

SUMMARY OF CONTRACT PROCESS ROUNDTABLE
(Held on January 29, 2015)
Sponsored by the Small Law Department Committee

TOPIC #1 – CONTRACT PLAYBOOKS
Has your company created a contract playbook?

* **What is a contract playbook?** A contract playbook is a document that empowers others within your company, either non-lawyers or lawyers, to handle the entire lifecycle of a contract. It should allow someone to step into a contracts administration role and understand what to do with little or no training and/or oversight from the legal department.

* A contract playbook can cover many types of contracts or be tailored to a single type of agreement (e.g. independent contractor agreement).

* **Narrow-Use Playbook** – Organizations handling a high-volume of contracts are especially well suited to use a contract playbook. If the contract will not require a lot of negotiation and can be created through a “fill in the blanks” template, then a simple contract playbook should result in a high level of success. For example, you should realize shorter contract turn times, less work for your legal department, and more predictability in your contract process.

* **General-Use Playbook** - A playbook will be more successful when used for your own contracts or common contracts that are generally standard (e.g. confidentiality agreement). They can also be used to handle the processing of outside contracts but escalation to legal for review and/or approval will probably occur more frequently.

* A playbook can cover key negotiation points, acceptable variations in terms & conditions, when to escalate to legal, proper signatories, contract storage, docketing of key dates, and other matters which are important to the contract lifecycle.

* Resources - See Additional Resources (at the end of this Summary) for more information on creating and using contract playbooks.

TOPIC #2 – SELECTING A CONTRACT MANAGEMENT SYSTEM

Contract management vendors, recommendations or experiences?

* It can be incredibly overwhelming to select a contract management system because there are so many systems available and more are being created every day. Think through what you need from a contract management system, get others in your organization involved, and consider using a consultant or project manager.

* Consider your audience and your needs. Who are the people that will need to use the system on a regular basis? Some systems can be incredibly complex and full of features that you may not need, whereas others are fairly simple, user friendly, and light on features. Will the system you are considering be too complex or too simple for your audience or your needs?

* If your company is in a heavily regulated industry or you have to audit your contracts regularly, consider whether the system will meet all of your needs. If not, you may find that you have to transition to a new contract management system which can be a very difficult and time-consuming task.

* **RFP** - You may want to consider doing a request for proposal (“RFP”) to select your contract management system. An RFP can be a good way to make sure you get a system that only has the features you need, will work with your IT systems, and is a good way to get your audience involved early in the selection process. See Additional Resources for a sample RFP.

* **Data Security** - Consider data security when selecting a system. Given the sensitivity of the contracts you will be storing on the contract management system consider whether a cloud based system is acceptable, are you OK with the system being hosted on the vendor’s servers, or do you need the system to be on your servers?

* **Customized Software** - Some vendors will allow you to customize your contract management system but do so with caution, don't customize yourself into a corner. Customized contract management software may not be able to be updated by the vendor's regular updates, this can lead to your system being incompatible with other technical systems (e.g. web browsers, servers, etc.) in the future. Also, customized contract management systems are much more expensive. If many customizations are needed perhaps there is a better system out there for you.

TOPIC #3 – CONTRACT STORAGE

How do you store and manage contracts?

* Storing contracts electronically appears to be the preferred method, however, you may want to keep originals of certain key agreements (e.g. operating agreements, credit agreements).

* Electronic storage can be accomplished in many ways. For example, your IT department may be able to set up a SharePoint site or a shared hard drive for this purpose. No matter which system you select, make sure you get others to buy into it, otherwise you will have problems locating contracts and tracking key dates.

* Storage of contracts should be dictated by a few factors. Who needs access to the contracts? If you store all of them electronically in a centralized database, can you control who has access to which contracts?

* Know the requirements of your contracts and whether the contract itself is considered confidential information. If the contract itself is considered confidential and you opt to store your contracts on a cloud based system or the vendor's servers, you may need to find out where those servers are located. This may be necessary because, if the contract prohibits the transfer of confidential information outside the country or to certain countries, you could breach the contract just by storing it in your contract management system because of where the servers are located. If this is important, make sure to speak with the vendor's technical staff and not just their sales staff.

TOPIC #4 - CONTRACT AUTOMATION

Contract assembly software - recommendations or experiences?

* Some contract management systems have contract assembly software built into the system. You may also be able to accomplish contract automation through the use of locked templates.

* Some templates can be designed to ask users business related questions and the answers are then used by the template to generate the contract.

* Automation and templates are good for removing the legal department from being a contract bottleneck. If you make it easy for people, explain the process well, and cut out unnecessary steps they will be more likely to comply with the system you have established.

TOPIC #5 - CONTRACT REQUISITIONS

What process is used to initiate work on a contract?

* Google Forms can be used to obtain the information you need to generate the contract and to initiate the request for the contract.

* An email inbox can also be a good system for contract requests. For example, the request will be sent to contracts@yourcompanyname.com. This is a good system for a company where everyone may not know everyone else, or for new employees. Also, this allows you to track when a request came in and how long it took for you to complete the task.

* Some contract management systems have a contract requisition feature. This can be helpful because in making the request the person is also entering certain data into the system that can then be used to generate a contract record, and, if you have an automated system, this data can be used by the system to do most of the contract drafting for you.

TOPIC #6 - CONTRACT APPROVAL

What is your contract approval process? Who can approve?

* Many companies use the dollar value of the contract to determine who must approve. Another manner of determining contract approval could be the department or business unit. For example, the head of the HR department would sign temp agency agreements and the head of the IT department would approve any contract for IT services.

* **Electronic Signatures** - If you want to use electronic signatures make sure you know the law for what is acceptable. Most jurisdictions in the US will accept an electronically signed document, however, requirements may vary slightly. For example, some governmental entities may be limited to the electronic signature system they are permitted to use.

TOPIC #7 - WHEN TO INVOLVE LEGAL

Do you have any contracts that don't require legal dept. review?

If so, what factors (below a certain dollar amount)?

* Most organizations have some contracts that don't require legal dept. review either because the value of the contract is below a certain dollar amount, or because the contract has been reviewed in prior years and there have not been any changes.

* You may be able to train people in the various departments of your company to handle the agreements that they will see on a regular basis. This will free up your time to focus on bigger contracts or issues.

TOPIC #8 - STAFFING FOR CONTRACTS

How is contracting staffed? Lawyers, non-lawyers, paralegals?

* Your staffing needs can largely be determined by your industry. If your company is in a highly regulated industry, you may need mostly attorneys and paralegals; whereas, if you are not in a highly-regulated industry you may be able to use mostly non-lawyers and only a few paralegals and lawyers.

* A contract administrator can be very helpful because they can handle many agreements with some oversight from an attorney as well as act as a traffic cop and route contract requests to the proper party and escalate matters as needed.

* If you use a contracts administrator, be careful who you put in that role because that person will become the main contact and face of the department for many people within the company. The impression this person makes will shape the opinion many people have of the department.

TOPIC #9 - PRIORITY OF CONTRACTS

How are contract requests prioritized?

* How contracts are prioritized seems to depend largely on the organizational culture of a company. In a smaller company, where communication is more personal and someone can just walk down the hall to check on a request, a "squeaky wheel" policy may be all that is needed to determine priority, however, it is certainly not a preferred method. Larger or more structured organizations may have a standard amount of time for certain contracts or an initial reply. For example, once a request is made that person will be contacted by someone in the Legal Department within 24-48 hours, or it is standard policy for the contract to be completed in 3 business days.

* Some set contract priorities based on the current strategic initiatives, or what they hear from their board of directors. Others will ask the contract requestor to indicate the due date or indicate low, medium, or high priority.

* Outlook's calendar and color coding features are used by some with great success. The ease with which you can drag and drop an email onto the calendar to create a reminder makes this method incredibly easy. Also, if you have your smartphone synced to your company's email you are able to check on matters very easily and hopefully sleep easier at night knowing you are not missing an important contract deadline.

TOPIC #10 - METRICS

What metrics are used to gauge success?

* Although it may be difficult to gather metrics on your contracting process, it is highly recommended that you do because being able to show how many contracts were reviewed, drafted, and processed by your department can be very valuable when it comes to budget justification and showing the value of a non-revenue generating department.

* Most contract management systems have reporting features. Thus, if every contract your department reviews is entered into your system you should be able to run a report very easily and see other information such as the amount of time it took to complete a contract.

* More manual systems, such as spread sheets, are possible but they can be burdensome.

Additional Resources

ACC Contracts Portal <http://www.acc.com/contracts>

Contract Review and Approval Form (Sample Form & Policy)
<http://www.acc.com/legalresources/resource.cfm?show=1391872>

A Play-by-Play Guide to Creating a Contracts Playbook (Program Material) <http://www.acc.com/legalresources/resource.cfm?show=1322727>

Using Your Contract Playbook as a Training Aid (Article)
<http://www.acc.com/legalresources/resource.cfm?show=1323535>

Supplier's Sample Playbook for Redlining Customer's Draft Contracts (Sample Form & Policy)
<http://www.acc.com/legalresources/resource.cfm?show=1323520>

Law Department Leading Practices in Contract Management: Finding an IT Solution (Leading Practices Profiles) <http://www.acc.com/legalresources/resource.cfm?show=1284809>

Sample Model RFP Questions (Sample Form & Policy)
<http://www.acc.com/legalresources/resource.cfm?show=1318546>

The Latest Technology for Law Department Management (Program Material)
<http://www.acc.com/legalresources/resource.cfm?show=19932>

Implementation and Use of Electronic Contracts (ACC Docket)
<http://www.acc.com/legalresources/resource.cfm?show=1347143>

Guidelines for Creating Enforceable Contracts Online - "The New Way is the Same as the Old Way" (Quick Counsel) <http://www.acc.com/legalresources/quickcounsel/gfceco.cfm>

Leading Practices in Law Department Staffing: Allocating Internal and External, Lawyer and Non-Lawyer Resources to Drive Value (Leading Practices Profiles)
<http://www.acc.com/legalresources/resource.cfm?show=1380370>