



## ADAMS ON CONTRACT DRAFTING

# The Case for a Subscription-Based Service Offering Automated Contract Templates

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What Are the Problems?

### ***Organizations waste a lot of time creating templates***

At companies, creating templates usually involves “drafting by committee”—people who aren’t contract-drafting specialists debate what to include in a template. It takes too long. One client told Ken Adams that, inspired by one of his presentations, they spent 18 months creating a new master services agreement. And [this Harvard Business Review article](#) says GE Aviation spent more than three years redoing its contract templates.

### ***Most templates are poor, causing organizations to waste a lot of time, assume unnecessary risks, and mishandle transactions***

Because they’re created by copy-and-pasting from precedent contracts and from other templates, most templates are poor, in terms of what they say and how they say it. That’s the case even with companies that have the resources to do better. For example, [this Word document](#) contains “before” and “after” extracts of the Salesforce master subscription agreement, with the “before” versions annotated by Ken Adams to highlight the problems and the “after” versions redrafted by Ken to say what they say more clearly and concisely.

Poor templates have consequences. Dysfunctional contract language makes it harder to figure out what a contract says, so everyone wastes time and therefore money, negotiations go on longer than they should, and there’s a greater risk of dispute. And using for a new transaction terms used for other, different transactions can result in a disconnect between a company’s interests and what’s in the contract. Important contingencies might not be addressed, potentially leaving your company exposed. And minor risks might be overemphasized, leading to a deal not getting done for reasons that don’t make sense.

You create better templates with the help of contract-drafting specialists, experts in the contract process, and experts in the relevant kinds of transactions. But individual companies aren’t in a good position to create better templates on their own. They don’t have access to economies of scale—it isn’t realistic to expect each company to secure the necessary expertise and take the time required.

### ***Organizations waste time and limit customization by using Word templates***

Word templates are an inefficient way to include options in a template—footnotes and bracketed language offer limited flexibility and require editing.

## ***Organizations waste time exchanging comments on draft contracts***

Negotiating by sending drafts back and forth is asynchronous. For some transactions, it would be more efficient to have the parties make decisions together.

## **Where's the Evidence?**

The costs of dysfunctional contracts aren't easy to quantify, but there's a mountain of anecdotal evidence that they exist and are substantial. If you run a tight ship, you'll want to address the dysfunction and have your templates closely reflect your interests.

## **What Isn't the Fix?**

Crowdsourcing won't fix contracts. Instead, what's required is expertise. Ken has written about this sporadically; see for example [this 2014 blog post](#).

Artificial intelligence won't fix contracts. Instead, you get garbage in, garbage out.

And currently, no vendor offers templates that are of the necessary quality.

## **What Is the Fix?**

The only way to escape copy-and-pasting dysfunction is to bring fresh air into the contracts process, in the form of a subscription-based library of questionnaire-driven automated templates.

Because companies the world over use the same kinds of contracts, a vendor could achieve the economies of scale that would allow it to invest in creating and maintaining automated templates.

Through their answers to the questionnaire, users could achieve a far greater level of customization than would be possible with a Word document. And annotations would present users with relevant information when they need it most—when they're deciding how to express a transaction in a contract.

Users could use the service to create a contract for a particular transaction. A user could create a draft to send the other side, or both parties could complete the questionnaire together, to avoid sending drafts back and forth.

Or a company could use the service to create a template radically faster than through the usual process. They could simply use as the basis for their new template the output Word document created by an automated template, but it would be more compelling for them to create their own automated template by customizing the questionnaire. That would be offered as an additional service, and the new template would then be hosted for that company.

The library wouldn't be based on the principle that "If you build it, they will come." Instead, Ken Adams would partner with companies and trade groups that are looking to capture these sorts of efficiencies. They would offer either development funding or an built-in market for templates.

## Who Is Best Placed to Offer the Fix?

Relying on someone else's contract language requires a leap of faith. Ken Adams is the only person with the expertise and the credentials to justify that leap of faith.

## Interested?

If you think you're in a position to help bring to life this sort of template library, you're welcome to contact Ken Adams at [kadams@adamsdrafting.com](mailto:kadams@adamsdrafting.com) or 516-318-6956.