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Do you trust me? Better budget predictability starts with strong relationships

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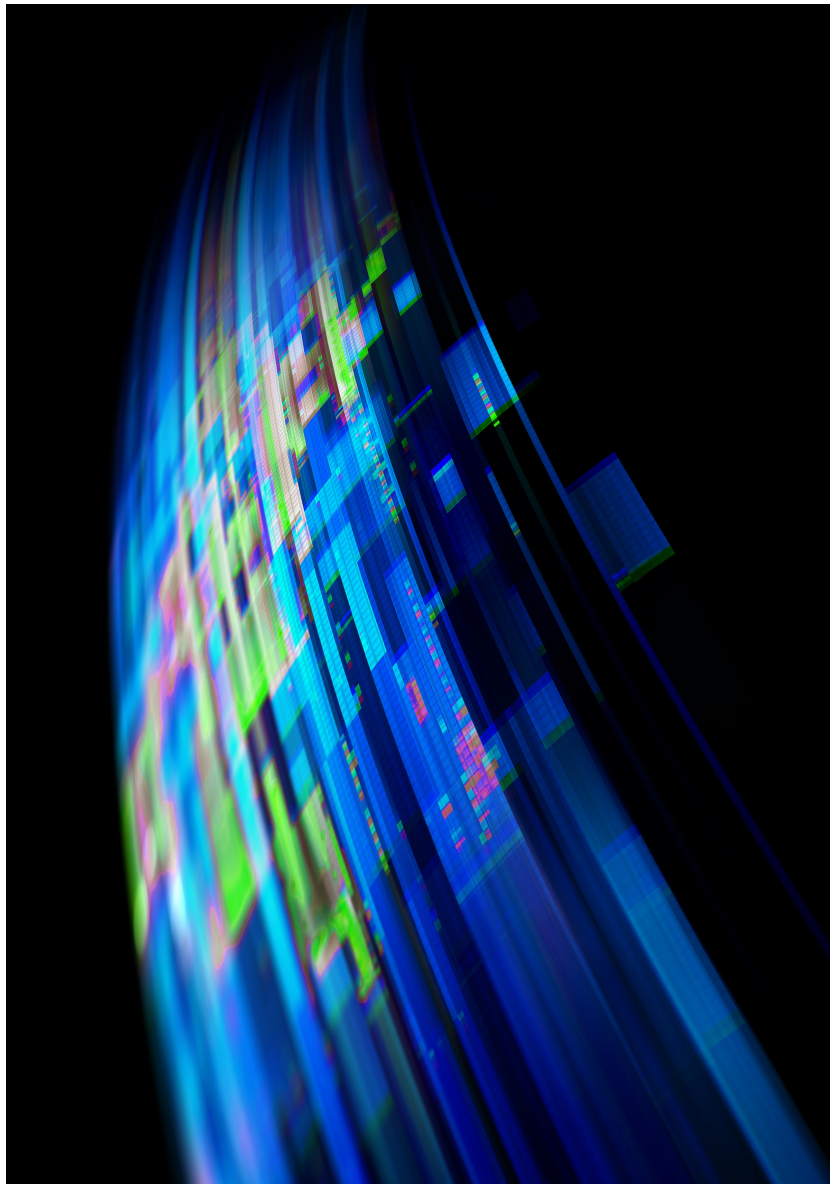


The legal profession is one steeped in tradition and built on relationships, trust, and ethics. Rarely are lawyers said to be innovative or creative, but in today's evolving profession, innovation and creativity may be just what the profession needs to keep up with its business partners and to drive value. For some in-house legal departments, evaluating relationships with external service providers may be one opportunity to showcase creativity and innovation while simultaneously deepening relationships and lowering spend. Tony Reid, principal with Deloitte Financial Advisory Services LLP's Forensic practice, suggests that Alternative Fee Agreements (AFAs) are valuable tools for "limiting costs and reducing cost unpredictability and risk for an in-house legal department."

The challenge: Unpredictable spending, uncontrollable budgets

AFAs are a consistent topic of conversation in many circles of in-house counsel, and if those in-house counsel aren't already putting such agreements in place, most are thinking deeply about how to make the transition. And while the billable hour isn't exactly on its deathbed, there is also no indication that AFAs are a fleeting trend. As chief legal officers are increasingly being held accountable for their legal department budgets, fee-per-hour spending becomes more intolerable.

"It's more than just the bottom line," says Kimberly Leach Johnson, firm chair of Quarles & Brady, LLP. "What clients really want is predictability. Clients want the ability to manage their budgets and be accountable for their spending."



A solution: Trust-based innovation

In an attempt to address the issue of predictability, Microsoft has migrated most of its legal spend to AFAs. At Microsoft, no two AFAs look the same, but what is constant is the focus on relationships with the service providers. For Microsoft, AFAs have incentivized both their legal service providers and their internal legal teams to drive efficiencies, process improvement, and innovation in the delivery of legal services. Like other corporations, Microsoft employs several fee model types, but the overarching goals are to drive aligned incentives with a focus on trust, collaboration, and innovation.

A common misconception is that engaging in this type of exploration diminishes relationships. In fact, it is quite the opposite—aligned incentives, shared risk, and the expectation of working together in the future grows relationships. These models work best when each partner trusts the other to be candid in approximately defining success and expectations, providing open and direct feedback, and encouraging proactive value-enhancing actions to support their collective, long-term best interest. “We approach our partner engagement with a growth mind-set. We will not get everything right the first time, but we will learn together and move forward with the presumption that we do what is right by each other because we are a team. These approaches

used with the right mind-set deepen the relationships we have with outside counsel,” says Jason Barnwell, assistant general counsel in Microsoft’s Law Firm Engagement Strategy and Legal Operations.

While there is no question that the law firms have always provided the highest quality work, the new and value-focused approach to AFAs that is now in place allows for even more collaboration and creativity in how Microsoft and their partner firms address the company’s legal challenges.



A road map: What you see is what you get

Here are some tips to help you build the right AFA for your in-house legal department:



Start small, but engage deeply. Start the conversation with just one or two external law firms with which you already have a well-established relationship. Be candid about your goals and concerns, and allow the firm to express the same. Be sure to emphasize that your primary goal is to preserve the relationship and to allow that both the company and the law firm feel like the agreement will work for them. While the obvious goal for your business may be cost savings, be sure to spend time helping the law firm to identify reasons why, and see specifically how, the arrangement works in their favor, too. Try to let the early conversations be creative. You and your external counsel may find that a collaborative brainstorming meeting helps you to develop new ideas.

Consider offering to let the firm's junior associates spend time on the file or even shadow someone on your corporate legal team. As companies continue to put restrictions on junior associates' ability to bill, this could be a real value-add for the law firm. You could offer to have one of the senior associates sitting at your corporate campus, or agree to host an annual or biannual collaboration event where the lawyers from the firm that work on your matters get to socially interact with your in-house lawyers, such as engaging in CLE sessions together or partnering on a community service project.



Start small, but engage deeply



Use data to identify the "low-hanging fruit"



Gain the trust and buy-in of your in-house legal team



Collect data and monitor closely to make course corrections

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Annual or biannual forums where service providers come into the company to learn more about the company's business, strategy, and priorities are also attractive incentives for law firms and have the added value of helping the outside lawyers align with the vision of the in-house department. Consider out-of-the-box collaboration opportunities, too—the corporate lawyer managing the AFA and the relationship partner at the firm may choose to coauthor articles or speak together about the AFA.



Use existing data to identify the “low hanging fruit.” Not every traditional billing structure can be evolved into an AFA. Think about what data you or the law firm might have to help you identify the types of matters that might be best suited to AFAs. If you've been working with the firm on a certain type of matter for a long time, you may be able to leverage data analytics to help you understand average costs and where and how unexpected elements can increase or lower costs for both sides. Bring the staff people from both the firm and your company that manage this type of data into the conversation. It may be helpful to work with someone in data analytics to identify and explain data trends.



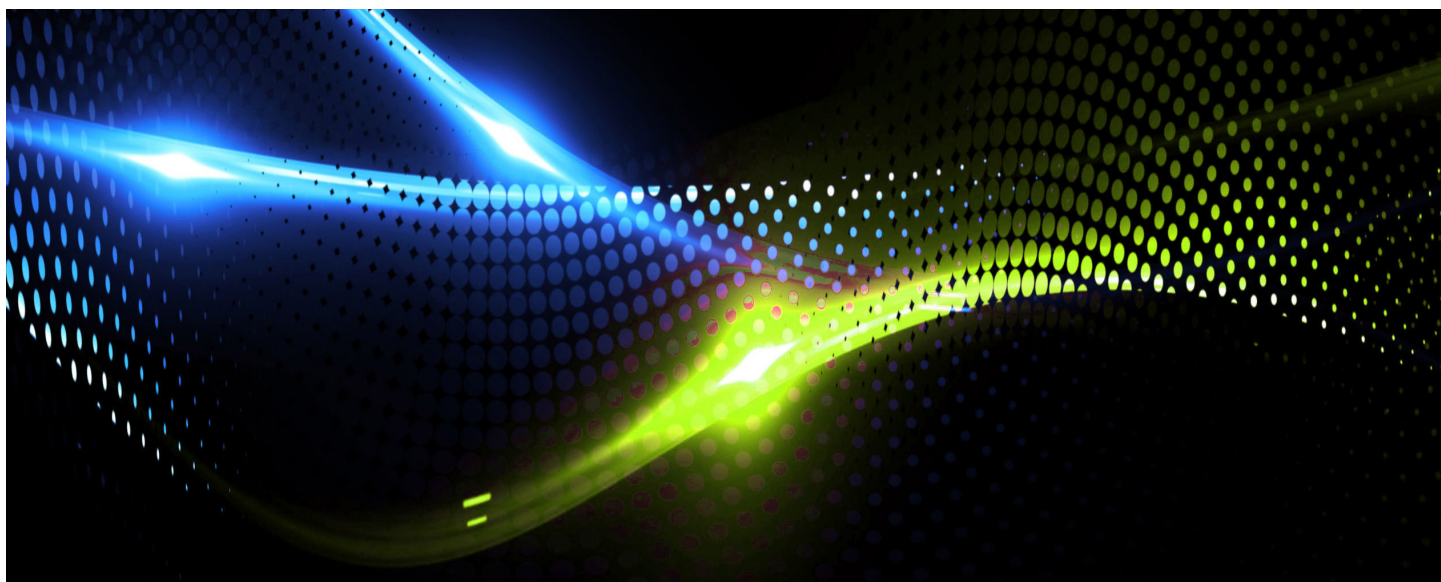
Gain the trust and buy-in of your in-house legal team. Be sure to work with your team to help them understand how to fully leverage the AFAs. In-house counsel that are accustomed to working with outside counsel on an hourly billing basis may be reluctant to engage more often or early in the process. Consider training your team on how and when to engage outside counsel under the new relationship structure, especially if one goal of the agreement is to allow outside counsel to be more

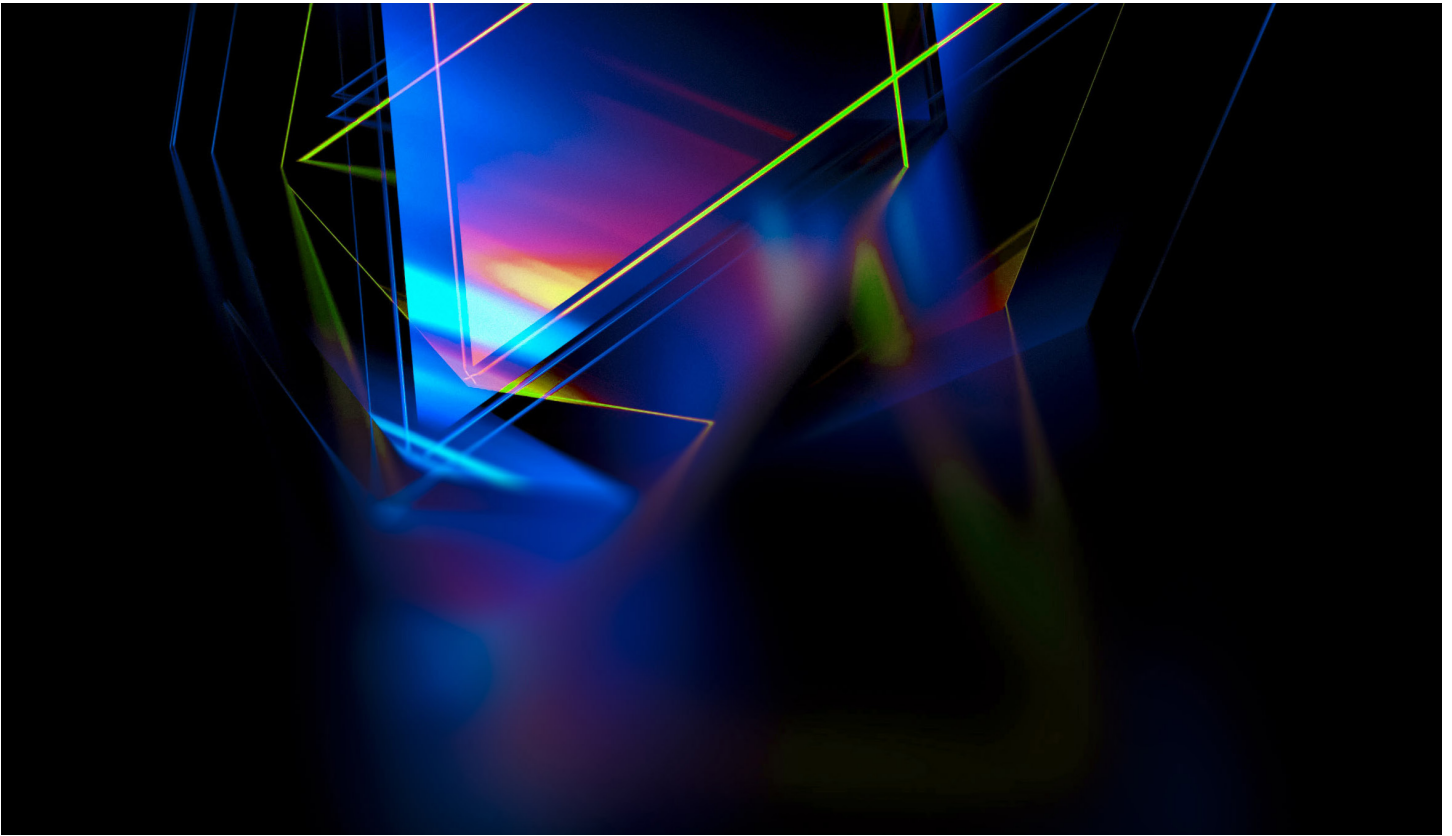
active in strategy, business case, or early decision making. If you have a “buffet” style AFA, help your in-house lawyers reframe their view of outside counsel as creative partners. Outside counsel may enjoy the opportunity to be creative and will almost certainly appreciate the opportunity to be involved in early decision making or strategy conversations.

Be on the lookout for members of your team who are reluctant to engage more often (as appropriate) with outside counsel. These individuals may be feeling like their own role is at risk, as outside counsel become more prominent. Where appropriate, help them get comfortable with the shifting mind-set.



Collect data and monitor closely to make ongoing course corrections. Set up a method for data collection, and stay in frequent communication. As you develop your AFA, build in a regular communication schedule and a process for collecting and evaluating feedback. Regular communication is essential to the success of the AFA and critical to preserving the underlying relationship, but it is the step that in-house counsel and law firms most often neglect. You should assume that you won't get every element of the AFA right on the first try and that modifications will need to happen along the way. Keeping an open line of communication—one where either you or your law firm can raise an issue or concern—will help you spot issues and modify as early as possible to allow the best outcomes for both sides. Keep good notes along the way to help you build a better AFA the next time.





The legal profession is evolving quickly and is driving in-house counsel and law firm leaders alike to think differently about their “business as usual.” For those who are willing to embrace change, there is an opportunity to innovate. And while it’s easy to think that innovation and the resulting potential for disruption can be detrimental to relationships, with time, perseverance, and a foundation of trust, new relationship models can lead to better outcomes for all.

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