LJN LAW JOURNAL NEWSLETTERS

LJN's

Legal Tech Newsletter®

An ALM Publication

Volume 31, Number 7 • November 2014

Strategic Contract Management to Maximize Net Revenue

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Do any of these situations sound familiar?

- Your firm or company aggressively markets your products or services at the best price and your procurement group strives to get the best terms and deals from your suppliers, but somehow the organization never seems to take full advantage of the very benefits they negotiated — renewal opportunities slip and discounts are missed.
- Perusing a few of your organization's existing contracts, you see a range of terms and clauses related to the same product or service. It is hard to know which version, if any, is the organization standard.
- You've shaken hands on the deal, but then it seems like it takes forever to get an actual contract signed, what with all the red tape involving the drafting process and approvals. You are concerned about the other party walking away, the revenue you could be earning while waiting, or the services or products you need now.
- Business units separately negotiate contracts for similar products or services without knowing what terms others in the organization have agreed on for similar items, or even whether the organization has other contracts with that same entity.
- Because of a recent regulatory change, a recent merger, or other triggering event, you want to verify that all your contracts are in compliance, but discover you have no idea how many contracts you actually have and where they are housed, much less what is in them.

Many organizations have experienced one or more of these situations, each of which can negatively impact net revenue because of missed opportunities, slow time to market, expensive overhead for contract creation, or the risk of penalties or other consequences of regulatory non-compliance, among other things.

Fortunately, strategic contract management and the deployment of the right supporting technology can mitigate these issues and help organizations extract maximum value from their contracts. Many organizations are not there yet, however. In a recent survey conducted by Huron Legal, 57% of responding legal technology and contract management professionals expressed concern about their organizations' contract management. *See*, http://tinyurl.com/ncjr5jy.

Developing a Strategy And a Plan

The first step to taking a strategic approach is to define strategic objectives for the contracting process and function, then determine metrics that can be used to evaluate whether the organization is achieving those strategic objectives. Maximizing revenue capture is a common objective among many organizations. Although specific metrics and solutions will vary, one approach is to look at the contracting function in terms of its people, process and supporting technology.

Traditionally, contract management began at the time the contract was executed. Expanding the concept of the contracting process beyond that, to include activities before execution as well as managing contractual obligations and analyzing contracts at the other end of the spectrum, can offer a number of opportunities to achieve the

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goal of capturing more revenue. Technology has evolved such that there are a variety of solutions that can support this broader process.

Pre-execution Opportunities

The trend today is to begin contract lifecycle management before the contract is even executed. With pre-execution, the contracting function can be improved by developing standard negotiating protocols, streamlining processes to improve time to market, and ensuring consistent terms and pricing in compliance with the organization's policies.

Before there's even a preliminary agreement, standard protocols for contract negotiators — such as questions to ask of the client that can increase revenue, provide upsell opportunities or opportunities to reduce cost — can lay the foundation for additional revenue capture.

Once there is general agreement on the terms, the length of time from the conception of a deal to the execution of the actual contract can be frustrating. The initial drafting, protracted negotiations, and byzantine approval processes contribute to that time lapse. Improved workflows, however, can shorten this time. Many claims and litigation management (CLM) systems include functionalities that track approvals and other steps in the process, send e-mail reminders to the parties involved, and have built in redundancies allowing escalation or sidestepping in certain circumstances, facilitating better management of the approval process. These systems now often provide for electronic signature, further expediting time to market.

But even before that, new technology has created opportunities to expedite and improve the actual contract creation process, although Huron Legal's survey indicates many organizations have not yet availed themselves of this technology. A large number of respondents' organizations continue to use lawyers to draft each contract individually: 42% of respondents indicated that in-house law departments primarily draft their organizations' contracts and 4% use outside law firms. Only 20% of respondents use a contract template, while 22 % use a contract development software tool.

There are new tools, some embedded in traditional CLM platforms and others that are add-ons to traditional CLM systems, that can greatly automate aspects of contract generation, expediting time to market, and ensure compliance for internal or external requirements. Some of the newest tools are custom-designed and incorporate logic components so that they can be used on more sophisticated contracts that may previously not have lent themselves to more basic template-based technology. These new tools are simple to use, powerfully dynamic, and can be client-facing, allowing self-service.

The automation facilitated by this technology does not replace the expertise of legal counsel; rather, organizations can use the technology to leverage and re-use legal expertise and thus accelerate and streamline the contracting process. This has the added advantage of minimizing in-house counsel involvement and reducing outside counsel costs, allowing in-house attorneys to focus their efforts on more complex, higher value, and less routine work. It also minimizes the risk of unilateral changes to standard language or failure to work from the most current version.

Negotiation protocols, automation of contract generation, and better management of the approval process can positively impact the bottom line by opening the door to more revenue before the deal is made and increasing speed to market at consistent, pre-approved terms, as well as reducing the potential cost of non-compliance.

Post-execution Opportunities

Many organizations flounder in their contract management once contracts are signed, missing out on opportunities to reap the benefits of the terms and conditions of those agreements.

Effectively managing and enforcing contracts requires attention to the terms and conditions. One aspect of that is periodic review of standard terms and conditions to confirm not only that they are consistent with current laws and regulations, but also are the most favorable to the organization for the current environment in which the industry operates. A majority of the respondents to Huron Legal's survey (58%) said they review terms and conditions at least once a year. Another 17% conduct a review every two years, and 13% do so only when a new client is signed.

Beyond reviewing terms and conditions, in order to maximize revenue, it is important to manage and enforce contractual obligations: make sure, for example, that pricing opportunities, volume discounts or termination and renewal dates are all well-managed and that notice is provided to the right people at the right time, essentially stopping revenue leaks. Huron Legal's survey reflects that many organizations have room for improvement in this area. In some organizations, one internal company department is responsible for contract management and enforcement (26%); in others it is a single individual (14%); and for some, contracts are managed and enforced on an *ad hoc* basis. Only a third (34%) of survey respondents said they use a contract management tool to help manage contractual obligations.

Clearly defined responsibility and a process for management and enforcement of contractual obligations are critical to success in this area. There are a variety of contract lifecycle management tools available that can facilitate the process of managing terms and conditions to maximize net revenue. Their functionalities often include reminders for renewals and other critical dates.

Legacy Contracts: An Untapped Goldmine?

While improving an organization's pre-execution processes and post-execution obligations management will certainly advance the goal of optimizing net revenue, if an organization does not have a good handle on *all* of its existing contracts, there may still be a lot of money left on the table. Unfortunately, many organizations do not have or cannot access the information they need to find and collect this money.

Huron Legal's survey highlights the high volume of contracts in most organizations: nearly 65% of respondents reported having over 1,000 active contracts. Over half of that group reported having 1,000-25,000 contracts in effect and the remainder had even more. (A full 14% did not know how many contracts their organizations had.)

Despite the large number of contracts in most reporting organizations, only 25% of respondents said their organizations' contracts were kept in a single, electronic repository. Twenty-four percent said their contracts were stored electronically in several different repositories, while 36% said their contracts were located in a combination of hard copy and electronic storage. Interestingly, 10% of respondents said they did not know where their organization's contracts were stored.

For organizations with a less-than-complete grasp of their contracts portfolios, it can be a useful exercise to collect and analyze contracts, essentially taking an inventory of their contractual obligations and leveraging the data that the contracts contain. This exercise can be undertaken as a prequel to establishing a contract management program, as a way of taking inventory in a merger or acquisition, as a compliance exercise, or simply with the intent of identifying untapped revenue opportunities. Those might be abundant, depending on how unaware the organization is.

From a purchasing perspective, gathering all contracts and evaluating the related products and services, as well as terms and conditions, can identify opportunities for consolidation of vendors and negotiated volume discounts, take advantage of "most favored nation" clauses, or flag contracts where discounts are available if certain payment terms are met, for example. From a sales perspective, it can reveal inconsistencies in pricing and related possibilities for increases, renewal prospects, up-sell and cross-selling opportunities, and more. More indirectly, a regulatory compliance review can help avoid costly penalties or reputational damage that can result from non-compliance.

Going forward, organizations can use the information they glean to integrate these newly identified contracts into the existing contract management system or use it as a basis for establishing a contracts repository and new contract management program.

Further, from the perspective of revenue impact, the information from legacy contracts can be a valuable source of analytics and business intelligence, offering strategic insights to guide future business decisions — resulting in more profitable future contracts.

Fortunately, there are now technology tools available to assist with this process — tools that can search and locate contracts within an organization's systems and extract metadata from those contracts to provide transparency into contractual obligations. This technology can include basic or more advanced fields, including identification of parties, jurisdiction or venue, obligations, costs, expense, indemnification and more. The technology can be customized for specific businesses and sometimes also includes a searchable repository or can tie into another CLM system.

Conclusion

Despite the volume of active contracts, many organizations still have a slow, ineffective, even manual approach to contract management and miss out on many of the benefits that the contracting process can afford. By taking a strategic approach to the contracting functions — building the correct organizational structure with the right people then supporting that with the right process and technology — organizations can focus on improving the contracting functions in order to maximize net revenue. The front end of the contracting process — pre-execution — and the back end — obligations management — are areas ripe for improvement and revenue capture. But before looking to these areas, many organizations will find value in locating and analyzing their legacy contracts.