

Quality Control

Take a look at how we use protocol-ization and technology to maintain consistent quality work product.

TRIFECTA
••• General Counsel

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Introduction

There is a saying about lawyers: Ask three of them the same question and you'll get at least four opinions. It's something that happens all the time. Lawyering, especially contract review and drafting, is traditionally a highly individualized and bespoke activity. This approach can lead to critical errors, omissions, and inconsistencies. And in the corporate setting, with each lawyer having their own way of doing things, it's nearly impossible to implement and enforce policies on what a company should or shouldn't be agreeing to.

Ask three lawyers the same question . . .

Lawyering, especially contract review and drafting, is traditionally a highly individualized and bespoke activity. You get a different result every time, and this approach makes it incredibly difficult for legal departments to be effective. At Trifecta, we know consistency and standardization are the keys to building a contracting process you can trust.

When you use Trifecta for contract review and markup, one of our top goals is to eliminate inconsistency and unpredictability inherent in the old way. To do that, we invest significant time up front to create a compilation of contracting best practices—we call it a playbook—to use as a guide when read and markup contracts. Here is an overview of our methodology.

Step 1: Trend research

To understand where you want to go, we need to know where you've been. That's why our process starts by taking a deep dive into your existing contracts and interviewing your front-line contracting attorneys. The purpose of this exercise is to understand your historical position on key legal issues, everything from data privacy and security, to limits of liability, warranties, indemnification, and a host of other topics. This activity also gives us insights into your risk tolerance as an organization and your business imperatives, as well as how your position on these items has evolved over time. Finally, after completing a close scan of your existing contracts, we are in a better position to offer recommendations on ways to optimize your contract templates and processes, if needed.

Bandwidth QA Method:

1. Trend research
2. Derive protocols, compile into playbook
3. Stakeholder consensus
4. Propagate playbook
5. Validation
6. Run the plays, review and redline contracts the against playbooks

Step 2: Derive Protocols, Create Playbook

We maintain a set of best practices on the contract types that we service—e.g., NDAs, BAAs, DPAs, SaaS Agreements, MSAs and the like. We refer to these best practice sets as “protocols.” A

protocol is an accepted or established code of procedure for a given organization or situation. Using protocols is the perfect way to create order and predictability on a team dedicated to reading and drafting contracts. It's also the foundation for the Bandwidth delegation system.

We've developed our standard protocols from absorbing best practices and optimal contract language from our experiences in the field. Our area of specialty is working for and opposite of leading companies in technology and healthcare. From this background, we've cultivated best practices on a range of frequently encountered contract provisions, from assignment clauses, to governing law provisions, to limitations of liability and indemnification.

We merge our standard protocols for each contract type you've engaged us for with the trends we observed in Step 1.

The result is a contracting playbook that's customized to your organization.

This step should take no more than 2 weeks per playbook and can be completed in conjunction with step 1 if you have a short timeline.

Playbook excerpt

Issue: From a client's perspective as a business associate, the agreement needs to be transferable as part of an acquisition. When a company is acquired, it needs to be doing business. Anti-assignment clauses are a pinch point that should be avoided.

AC	Response	Fallback
This Agreement may be assigned by a party with the other party's prior written consent or in connection with a merger or sale of a party itself or substantially all of such party's assets, in each case so long as such party's successor agrees to be bound by this Agreement. Any other assignment is void.	Although we require the ability to assign this contract as part of an acquisition, we would only do so if our successor agrees to assume our obligations so that there is no disruption in service.	It's OK to do as an addendum. FAC: Add otherwise, completed in the next 5 business days. If not, believe COI this Agreement.

Automatic Renewal
Issue: This is an important term for vendors. It's very easy to miss a renewal deadline and to let a contract expire. Auto-renew is important to ensure there isn't an inter-

AC	Response	Fallback
Your initial term will renew for successive 2-year periods unless either party notifies the other of non-renewal at least 90 days before expiration of the then-current term.	To avoid interruptions in service, it's optimal to allow for agreements to renew without the need to execute an amendment.	OK to give direction.

Step 3: Stakeholder consensus

We take a team approach to finalizing your contracting protocols. Once draft playbooks are created, we circulate it with our counterpart on your legal team. In addition to legal, we encourage our clients to seek input from relevant domain experts from sales, finance, IT, marketing, product management, customer success, and other teams whose work is impacted by contracting. We expect the playbook creation process to be iterative, and we're happy to accommodate a reasonable number of revisions that your organization requests. Our expectation is each playbook should take no more than 1 to 2 weeks for your team to review and approve.

Step 4: Propagate Playbook

Our next step after reaching consensus on the playbook is to build content from the playbooks into our contract reader tool. The tool is a commercially-available SaaS application called LegalSifter™. Using artificial intelligence and machine learning to understand context, the tool takes seconds to read lengthy, complex contracts and spot key issues. We've configured the tool

to then route reviewers to the relevant “play” in the playbook. There is no need for your team to interact with LegalSifter™ or be trained on how to use it. We absorb all the licensing costs.

To keep the playbook current, we set up quarterly reviews to incorporate updates in contracting policies and other matters.

Step 5: Validation

Once we’ve propagated the playbooks in our system, it’s time to do some practice runs. We take up to 3 new contracts of each contract type and run them through our review and redline process, of which the playbook is a part. We then review the output with our counterpart on your team to ensure satisfaction and to set appropriate expectations. This is a time when we can make adjustments to the delegation process and playbooks based on the feedback we receive.

Step 6: Run plays

Once the playbook content is approved, built into the software, and our process is validated, it’s off to the races! All contracts we receive through the delegation process are run through the playbooks and edited in compliance with the plays. The end result is a process for reviewing and marking up contracts that supports efficient and affordable delegation, all while creating the satisfaction that comes with receiving consistent and reliable attorney work product.

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