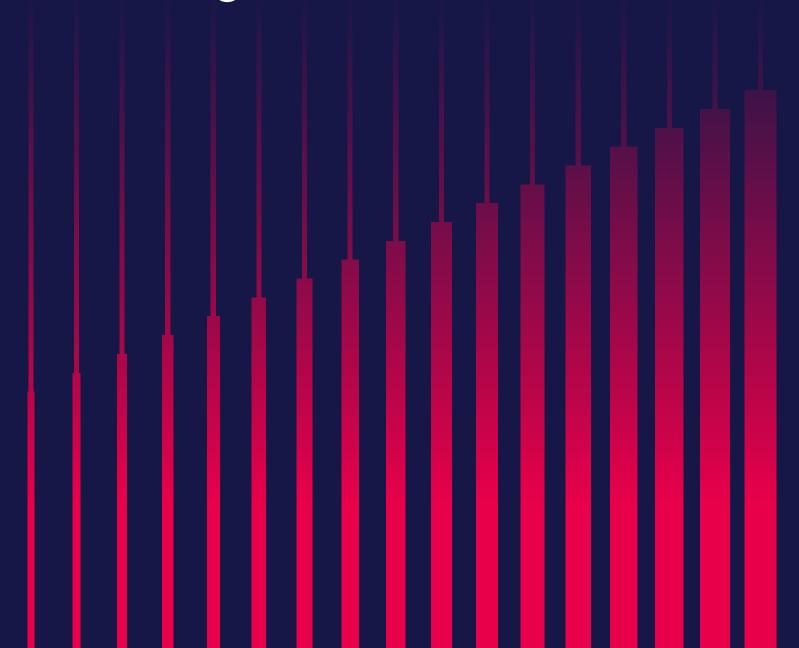# Transforming Contracts Management

For most companies, the enterprise contracting process is inefficient and ineffective, resulting in a measurable loss of enterprise value for a company. Their current processes often needlessly extend sales cycles, result in revenue/margin leakage, and increase legal/compliance costs and risks. It is also a drain on legal and procurement staffing. Corporate legal, contracts, and procurement departments have lagged other departments in taking advantage of technology and process improvements to address the broken nature of the contracting process. When they have invested in technology, the implementation has often failed either due to a poor technology selection or simply a failed change management effort.

The inability to optimize contracting impacts businesses daily. Legal and procurement departments are overwhelmed with the volume of contracts. Other departments, such as sales, complain about how long it takes to complete contracts with customers or vendors. Business executives complain they do not have visibility to their contracts while legal and procurement are seen as roadblocks rather than enablers of business value.

Most companies face some or all of the following challenges:

- Inefficient processes and resource constraints

- Inconsistent compliance with company policies

- Lack of transparency/visibility

- Lack of meaningful reporting or data analytics

- Lack of value based metrics

- Poor management of post-signing obligations

- Failed and/or expensive technology deployments

To truly fix contracting, you have to simultaneously address four fundamental pillars:

(i) Contracting processes

(ii) Content (templates/playbooks)

(iii) Technology

(iv) Staffing

While addressing inefficiencies within any one of these four pillars can improve the current state, you will only optimize contracting and maximize business value by addressing the key problems within all of them.

Four Pillars of Contracting Excellence

Let's examine the four pillars of contracting in greater detail.

1. PROCESS

Effective contracting begins with optimizing the company's processes, policies, and workflows, as well as establishing key success metrics. Critical factors include:

- Do policies reflect current business/risk profiles?
- Are policies balanced to offerings/deliverables?
- Are policies clearly written, understood, and accessible?
- Do policies cover all aspects of the contract lifecycle (i.e., request, creation, negotiation, approvals, execution, storage, administration, termination)?
- Are approval/escalation processes clear and aligned to risk/offering?
- Are the right stakeholders timely engaged in the approval/escalation process?
- Are there prescribed turnaround/response times or approvals and escalations?
- What are the key metrics to assess the effectiveness of the contracts process? How often are they measured? Who receives the information?

Few companies have addressed these process factors adequately. Processes evolve haphazardly over the years as companies grow and tasks are assigned to ever-changing personnel. Governance of the contracting function is often fragmented across various departments.

Effective contract management begins with a thorough assessment of a company's processes, policies, and workflows along with anticipating future needs with the goal of optimizing processes, governance matrices, and appropriate workflows. Such an effort must include legal and all other key stakeholders. Identifying an executive sponsor is also a critical success factor because of the cross-business and functional nature of this exercise.

2. CONTENT

An effective contracting process requires the creation and/or harmonization of contract templates and playbooks. Many companies have failed to control the proliferation and complexity of templates used by attorneys and contract professionals, particularly across multiple jurisdictions and business offerings. By standardizing and simplifying contract templates, companies can reduce risk and ensure compliance with policies.

Playbooks create a mechanism to ensure alignment across the company by including guidance on preferred contractual provisions, pre-approved alternative provisions, checklists, model clauses, explanations with talking points, and required approvals.

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Some critical factors for companies to consider include:

- Is there a defined owner for templates/updates?
- If shared, is there a governance process for managing changes?
- Are templates harmonized, succinct and reflective of current market positions?
- Are playbooks in place for negotiating on company templates or third-party paper?
- Do playbooks contain alternative clauses and guidance for their appropriate use?

Completing this exercise will begin to make the contracting process more efficient and effective, and will help accelerate current negotiation cycles. Clients will see immediate results via more simplified templates, along with a set of playbooks that will both accelerate and harmonize the current negotiation process.

3. TECHNOLOGY

The improvements a company can achieve by transforming their processes, templates, playbooks, and workflow will be significantly greater by utilizing technology to automate and operationalize these improvements. Technology will also provide greater transparency to the contracting process, allow for ongoing performance tracking and enable reporting/analysis of the entire contracting portfolio. Finally, a well-considered technology choice can also position a company to take greater advantage of new developments in areas such as artificial intelligence, blockchain or natural language processing. Fortunately, contract lifecycle management solutions (CLMS) have improved dramatically in recent years, particularly with the emergence of cloud-based options. A true, end-to-end CLMS will offer comprehensive functionality and address each aspect of the contract lifecycle, including:

Request and Intake – Managing workflow effectively begins with controlling the process of requesting and initiating contracts. A powerful and flexible CLMS can enable (and also require) business users to request a contract in ways selected by the company. Without this control of how work is requested and assigned, the ability to overcome the resistance to change is greatly impacted.

Authoring – Users should have access to approved templates, alternate clauses, and playbooks at their fingertips for seamless and efficient document assembly. This feature also enables "self-help" options for business users with respect to low-complexity contracts.

Multi-Party Negotiation – The CLMS should enable real-time collaborative editing both with colleagues and counterparties, with easy access to alternate clauses and playbooks. This significantly eases both internal collaboration and the negotiation process with third parties.

Automated Workflows and Approvals – Workflow rules should be turned into automated tasks that alert the appropriate stakeholders and provide visibility on the progress of individual contracts. Rules for approvals and escalations should also provide a record of all pending and completed tasks (including tracking of time to obtain approvals).

E-signature – This common and essential component should be a part of any CLMS, either as a native feature or as an easy integration with third-party solutions such as DocuSign or Adobe.

Searchable Repository – All executed contracts should be stored in a single repository with advanced search features to enable reporting, analytics and enhanced compliance.

Task Management – A comprehensive CLMS should not only manage tasks during the negotiation process but also convert post-execution commitments into tasks. Items such as renewals and critical notices can be assigned as a task with email notifications.

Robust Reporting/Analytics – Users should be able to review reports and analytics from a customizable dashboard based upon customizable permissions. This provides critical visibility for executives and managers that informs business decisions. Often, clear and impactful reporting is what legal and business executives most want from a CLMS solution.

In addition to the key functionalities detailed above, a CLMS should also have:

Cloud-based Architecture – Too many CLMS products are built on older architecture, leading to difficult, complex and expensive deployments. Cloud-based platforms ensure ease of deployment and lower costs for licensing, implementation and maintenance.

Easy to Use UI – A consumer-like user interface adds to ease of adoption and helps to mitigate change management issues. Too many technology projects fail because systems aren't easy to use.

Open API – Ease of integration with other systems (CRM, ERP, etc.) is critical as companies automate more internal functions. It's also critical for enterprise-wide adoption of the platform.

Enterprise-wide Contracting Platform – An enterprise CLMS should be able to handle sell-side, buy-side and all other types of agreements. Options overly tailored to just one function, such as procurement, lack the flexibility to have an impact for other use cases.

4. PEOPLE

Companies that make the commitment to improve processes, content and technology will have an opportunity to reassess the allocation of resources to the contracting function, including both location and seniority of resources deployed. Process improvements reduce misalignment and needless friction in negotiating and approving deals. Better templates and playbooks produce more consistent results and drive reduced contract negotiation timelines. Technology is the enabler to operationalize and measure the results of these improvements. It also provides transparency and visibility to the entire contracting process. Taken together, the efficiencies gained from these improvements can reduce contracting support costs by 30%.

With respect to resourcing, companies can also consider whether they should outsource commercial contracting support for procurement and/or sales.

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Companies will of course retain key senior attorneys and contracts professionals to supervise the work and manage all key escalations. However, the outsourcing option is compelling in the following circumstances:

- The organization faces a high risk of not executing on change management for new approach to supporting contracts. Many well-intentioned internal attempts to transform contracting support fail for this reason. With the right provider, change management issues are eliminated as trained resources will be performing work specifically assigned through the services contract, with specific SLAs, service credits and penalties for failure to execute as required.

- There is a preference to move towards a higher variable cost model over a fixed cost model, particularly if fixed costs can be deployed into more strategic or critical areas. An elite legal services provider can provide flexible staffing options and a competitive cost structure.

- A critical need to deploy technology to transform the current contracting support model, including addressing intake, workflow, negotiation, storage, reporting, and analytics. Investment in needed technology and processes isn't always an option for an in-house team.

- The ability to leverage global delivery capabilities is required. While a number of companies have tried to create captive support models in lower cost jurisdictions, the reality is that deploying such models is difficult and requires significant expertise and operational rigor. It's often better to leverage a service provider that runs such delivery centers as a core competence.

- There is the need to reduce current costs aggressively and have a model for ongoing costs reductions. This can be built into the elite legal services provider contract, with guaranteed cost savings.

Delivering Business Impact

A company that can excel at contracting by implementing all four pillars of contracting excellence should expect to achieve and measure the following:

- Significant reduction in support costs to complete contracts, which can address budget reductions and/or enable redeployment of attorneys/contract professionals to other matters

- Increased velocity of sales deals and accelerated revenue cycles

- Reduced revenue/margin leakage

- Increased customer/vendor/partner satisfaction ("ease of doing business")

- Enhanced compliance with regulatory issues and corporate policies

Are you ready to tackle the transformation of contracting in your organization? Make sure you address all four pillars of contracting excellence – process, content, technology, and staffing – to ensure your efforts achieve measurable business value and impact. Given the positioning of the modern General Counsel as a key member of a company's leadership team, demonstrating the ability to deliver business impact will be an increasing expectation of this role.

To learn more about effective contract management and how this might apply to your company, please contact **info@unitedlex.com**.

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