



# Legal Process Outsourcing

## A Workbook for In-House Counsel

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# Vantage Partners LPO Workbook

This workbook is designed to guide in-house counsel as they consider whether and how to improve the operation of their law departments through legal process outsourcing (“LPO”). While there are great opportunities to improve the quality, efficiency, and impact of your law department through LPO, the providers are not all alike, their offerings do not all solve for the same problems, and there is no one-size-fits-all solution. Making the right decision for your law department requires:

- Careful consideration of your objectives in even considering outsourcing.
- Creation of a business case which reflects the real costs and benefits of outsourcing.
- A structured process for engaging the LPO provider market.
- (Should you decide to outsource) the ability to manage this new type of relationship effectively over time.

To help you identify potential opportunities and evaluate them, this workbook is organized into four sections, each reflecting a key step in the exploration of LPO.

Within each section we have included a set of resources to help you understand and manage your exploration of LPO, including: practical “how to” checklists for each step in the LPO exploration process; a number of tools and templates to help you along; and input gathered from your peers during ACC’s 2011 Annual Meeting. The data from the ACC session, “Lessons Learned Across the Legal Process Outsourcing Lifecycle,” will allow you to see how your colleagues thought about some of the key questions we’ll be posing in this workbook; their ideas represent a good starting place for your own thinking about LPO.



Note: All tools and templates included in this workbook are available in usable form from Vantage Partners, [www.vantagepartners.com](http://www.vantagepartners.com). Please see [V. Additional resources](#).

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## I. What might I outsource, and why?

*This section describes some reasons why consideration of outsourcing is rising among in-house law departments and major law firms, as well as some of the key questions to ask yourself about whether legal process outsourcing makes sense for your law department.*

### Why outsource legal processes? (Hint: If you are not sure, don't.)

Even though the outsourcing underway in in-house law departments and law firms represents a very limited application of a management tool long used by other corporate functions such as IT, Finance, Human Resources, and Procurement, the discussion about whether and how to outsource legal processes has spilled into the mainstream media in the past year or so, with articles in *The New York Times*, *The Wall Street Journal*, and *The Economist*, to name a few. While both mainstream and legal industry media seem to treat legal outsourcing as a singular phenomenon and take sides in some supposedly momentous debate about whether law departments and law firms should or should not engage in it, the reality is that outsourcing is a broad term encompassing a range of different business structures that law departments and law firms (like any other business) may choose to implement depending on their business objectives. Indeed, most law departments already outsource work — to law firms.

The real question is whether there is a better or smarter way to match the right work to the right resources. That exploration starts with a critical question:

*For what purpose (or with which priorities) would you consider unbundling matters or services and reassigning some of the work?*

There are certainly benefits to be obtained by outsourcing some tasks or services, and there are risks to doing so. Many hours have been spent negotiating contracts to try to reap those benefits and manage those risks, but experience shows that outsourcing the wrong things for the wrong reasons is a far greater a source of dissatisfaction than picking the wrong provider or negotiating the wrong terms.<sup>1</sup>

Outsourcing is a management tool that can be used to achieve different management objectives. And while outsourcing can save you money, cost reduction is certainly not the only reason to outsource. If you look at only cost reduction, you miss a significant part of the equation, but if you reach for other benefits without thinking through some of the inherent trade-offs, you may miss out on a significant part of the savings you expected.

### Ways in which in-house counsel can achieve value through outsourcing

In-house counsel have some interesting options available when it comes to outsourcing. To take advantage of them, however, make sure that you are clear on how you will measure success and what the implications are of your objectives for how you select a provider or manage your relationship with them.

- 1. Reducing internal headcount (by shifting activities to a third party)** — This is the typical way in which other business functions save money by outsourcing, and it is really mostly relevant to large law departments. Even then, if the driving purpose of outsourcing is headcount reduction, then the scope of the LPO engagement will be relatively small, as will the overall savings, net of transition and governance costs. (Consider that average in-house legal spend is less than

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<sup>1</sup> Hefferan, George, Ganesh Natarajan, and Danny Ertel. "Looking Beyond Your Backyard: Outsourcing Legal Processes." *ACC Docket* 28 (2010): 52-62, available at <http://www.vantagepartners.com/ResearchAndPublications/ViewPublications.aspx?id=4916>.

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40% of the company's total legal spend, and assume that most, but not all, of that is on staff; then, if you could outsource 25% of those roles and save 50% of the cost of those positions — two very generous estimates — your savings before transition and management costs amount to less than 5% of total legal spend.) The implications for in-house counsel thinking about outsourcing primarily for the sake of reducing their fixed headcount costs are plain; consider alternative ways to achieve comparable savings, including automating, or just ceasing, certain legal support activities.

If you decide to go forward with outsourcing, watch your business case very carefully, because any significant upfront costs will push your savings years out into the future. Pick a mature provider who has a track record of delivering on their savings commitments; ask them to bear most of the cost of mapping out how the work currently performed internally will be taken over and delivered by them, and ask them to commit to year-on-year improvements in quality and efficiency.

- 2. Reducing external spend (by shifting activities from outside counsel to an LPO provider)** — This objective represents a much larger opportunity for savings and is indeed what has driven the majority of legal process outsourcing to date. In-house counsel achieve savings by requiring their law firms to transfer some tasks from comparatively expensive law firm or temp agency resources to less expensive LPO providers who are advantaged by a combination of their investments in technology, development of more efficient processes, and access to a global talent pool. But shifting tasks from counsel to outsourcer on specific matters happens sporadically. Savings are realized on a matter-by-matter basis (and sometimes these savings will actually come out of business unit budgets, rather than the law department's budget), but the law department will usually incur additional costs as overhead. The most common example of this sort of outsourcing (which, incidentally, represents about 50% of the work of many "pure play" LPO providers) involves sending initial document review work to a provider but having outside counsel provide supervision and quality assurance.

This kind of outsourcing raises for many the specter of making sanctionable errors if the LPO provider is unable to meet the quality standards the law firm would have met, if adding another link to the chain breaks down communication, or if something else goes wrong. Law firms certainly will raise objections to being held accountable for the work of others.

The implications for in-house counsel considering leveraging LPO offerings to reduce external spend are straightforward: given that the potential savings are significant, you should prioritize quality assurance and invest in effective governance of the three-way relationship among client, law firm, and LPO provider. This means that due diligence will be especially important in selecting an appropriate provider, as will careful mapping of roles and responsibilities during the ramp-up period for a particular assignment. In most cases, in-house counsel should select just one or two preferred providers and develop the protocols and communications channels they will use to manage their relationships and specific projects with these providers and their preferred law firms.

- 3. Shifting internal resources to more valuable work** — This objective does not really save much money, though it could be thought of as a way to avoid the cost of hiring additional staff. It does, however, deliver a very real benefit: making sure that in-house lawyers are spending their time productively. Consider the value of freeing up law department staff from reviewing every routine change proposed by a counterparty to the thousands of non-disclosure agreements a technology

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company signs every year, where most of those proposed changes fall into one of a handful of predictable (and acceptable) requests that can be described in an outsourcer's playbook. Freeing up their time from mundane tasks is important to retain motivated professionals and make sure that the company is realizing a return on its in-house legal talent.

This kind of outsourcing can sometimes be hard to defend internally because it seems to run counter to the current mantra of "do more with less" and rather suggests that the law department accomplish the same things with more (even if not very expensive) resources. Yet general counsel often say that they are urgently looking for ways to get their staff to spend more time getting to know and understand the business units they support and building relationships with key executives in those businesses. That time has to come from somewhere.

The implications for any such effort are twofold:

- Internally, to gain approval for their outsourcing business case, general counsel will have to be able to articulate what priorities are currently underserved because of such unavoidable but lower-value tasks; also, because change management is always a challenge, they will need to have a plan to make sure that internal resources will be redeployed accordingly.
- Externally, with the LPO providers, in-house counsel will have to devote some time and effort to making sure that the transition is a smooth one and that the outsourced tasks are being delivered well enough that the business is being well served and in-house counsel are not being dragged back into those activities.

- 4. Providing new, heretofore unaffordable, services to the business** — This objective is a bit different from the prior one, and it falls squarely on the side of "do more" rather than "with less." Companies face ever-increasing risks in global markets; outsourcing can allow a law department to provide new or added risk management services *affordably* to the business. The availability of lower-cost resources, managed to a well-run process and supported by effective technology, can allow law departments to provide support that might otherwise be unthinkable; for example: provide more detailed, market-by-market guidance to a business about the legal and regulatory risks facing their distributors; extract key terms and conditions data from thousands of license agreements; review every piece of advertising copy for potential truth-in-advertising violations; conduct due diligence reviews on every major customer contract for an acquisition target; and more. The value comes from reduced risks elsewhere in the company rather than savings in the law department.

Client and provider must work together in order to imagine and define what those services should look like, identify what reasonable expectations should be about quality and service levels, and determine what those services should cost. This means that the *selection process* must be one that takes into account how well the two organizations can work together from an organizational and cultural fit perspective. It also requires that *contractual terms* and financial incentives be structured to promote trust and openness. Finally, it requires a *governance model* that allows the parties to experiment a bit, learn from their experience, and make adjustments so that the services the client can comfortably buy from the provider deliver greater and greater value over time.

In some ways, this is the most exciting and innovative way to leverage an LPO provider’s capabilities, yet it can also be the most challenging to get right. Sometimes the service is a relatively standard one that the LPO provider has delivered many times before, like contract data extraction. But in other instances, these will be services that have not previously been offered inside the company, or perhaps anywhere.

If you are considering outsourcing some legal processes, you should do so with a clear set of objectives in mind so that you can design an engagement that is “fit for purpose” and select a provider with the right capabilities. Careful mapping of processes, thorough due diligence in selection, effective quality control, and robust governance of the relationship are additional investments required to outsource successfully. Achieving real return on those investments requires starting with a clear picture of what success looks like and what trade-offs may be required to get there.

### Practical tips for exploring LPO within your law department



A helpful way to begin thinking about LPO is to focus on what could be better — what services do you seek, what challenges need to be managed, and what opportunities exist to become more efficient? Once these potential objectives are defined, several different ways to achieve them can be considered, including changing in-house roles and responsibilities, shifting some tasks to administrative or other resources, altering the usage level of outside counsel, and LPO.

In order to assess whether your department might benefit from LPO, we recommend you evaluate the tasks you are currently doing as a department and the value of these tasks relative to the time they consume. Beginning an assessment this way has a number of benefits: it will engage others in the law department and allow you to clarify the benefits of outsourcing, identify which specific tasks are candidates for outsourcing, and begin to build alignment around your decision.

A bit of structure goes a long way in getting buy-in and in getting at the information required:

1. Consider using the [Whether/What to Outsource Template](#) to start your brainstorming. This template can help organize thinking about the opportunities presented by outsourcing and allow you to focus your analysis further.

#### Making the Right Decision: Whether/What to Outsource

| What do you wish you and your staff had <b>more</b> time to do   | What do you wish you and your staff could <b>stop</b> doing   | What do you wish you and your staff could <b>stop</b> doing                                 |
|--|---|---|
| <i>What valuable things are you not getting to? E.g., could you help the business manage risk better? Make better decisions?</i> | <i>What’s unavoidable, but not very interesting or valuable? What would you stop doing if you had some ways to improve self-service by non-lawyers?</i> | <i>Could you break up the tasks and shift part of the work to less expensive resources?</i> |
|  |   |   |

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**Tip**

When discussing this with your team, consider asking the question, “What will be different if we are successful?”

2. Talk to your team about the tasks they would like to *spend more time on* but currently are unable to. What’s the real barrier to doing those things? Could they make room for them by just saying “no” to other tasks, or do those other tasks also have to get done? Consider seeking input from key stakeholders in key business units about additional ways the law department might support them.
3. Ask your team to list the 10-12 tasks they currently *spend the most time on* and the approximate value (from 1 (lowest) to 5 (highest)) and time (in hours per week) for each task.
4. Review the list of tasks and assess:
  - Which tasks does your team not need to do?
  - Which tasks need to have involvement from the law department but might have components which could be done by a non-lawyer?

### What might I outsource: Advice from your peers

During ACC’s 2011 Annual Meeting session, “Lessons Learned Across the Legal Process Outsourcing Life Cycle,” several groups of participants used the [Whether/What to Outsource Template](#) to brainstorm tasks that may make sense for law departments to consider outsourcing. Their responses are summarized below and organized into three categories:

- A. Tasks in-house lawyers wish they had more time to do.
- B. Tasks in-house lawyers wish they and their staff could stop doing.
- C. Tasks in-house lawyers believe take up too much time relative to the value the tasks provide.



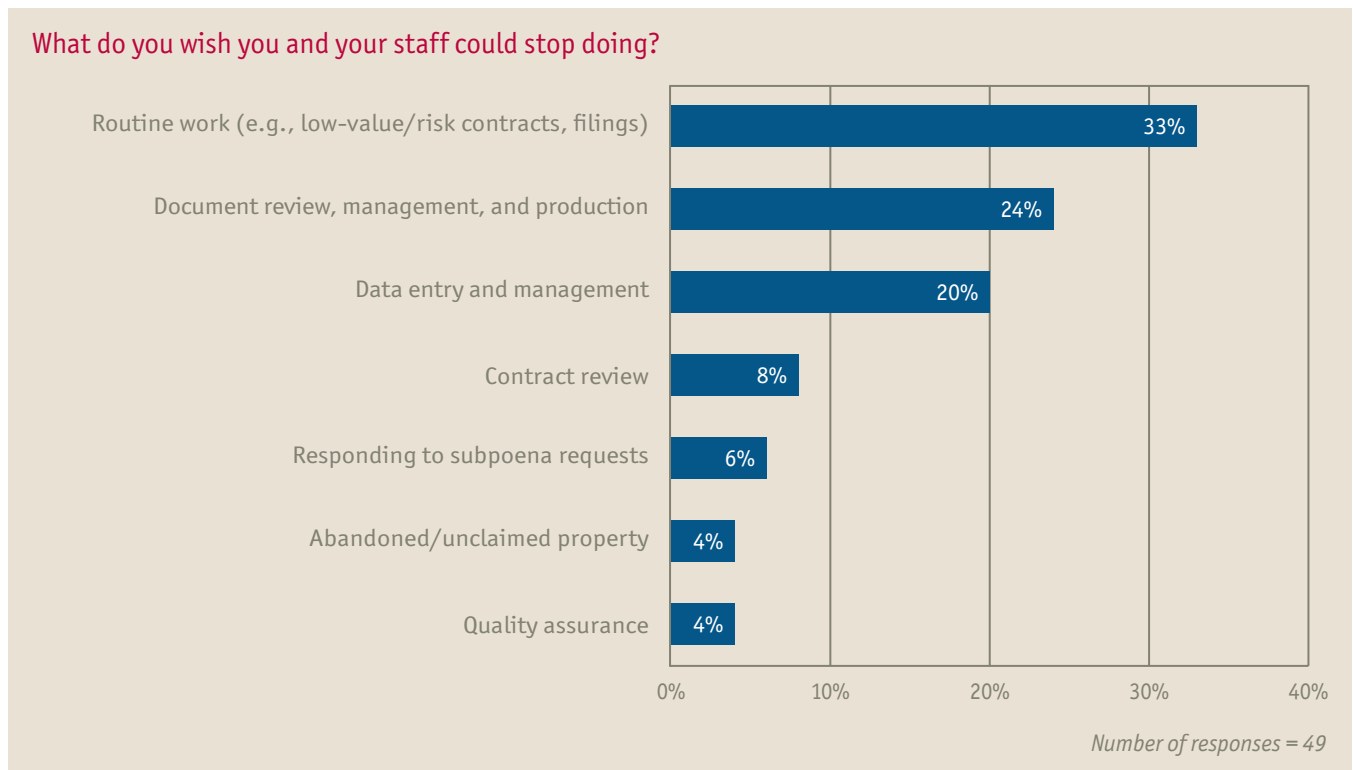
## A. Tasks in-house lawyers wish they had more time to do



### Observations on the results

- The tasks identified are some (though by no means all) of the activities which either are not being done much at all today or are being done far less than they should to drive more business value for the organization.
- It is interesting that nearly half (47%) of respondents identified either strategic planning or interacting/coordinating with the business as something they would like to engage in more; this is a significant source of potential value.
- The above data, and additional brainstorming you might do with your own team, can help frame a key benefit of outsourcing for internal stakeholders.

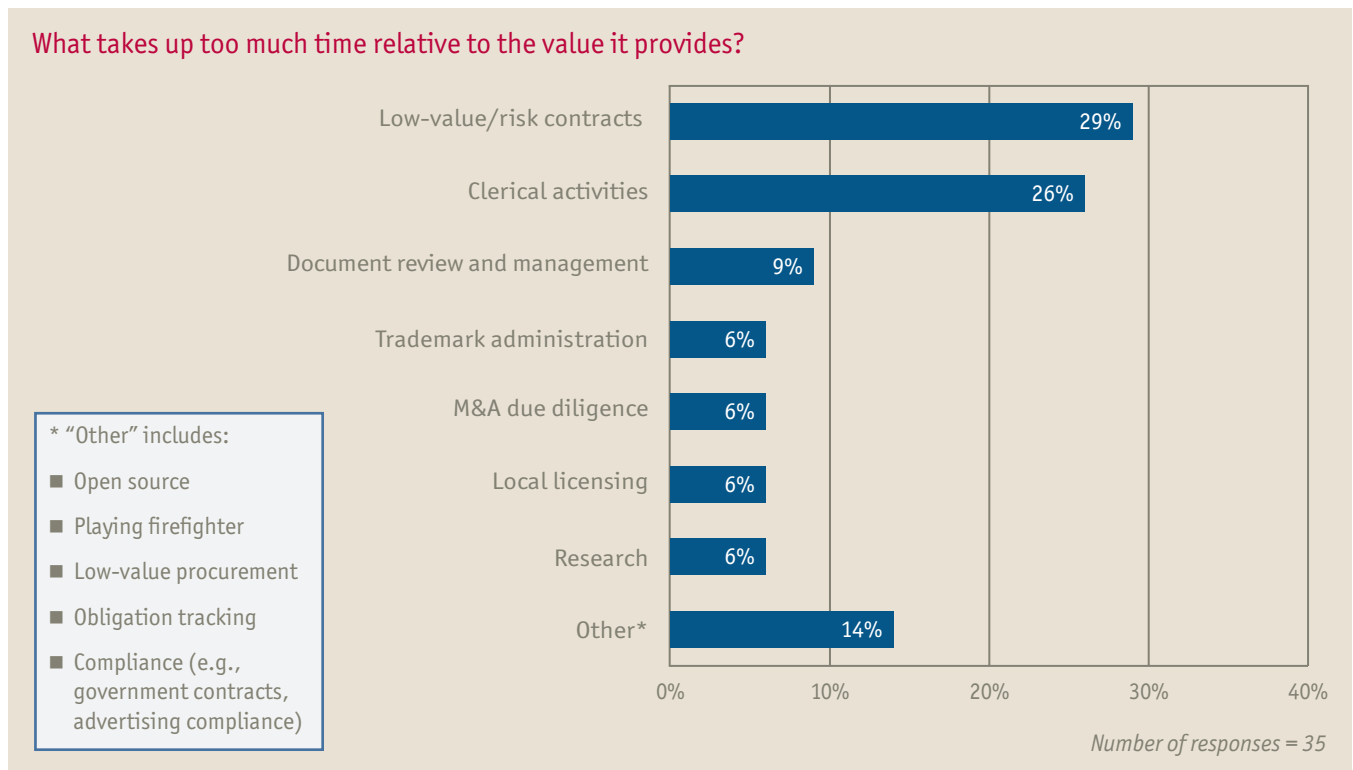
## B. Tasks in-house lawyers wish they and their staff could stop doing



### Observations on the results

- The first three activities (routine work, low-value/risk contracts, and filings; document review, management, and production; and data entry and management) correspond well with the most common offerings from legal outsourcing providers.
- A significant amount of law department time spent on data entry and management may speak to an outsourcing opportunity, but it may also speak to an opportunity to shift tasks to other internal resources. For example, applying administrative assistant time to data entry may be much more cost efficient than having in-house counsel complete this task; exploring whether paralegals, database administrators, or IT can support data management may be another solution.

### C. Tasks in-house lawyers believe take up too much time relative to the value the tasks provide



#### Observations on the results

- The top results here have significant overlap with the previous category. This likely reflects two truths: that some in-house counsel feel tasks such as reviewing relatively standard contracts, reviewing documents, and clerical tasks are undesirable and that they take up too much time.
- Our experience is that how in-house teams answer “what takes up too much time relative to the value it provides” will vary based on the core businesses of their respective companies. For example, companies whose businesses are heavily reliant on IP will tend to place greater emphasis within their in-house teams on trademark administration, licensing, and managing their patent portfolio than those who do not.
- Many of these tasks are ones that the law department needs to remain aware of or engaged in at some level. One benefit of outsourcing is that by receiving data or outputs but not having to perform the entirety of a task, the law department can retain overall control of an activity while handing off the day-to-day details of specific tasks.
- The data above do not represent the only answers to what tasks to consider outsourcing; there are many other tasks that have been successfully outsourced by law departments. However, the tasks identified above are good examples of the kinds of opportunities that exist in most law departments today and may be a helpful way to begin thinking about how you can benefit from LPO.

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## II. Taking the next step — building the internal business case

*This section describes how you can begin to assess whether LPO makes good financial sense for your law department: do the benefits outweigh the costs? In many companies, a positive business case will be required for deeper exploration of LPO, and there is no reason to let the development of such a business case become a barrier.*

### Why build a business case early

Building a business case can indeed be complicated, and each organization will have its own rules on how to allocate costs and calculate benefits. However, the steps described below represent a good common-sense approach that will often satisfy both financial and business stakeholders and allow you, the law department, to determine whether to proceed with further exploration of LPO.

Once you and your team have identified a set of tasks that might make sense to outsource and are confident that the potential value from outsourcing should be sufficient to justify it, an important next step is to take a closer look at the business implications. The purpose of this business case is threefold: first, to validate and document your financial case for outsourcing; second, to provide a tool to engage key internal stakeholders around the costs and benefits of outsourcing; and finally, to begin to build some of the information an outsourcing provider will need in order to propose some outsourcing options. The business case should be a living document, not a one-time calculation, and as such, it makes sense to begin it early in the process and update it as you learn more.

It should be noted that in this section we focus primarily on the business case for outsourcing activities you are currently doing in-house, as opposed to shifting activities such as document review that you are currently having done by outside counsel. The savings to be achieved by the latter are straightforward. Other implications of such a shift are discussed in [IV. Making it work — managing relationships with LPO providers and outside counsel over time](#).

When building out the business case for outsourcing some in-house activities, we recommend beginning to think about costs and benefits soon after you identify tasks that may potentially make sense to outsource. The reason for this is twofold: first, this ensures that investing time in exploration of outsourcing is justified; and second, this helps you learn the strengths and weaknesses of your business case so that these can inform decisions you make along the way about scope, provider selection, and contract negotiation.

Initially, many of the key inputs into the business case will be rough estimates; this is normal and expected. As the exploration process continues, you will obtain a significant amount of new information, and your perspective on some of the tasks and benefits may change. This usually results in a number of the inputs changing. A few examples of where new information may come from during the outsourcing exploration include: input from other (e.g., non-legal) internal stakeholders; new opportunities identified by the law department; new risks that must be managed which are identified during the exploration process; information from outsourcing providers that changes your estimation of both costs and benefits; and changes in your company's business that may make outsourcing more or less valuable.

Keeping your business case updated will ensure that you are evaluating how changing information impacts the overall decision to outsource and will inform where you may want to seek additional clarity from stakeholders or potential providers about new information that is received.

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## Practical tips on building the business case for LPO



A good approach to building the internal business case for LPO focused on shifting tasks you currently complete in-house to a provider might include the following steps:

1. For each task that your team determines is a potential candidate for outsourcing (for more on how to do that, please see [I. What might I outsource, and why?](#)), ask your team to develop an estimate of how much time they spend on each of those tasks today. This represents the total time your department might be able to free up by outsourcing that set of tasks.
  - Remember to think broadly about the implications of a task shifting to an external provider in terms of reduced time managing junior staff, reduced burden on administrative staff, and reduced use of IT and other internal resources.
  - Unless your organization has a rigorous task-code billing or other structured time management process, these estimates will likely be only rough ones. This is fine for initially scoping the potential benefits, but they may need to be refined during the internal alignment process.
  - If feasible, it may be useful to break down your time estimates into unit costs (how much time does a task take) and volumes (how many times is that task performed) as opposed to just knowing that X number of FTEs go into a task. With slightly more granular numbers, you can play around with options that may simply reduce volume instead of replacing who does it and also look at whether there are seasonal patterns to take into account (e.g., peaks at end of quarter).
  - Eventually, you will need to map the processes or services under consideration in some detail to fully understand the potential implications of outsourcing and ensure you realize the benefits. This is a task you can begin on your own and perhaps let the provider help you complete later as part of their detailed solution design.
2. Determine how you might value success from outsourcing. What benefits are you seeking? Remember, there are different kinds of value available from outsourcing, and you'll need to apply a slightly different approach to valuing each.
  - If the benefit is reduced headcount, calculate the value of the reduction, including benefits, bonuses, and overhead costs.
  - If the benefit is access to best provider practices or new resources, estimate what you think these would be worth. Would they translate into law department efficiency improvements or direct benefit to the business?

### Tip

Developing this information may require engaging with Finance, IT, HR, and other functions, so be sure to have a crisp explanation handy of why you are considering outsourcing and where you are in the process of evaluating this possibility!

### Tip

Be sure that reduced headcount (or open FTEs that you do not fill) are true reductions.

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## Tip

Several types of value that you may find exist include better regulatory outcomes, quicker transaction closings, shortened revenue recognition time, reduced revenue leakage in contract implementation, improved leverage of our IP, tighter alignment between commercial and risk management objectives, and increased communication.

## Tip

Remember to include some resources to manage the outsourcing provider in your business case! Also remember that there may be incremental IT costs for connecting a provider to your internal systems.

- If your primary objective is freeing up more staff time within the law department, review the list of tasks your team wished it had more time to pursue, and determine how you might value these activities. Some questions to consider include: How might I quantify the value to the business of earlier/deeper law department engagement? What costs might be avoided by earlier/deeper law department engagement? Can we help improve some business processes? Might there be greater efficiency or effectiveness within the law department, and if so, how might I translate that into dollars or FTEs?
  - If you are focusing on repurposing your own staff, you might consider the avoided cost of not having to hire more staff as a good proxy for those other higher-value tasks they might turn to after you outsource some of the less valuable activities.
3. Develop a rough estimate of the additional costs that may result from outsourcing. This assessment should include three different categories of costs:
    - *Exploration costs* that are part of making the strategic decision whether or not to outsource; these are usually considered separately from the outsourcing business case itself because they are costs you would incur even if you ultimately decided not to outsource.
    - *Transition costs* that are one-time costs incurred during the shifting of tasks to a provider.
    - *Ongoing incremental costs* which are “new” or additive costs you incur as part of managing and supporting the outsourcing provider. Additional categories of cost to consider are described in the [High-level LPO Business Case Template](#) included on the next page.
  4. One important cost category concerns the annual fees to be charged by the outsourcing provider to complete the tasks which are eventually decided to be “in scope.” There are a number of ways to obtain this information, even early in the process:
    - For some tasks, providers, advisors, or others may have current unit cost information available which you can use if you have good volume estimates.
    - Once you have sketched out the tasks and approximate number of FTEs/average time per year per task for each, you can get “ballpark” pricing from outsourcing providers themselves.
    - You can email Danny Ertel ([dertel@vantagepartners.com](mailto:dertel@vantagepartners.com)), who can help you informally size the savings opportunity.

As mentioned above, the business case is not a static document. One point in time where it is especially important to revisit the business case is when you have engaged providers and learned their perspective on how to most efficiently deliver the activities you have described. Providers sometimes will suggest other ways they might be able to provide value to your company (e.g., access to proprietary databases, additional tasks that are very low cost to provide alongside some of the in-scope activities, etc.). An effective approach to engaging providers is described in [III. Picking the right partner](#).

## High-level LPO Business Case

| <b>Potential Annual Benefit from Outsourcing</b>  |  |
|---|--|
| <i>“Hard” cost savings (e.g., actual reductions in internal FTEs, overhead, bonuses, computers &amp; equipment for FTEs, etc.; or reduced external legal spend)</i>                         |  |
| <i>Benefit from deeper engagement of the business (e.g., increased value from deals negotiated, reduced risk in deals, reduced insurance or other claims, stronger IP protection, etc.)</i> |  |
| <i>Value of in-house attorney time freed up by outsourcing routine tasks (i.e., time used for activities <u>other than</u> deeper engagement of the business)</i>                           |  |
| <i>Benefit from access to provider best practices (e.g., efficient templates, enabling self-service activities, access to specialized research tools/databases, etc.)</i>                   |  |
| <b>Total Annual Benefit</b>   |  |

| <b>One-time Transition Costs</b>                   |  |
|--|--|
| <i>Internal time to plan and manage transition</i> |  |
| <i>Internal time to train provider staff</i>       |  |
| <i>Termination or other one-time staff costs</i>   |  |
| <i>Contract negotiation costs</i>                  |  |
| <i>IT connection/compatibility</i>                 |  |
| <b>Total Transition Costs</b>                      |  |

| <b>Incremental Costs from Outsourcing</b>           |  |
|---|--|
| <i>Fee for outsourcing provider</i>                 |  |
| <i>Cost of managing provider</i>                    |  |
| <i>Incremental IT, HR, and other internal costs</i> |  |
| <b>Total Incremental Costs</b>                      |  |

|   |  |
|---|--|
| <b>Net Annual Benefit from Outsourcing</b><br><i>[Total Annual Benefit - Total Incremental Costs]</i>   |  |
| <b>Net Annual Benefit from Outsourcing</b> <i>(with five-year amortization of transition costs)</i><br><i>[Total Annual Benefit - Total Incremental Cost - 1/5 of Total Transition Costs]</i> |  |

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## Tip

Things to determine before a provider or advisor can give you a good answer include: what tasks are to be outsourced; what is the activity level for each (FTEs or number of occurrences per month); can the tasks be performed anywhere or must they be completed in the US; and what languages will need to be supported.

In sum, managing the creation and updating of a business case can be time-consuming and will likely require engagement with Finance, HR, and external providers. Some law departments find it helpful to consult external advisors during this process; whether or not that step is warranted for your law department, the creation of a business case is an important step in building organizational support for LPO and for making a wise decision on whether to proceed in your own exploration.

## III. Picking the right partner

*This section describes how to find the right LPO provider. There are hundreds of LPO providers in the market with very different delivery models, value propositions, and track records. Much like law firms, there is no single LPO provider who is the best choice for all law departments or all types of outsourcing. Instead, there are providers who fit specific corporate cultures and specific outsourcing objectives better than others. The steps laid out in this section will provide high-level guidance on how to narrow those hundreds of LPO providers to the few who merit in-person time from you and your team.*

### What is different about choosing an LPO provider

Choosing an LPO provider is a bit different from choosing a law firm, and it requires a bit more from the law department. Law firms generally pitch themselves relatively broadly, as being able to handle most or all of your outside counsel needs. They want to establish a trusted adviser relationship — someone who is ethically bound to protect your interests and brings their training and expertise to bear to anticipate and address the major risks in whatever regulatory-, transaction-, or dispute-related matter you bring them. By and large, they take pride in their ability to analyze a situation and come up with answers (or at least strategies to pursue on the path to those answers). When asked, most in-house counsel will say that they “hire lawyers, not firms” and that the personal and professional connection with key individuals at that firm is what drives their choices.

LPO providers, on the other hand, tend to make it clear that they are “not practicing law” but rather taking specific tasks that do not necessarily have to be carried out by someone admitted to practice and performing them more efficiently and with better quality control through the use of well-trained people, efficient processes, and leading-edge technology. They do want you to “hire the firm” and judge them on how well they meet specific, measurable expectations about their responsiveness and deliverable quality.

In some ways, selecting an LPO provider may have more in common with some of the things that your Sourcing & Procurement organization does for other parts of the company but with a couple of key differences. Legal services in general are different in some important ways from other kinds of services that Procurement may have more experience with, and LPO services in particular tend to require that the LPO provider work closely with both the law department and outside counsel. Both of these mean that there are critical non-price-related components to the selection process; indeed, price may be a relatively small

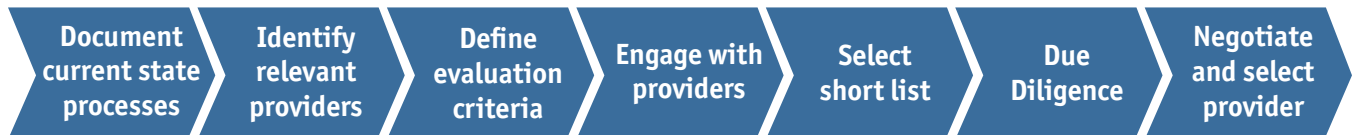


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differentiator among LPO providers, even though the savings, when compared to outside counsel costs for the same services, may be huge.

In this section, you will find some tips and insight from your peers about how to go to the market to get input from providers about what they can do for you and how you might them evaluate and compare their responses.

### Practical tips for provider selection



A good process for picking the right LPO provider to help you meet your objectives might include the following steps:

1. Taking what you have learned about the activities you are considering outsourcing during the creation of the business case and creating a “light” process map for each activity. This process map should show the major steps of the activity and the people who are potentially impacted by a change in that activity; “impacted” people are those who contribute information to the activity, those who access information impacted by the activity, and those who ask questions of someone in the law department who may be impacted by the activity.
2. There are many potential providers for common LPO activities, and it is likely impractical for you to contact all of them. Even if you were to try to do so, many providers likely would not engage with you due to a misalignment in project size, geographic or language requirements, or capacity. Thus, we recommend engaging in an initial exploration of the market to identify an initial list of providers who likely can meet your LPO requirements. There are multiple approaches to creating this list:
  - Network with colleagues at other companies or through ACC to find out who your peers have had success with.
  - Begin with a resource such as *The Black Book of Outsourcing* or *India Business Law Journal*, who each publish periodic lists of major providers and how they have ranked in surveys, and supplement this information with some web-based research to identify smaller providers who might also fit your requirements.
  - Consult an outsourcing advisor who maintains a database of providers and their capabilities and can counsel you on the suitability of different providers for different potential LPO engagements.
3. Once you have a sense of the scope and nature of the potential outsourcing and have identified that there is a set of providers who might meet your needs, you should develop a clear set of criteria with which to measure the providers against your stated objectives and determine the relative importance of each criterion to your selection.

Criteria will likely vary for different objectives, often significantly. This is why it is important to clearly define the tasks you may outsource and think with your team about your objectives for outsourcing before you deeply engage with providers: only by first gaining clarity on your objectives can you be sure what to evaluate providers on. An illustration of how significantly evaluation criteria can vary for different outsourcing objectives can be seen in [Provider selection criteria: Advice from your peers](#).

Many companies find that the criteria they use to evaluate providers fall into two categories:

1. “Must have” capabilities that a provider must demonstrate in order to even be considered and which tend not to distinguish among “qualified” providers (often including items like IT and physical security, good confidentiality practices, and effective business continuity planning).

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## Tip

An easy way to reality test your weightings is to ask a couple colleagues how they would weight the top criteria and then compare the results. If there are significant differences, explore their reasoning and adjust; if there is strong alignment, your weighting process is complete!

## Tip

Increasing media attention on LPO has led many law departments to feel that they should find out more. The resulting volume of not very serious inquiries has led some LPO provider sales teams to become somewhat selective about which inquiries they respond to in detail (or at all). If you are serious about understanding how an LPO provider can help you meet your objectives, make that clear from what you put in the RFI and how you treat the process.

2. Criteria that often *do* differentiate providers from each other (often around pricing model, experience with particular activities or substantive areas, and delivery quality).

As a starting place for thinking about criteria you might include in your evaluation process, some common evaluation criteria are shared in [Provider selection criteria: Advice from your peers](#).

You should also consider weighting criteria based on their importance to your achieving your outsourcing objectives. While there is no “rule” on how to weight the very different kinds of criteria we often include, keep in mind that sometimes non-price criteria can be as important (or even more so) than cost.

4. Once you have established your evaluation criteria, you are ready to engage the potential providers directly. There are a number of approaches to doing so, depending on the scope and complexity of the outsourcing, your own resources, and whether you can obtain productive support from Procurement for the exploration. Three possible approaches are described below:
  - For a very small scope or when you are uncertain even of what activities it makes sense to outsource, it may make sense to engage directly with a small number of providers to discuss the opportunity and obtain their feedback. Large providers are generally able to have a good discussion with you even early in the process, and though they will ultimately want to sell you services, they also have an interest in maturing the market for legal outsourcing; they often will share some basic information and practices with you.
  - For complex or very large outsourcing, it may make sense to begin with a Request for Information (“RFI”). This can be done relatively early in the process and will allow you to begin to engage providers about the potential tasks, encourage them to share information and ideas with you, under a non-disclosure agreement and allow you to evolve your vision for the outsourcing before you commit to a Request for Proposal (“RFP”). An RFI can be fairly short and informal. It should, however, share enough information about your organization and your objectives such that providers can be responsive in ways that you will actually learn something from the exercise.
  - For outsourcing that involves relatively standard types of tasks for an LPO provider (e.g., document review, data entry and management, contract management, due diligence support, some components of IP portfolio management, contract redlining, document coding, etc.) and is not exceptionally large, it may make sense to proceed directly to an RFP. Because an RFP typically asks for a firm commitment from the provider for a defined scope of work, it will tend to occur later in the maturation of your own thinking than an RFI might. An illustrative example of an RFP table of contents can be found on the following page.

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## Illustrative RFP Table of Contents

### **1. Introduction to the Request for Proposal**

- 1.1 Objectives of RFP
- 1.2 Background on CLIENT COMPANY
- 1.3 Specific Needs
- 1.4 Selection Criteria & Timeline of the Selection Process
- 1.5 Deadline for RFP Submission

### **2. Provider Information and Finances**

- 2.1 Provider Company Overview
- 2.2 Equity & Finances
- 2.3 Leadership & Stakeholders
- 2.4 Human Resources
- 2.5 Partners
- 2.6 Security
- 2.7 Business Continuity
- 2.8 Customer References

### **3. General LPO Model**

- 3.1 Service Delivery Experience
- 3.2 Project/Client Management
- 3.3 How do you prepare for and conduct client-specific training with respect to...
- 3.4 How do you capture and maintain such knowledge between assignments?
- 3.5 Performance Metrics
- 3.6 Cultural Fit
- 3.7 Differentiators
- 3.8 Additional Value from Outsourcing

### **4. Ability to Meet CLIENT COMPANY's Objectives**

- 4.1 Export Control
- 4.2 Foreign Language Support
- 4.3 Proposed Solution to Defined Scope

### **5. Pricing**

- 5.1 Proposed Model
- 5.2 Bid, including Critical Assumptions

- As you review information from providers and measure them against your criteria for each objective, you might end up with a table like the following that reflects the key evaluation criteria you have selected, the appropriate weights for each criterion, and your team’s evaluation of specific providers for each criterion. Note that the first column reflects a “must have” criterion (i.e., pass/fail) while the other criteria selected are all “differentiators.”

**Tip**

Keep your scoring scale simple. A four-point scale can be useful because it forces evaluators to choose which side of the midpoint to come down on. A simple red/yellow/green scale lends itself to a more visual assessment than a calculated score.

|            | Security / Confidentiality / Business continuity | Cultural fit (e.g., experience with companies like ours) | Language capability | Experience in substantive areas relevant to outsourcing | Experience in activities being outsourced | Ideas for value-add services | Delivery capability | Quality control | Human resources (e.g., quality stability of leadership) | Indicative pricing / savings |
|------------|--|--|---------------------|---|---|------------------------------|---------------------|-----------------|---|------------------------------|
| Weight     | Pass/Fail  | 10%  | 5%                  | 10%   | 25%                                       | 5%                           | 15%                 | 10%             | 10%   | 10%                          |
| Provider 1 | Green  | Yellow   | Green               | Green   | Green                                     | Green                        | Yellow              | Yellow          | Green   | Yellow                       |
| Provider 2 | Green  | Green  | Yellow              | Yellow  | Green                                     | Red                          | Green               | Green           | Green   | Yellow                       |
| Provider 3 | Green  | Yellow   | Green               | Red   | Yellow                                    | Yellow                       | Green               | Yellow          | Yellow  | Green                        |
| Provider 4 | Green  | Green  | Red                 | Yellow  | Green                                     | Green                        | Green               | Green           | Yellow  | Green                        |
| Provider 5 | Green  | Red  | Yellow              | Green   | Yellow                                    | Green                        | Red                 | Yellow          | Red   | Red                          |

- Once you have a sense of who are the strongest potential providers, perform some due diligence on those few providers. Good practice includes calling named reference accounts, conducting research on the ownership structure of your top candidates, and consulting ACC peers or an outsourcing advisor about the companies you are considering working with. Normally, LPO providers will visit you for an in-person meeting and give you an opportunity to meet or speak with some of the delivery staff and/or delivery supervisors. Visiting one or more finalists and conducting on-site due diligence prior to contracting is also important, especially if you are contracting with a smaller or less well-established provider.

In some cases, especially when you have a complex set of activities being outsourced or when you have multiple very strong providers, you may choose to have an additional exercise to help you decide among the final few providers. The form of this exercise will vary depending on your outsourcing objectives and the size of the outsourcing. We have worked with clients who have created daylong interactive sessions with providers to explore capabilities, learn what it would be like to work together, and assess cultural fit. Other clients have created a “virtual data room” and asked providers to review and/or provide a work plan and cost estimate for completing a task relating to the documents in the virtual data room. What kind of diligence is “due” depends in large part on what your objectives are and what activities are potentially in scope to be outsourced.

- Based on your assessment of provider capabilities, their performance against your evaluation criteria, and their success during your due diligence activities, you should select a provider

and begin negotiations. Sometimes it will make sense to begin parallel negotiations with two providers instead of just a single provider. We do not recommend negotiating with more than two providers; it is difficult to manage the negotiations effectively, and it is not entirely fair to the providers.

Once the negotiation of an agreement is completed, there can be a tendency to think the hard work is over and the provider will “do the rest.” In our experience, a great deal of value can be lost at this point if there is not a thoughtful transition process and a robust, fit-for-purpose approach taken to managing the provider relationship over time. [IV. Making it work – managing relationships with LPO providers and outside counsel over time](#) provides some advice for managing these relationships effectively so that they can deliver maximum value over time.

### Provider selection criteria: Advice from your peers

As an example of how selection criteria can vary depending on your specific outsourcing objective, during ACC’s 2011 Annual Meeting session, “Lessons Learned Across the Legal Process Outsourcing Life Cycle,” we gave groups four different outsourcing objectives and asked them to select their five most important selection criteria from a single pre-defined list. The list of criteria was the following:

| Quality of solution proposed  | Strength of internal knowledge management process and ability to identify “best practices”   | Pricing model proposed   |
|---|--|--|
| Ability to customize solution (e.g., building right set of fields, adjusting internal processes to meet client data parameters) | Structure of proposed project team   | Amount of quoted price   |
| Strength of proposed process, including quality of workflow tools   | Quality of management team/organization  | Fixed or capped fee  |
| Quality of process described (e.g., audit trail, defensibility)   | Average tenure of delivery personnel   | Ability to start quickly (i.e., staff a trained team immediately)  |
| Quality and ease of use of proposed document review technology  | Level of credentials possessed by document review teams (e.g., percentage of document reviewers with law degree)                   | Additional document capabilities (e.g., production capabilities, imaging, document hosting)                            |
| Overall track record (e.g., client references, case studies, and metrics)   | Business acumen of delivery staff  | Additional litigation capabilities (e.g., document analysis, expert testimony, expert witness identification services) |
| Evidence of maturity in document review   | Statistics demonstrating QA/QC performance   | Value-added capabilities (e.g., analytics)   |
| Industry experience (e.g., oil & gas, securities, life science)   | Experience implementing defined playbook process (e.g., executing within pre-determined rules, flagging exceptions for escalation) | Foreign language capability  |
| Legal domain/type of case experience (e.g., product liability, anti-trust)  | Ability to exercise independent judgment on questions outside of clear playbook parameters   | Strength of relationship management skills   |
| Writing skills of delivery staff  | Cultural fit with client organization  | Ability to interface effectively with other business units (e.g., Accounting, Procurement)                             |
| Communication skills of delivery personnel  | Hours of availability with delivery team personnel for communication with client   | Primary location of document review (e.g., offshore, onshore, nearshore)   |

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Interestingly, though not surprisingly, the five criteria selected by each group varied widely across the four outsourcing objectives. In fact, no single criterion appeared on all four lists!

The top five results for each objective are below:

| <b>Top criteria for freeing up internal resources by outsourcing redlining contracts</b> |
|--|
| 1. Experience implementing defined playbook process                                      |
| 2. Strength of proposed process, including quality of workflow tools                     |
| 3. Writing skills of delivery staff  |
| 4. Pricing   |
| 5. Fixed or capped fee   |

| <b>Top criteria for getting more useful work products by outsourcing due diligence</b> |
|--|
| 1. Industry experience   |
| 2. Writing skills of delivery staff  |
| 3. Level of credentials possessed by document review teams                             |
| 4. Business acumen of delivery staff   |
| 5. Evidence of maturity  |

| <b>Top criteria for reducing external spend by outsourcing document review</b> |
|--|
| 1. Quality and ease of use of proposed document review technology              |
| 2. Quality of process described  |
| 3. Pricing model proposed  |
| 4. Strength of proposed process, including quality of workflow tools           |
| 5. Quality of solution proposed  |

| <b>Top criteria for supporting business better by outsourcing contract data</b> |
|---|
| 1. Experience implementing defined playbook process                             |
| 2. Ability to customize solution  |
| 3. Statistics demonstrating QA/QC performance                                   |
| 4. Legal domain/type of case experience   |
| 5. Quality and ease of use of proposed document review technology               |

While the results of a workshop exercise are by no means dispositive, it is consistent with our experience across many outsourcing selection processes that selection criteria do, and should, vary significantly based on the objective of the outsourcing.

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## IV. Making it work — managing relationships with LPO providers and outside counsel over time

*This section helps you ensure that the potential value you have identified during the LPO exploration process is not just fully realized, but also maintained over time. Identifying a provider and negotiating your initial agreement with them is an important step, but it does not by itself generate any value for your law department. Instead, the real value of outsourcing legal processes and tasks is generated over time from effective interaction with your provider and careful management of your internal team, your other internal stakeholders, and the provider. Sometimes your outsourcing may also impact your outside counsel, and if so, they will also need to be informed of your process and integrated, over time, into a discussion of what is working and what might be improved.*

*While many of your peers have had success with LPO, many of them have learned that management of the provider, and your outside counsel when they are involved in LPO, is an important enabler of success.*

### Remember: LPO often requires a three-way relationship

Managing LPO relationships, like selecting LPO providers, requires some different capabilities than does managing or selecting outside counsel. Some of the reasons are the same: LPO providers deliver a different service than law firms, and they need different kinds of input upfront and feedback later. But a major difference comes from the reality that LPO providers are often performing activities that have been unbundled from a larger service that was previously provided by a law firm, and the reintegration of those activities into a coherent, defensible whole requires careful attention.

Do not underestimate the effort required to make sure internal stakeholders, LPO provider(s), and outside counsel are well aligned, understand their respective roles, and are positioned to succeed. Your leadership will be essential, and you must set the tone and shape the process. At the conclusion of this workbook, you will also find references and links to some additional resources, including a number of articles discussing how in-house counsel can effectively manage these new, more complex, multi-party relationships.

### Practical tips for managing LPO relationships effectively



While there is great potential value from legal outsourcing for many companies, realizing this value requires strong collaboration between the law department and the outsourcing provider, and sometimes with outside counsel and other service providers as well. This collaboration is most likely to occur if you and your provider consciously build the right working relationship and put in place processes to ensure the relationship remains strong over time.

### Key principles for managing LPO relationships effectively

- 1. Conduct a joint relationship launch** — Whether the relationship being managed is directly with an LPO provider or involves both an LPO provider and outside counsel, it is important to begin the relationship the right way. Often, an effective way to ensure this occurs is a formal “relationship launch.” This should be an in-person event that includes both management and delivery personnel from the provider and your law department — an executive sponsor, a relationship

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manager, and key people who will be involved with the delivery. If the relationship involves a law firm as well, both the relationship partner and the delivery team (e.g., partner and senior associate who will be responsible for day-to-day interaction) should be involved. There are several key topics that might be addressed during the relationship launch:

- Sharing your objectives for the outsourcing.
- Defining a shared definition of success for the relationship.
- Aligning on how the organizations will work together, including clarity on roles, responsibilities, decision rights, and accountabilities.
- Sharing fears and potential nightmares about what might happen so that they can be discussed and managed.
- Discussing and defining joint metrics that will demonstrate the success of the relationship.
- Aligning on short-term next steps.

2. **Communicate the objectives for the outsourcing to stakeholders** — LPO can feel threatening to members of the law department and to outside counsel. Ensuring that there is clear and early communication with these stakeholders about the reasons for outsourcing, the law department’s objectives, and the scope of the outsourcing will help minimize any concerns.

While more and more outside counsel are becoming familiar with LPO providers, they can still have significant concerns about a decision to outsource. Whether you are outsourcing some in-house activities which outside counsel may later need to access or you are asking outside counsel to work with an LPO provider who is reviewing documents for a litigation, explaining your reasoning for outsourcing and inviting discussion of how to manage the process will ease the transition and enable the best results.

3. **Ensure stakeholders who may be impacted by the outsourcing understand what has changed and who to go to with questions** — Outsourcing changes a number of components of internal activities, including who generates certain types of information, who receives this information, and who has additional context for answering questions from the business. While key participants from the law department, the provider, and (if necessary) outside counsel will be at the relationship launch, there are likely other stakeholders in the business who might be impacted. For example, if the creation of a document database is outsourced to a provider, there may be administrative staff who currently forward documents to the law department but should now know to send them to the provider; if due diligence for acquisitions is outsourced, connection points with Finance, Corporate Development, and the provider should be established.

#### Tip

Sharing some information about the exploration of LPO early in the process can simplify communication of the decision to outsource later on.

#### Tip

If you haven’t already done so as part of understanding the current state of service delivery, build a “map” of how each input or deliverable from the tasks within the scope of the outsourcing are “touched” within your company and (if necessary) within your outside counsel.



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**4. Build a dashboard to enable project managers and executive sponsors to monitor progress on an ongoing basis** — Make sure that the metrics you select truly impact the business and your ability to deliver legal services; don't just select metrics that are easy to collect. For some additional thoughts on building a useful dashboard or scorecard, see [Measuring Success: Effective use of scorecards to manage legal process outsourcing \(LPO\) arrangements](#), also listed under [V. Additional Resources](#).

**5. Continue to assess progress against the business case over time** — As part of managing your provider, it is often helpful to refer back to the "final" business case you prepared and consider how you have done against those expectations. It is almost always the case that the situation will change some over time; however, learning about what changed and why will help you most effectively manage future LPO decisions as well as alert you to potential variations that might require internal consultation over time.

If you are assessing the success of a third-party provider working with outside counsel, take the time to go back and compare the actual costs incurred (both the provider's and those that outside counsel describes relate to managing the provider) to your cost projections. Taking this step will let you know if you are achieving the success you envisioned and will provide legitimacy for decisions you make in the future, whether it be to expand or otherwise change the scope of activities you are outsourcing.

#### Tip

When possible, tie metrics to your outsourcing objectives. For example, if your primary objective is reducing the cost of document review while maintaining quality, consider metrics such as "current average cost per document" and "error rate detected on second-level review" instead of reporting easy-to-find information such as "total documents reviewed" or "total hours per month."

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## V. Additional resources

While it may feel as though LPO is too difficult to undertake and a lot more work than selecting and managing outside counsel, our experience is that most LPO clients who follow a structured opportunity identification and selection process, and then invest the time to properly launch and manage their LPO relationships, derive significant value from outsourcing and usually expand the set of activities they outsource over time.

As the delivery of legal services evolves, it will only become more important for law departments to become more efficient in how they use resources. Strategically assessing your LPO options can enable you to deliver better value to the business with lower costs.

We are eager to hear about your successes with LPO and are also happy to provide additional information on LPO validation, selection, and management or to answer any questions you may have on this document or its provided forms and templates. Please feel free to contact Danny Ertel at [dertel@vantagepartners.com](mailto:dertel@vantagepartners.com).

Follow the links below for specific additional resources:

1. All forms and templates referenced in this workbook:
  - a. [Whether/What to Outsource Template](#)
  - b. [High-level LPO Business Case Template](#)
  - c. [Sample Request for Proposal \(RFP\) Template](#)
  - d. [Sample Provider Evaluation Matrix](#)
  - e. [Provider Evaluation Criteria List](#)
2. [Legal process outsourcing: The provider selection process](#)
3. [Measuring success: Effective use of scorecards to manage legal process outsourcing \(LPO\) arrangements](#)
4. [In-house counsel as service integrators](#)
5. [Understanding how law firms can achieve value through LPO](#)
6. [Managing relationships with outside counsel when offshoring work](#)

This workbook and all of its included tools and templates can be accessed at <http://www.vantagepartners.com/LPOWorkbookLandingPage.aspx>

### About Vantage Partners

Vantage Partners leads the field of relationship management, building on more than 25 years of research and consulting experience with the world's leading companies. A spin-off of the Harvard Negotiation Project, at Vantage we help our clients and their partners and providers enter into, manage, and (when necessary) remediate working relationships. For more information, please visit [www.vantagepartners.com](http://www.vantagepartners.com).