Section taken from:

**The Armed Forces Museums & Archives, Archive Manual**

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**4.5 Deposit Agreement**

A key component of collections and acquisitions is the deposit agreement. A deposit agreement should always be sought with any individual or organisation wishing to leave records in your custody.

Deposit agreements are widely regarded as legally binding though this cannot be said with any certainty. (That is a decision for legal professionals and courts.) If you have, or wish to develop a deposit agreement form it makes sense to have it checked by a legal professional before use.

A deposit agreement should have two parts (rather like a treaty) a protocol outlining the agreement, and ratification, where the parties signed their agreement.

The protocol outlines the key point of the agreement. It can include details covering –

The rights of the depositor

The rights of the recipient (new custodian)

Specified actions permitted under the agreement (preservation measures, cataloguing, and access arrangements)

The future alteration or termination of the agreement (usually following recovery of the records by the depositor)

Responsibility for any costs / payments incurred through receipt, custody or withdrawal of the records

The transfer of all associated rights (for example, copyright, where possible)

It is sometimes necessary to

Cover the responsibilities of a third party acting on behalf of either the depositor or recipient

Cover the rights of any other parties, additional to the depositor, where there is a vested interest in the records (e.g. copyright ownership)

Any legal terms should be defined (quite often this occurs at the start of the text).

The ratification should

Have a unique deposit agreement number

Have a preamble stating briefly the purpose of the agreement

Details of the depositor and recipient

Space outlined for both depositor and recipient to sign and date the agreement

A general description (sometimes referred to as a schedule) of the collection or records being deposited.

It may also be helpful to have a listing of the records if it is available at the time of signing.

You may wish to establish a register where all of the above information is recorded, or otherwise incorporate this information in to one of the reference works outlined in Section 6. Establishing an electronic register may seem like duplication but having all the information instantly searchable is a boon to handling enquiries.

Hampshire Archives and Local Studies has two forms of deposit agreement. One covering the custody of records, the other receipt of gifts of records. Copies have been provided at the end of this section.

**4.5.1 The pros and cons of a deposit agreement.**

Are deposit agreements always necessary and are they for the best? Well, the answer to this is no, then yes.

It may not always be possible to arrange a deposit agreement as there may be nobody to form an agreement with (thus, the need for effective acquisition documentation (s*ee* section 5). Where it is possible, it is desirable. That said, there are certain drawbacks to a deposit agreement.

The advantages are –

**Secures collection**

**Agreed disposition**, delineating responsibilities of each signatory

**Permits actions** with records to improve their condition and make them accessible

**Sets out compensation** should either party renounce the agreement

**Clarifies associated rights**, such as ownership and copyright, whether or not they are vested in the Museum, depositor or third party

Things to be aware of –

**Ties down responsibility**, long-term, leaving archive with duty of care, etc. that …

May have **long-term financial cost**, possibly not envisaged at time of deposit

**Reputational threat**, if the agreement is not honoured, and if the agreement is not deemed fair for the depositor, thus …

**May put depositors off** depositing if they feel they would not get a positive outcome

May lead to **unwanted offers** of records, especially so if there are material benefits to the depositor.

Ultimately, it’s down to mutual acquiescence. If the depositor wishes to donate but doesn’t wish to be tied to a formal, legally binding agreement, it will be down to you to decide if you go ahead with receiving the collection. A reluctance to sign a deposit agreement with legal ramifications is entirely understandable, but there are ways to circumvent the concern.

Firstly, you should provide a straightforward explanation of the deposit agreement, avoiding legal jargon and setting out in very plain terms what, in practice, the clauses mean. This should be publicised so that would-be donors can consider the requirements without the pressure of making a decision with little or no notice. Publicising such information may reassure and encourage other would-be depositors.

Secondly, you could formulate this explanation into an additional agreement that can be signed by both parties as ‘understood’. This would provide reassurance to a would-be depositor and, possibly, lend encouragement to signing the formal deposit agreement.

Thirdly, if there remains a reluctance to sign a formal deposit agreement you may wish to offer something far more straightforward where the depositor signs away ownership, and any associated rights to the records, thus leaving them as the Museum’s property.

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