the ability for a business to define and establish policy-centric contracting solutions, without the need for custom code. The next evolutionary step is Obligation Management and the need for business leaders to have the resources to ensure obligation fulfillment. These forward thinking solutions also address the Obligation Traceability functionality, critically important in providing leadership with organization visibility. Our future will complete the delivery of total Obligation Management and Obligation Traceability from all sources, whether the source is contractual, regulatory, or board-level directives. The question now becomes: How are you going to manage your company's obligations?

About CLM Matrix

CLM Matrix is the market leader in Contract Lifecycle Management (CLM) software solutions on Microsoft Office and SharePoint technology platforms. Our solution extends the functionality of traditional contract management software by adding features such as:

- Rule-based document creation
- Clause libraries
- Policy-based approval workflow
- Automated reminders and alerts
- Real time user defined reporting
- Integration with legacy enterprise software
- Contract compliance tracking
- Multi-language capabilities
- Support for global environments
- Fully configurable to specific process and document types without code (wizard driven)

clm matrix

To learn more about CLM Matrix and our award winning software solutions, please visit clmmatrix.com or contact us directly at 1.800.961.6534.