

Future Proofing Your Contracts: Negotiation Strategies and AI Integration for In-House Counsel

ACC St. Louis

September 17, 2025



Apollo Carey

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Roadmap:

1. Discuss Goals for Business Units and Legal Departments in Negotiating Contracts
2. Provide Practical Tips and Negotiating Strategies for In-House Counsel
3. Examine Recent Trends and Negotiating Points with 3 Kinds of Contracts
4. Explore AI Integration into the Contracting Function



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What Do Business Units Care About

Price/Budget

Schedule/Timeline

Quality of the Product or Service

Relationship Dynamics (who's supposed to do what)

Alignment with Company or Departmental Goals

Convenience/Efficiencies



What Does the Legal Department Care About

Risk Mitigation

Legal Enforcability of the Contract

Exit Strategy

Compliance with Applicable Laws

Insurance and Liability

Dispute Resolution



Bridging the Gap Between the Business Unit and Legal Department

Examining the tangible impact that a contract will have on:

Finances

Workflows

Service Delivery

Reputational Risk

Cross Departmental Impact

Use of Technology





The Practical Approach for Lawyers

Define Clear Goals for your Review, Negotiation or Drafting that align with the priorities of the client:

- What's most important to this particular client?
- What are the overall business priorities of the company?
- What is the client's timeline?
- How will this transaction impact other clients within the company?
- Are there any compliance issues?



The Practical Approach for Lawyers cont.

Maintain a thorough understanding of the contract's context

- What is the overall purpose of the contract?
- What business goals is it/will it be designed to achieve?
- What are the contract specifics?
 - What products are involved?
 - What services are involved?
 - What parties are involved?
 - Are the parties different legal entities?



The Practical Approach for Lawyers cont.

- Does your client (or legal department) have a “Contract Manuscript”?
 - Standardized language
 - Standardized templates
 - Clearly defined negotiating goals
- Creates consistency and efficiency within your legal department and amongst clients
- Use of standard clauses and language that has been vetted by legal department for low-risk agreements
 - NDA’s
 - Recurring, low dollar-amount agreements



The Practical Approach for Lawyers cont.

- Does your company have approval thresholds or clear guidelines for when a contract requires legal review?
 - Dollar Amount threshold?
 - Length of obligation threshold?
 - Type of Contract?
- Can you empower certain business units with the appropriate tools, templates, and/or language to handle routine, standardized contracts on their own?

Review and Negotiation Strategies

- Focusing on critical clauses that impact a client's legal rights in a way that enhances or progresses their business objectives
 - Indemnification and Limitations of Liabilities
 - Waiver of Legal Rights
 - Termination and Renewal
 - Confidentiality
 - Intellectual Property Rights
 - Governing Law
 - Dispute Resolution



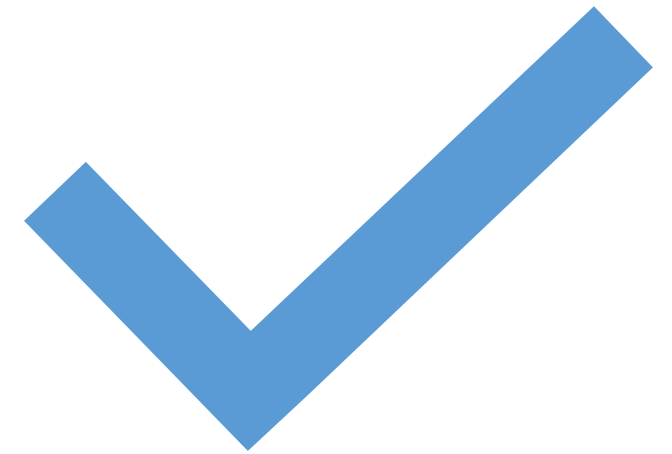
Review and Negotiation Strategies cont.

- Minimize time spent on clauses that are purely business related or that should be standardized such that the obligations and rights of the parties are always the same (boiler plate).
- Strategic use of clarity and vagueness/ambiguity
 - Not all terms require specific metrics or measured results
 - Clarity is King....but....ambiguity or vagueness can be advantageous for the client
 - Caveat** Understand how contract sections containing ambiguity or vagueness impact the remaining sections of the document and the ability for the client to achieve its business objectives. Error on the side of clarity.



Review and Negotiation Strategies cont.

- Verify core business terms have been achieved
 - Confirm that all deliverables, responsibilities, and timelines (for the same) are consistent with the client's priorities
 - Double check financial terms
 - Verify payment schedules
 - Examine the contract for hidden costs, fees, or penalties



Review and Negotiation Strategies cont.

- Conduct a thorough compliance review
- What are the industry-specific laws and regulations that impact the contract and/or the parties?
 - HIPAA (Health Insurance Portability and Accountability Act)?
 - GDPR (General Data Protection Regulation)?
 - CCPA (California Consumer Privacy Act)?
 - CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act)?
 - CPSA (Consumer Product Safety Act)?





Construction Contracts

- Typically, there are multiple parties involved (not just 2)
 - Owners
 - Contractors (and subs)
 - Architects/Engineers
 - Consultants
- Negotiation strategy depends on the type of contract that makes sense for the project and the perspective of the party involved
- Some areas have industry standard forms that are used, such as the AIA forms



Construction Contracts Cont.

A solid construction contract defines:

- Scope of the project
- Responsibilities of each party involved
- Terms and conditions for the services being provided or materials being purchased
- Pricing
- Compliance with applicable laws
- Providing a framework for managing the project to completion
- Dispute resolution



Construction Contracts Cont.

Owners typically care about 4 things in construction contracts:

- Price
- Schedule
- Quality
- Safety



Construction Contracts Cont.

- Safety
 - No new trends in how contractors are approaching safety provisions in construction contracts
 - Most contracts include sufficient provisions mandating Contractors will do their work safely in compliance with OSHA, etc., and will indemnify for personal injury or property damage resulting from their negligence



Construction Contracts Cont.

- Pricing
- Multiple ways to structure Pricing that impact negotiations:
 - Lump Sum—Contractor Agrees to complete the entire project for a single, predetermined price
 - Cost-Plus—Owner pays for the contractor's estimated costs incurred (materials & labor) plus an agreed upon fixed fee for overhead and profit (usually expressed as a percentage of the actual costs)
 - Unit Price--Project is divided into units (or phases) and the contractor is paid a fixed price for the unit of work performed
 - Guaranteed Maximum Price—variation of Cost Plus which sets a ceiling on the project's total cost
 - Time and Materials—Owner pays for contractor's actual time spent and actual materials used



Construction Contracts Cont.

- Scheduling
 - Be aware of construction contracts where Contractors are significantly restricting their responsibility for delay damages.
 - It has historically been standard for construction contracts to include waivers of consequential damages which waive owner delay damages (like loss of use of a facility)
 - To compensate for this, Contractors would often agree to uncapped liquidated delay damages.
 - Recent trend is that Contractors are also refusing to agree to any significant liquidated damages for delay (or are putting very small caps on their liquidated damages liability).



Construction Contracts Cont.

- Quality of Work
 - A recent trend is that Contractors are attempting to restrict their responsibility for defects in larger equipment or material provided under their contracts (e.g. mechanical equipment) by “passing up” onerous warranty terms from downstream suppliers.
 - Purchase Order terms with large equipment suppliers (GE, Trane, Siemens, etc.) often have onerous terms limiting a customer’s right to claim labor costs to repair defects or limiting liability for other property damage or limiting liability over a certain monetary threshold.
 - Terms in a construction contract passing up downstream PO terms can thus be very problematic for an Owner.



Real Estate Contracts

- Typical Client Objectives:
 - If Seller Client wants to:
 - get rid of the property quickly and at the highest possible selling price
 - Minimize Seller's Obligation to do anything while the property is under contract
 - Minimize Seller's Obligation to do anything after the property is sold
 - Client may have an interest in avoiding publicity
 - If Buyer, Client wants to:
 - Acquire the property at a reasonable price
 - Make sure the property is what the Seller holds it out to be
 - Make sure the property can be used for its business purposes
 - Make sure Seller isn't hiding or failing to disclose material issues with the property



Real Estate Contracts Cont.

- Purchase Agreements
 - Length of and triggers that extend Due Diligence Period (are they unilateral or is mutual agreement required)
 - Title & Survey Review
 - Be aware of the impact of invasive testing during Due Diligence
 - If there is significant earnest money, what happens to it if the contract is breached or becomes null and void?
 - Spend time on Reps and Warranties
 - Rights and Obligations that survive Closing
 - Pre-conditions to Closing



Real Estate Contracts Cont.

- Leases
 - Look out for language containing waivers of state-specific statutory rights
 - Rights to challenge a declaration of default
 - Rights to challenge a LL's entry into property
 - Rights to challenges a LL's seizure and sale of business personal property
 - Clauses giving LL a security interest in Tenant's property beyond what might be contained at the demised premises
 - Landlords want more flexibility in delivery dates but do not want to allow Tenant's the right to terminate or be compensated if LL does not deliver the premises in a timely manner
 - If LL work is involved, look out for risk or burden shifting language, requiring Tenants to pay for costs associated with obtaining permits
 - If Tenant work is involved, look out for language requiring Tenant's contractor's to obtain approval from LL's contractors prior to beginning work

Technology Contracts

Contracts designed to address specific needs related to the technological aspects of your practice or business

Generally three types:

- Software Agreements
- Service Level Agreements
- Data Processing Agreements



Software Agreements

Software Development
Agreements

Software Licensing Agreements

End-User License Agreements
(EULA)

Software as a Service Agreements
(SaaS)

Software Agreements Cont.

Intellectual
Property Rights
between the parties

Data Privacy and
Security

Licensing Terms

Liability Limits

If services are
involved, service
level terms and
conditions

Indemnification

Termination clauses

Payment terms

Service Level Agreements



Typically used for Information Technology Services being provided by an outside vendor



Protects business-critical services, high risk/high value services, or complex custom solutions that are inextricable to a Client



Also used for repeated transactions in regulated industries



These agreements can ensure clarity and mitigate risks for both the Client and the vendor

Service Level Agreements cont.

Define Clear
Performance
Metrics and
Remedies

Limiting Liability
Exposure

Define Ownership
of Intellectual
Property

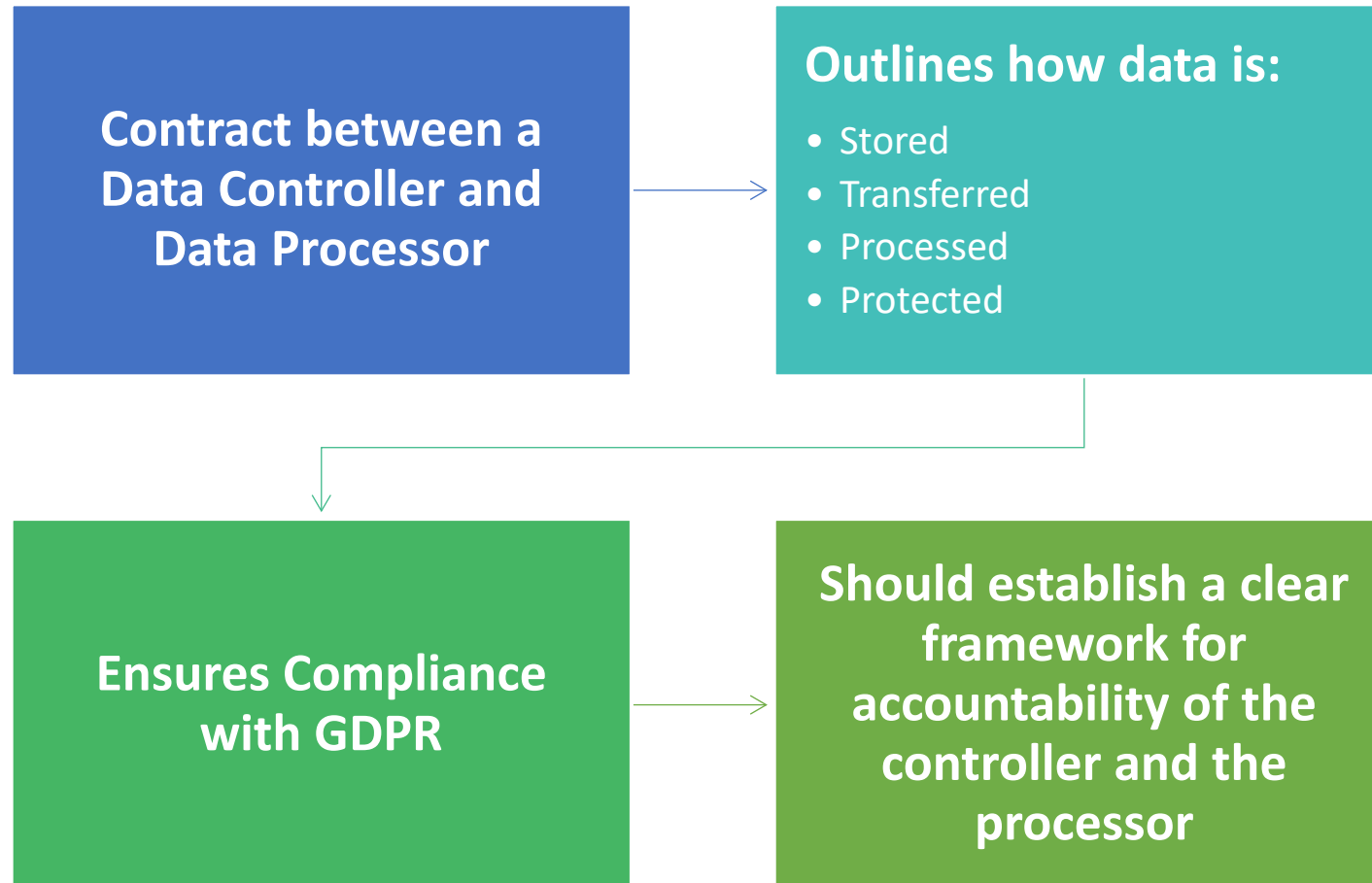
Need for Robust
Data Protection,
Data Privacy, and
Security

Risk Shifting for
External Factors

Provisions for
breach
notifications

Provisions for
dispute resolutions

Data Processing Agreements





Data Processing Agreements cont.

Limitations and Caps of Liability

Regulatory Penalties

Reputational Damage

Use of subprocessors (is it addressed)

Breach Notifications

End of Contract Obligations

Are there cross-border compliance issues



Impact of Artificial Intelligence on Contract Negotiations and Drafting

Used to Automate and Enhance various stages of the contracting process

Accelerates repetitive tasks and serves as an assistant for legal and procurement teams (with appropriate human oversight)

Can work seamlessly for:

- Contract Review
- Contract Redlining
- Risk Assessment
- Enhancing Collaboration



Impact of Artificial Intelligence on Contract Negotiations and Drafting cont.

Review and Redlining

Can scan contracts quickly and aid in comparing proposed contract terms against previously agreed-to terms and company goals

- Deviation Detection—instantly identifies non-standard clauses, missing provisions, or risky language
- Suggested Edits—Recommends alternative wording or approved fallback positions to speed up the editing process
- Negotiation History—can learn from past successful agreements and provide insight/suggestions on strategies that can be successful in the future

Impact of Artificial Intelligence on Contract Negotiations and Drafting cont.

- Risk Assessment
- Can identify potential risks with language or clauses quickly and efficiently, prior to them becoming costly liabilities
 - Risk Scoring—AI can provide a risk assessment based on a “score” for each contract, quantifying potential exposure based on factors such as vague language or non-compliant terms
 - Compliance Monitoring—AI can cross-reference contract language against applicable laws, ordinances, regulations, etc. to enhance the compliance review process
 - Anomaly detection—AI can identify terms buried in boiler plate that are unusual or inconsistent, ensuring consistency and minimizing oversights

Impact of Artificial Intelligence on Contract Negotiations and Drafting cont.

- Improving Departmental Collaboration
 - Centralized Platform for Contracts—can provide a single, trusted location for all contract stakeholders to review, provide input, etc.
 - Automated Workflows—can route contracts to appropriate departments and teams within a company for review and approval. Also can be set up to send reminders for deadlines relating to a contract
 - Tracking Contract Status—can provide a dashboard for visibility into the negotiation and approval process so that all stakeholders are on the same page about the status of a particular contract

Impact of Artificial Intelligence on Contract Negotiations and Drafting cont.

- Practical Steps to implement AI in the Contracting Process
 - Start with a good “Contract Manuscript”
 - Human Oversight is a “Must”
 - Robust Data Security
 - Integration with existing systems and software
 - Training

AI Vendor Assessment Checklist

General Vendor Info

- ✓ What is the Purpose and Intended Use of the AI System?
- ✓ Who Developed the System?
- ✓ What is the geographical scope of the AI System?
- ✓ How does the AI System Learn?
- ✓ What are the Outputs of the AI System? Are they confidential or proprietary?

AI Vendor Assessment Checklist Cont.

Legal and Regulatory Compliance

- ✓ Is the System Compliant with all applicable laws (GDPR (EU), CCPA/CPRA, HIPAA, GLBA)?
- ✓ How does it handle compliance across regions (e.g., EU, US, China)?
- ✓ Are compliance requirements regularly updated and communicated?
- ✓ Is a Data Protection Impact Assessment available?
- ✓ Is the AI system compliant with industry-specific laws?

AI Vendor Assessment Checklist Cont.

Data Sets & Training

- ✓ What datasets are used to train the AI? What types of data are collected, processed, and stored (e.g., personal, sensitive, health)?
- ✓ How is data gathered (e.g., direct input, scraping, sensors)?
- ✓ Are users informed of data collection and given privacy notices or consent forms?
- ✓ Does the system collect explicit consent? How is consent withdrawal handled?
- ✓ Is the dataset static or dynamically updated over time?
- ✓ What is the data retention policy and duration?
- ✓ Are user inputs retained, and are they used to train the system (including for third-party benefit)?

AI Vendor Assessment Checklist Cont.

Data Security

- ✓ Is the vendor certified or aligned with ISO/IEC 27001, SOC 2, NIST Cybersecurity Framework?
- ✓ What encryption standards are used for data at rest and in transit?
- ✓ Are multi-factor authentication and role-based access control implemented?
- ✓ Who has access to the data?
- ✓ What techniques are used for anonymization or pseudonymization?
- ✓ What safeguards are in place for personal and sensitive data?
- ✓ Are systems regularly tested via vulnerability scans and pen testing?
- ✓ Is there a defined process for detecting, reporting, and responding to data breaches?