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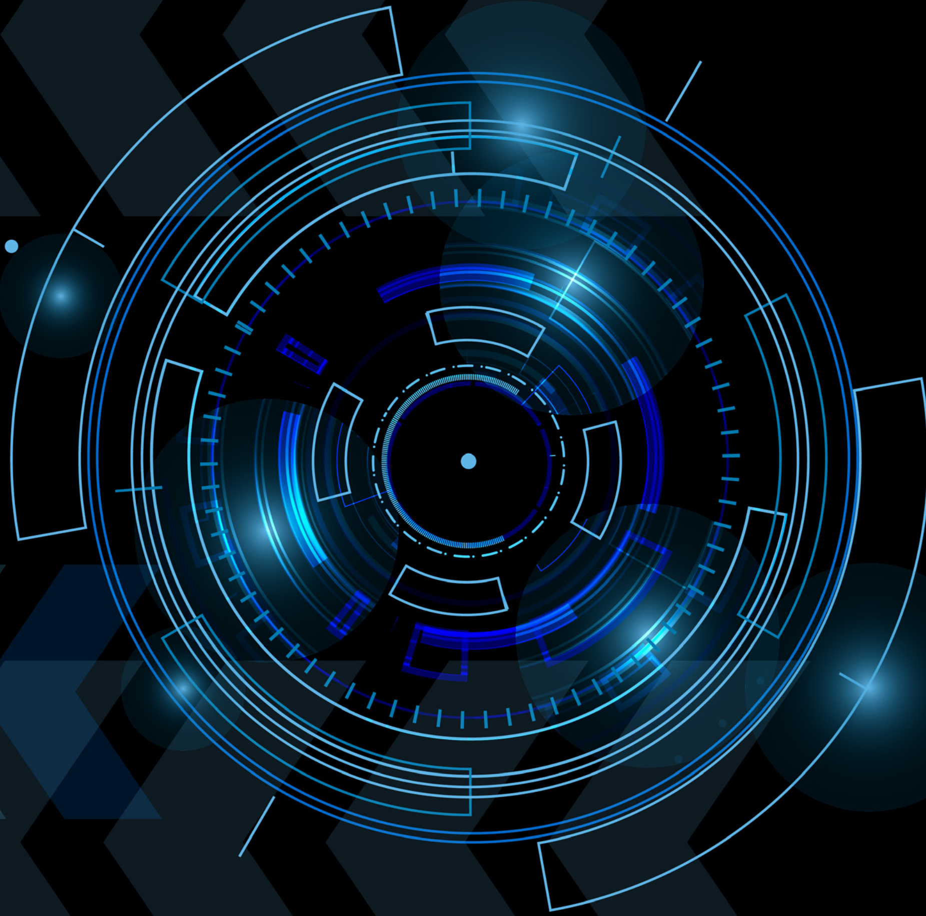

The next frontier for contract management

Technology and humanity meet to revolutionize post-signature

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Abstract

2020 was the year when incremental evolutionary change gave way to revolutionary transformation in contract and commercial management. When the pandemic hit, the demands on post-signature contract management exploded. COVID accelerated a colossal volume of questions about executed contracts. Customers and suppliers raced to understand the status of performance; to seek variations to terms; and to identify rights, obligations, and the implications of contract change and amendment. Transparency and clarity of contractual obligations had their moment, and companies realized the benefits and challenges of being on the right side of that divide. With pre-signature contracting efficiencies, enabled by technological and resourcing advances now table stakes, the next frontier—transformation of the post-signature phase—came squarely into the innovation spotlight. In this article, we discuss why this phase is so critical in the contract life cycle, and how post-signature is where the value of contract management is truly won or lost.

Introduction

2020 will go down in the history books for a myriad of reasons. Among them, it was the year when incremental evolutionary change gave way to revolutionary transformation in contract management. However, while winning, drafting, and negotiating contracts—pre-signature activities—are critical, it is in the post-signature phase that contractual value is won or lost. This is where 2020 showed us we needed to focus, and the market responded.

When the pandemic hit, the demands on post-signature contract management exploded. COVID accelerated a colossal volume of questions about executed contracts. Customers and suppliers raced to understand the status of performance; to seek variations to terms; and to identify rights, obligations, and the implications of contract change and amendment. Companies needed to know whether they, their customers, or suppliers could renege on contractual commitments. The necessity for transparency and clarity of contractual obligations, rights, and reliefs was clearly apparent, and companies quickly realized the benefits of having that transparency and clarity—and the challenges if they didn't!

With pre-signature contracting efficiencies, enabled by technological and resourcing advances now table stakes, the next frontier—transformation of the post-signature phase—came squarely into the innovation spotlight. In this article, we discuss why obligations management is such a critical phase of the contract life cycle, and how post-signature is where the value of contract management is truly won or lost. By understanding this, contracts may be seen for what they are—a strategic business asset—rather than just exclusively a legal document.

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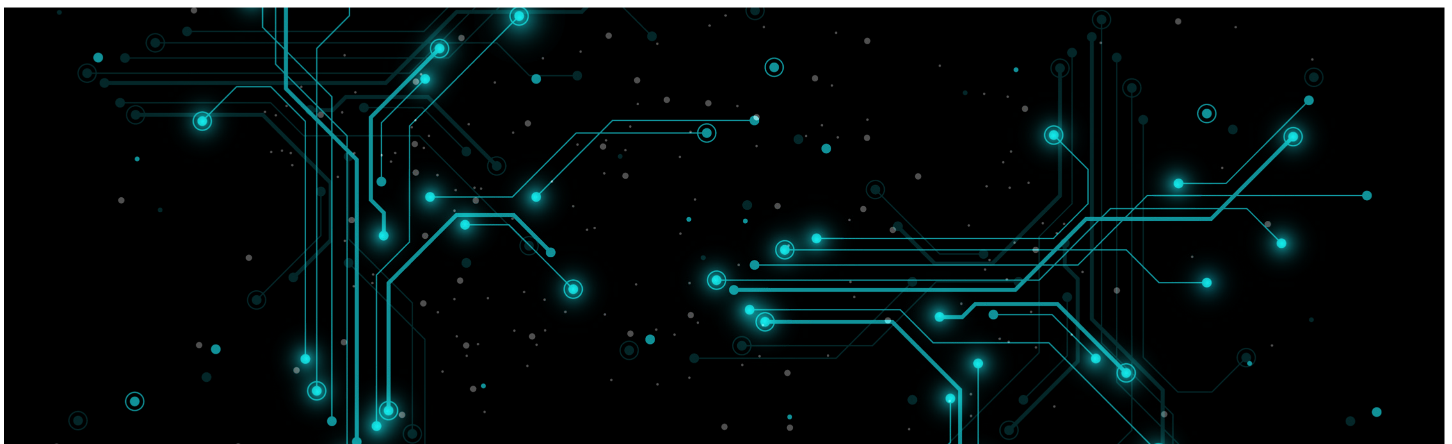

The end-to-end process

Contract management is the process by which businesses across all industries manage the life cycle of their contracts. Customers, suppliers, and businesses of all sizes and across all industries need effective contract management to thrive and grow. A fully deployed and effective contract management strategy drives value to the overall business as stakeholders from across the organization engage more actively in the contracting process, increasing compliance, becoming more operationally efficient, mitigating contracting risks, and promoting growth and new opportunities. Businesses' initial focus has historically been on pre-signature activities, such as streamlining contract requests, templates and clause libraries, negotiation guidance, approvals, and contract execution facilitated by e-signature. Many customers and suppliers spend most of their time and effort focusing on winning that deal, drafting, and negotiating that contract—all staple pre-signature activities—yet may neglect the equally, if not more critical, post-signature phase activities.

The term "post-signature" references the activities that can or should occur after a contract is signed. To be clear, these are contract management activities, but they may not be getting appropriate attention and focus. You can segment these activities into two buckets: (1) compliance with the legal components of contractual relationships, such as notices, change orders, renewals, and amendments; and (2) commercial obligations, such as invoicing, discounts, and performance management—frequently referred to as commercial management. Both buckets of activities are, of course, tied together with the common thread being the contract itself.

Until very recently, customers and suppliers often neglected proactive post-signature phase management, seeing it as merely a "nice to have." A lot of attention is put into contract creation, but the end of the life cycle is often not thought of as a stage where value can be found. It is easy to understand why businesses get distracted by the always engrossing drafting and negotiation processes—there is typically the instant reward and gratification derived from a contract being executed. However, once a contract has been signed, focus may shift elsewhere. These "must have" pre-signature activities have preoccupied the minds of most, arguably even to the detriment of the overall business given that most of the lost contract value is in the post-signature phase. Perhaps, it is that the pre-signature phase is often more comprehensive, expectations and processes are more conventional, or simply that the wins are more tangible. In any case, post-signature activities are often set aside until the eleventh hour, or just until an unexpected pandemic forces everyone to take notice.

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Coronavirus: The catalyst

The United States and the world were significantly impacted by the coronavirus. It changed the lens by which we see post-signature activities. In March 2020, cases of the novel coronavirus began to jump at alarming rates. One by one, states and countries began shutting down, causing a ripple effect that impacted economies around the world. With international travel effectively halted, the fragility of supply chains became quite clear. Further, with new and challenging demands, legal departments and companies as a whole found themselves exposed and wondering why so many had not anticipated the need for effective and comprehensive post-signature contract management. The pandemic triggered a significant volume of questions about executed contracts. The need for businesses to understand the status of performance, to seek variations to terms, to identify rights and obligations, and the implications of contract change and amendment grew exponentially. On top of all of this, the burgeoning regulatory environment continued to impose ever-changing and novel demands on organizations. It became clear that transparency and clarity of contractual obligations were not just important but vital.

The coronavirus and its aftermath exposed the frailty of immature and inefficient contract management. More notably, it exacerbated post-signature contract knowledge gaps. Unable to quickly access contract details, rights, and obligations, businesses were left with numerous uncertainties. There are a number of additional overlapping and interrelated forces at play here; forces that collectively began shining a light on the post-signature processes—the burgeoning regulatory environment; the rise of legal operations as a discipline; and of course the increased sophistication, maturity, and functional capabilities of the leading contract management technology providers. However, it is clear that the coronavirus was a catalyst, if not the primary catalyst for the long overdue laser focus on post-signature activities management. The pandemic turbocharged the focus on post-signature activities. It prompted many businesses to take notice and give it the attention, effort, and investment it warranted. After the pandemic, it became clear that post-signature is where the value of contract management is truly won...or lost.

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Contract management post-signature

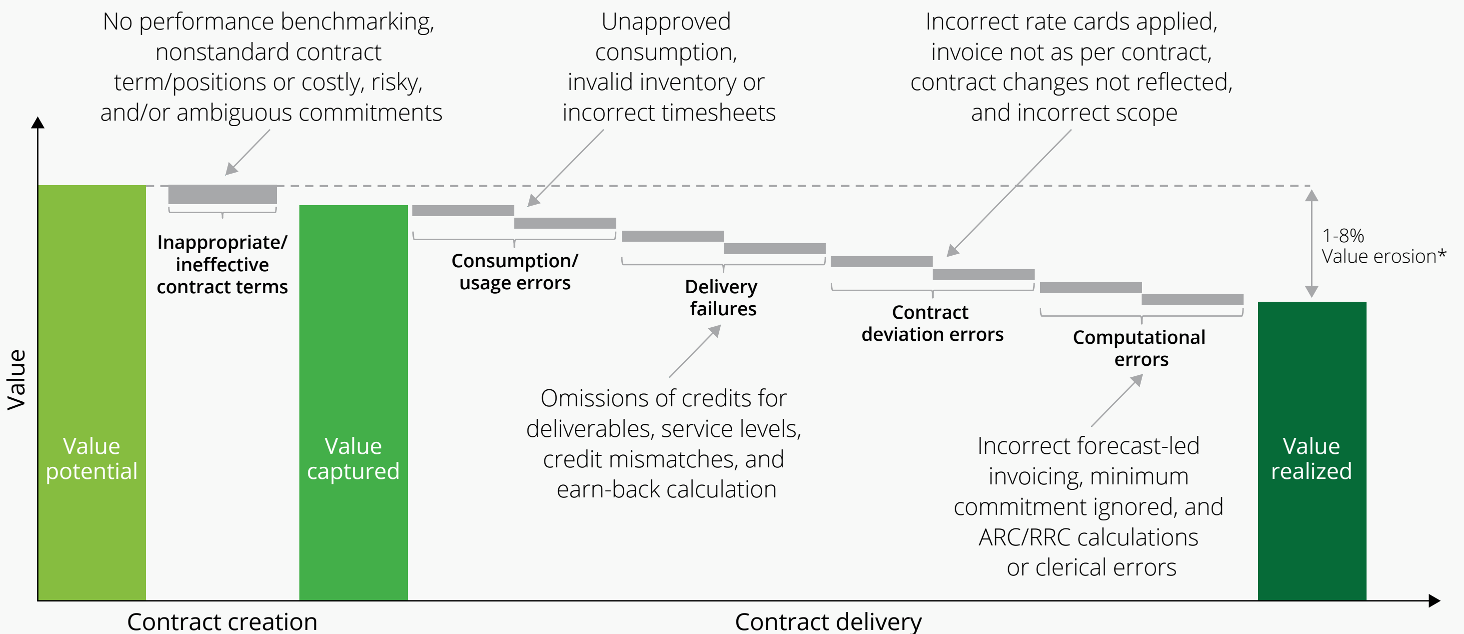
When we say post-signature, what exactly are we referring to, what is it that happens after a contract is signed? The answer is both nuanced and varied: ensuring compliance with the terms and conditions, in other words getting the value bargained for; managing contract amendments; adhering to production, quality assurance, packaging, and delivery requirements; resolving claims and disputes; and measuring commercial performance, among many other activities. For framing purposes, the post-signature activities fall into two buckets: (1) the hygiene to ensure compliance with contractual and regulatory obligations, change order and dispute processes, notices, renewals, amendments, and reporting (contract management) and (2) the more financially focused activities, such as performance, pricing adjustments, invoicing, and discounts (commercial management). The World Commerce & Contracting (WorldCC) association, formerly known as the International Association for Contract and Commercial Management (IACCM), has in multiple studies and webinars detailed that 9.2% of annual contract value is lost through poor management across the whole life cycle, with the majority of that lost value occurring in the post-signature phase.[1] This is consistent with what we might expect—just think through the wide range of post-signature issues that come into play that directly impact commercial value—price changes, invoices, late payments, service levels, discounts, and auto-renewals, to name just a few. One of the main aspects of a contract is to get something of value, so while it is important to focus on contract creation, which businesses do plenty of, it is equally important to focus on post-signature management and mine all of the value to be found through effectively managing obligations.

Knowing what the contract says is just the start to finding value. The real value perhaps comes from knowing where those diamonds are and how to mine them in the post-signature phase. To achieve this, consider moving away from the reductionist mindset that oversimplifies what truly post-signature is. Businesses may be doing a disservice to themselves and their customers if they just thought of post-signature as limited obligation management and document retention.

Post-signature is so much more. Let us explore this by using maturity model-type language.

Why is contract management important?

Without effective contract management, a "value gap" can arise over the lifetime of the contract, where the anticipated benefit at the start of the arrangement is gradually eroded over time. Effective contract management avoids this, enabling enhanced value to be derived from contracts.



*Based on industry research conducted by World Commerce & Contracting, as well as CLM vendor and Deloitte case studies.

BASIC: Obligation management and document retention

For many companies, common sense dictates that there is a much higher volume of executed and live contracts than contracts that are in the process of being drafted and/or negotiated. Given that, just knowing where these contracts are and what they say seems like the most rudimentary of table stakes requirements. However, despite the current wave of contract management technology investment and market expansion, many companies still have some gaps. While some companies are getting better about knowing where the contracts are stored and how to access them, many still have an outdated and uninformed version of contractual data management. Effective obligation management is not just about focusing on the legal and commercial obligations as they are detailed within the four corners of the contractual document, but also how this information interacts with and informs information contained within an organization's financial and human resource systems. All of this information is, of course, impacted by the burgeoning and ever-changing regulatory environment.

Within the past 24 months alone, a slew of activity around interbank offered rates (IBOR), Brexit, pandemic effects on supply chain, new data privacy laws, etc. have had a significant impact on contracting. That said, sometimes even tracking what is contained in the four corners of the document is a challenge. The IBOR transition alone is a great illustration of this. The global financial industry is scrambling to answer a simple question: What are the implications of IBOR changes on our existing contracts and how do we remediate this effectively? Finding it difficult to understand or simply track what language is contained in their contracts, the financial industry finds itself stretched for resources and burdened by the high costs of due diligence/scoping efforts.

IBOR, Brexit, General Data Protection Regulation (GDPR), and others are examples of existential regulatory changes that are foreseeable or planned. While still challenging to manage, they at least come at us with notice, sometimes even years in advance. If you look at the obligations within a contract that a company has to its partner or a supplier has to its customer, they can be complex and rife with potential penalties but also potential opportunities. Companies often undertake only basic monitoring of these. Many simply track the parties and the end dates, but not the notice period to terminate or stop an auto-renewal. The result is that many have accidentally renewed something they did not need and paid cash for something that was never used simply because they failed to track the one foreseeable part of this equation.

We can all relate to the challenge here. Most individuals have at least once signed up for that free 10-day trial and then forgotten to cancel after the trial period was over. Then, it is not until you receive your monthly credit card statement that you realize that you have just paid for a one-year subscription for something you did not want and definitely did not need. Imagine you failed to cancel that one subscription, but that one subscription was for 1,000 more people, and the cost was not just the usual $9.99 but $99.99—now multiply that times 10 different business units, and 10 different product or service types, and maybe even across a few years, and the result is a huge loss. Since we are on the subject of huge losses, imagine you are a vendor or a buyer and an employee makes a data entry error and selects the wrong rate card here, or an additional fee or surcharge there. Now, one overcharge of a license rate or improper rate card used could cost a customer $10,000 on a one-time basis. But imagine if you have more than 300 vendors, as many companies do, and a third of those were making a similar error just one time in the year for about $10,000. Suddenly that $10,000 that is just a rounding error becomes $1,000,000.

Because of the complexity of contracts, these types of mistakes can be made frequently. But why should this be seen as a potential sinkhole for cash. Perhaps it is time to see it from a more positive angle and think of that contract as an asset, a profit center that if monitored correctly can be a profit assurer for the entire organization. Contracts do much more than just serve as record documents; contracts can:

- Provide a framework for mutually beneficial business outcomes;
- Generate economic value;
- Be tools for risk management;
- Offer a formal record of rights, responsibilities, and obligations;
- Provide intelligent insights to the overall business; and
- Be a testament to an organization's brand and corporate values.

After all, contracts are not just legal documents. As stated earlier, they are strategic business assets that happen to contain both legal and commercial terms and conditions.

INTERMEDIATE: Change orders, statements of work, and extensions

Procurement and legal teams often have established limits, which trigger review, tender, or other scrutiny. While internal teams probably know this for the most part, it is typically vendors who know it even better. This is not driven by trickery or any desire to be unfair, but just the expeditious needs of the business. Oftentimes and in the interest of speed, companies can adopt a default position of simply creating a change order for every perceived change in scope of timing without scrutinizing the already agreed-upon mechanisms in the contract. This may not be ideal, as it can lead to inadvertently one party paying for something twice. On the other side, change orders are a natural part of any long-term relationship, and the absence or infrequency of a change order can actually be an indicator that the scope is lacking oversight. While there might be an immediate cost saving of "free work," the long-term effect might not be as positive, as like any relationship this one also needs to be cultivated and in good terms. The point here is that contractual relationships do not end at signature, and without a living understanding of the scope coupled with the discipline to enforce it, there can be consequences either way.

Projects, relationships, needs, and wants will wax and wane over time and most contracts have mechanisms for how changes, expansions, or reductions are handled. These are typically negotiated and handed over for others to handle the details at a later point without knowing or recognizing these can have significant impacts. While the negotiator might have been able to escape the issue prior to contract execution, it is likely that the issue will come to fruition in the post-signature phase. Managing these types of issues can cost significant sums over time. Without the right staffing, process, or technology to help manage these, companies run the risk of losing out, paying too much, recovering too little, or just souring a relationship. If you invest to create something, it only stands to reason that you invest something to make sure it lives a healthy life.

ADVANCED: Financial and other performance focus

So far, this analysis up the value ladder has been focused on reactive activities and being prepared for them. But, at the higher levels, it really is about being proactively on the front foot in the management of individual contracts, if not the whole portfolio. This is the nexus point where the legal language and business outcomes truly meet and the Venn diagram becomes just one circle. This is when companies need to dig into their contracts and contractual relationships, pull data from within and outside the contract, and evaluate whether they are receiving the value they signed up for or are spending too much and getting less or performing too much and getting underpaid. Businesses many want to consider not only focusing on the standard key performance indicators (KPIs) but also on what the business truly needs.

Understanding the business needs is merely the beginning of the journey. Businesses must soon thereafter begin to monitor financials and performance in the post-signature phase diligently in order to apply the data gathered in a manner that will enhance productivity and revenue. Once able to do so, they may be able to see an impact in their bottom line. For many organizations, the challenge remains being able to demonstrate and quantify value and return on investment. An earlier report, entitled *When technology meets humanity: The future of contract management,* authored by Deloitte and WorldCC, showed that only a third of those surveyed were currently able to provide some measure of their financial value or impact to the business, but more concerning, only a little more than 20% attempted to monitor or calculate the costs or overall benefits associated with contract management.[2] Here are some concrete examples of how effective post-signature management can drive enhanced value:

- Avoiding invoicing errors;
- Avoiding paying for unachieved service levels, deliverables, or outcomes;
- Avoiding purchasing goods or services that are available but are not needed or are duplicative to what is already in scope;
- Maxing out earned credit or negotiated discounts;
- Avoiding non-adherence to payment terms that can affect cash flow; and
- Avoiding failure to bill for contractually required and delivered work.

Most contract verbiage is there for a reason. Ignoring the language because it is not numeric is not a good idea, and companies should expect more from their contract management solution. The most effective contract and commercial management processes will monetize those clauses affecting the numbers so that you can track, manipulate, and really go deeper into managing risk and opportunity. Identifying these opportunities takes digging and knowledge of where and what to dig.

There are countless benefits to effectively manage post-signature obligations. Effectively doing so may allow companies to decrease compliance risk and administrative burden, enable better tracking and monitoring of existing contract service level agreements and KPIs, share knowledge between information within the contracts and the organization or piece of the organization actually utilizing the services or goods, and enhance the value proposition from third-party relationships.

The present

To paraphrase a recent WorldCC report, most of the negotiation occurs before a contract is signed, but a vast amount of the actual time and cost are lost in the post-signature phase.[3] So why is this the case? At the most simplistic level, many companies have disproportionately invested time, effort, and funds in the pre-signature phase. Why? Well, it may be the "must have" versus "nice to have" conundrum. Companies "must have" contractual agreements in place to enable the business, whereas for them it is "nice to have" an effective and efficient post-signature contract and commercial management process in place. The business case for better pre-signature generally revolves around doing it faster, quicker, or at less cost. Depending on the type of contracting, there can be an argument for faster cash in the door. A concern with this approach is that it treats the contract life cycle as a sprint—not the marathon that it is—and fails to recognize the commercial and economic advantages to be found post-signature. Adding to this is the fact that signing a contract is often seen as a "quick win," a more tangible item to which a numeric value can be given. While the same can be said for those "quick wins" found in the post-signature phase, finding them requires more effort, more monitoring, and more capital. The Deloitte and WorldCC's *When technology meets humanity* report mentioned previously revealed that less than 30% of organizations surveyed currently had centralized or center-led post-signature contract management resources.[4] By diverting most of their resources to the front line, many companies leave few to none to contest the real battle that begins post-signature. Sealing the deal is important, but an important aspect behind a company wanting to seal that deal is typically profit—and it is in the post-signature phase that profit is best mined.

Not all companies have realized that a shift in mentality seems to be trending, and the pandemic clearly was the leading catalyst. What the research shows is that the balance of focus across pre-signature versus post-signature is now changing.[5] Companies are investing time and money into a number of key areas: analyzing, assessing, and reengineering the post-signature processes; introducing more comprehensive and robust approaches to legal and obligation management; investing in the multidisciplinary and cross-functional talent needed to improve post-signature contract management; and investing in contract management technology. There is a trend toward digitization of contract management as companies en masse are embracing the need to look at and understand how contracts are managed after signature, with a true appreciation for the power of data. Many organizations are now thinking beyond the data found within the four corners of the contract itself and focusing on how it can be linked to enterprise data contained in financial, HR, procurement, and customer relationship management systems. Companies are beginning to act, with 39% of those interviewed for the above-mentioned study reporting that they were focused on improving post-signature processes, and 25% of them stating that they were increasing the role of commercial professionals in post-signature risk management.[6]

Making this change in process and mentality can be challenging for organizations. Understanding what these challenges are is a key aspect of addressing the problem. The past year has seen unprecedented investment in the tools and use cases for proper contract management, be it a new appreciation for force majeure clauses in pandemics, cascading effects from Brexit, or changes in IBOR. While these changes affect the whole contract life cycle, it often seems like there is more attention given to contracting as opposed to activities that occur post-signature. Why do companies continue this? The answer is simple: Companies have to keep contracting. Anything that can make this process faster, better, and/or simpler is appealing. They continue to invest time, effort, technology, money, and sometimes endless bureaucracy to get to contract execution, and then they may hand it off to part of the business that doesn't have any knowledge about how the contract was created or what the risks and opportunities are contained within it. Passing over contract management responsibilities to the business may be an acceptable approach, assuming it is accompanied by training, support, or tooling to help them.

Organizations continue to exhibit this seemingly counterintuitive behavior for a plethora of reasons. The first is the upfront cost—the investment. Most organizations do not have historic functions, processes, or personnel for these types of activities. Many even lack basic document retention. Furthermore, the main functions that typically deal with contracts—legal, procurement, and sales—may have a bias toward getting the contract signed. Meanwhile, the organizations that have a vested interest in managing contractual portfolios—the chief operations officer, finance, business units, information technology—are typically more focused on the "doing" of business. They may not be adequately equipped with the resources that have the skills to really dig into a contract and parse out how some legalese clause affects pricing, responsibility for action, or obligations. As such, it costs money, time, and change management to develop or outsource these activities.

The second is the need for cross-functional cooperation. To perform contract and commercial management activities efficiently, you need a great recipe, and that includes many functions and different perspectives working harmoniously. A team that can properly do all this work needs a bit of legal experience to understand the terms, a touch of procurement, or sales savvy to understand the underlying relationships, some financial acumen to keep a focus on the numbers, with a healthy dash of technology and data experts to understand the data flows as well as pinpoint the issues and automation opportunities. Thus, in order to properly do this, you need a team of mixed skills united on common platforms and processes.

The third is the issue of change. Investment in post-signature contract management is a change, one that requires time and energy. It is precisely because of these needs why it gets pushed to page two of the "to-do list." Many organizations shy away from change and remain with the status quo. Perhaps it is because it is easier or maybe because the benefits of change are not yet clear enough to them, or possibly it is because they have yet to figure out that contracts are not just legal documents but strategic business assets full of opportunities waiting to be discovered.

Operational costs associated with post-signature management at times can be difficult to discern as they can be spread across the organization. There is an added challenge trying to harmonize how data is interpreted across teams, how data is captured, and in what system it is stored. Then comes the resistance related to cost, who will oversee the process, does the organization have the right resources, or enough of them, among many other challenges. Nonetheless, the business case for increased post-signature management is strong. It may help mitigate catastrophic loss through actively avoiding regulatory pitfalls. By focusing on things like revenue leakage through bad invoicing or change order management that equates to paying for the same thing twice, or not holding your partners accountable for what they promised to deliver, it may allow for companies to enhance profit and reduce loss.

Companies may want to consider approaching contracts more broadly. By so doing, they may be able to address any separation between those that draft and negotiate the contract and those to whom the contract applies and affects post-signature. One might ask how organizations can ease the transition and move toward this more broad-based approach to contract management, one that focuses at the very least as much on post-signature management as it does on pre-signature. The first step is recognizing the need for change and the benefit of change. The next step is not just technology, as some might assume, but a combination of technology along with people and intelligent data insights. Despite increasing advancement and adoption of technology, there is a growing realization that technology is the enabler, not the cure-all. Transforming the contracting function requires multidisciplinary talent, from knowledge engineers and technologists to process analysts and legally trained professions. It requires a broad-based approach that marries process standardization, automation, global delivery, alternative resource models, and continuous improvement. For a successful transformation to occur, organizations may need to use technology to support other aspects of change within their organization, including:

- Digitization of the contract portfolio;
- Analysis and understanding of the pain points across the entire life cycle;
- Development of contract data standards;
- Quantifying the overall cost per contract to the organization;
- Consolidation of resources; and
- Increasing clarity over organizational roles and responsibilities.

Hence, without the proper investment in people, process, and even content, the best technology may only be able to offer a temporary fix.

To perform contract and commercial management activities efficiently, you need a great recipe, and that includes many functions and different perspectives working harmoniously.

The next frontier

What is next? Perhaps a bright, more profitable future for those willing to make the change. Organizations need to start by changing their perception of contracts as a whole. Contracts are the lifeblood of the business. Contracts are not static documents as many organizations think; they should be seen as a well of data that can be used throughout the organization and sourced for profit. They provide a framework for mutually beneficial business outcomes; they generate economic value; they are tools for risk management; they offer a formal record of rights, responsibilities, and obligations; they provide intelligent insights to the overall business; and they can even be a testament to an organization's brand and corporate values. Contracts, and the contracting process itself, rather than being viewed as legal documents that are a source of frustration, should be seen as a strategic business asset, and the contracting process as an opportunity to demonstrate collaboration both within the organization and externally.

With a change in the way contracts are seen, a change in overall perception of the post-signature phase will likely follow. The hope is for a future that is utopian in the way the broader organization perceives post-signature activities management, one where post-signature activities management is seen as a "must have" to prevent negative outcomes, as well as a profit center where there are ample opportunities for contract mining, profit creation, and profit assurance. What will follow will likely be enhanced relationships with internal clients as well as external vendors, partners, and customers. Better relationships often translate into longer, stronger, and more fruitful partnerships, which in turn lead to a more prosperous and profitable organization. The future starts with elevating our view of contracts and remembering that contracts are not just legal documents but so much more—they are strategic business assets that merely happen to contain both legal and commercial terms.

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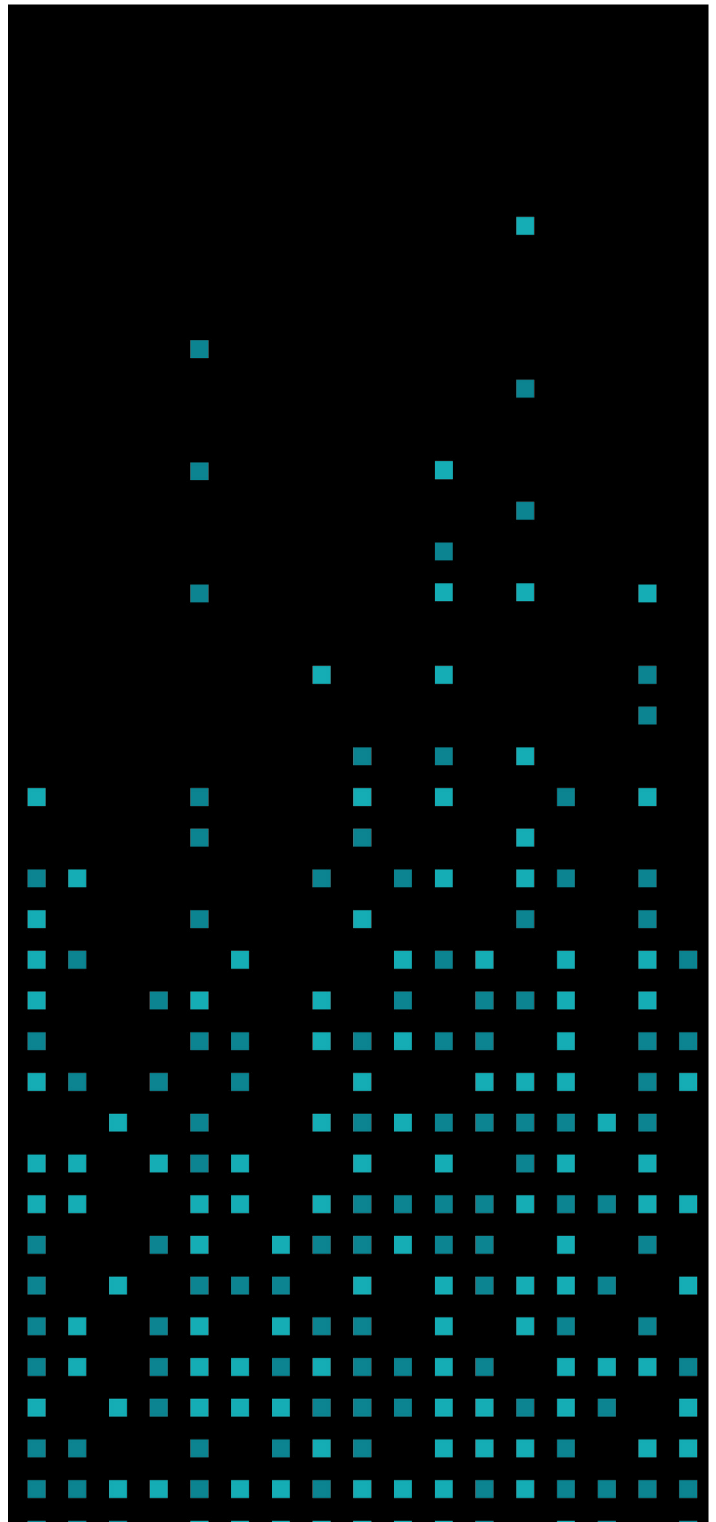

Endnotes

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