## **Best Practices in Commercial Contract Lifecycle Management:**

How Technology and Artificial Intelligence are Transforming Commercial Contract Processes

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September 9, 2020

### troutman<sup>1</sup> pepper

The Tyranny of the Urgent

# "Our greatest danger is letting the urgent crowd out the important."

- Charles Hummel



#### Look Familiar?





#### **Common Contracting Problems**

- Contracts signed without legal review
- Incomplete contract requests through multiple entries
- No standardized templates or forms
- Third party paper used as default increases risk
- Business owners not taking ownership requiring legal to make business decisions
- Business making legal decisions legal pulling back
- Delayed contract cycle times frustrated business/overworked legal
- No visibility into tasks, status, timing, etc.
- No prioritization if everything is an emergency, then nothing is
- Negotiations not streamlined with SME input
- · Disjointed approvals and not tracked

- Execution delays based on lack of clear approvals
- No ability to measure our compliance with obligations
- No ability to track vendors' compliance with negotiated terms (pre-pay discounts)
- Finance paying on outdated contracts
- Surprise auto-renewals or expirations
- Lack of centralized storage
- Unable to report across all contracts affecting business or key terms
- No access to data to make informed contracting decisions
- Contracting process **not scalable** to accept growth of the business.
- Increased contract disputes and litigation



### **Possible Solutions**

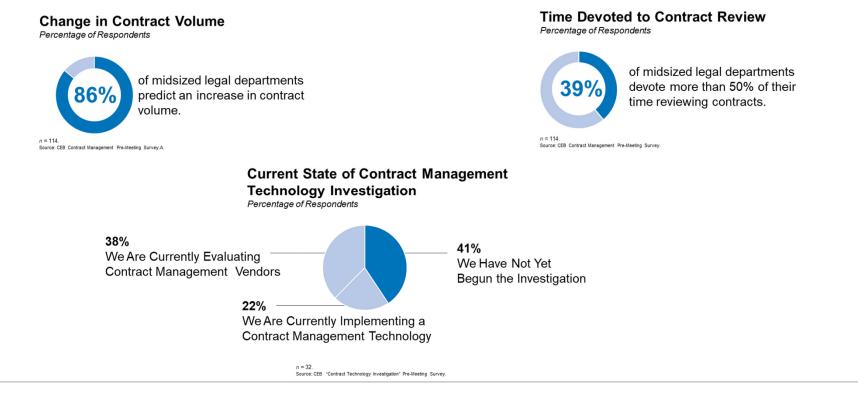
- 1. Work longer, faster and harder
- 2. Hire more internal staff
- 3. Hire outside law firms

## 4. Become more efficient

 Implement ECLM and leverage technology with Artificial Intelligence advantages



# As the volume of contracts continues to grow, companies look to technology solutions to create efficiencies in contract review.





#### What is Enterprise Contract Lifecycle Management (ECLM)

Implementing processes to efficiently and systematically manage legal processes for contracts:

- Requests
- Creation
- Authoring
- Negotiation & Risks
- Approvals
- Execution
- Implementation
- Performance
- Analysis
- Review and reporting, and
- Retrieval

for the purpose of maximizing financial and operational performance and minimizing risk within an organization.





#### **Goals and Benefits**

- Create the enterprise-wide **contracting efficiency** across legal and all business units
- All contracts subject to ECLM process
- Single point of entry for all contract requests
- Electronic file and dashboard for all contracts
- Contract **integration** with CRM and ERP systems
- Standard **set of contract templates**, forms, playbooks and clause liabraries
- Better manage vendor relationships and contractual risk
- Enhance the Company's vendor comparison and selection processes
- **Speed contract cycles** and transaction times
- **Central repository** for all agreements
- **Centralized visibility**, storage, retrieval and reporting of contract status and data

- **Reduce resources** reviewing third party forms
- **Empower** business units
- **Faster approvals** with accountability
- Increase **compliance**
- Security and access control to maintain confidential information
- Reduce contract disputes and litigation
  - Reduce outside legal spend and reliance on outside counsel
- Achieve significant savings in speed to contract, reduced litigation, avoided inefficiencies and outside spend
- Relieve burden on in-house legal staff and save time



#### **ECLM Manages All Contracts throughout the Enterprise**

#### Sales

- Sales Order Processing
- Customer Account
- Provisioning
- Special Deal Terms
- Referral Agreements
- Reseller Agreements
- Partner Agreements
- Sales Support
- Loan Documents
- Support Agreements and Renewals

#### **IT/Operations**

- Asset Tracking
- Change Requests
- Requirements Sign-off
- Access Management
- Incident Reporting
  Production Change
- Authorization
- Maintenance Authorization
- Authorization

9

- Real Estate Approval
- Project Budget Approvals

#### Marketing

- Event Registration
- Customer Communication Approvals
- Mass Mailing/Email Approval
- Event Vendor Agreements
- Rebate Agreements
- Sponsorship Agreements
- Promotion Agreements
- Advertising Contracts
- Press Release Approvals
- Brand Licensing Agreements
- Media Plan Sign-offs

#### Legal

- NDAs
- Contract Management
- Internal Compliance
- IP Licensing
- Patent Applications
- Board Minutes
- Affidavits
- Summons
- Engagement Letters
- Memoranda of Understanding
  - -

#### Services

- Account Change
- Service/Work Orders
- Terms Change
- Self-Service Requests
- Compliance
- Field Service
- New Policy Applications
- Policy Cancellations / Suspensions
- Independent Agency Licensing
- EFT Authorization

#### Facilities

- Front Desk Sign-in
- Work Orders
- Lease Agreements
- Move In/Out Requests
- Parking Permits
- Building Maintenance
- Construction CAD Drawings
- Equipment Loan Agreements
- Change Justification Forms
- Building Permits
- Change Orders

#### Human Resources

- Offer Letters
- New Hire Paperwork
- Candidate NDA
- On/Off-boarding Checklist
- Employee Policy Distribution
- and Signature
- Contractor Agreements
- Non-disclosure
- PTO Management
- Performance Appraisal
- Background Checks

#### **Product Management**

- Change Management
- Release Management
- Code Review Reporting
- Requirements Acceptance
- Release Scope Commitment
- Policy Approval
- Beta/SDK Agreements
- Developer Program Enrollment
- Product Development Methods
- New Product Evaluation
- New Offering Announcement

#### Finance

- Invoice Processing
- Expense Processing
- Capitalization Management

- Asset Transfer/Retirement

- Sales and Use Tax Return

- Consumer Account Opening

- Audit Sign-off
- Policy Management
  Inventory Sign-off

- Grant Applications

- Deposit Products

Procurement

- Purchase Order

- RFP Sign-off

- Rate Cards

- Statement of Work

- Supplier Compliance

- Termination Letters

- Invoice Processing

- Vendor Contracts

- Master Services Agreement

- Service Level Agreements

- Software License Agreements

- Subcontractor Agreements

troutman<sup>1</sup> pepper

#### How is ECLM done?

- Investigate current practices, inefficiencies and pain points
- Identify future state goals and work-flows
- Architect a process bridge to best practices
- Reorganize people and processes
- Appoint contract managers and assign responsibilities
- Select technology partners
- Identify recurring agreements
- Develop best practices forms
- Create user manuals, negotiation "playbooks" and clause libraries
- Train legal and business teams



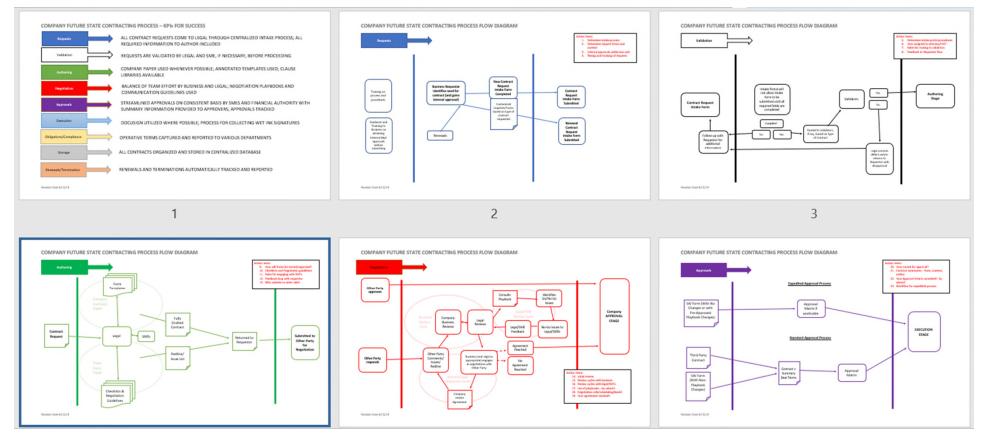


### Identify Current and Future Practices and Develop Customized Legal Organization Process





#### **Architect Future State Process Diagrams**





### **Reorganize People and Processes... at Highest and Best Use**





### Which ECLM Vendors are Leaders in the Industry?





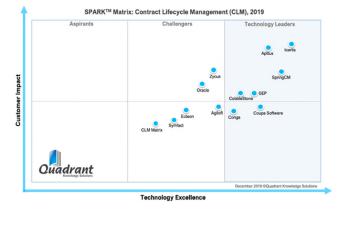


Figure 1. Magic Quadrant for Contract Life Cycle Management



Source: Gartner (February 2020)



### **Develop Detailed Technology Requirements**

Detailed Technology Requ										
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MS	Contract Management Software		1 Required valid	ation is	Email to valida	ator that a	12 Status indicator designates request submitted			
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### **Evaluation and Select Technology Vendors through RFP and Scorecards**

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SUPPORTABILITY INDEX:	0.00	A measure of the <u>potential</u> support effort required to maintain the system over its projected lifespan.
ENHANCEMENT COST:	\$0.00	The total of all Paid Enhancement Costs entered when the response was PE.
VENDOR PROFILE SCORE:	0.00	A measure of the vendor Capabilities Profile, based on the data collected in the Vendor Global Issues section.
# FULLY SUPPORTED Capabilities:	0	The number of proposed system questions eliciting a FULLY SUPPORTED response.
# YES Responses:	0	The number of proposed system questions eliciting a YES response.
# NOT SUPPORTED Capabilities:	720	The number of proposed system questions eliciting a NOT SUPPORTED response.
# NO Responses:	44	The number of proposed system questions eliciting a NO response.
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# PAID ENHANCEMENTS Proposed:	0	The number of proposed system features based on PAID custom programming or scripting.
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# REPORTING TOOLs Proposed:	0	The number of proposed system features based on Report Writing Tools.
# THIRD PARTY Add-Ins:	0	The number of proposed system features based on Third Party Products.
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### **Customize and Implement Technology and AI Solution – Sample Dashboard**

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#### What is Artificial Intelligence?

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#### What is Artificial Intelligence?

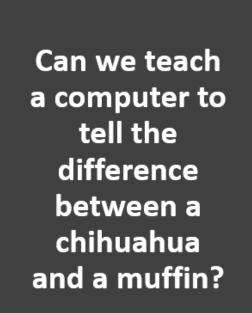


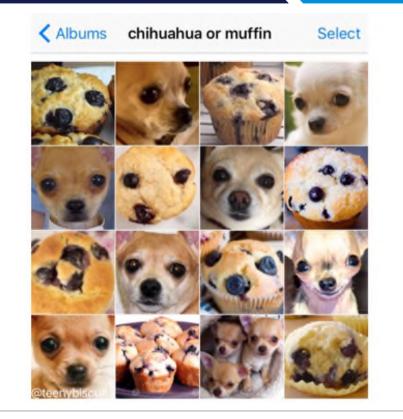
### Computers mimicking human thinking and behavior to

### reach reasoned conclusions.



#### **Chihuahua or Muffin?**







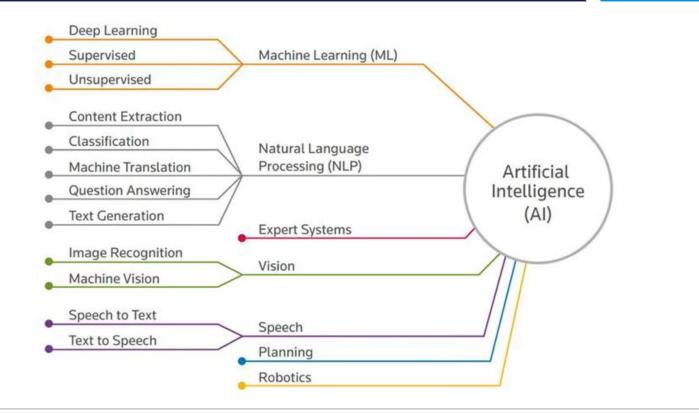
#### **AI: Machine Learning or Deep Learning**

Machine Learning: More involvement by human to train and supervise; learns then escalates

**Deep Learning:** Free the computer to solve problems itself; iterative trial and error using its own judgement (Facebook bots started own language)

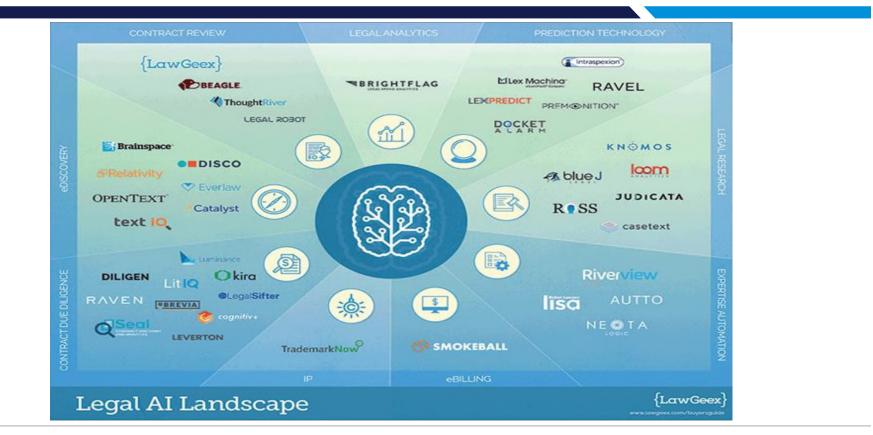


#### **Understanding Artificial Intelligence**





#### Legal AI Landscape





#### **Using AI in a Contract Management Process**

- Contract Review
- Contract Authoring
- Exception Tracking
- Comparison of revision and thirdparty paper to template and % variance by provision
- Integration
- Knowledge Management
- Compliance & Obligations



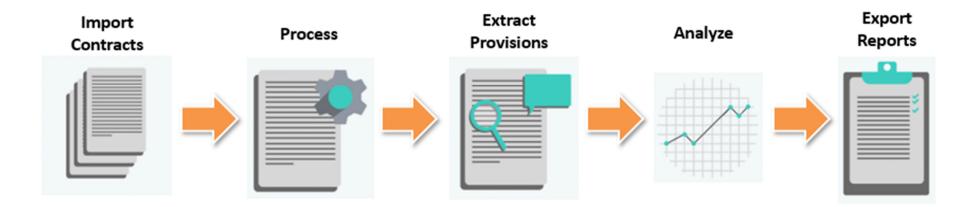


#### Leveraging Artificial Intelligence





### **Contract Analysis Process**





#### **Other Benefits**

- Redline comparisons
- **Remove duplicates**
- Identify variations from templates
- More accurate identification of key provisions

#### References Mailings Review View Help ,0 Search BBB

1.2 AUTOMATIC KENEWAL UNLESS AND UNTIL TERMINATED BY ETHER PARTY PURSUANT TO SECTION 1.3 OR EITHER PARTY PROVIDES WRITTEN NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST THIRTY (30) DAYS PRIOR TO THE SCHEDULED END OF THE THEN-CURRENT ORDER TERM. THE ORDER TERM OF EACH ORDER SHALL AUTOMATICALLY RENEW AND BE EXTENDED UPON ITS EXPIRATION (REGARDLESS OF WHETHER PREVIOUSLY RENEWED OR EXTENDED) FOR A PERIOD OF THE SAME DURATION AS THE ORDER TERM SPECIFIED ON SUCH ORDER.

7.3 Termination. Company may terminate the Agreement for convenience by giving Customer at least 30 calendar days written notice Customer may terminate this Agreement, or any given Order or SOW, immediately and without penalty upon providing thirty (30) days written notice thereof to the other Party.

7.4 Effects of Termination. Upon any termination of this Agreement (or any termination or expiration of any Order), all rights and licenses granted to Customer herein to the affected Solutions shall automatically terminate and be revoked, and each Party shall, subject to Section 6.2 and 7.5: (a) immediately discontinue all use of the other Party's Confidential Information; (b) delete all of the other Party's Confidential Information in its possession; and (c) return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in such Party's possession or control. In addition, upon any termination or expiration of this Agreement or any given Order, Customer shall promptly pay Tally Solar, Inc. all amounts remaining payable under, as applicable, this Agreement and any Order and SOW. Any termination of this Agreement shall simultaneously terminate any Orders

5. NONHIRE OF COMPANY EMPLOYEES. To further preserve the rights of the Company pursuant to the nondisclosure covenant discussed above, and for the consideration promised by the Company under this Agreement, during the term of the Employee's employment with the Company and for Deleted in 1 document. months thereafter, regardless of the reason for termination Employee will not, directly or indirectly, (i) hire any current or prospective employee of the Company, or any subsidiary or affiliate of the Company (including, without limitation, any current or prospective employee of the Company within the 6-month period preceding the Employee's last day of employment with the Company or within the 18-month period of this covenant ) who worked , works, or has been offered employment by the Company and with respect to whom Employee had any on bobalf of the Company + or + who was, or

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#### **Artificial Intelligence through CLM**

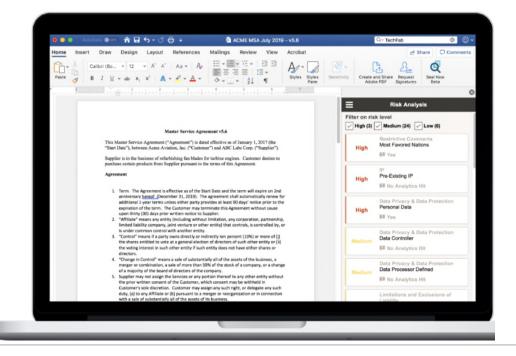
#### **Initial Review and Analysis of Incoming Agreements**

Automatic clause and term analysis for incoming agreements

Risk scoring to spot language to focus on

Clause library access to substitute approved language

CLM workflow integration to route work based on clause content





#### **Artificial Intelligence through CLM**

#### **Understanding What Is In Your Agreements**

Find, filter and analyze all your agreements, regardless of source and current format

Compare Al-extracted clauses and terms across agreements

Search agreements by concept, not just keyword

	ignable" assignable		×	Select •	All		
	FILE TYPE	FILE NAME					
	All	Search for file name			Select		•
	CONTRACT CLASS	SIGNED OPTIONS	START DATE		TERMINATIO	N DATE	
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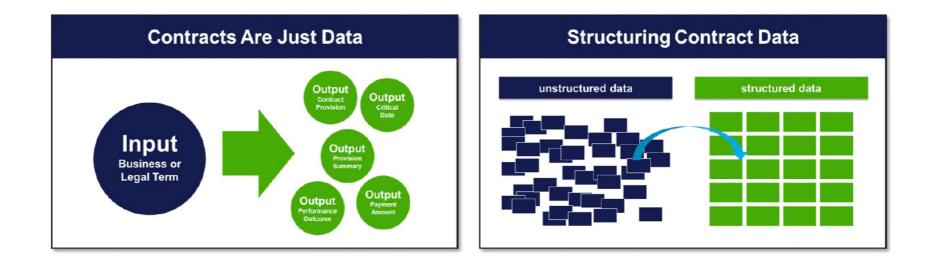


#### **Structured Data Allows Us to Visualize Contract Obligations**



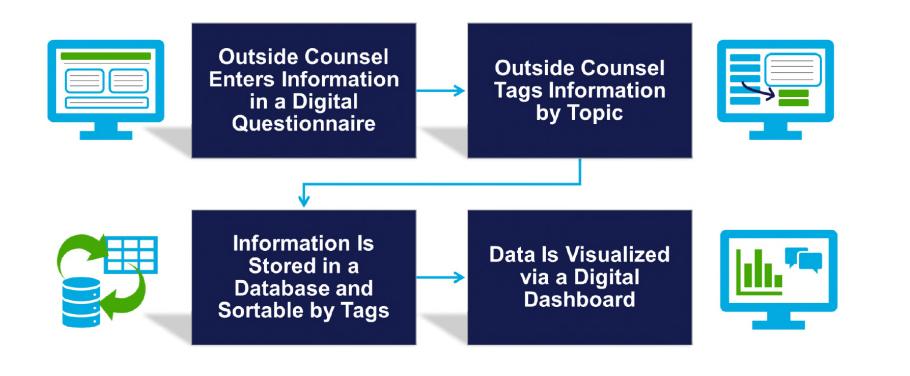


#### **Structured Data Allows Us to Visualize Contract Obligations**





#### **Contract Data Visualization**





### Leverage Data to Optimize Negotiation Strategies



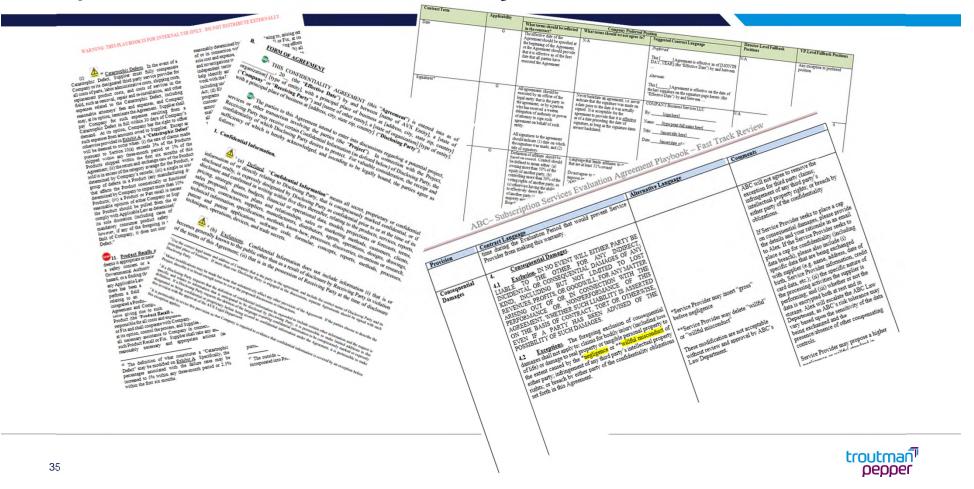


#### **Other Uses of AI Beyond Contract Management**

- **M&A Due Diligence:** Includes provisions such as change of control, assignment, exclusivity, license grants and indemnity to help you get through contract review faster and more accurately
- **General Commercial:** Includes provisions such as most favored nation, liquidated damages, termination, automatic renewal, export control and anti-money laundering compliance to help you manage contractual obligations
- **Corporate Organization:** Includes common provisions from shareholders' agreements such as board/manager selection, veto/approval rights, rights of first offer/refusal, drag-along rights and tag-along rights to help you find precedent language, conduct due diligence or obtain market intelligence information
- **Real Estate:** Includes commercial lease provisions such as rent, notice, sublet conditions, description of premises, common area maintenance, parking, signage and utilities to help you with lease abstraction or due diligence projects
- **Non-Disclosure Agreements**: Includes provisions such as the definition of "Confidential Information" and exceptions, injunctive relief and standard of care to help you determine confidentiality rights and obligations



### **Implement Best Practice Forms and Playbooks**



### **Training, Development and Compliance**



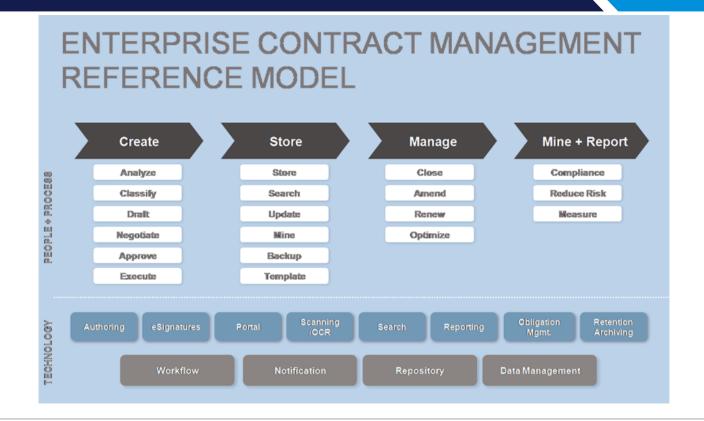
"If you think compliance is expensive – try non-compliance."

Former U.S. Deputy Attorney General Paul McNulty



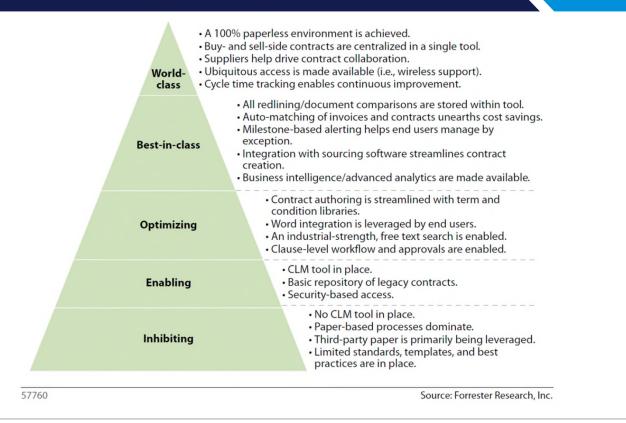
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#### Three Elements to CMP Success... Process + People + Technology





#### Begin With the End in Mind...





#### **Average Timeline**

- Kick-Off and Organization of Team 2 weeks
- Template and Form Review, Update, Development 1 month
- Playbook Preparation with Fall-Back Provisions 1-2 months
- Current State Review, Process Design and Workflow Architecture 2-3 months
- Technology CLM Evaluation, RFP, Design and Selection 1-2 months
- Technology Implementation 3-4 months

Most phases occur simultaneously; average project implementation start to finish = 6 months

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#### **Budgetary Items and Estimated Costs**

Template and Form Review, Update, Development – per contract/hourly Playbook Preparation with Fall-Back Provisions – per contract/hourly Current State Review, Process Design and Workflow Architecture – flat fee based on scope Technology CLM Evaluation and Design – flat fee based on scope Technology Costs (on average):

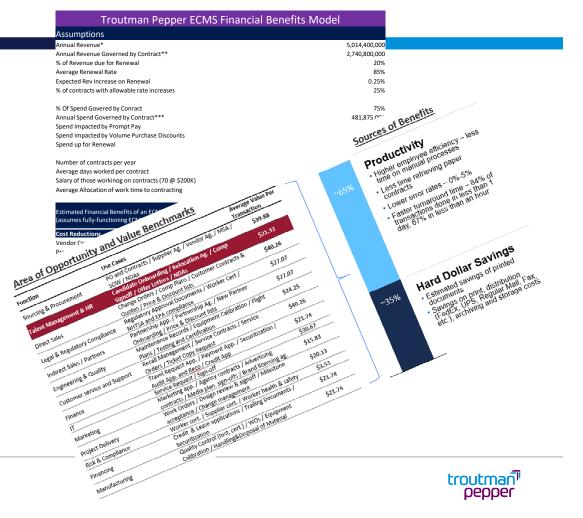
- One-Time Implementation ~\$100,000
- Annual SaaS License Fee with Support (depends on user counts) \$80,000 \$120,000
- 3 year term

Training and Roll-out – per training/hourly



#### How Do I Measure ROI?

- Fixed savings vs. indirect savings
- Securing bottom-line of contract value
- Market-based tools, such as EMC<sup>2</sup>
- CLM Vendors have robust value estimation tools
- Internal white paper and justifications
- You are paying for it anyway just without the benefits
- Example: Client reduced outside legal spend on contract review from \$14M to \$2M annually



#### **Key Takeaways**



- Contracts are the fabric of the business
- ECLM achieves internal compliance and drives business growth
- Al can assist you, not yet replace you
- Do not wait to begin leveraging ECLM and AI
- Define success for your organization



#### **Thank You**



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