

Low Tech/High Risk

How Weak Contract Management Prevents General Counsel
from Answering CEOs' Toughest Questions



The State of Contract Management

Recent Analyst reports have stated that Contract Lifecycle Management (CLM) solutions have gone from a benefit to a necessity, broad organizational adoption remains a challenge.¹ In order to learn more about these challenges, Exari, the global leader in Contract Lifecycle Management (CLM) solutions, surveyed more than 90 General and Corporate Counsel on their contract management strategies. Findings point to a heavy dependence on manual processes to create, track and modify contracts, putting firms at risk, increasing costs and undermining revenue growth.²

Almost every aspect of a business, from sales to vendor relationships, is defined by contracts. Companies simply cannot afford to ignore evolving **best practices of contract management**. Historically, no news has been good news between the CEO and General Counsel. But as business leaders recognize the value inherent in contract certainty and the GC's role within the organization evolves from that of legal counsellor to a more strategic advisor, legal teams must be prepared to answer to the C-suite when questions or crises arise.

The results of Exari's **GC Contracting Best Practices Survey** show most companies suffer from inadequate contracting processes. Indeed, a majority of General Counsel struggle with slow contract approval processes (**cited by 59 percent of respondents**), inadequate risk

visibility (**39%**) and stunted collaboration (**25%**).

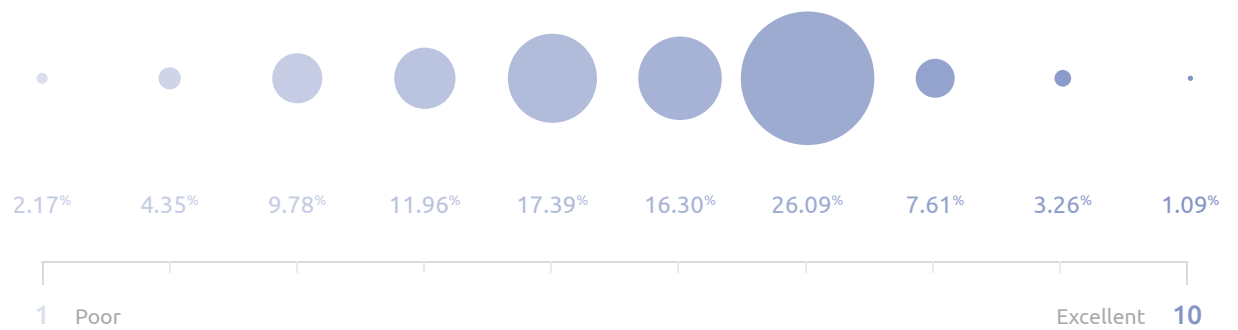
These negative results can be explained by the fact that more than three-quarters (**76%**) of counsel use "cut and paste" templates throughout the drafting process. Manual drafting can exacerbate the already sluggish legal review process, multiply the opportunity for manual error, and create additional contract blind spots.

Organizations can't afford to continue taking risks and overspending on contract management; business leaders and inside counsel must have complete visibility and control of their business' contracts to make informed decisions. Without a firm grasp on their obligations and liabilities, legal teams will continue to struggle in a variety of areas—from enforcing non-compete clauses to assessing client and contract-level risk.

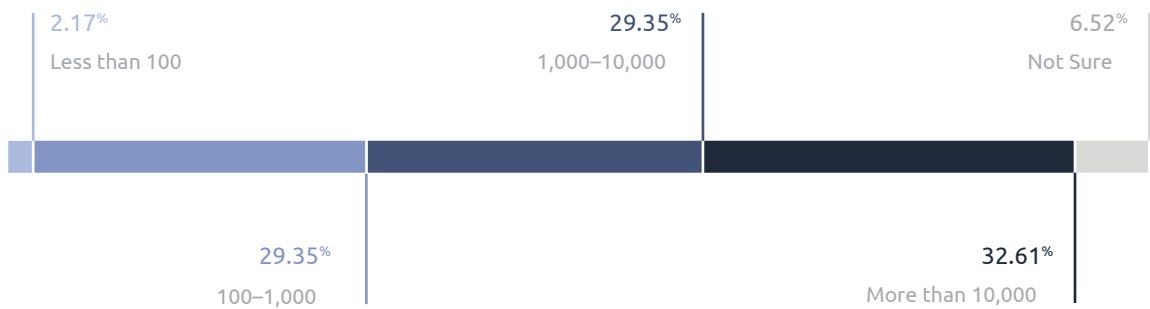
Want to reduce risks and uncover waste? Click here to download the Contract Risk Playbook: Risks Hiding in Plain View to learn how!

The State of Contract Management

How effective is your current contracting process?



Number of contracts signed each year?



Only 11 percent of General Counsel rate their contract management processes higher than a 7 out of 10.

Gaps General Counsel Face When Addressing Executives' Contract Queries

No General or Corporate Counsel wants to face their CEO's questions unprepared, but few are equipped to answer the many inquiries that arise during major company milestones, acquisitions, financings, and other volatile periods such as security breaches or market disruption. When the success of a major transaction hinges on knowing your data quickly and absolutely, counselor and business users must have immediate, accurate access to all their contracts.

General Counsel must be able to quickly, confidently answer the CEO's contract-related questions, such as:

Question 1

I don't need to worry about contract surprises during this merger, right?

Revenue and sell-side contracts are especially prone to scrutiny during an acquisition, sale or spin-off, when contracts and clauses can damage or kill a deal. As a company's value and liability are spelled out in its contractual rights and obligations, complete visibility into all contracts and terms is vital for a smooth, predictable M&A process. A last-minute discovery of termination for convenience clauses, for example, could spell disaster to **a lucrative M&A deal.**

Contract visibility is the most important factor in identifying any lurking surprises, but too

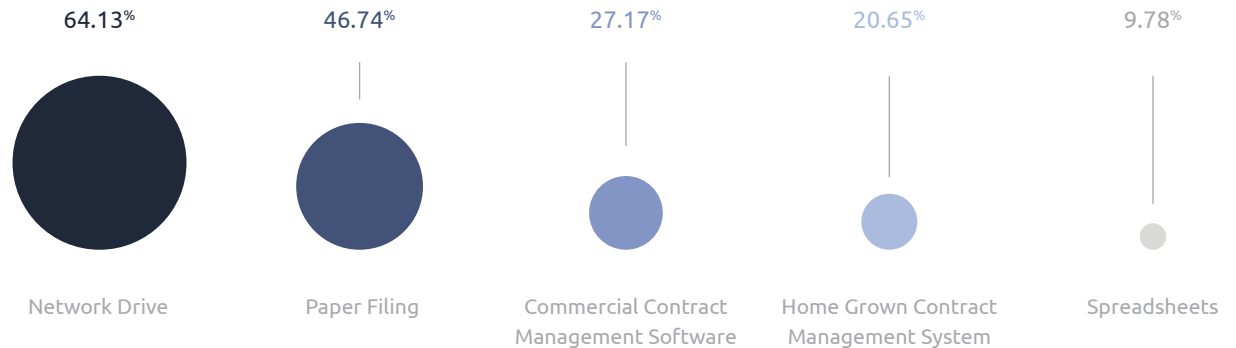
many legal teams use processes that obstruct their view. In fact, nearly half (**47%**) of General Counsel rely on paper filing to store contracts. Searching through paper contracts is not only costly and time consuming—when a slow process can cost the deal—it is unreliable.

Even for the **64 percent** of businesses that store contracts on a shared drive, disorganization and poorly tracked version control can eat away at a Corporate Counsel's efficiency and reliability and lead to unwelcome surprises.

Click here to watch Exari's Explain-er Video on how you can gain unprecedented visibility into all your contractual data.

How are your contracts currently managed and stored?

(select all that apply)



Nearly half of General Counsel still use a paper filing system to organize their contracts.

Question 2

A rogue vendor is attempting to compete with us/has claimed partial ownership of a product. Are our contracts airtight?

Maintaining contract organization is just as, if not more, important than contract visibility. Should a vendor unexpectedly turn into a competitor, the GC must be able to identify the specific contractual obligations addressing the vendor's potential breach of contract.

The specific wording of non-compete agreements (including whether the clauses endure after

contract termination or if protections apply to future as well as current products) can make or break a firm's case. Many corporations come away from this review disappointed: **27 percent** report that poor contract management processes prevent them from ensuring client compliance, and more than a quarter of GCs claim inefficient contract processes lead to missed milestones.

Never miss a milestone again.
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Exari will improve compliance and
close more deals for your firm!

Question 3

I have a strategic account insisting that they receive the best pricing we've ever granted to any client. What do we have to offer them?

Most favored nation (MFN) clauses present both risk and reward: while they can prove instrumental in landing an important deal, compliance across your customer portfolio may be easier said than done without a way to monitor active contracts. Undercharges can lead to loss of revenue or breach of other MFN contracts, while quotes above your firm's actual MFN rate can incur penalties and reputational

damage. Complicating matters, MFN pricing is often determined through a complex assortment of discounts and fee escalations that must be consistent across MFN agreements. Many Corporate Counsel believe their current contract process may lead to revenue leakage, suggesting lingering transparency challenges as businesses struggle with MFN and other high-risk clauses.

More than a quarter of General Counsel struggle to meet client obligations due to poor contract management processes.

Question 4

One of our vendors suffered a data breach and Bloomberg is calling me for comment; wasn't this vendor required to let us know? What does this mean for us?

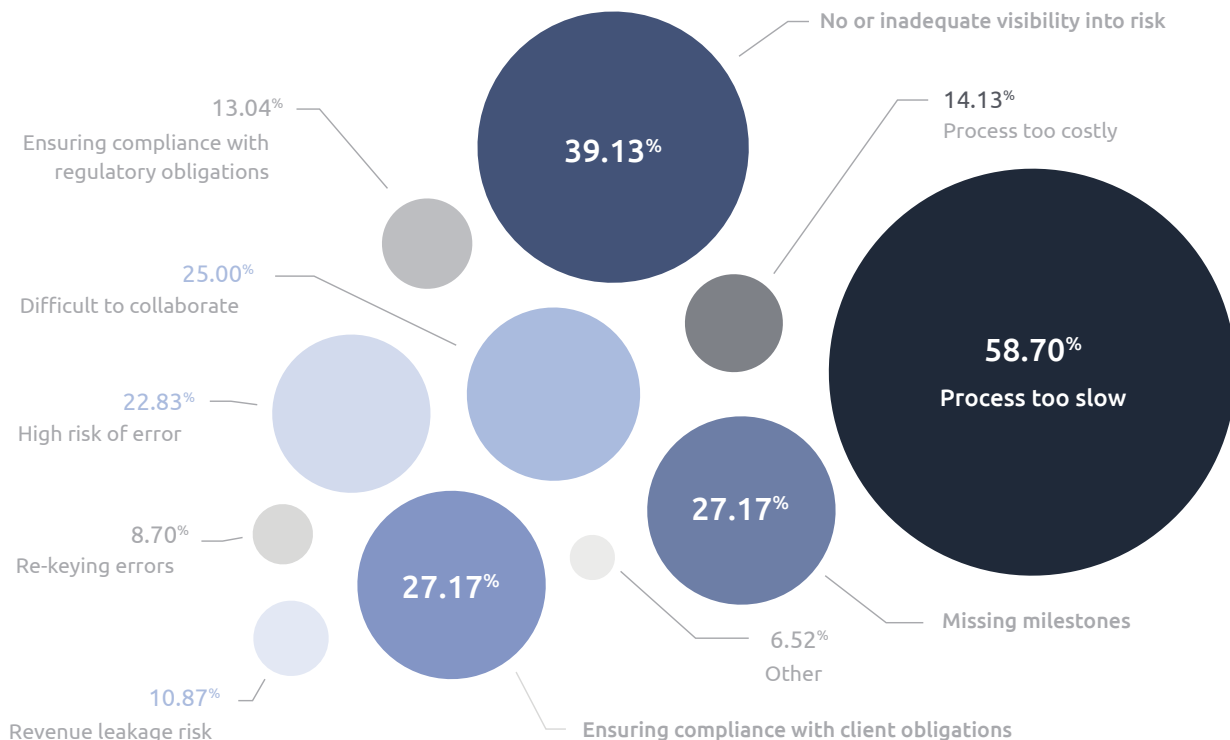
As data breaches become increasingly common, it's crucial for a firm to know both its own and its vendors' disclosure requirements. Without sufficient contract visibility, however, this is almost impossible. Especially in heavily regulated sectors like healthcare and financial services, where disclosure requirements and penalties may be severe, companies must have the visibility to be able to identify their regulatory and contractual disclosure requirements without delay.

Despite the common occurrence of data breaches, more than a quarter (**27%**) of inside

counsel feel their contract management processes fail to guarantee compliance with client obligations and **13 percent** say the same of ensuring compliance with regulation. Data breach notifications from third parties are often overlooked as organizations focus full attention on their own cybersecurity measures, forgetting second-hand exposure through vendors. Even with an appreciation of third-party cybersecurity risk, General and Corporate Counsel often lack the tools they need to verify that their vendor or partner contracts are in compliance with federal, industry and client data breach requirements.

Which of the following are pains you experience in your current contracting process?

(select all that apply)



Risk visibility is a key contract management pain point for nearly **two in five** General Counsel, second only to slow processes.

Question 5

What are our riskiest contracts and how are we managing them?

While it may be easy for lawyers to identify the broad factors that breed contractual risk, few are prepared to give specific, detailed answers regarding the riskiest contracts. Alarming, 39 percent of Corporate Counsel claim that their contract management processes provide insufficient—or nonexistent—visibility around risk. Without an objective and meaningful standard by which to measure risk, firms are unable to accurately assess a contract's value.

Thus, in times of volatility, such as in the aftermath of a cyber-breach or during litigation, business leaders are unable to access the information contained in contracts that may be critical to making an informed decision.

Even more troubling is that this lack of visibility into contractual terms leaves organizations **incapable of determining risk across their entire portfolio**. It is the business equivalent of flying blind.

How to Have the Right Answers

Termination risk, MFN agreements, crisis management and recycled contract language impact organizations of all sizes across a range of industries. The ramifications of one botched clause can reverberate across an organization and amplify during mergers, breaches and other vulnerable moments. Corporate and General Counsel must take a proactive approach that affords visibility into every aspect of a contract—from drafting to termination and beyond—to avoid potentially costly blind spots.

Contract management has always been a major source of risk for companies, but most have historically lacked the tools to improve the process. With the **rise of contract lifecycle management software**, organizations no longer need to settle for manual processes that allow businesses to just “get by.” Firms can easily digitize contracts from the beginning, overcoming storage and retrieval challenges and simplifying contract drafting, review and

approval. With more than a quarter of counsel already storing or managing contracts in a commercial contract management system, the discussion has moved beyond workflow automation. Contract risk management and ROI are inextricably linked; the analytics from a sophisticated CLM system can provide a data-driven foundation for discussions around risk, revenue and expenses.

*Before proceeding with a new contract management solution or upgrading an existing process, consider where your business falls on the **CLM Maturity Model**. Experience shows that when companies try to take on too much, they often fail to achieve the organizational buy-in necessary and risk losing funding as projects run too long or over budget. Exari recommends starting small by achieving the organization and insight that serve as the building blocks for continuous improvement.*

STAGE	OBJECTIVE	PROCESS
I	Improved Visibility	Organize <ul style="list-style-type: none"> Reporting on metadata and key contract terms Central, Searchable Contract Repository Secure, audited access
II	Risk Insight	Analyze <ul style="list-style-type: none"> Contract analytics across contract types Milestone and obligation tracking Triage/mitigation of highest business risks
III	Accelerate Deals	Automate <ul style="list-style-type: none"> DIY contract drafting (non-legal staff) Automated drafting of complex agreements Compressed negotiation time Seamless contract execution
IV	Enhanced Agility	Optimize <ul style="list-style-type: none"> Risk Management Compliance Management Revenue Management Spend Management Relationship Management

CLM Maturity
Model

General and Corporate Counsel can't afford to wait for a crisis to strengthen their contract management processes. They must be ready before their CEO comes knocking on the door with an urgent inquiry. Above all, they must stay

organized in order to maintain complete contract visibility and control. As GCs strive to manage risk and focus on ROI, CLM solutions are increasingly "must have" tools.

Learn more and connect with Exari

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Sources

- 1 “Market Guide for Contract Lifecycle Management,” Gartner. July, 2015
<https://www.gartner.com/doc/3096023/market-guide-contract-life-cycle>
- 2 During the spring of 2015, Exari surveyed 92 Corporate Counsel and compliance professionals about their habits and challenges surrounding contract creation, storage and legal technology. The findings shed light on current trends in contract management, as well as the intersection of contracts and risk management, primarily among businesses handling more than 100 contracts annually. Survey responses were collected on-site at the Corporate Counsel & Compliance Exchange conference in April and the General Counsel and Compliance Strategy Forum in May.

About Exari

Exari is the market-leading Enterprise Contract Management platform for delivering 100%Contract Certainty™. Hundreds of thousands of users across 80 countries use Exari for document assembly, strategic sourcing, contract creation, negotiation, collaboration and contract analytics. 5 of the top 15 banks, 4 of the top insurance brokers, and numerous market-leading energy companies use Exari.

Exari is headquartered in Boston, Massachusetts with offices in Oslo and Bergen, Norway; London, UK; Munich, Germany; and Melbourne, Australia. Learn more at www.Exari.com.
