

Fitting the bill

As clients turn against hourly rate billing, LPO providers are stepping in with an innovative range of alternative fee structures

Lesley Sutherland reports



Writing on his blog, *Legal Process Outsourcing*, industry observer Rahul Jindal doesn't mince his words: "Charging by the hour is a sure way of driving your clients away from even the periphery of your office," he says. "Payment of services should be based on the value addition done by the service provider rather than the number of hours the person has spent in courtship with the project."

His words resonate. Driven by client demand for efficiency and transparency, traditional hourly-rate billing for legal services is in decline. In its place, new alternative billing models are becoming increasingly prevalent.

Perhaps unsurprisingly, it is legal process outsourcing (LPO) providers that are at the vanguard of the alternative billing movement. But the introduction and use of new billing models only makes sense if clients truly understand how they can best utilize and quantify the powerful resources offered by their legal service providers.

LPO providers lead the way

None of this is new to LPO providers or their clients. The quest to break down, commoditize and accurately account for the basic elements of legal work is fundamental to their industry. Yet LPO may lag behind other sectors of the outsourcing profession when it comes to the sophistication of its billing practices.

"The billing arrangements in the LPO industry are not as varied or developed as in other outsourcing areas," explains Kunoor Chopra, president and CEO of LawScribe. "You are mainly seeing project-based billing. Full-time equivalent arrangements do exist, but they are not as prevalent, yet, as in BPO [business process outsourcing] and ITO [information technology outsourcing]."

One reason for this disparity may be that LPO is still regarded by some clients as a low-cost option for handling low-skilled work. As JR Maddox, director of intellectual property services at Lexadigm, explains, many clients remain attached to the simplistic concept "that outsourcing legal services involves sending low-level legal chores to cheaper overseas attorneys to be performed in a vacuum".

Instead, "a truly sustainable model is one which focuses on providing specialized services with a value proposition much broader than just the cost savings resulting from

wage disparity," Maddox says. "Cost savings are a result of higher efficiencies and the vendor's economies of scale, and not necessarily solely by leveraging offshore resources."

An important factor in the pricing of an outsourcing project is identifying and understanding how the project is adding value for the client. There are various sources of value, and economies of scale is only the first of them.

Efficiency is key, says Vikas Gondhalekar, chairman of G Lexsys: "To our knowledge we do a job in 20% less time than that in the US, so it is double savings for clients, time as well as money."

Mike Dolan, the CEO of Tusker Group, says low-cost labour is the company's first value-added offering, while its niche specialization in document review services – more specifically, discovery documents in litigation – is its second.

Designing the optimal service package

Reporting and billing are dependent on the service agreement – be it a statement of scope of work, a service level agreement or a master service agreement. These service agreements define every parameter that will govern the relationship between client and provider: work to be done, billable items or units, deliverables, productivity and quality benchmarks, reporting requirements, project management methodology, guarantees, pricing and terms for payment and adjustments.

"Only billable items authorized by a master services agreement and a work order are performed and billed," explains Hiren Patel, CEO of Aphelion Legal Solutions.

At Intellextra Outsourcing Solutions, billable items and service contracts "are linked perfectly," explains its CEO, Rajeev Goswami: "If a new service is added, the contract is updated accordingly."

Quality benchmarks are a vital part of any service agreement. "We agree to specific delivery metrics for our work and provide structured reports which detail our speed, productivity, accuracy, and project findings against the agreed metrics," says Chris Veator, executive vice president of CPA Global.

Tariq Akbar, CEO of LegalEase Solutions, reveals a similar process: "We will rework the legal product till it has met the client's expectations. We also negotiate with the client as to the typical time spent on a particular legal product and set expectations. Our billings never exceed this negotiated yardstick."

However, Chopra points out that because the LPO industry is still developing, "often there are not established industry standard benchmarks, making it difficult to set benchmarks which will be used to provide penalties ... or incentives.

"With the development of the industry, and increasing stability in performance standards, these hurdles will no longer exist," she adds.

Horses for courses

In Maddox's view, "a simplistic view of the process of outsourcing tends to lead to a simplistic view of the billing of outsourced services – that one billing model fits all.

"The fact is that one billing model does not fit all," he says. This understanding is borne out in the practice of most LPO providers, which offer a range of alternative

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Tariq Akbar
CEO

LegalEase Solutions





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Pricing models have to be simple and easy to use for our clients

Ganesh Natarajan
CEO & President
Mindcrest



billing models (see *Bespoke billing solutions*, page 51) to accommodate the particular needs or concerns of each client.

Most billing methods conceptualize and measure work in two basic ways – time spent, and items produced.

Veator says that CPA Global offers “a range of billing models and charging structures depending on each client’s needs.

“We are flexible and responsive in developing the model that helps the client best meet those needs,” he continues. “We do not stick to a single, rigid, ‘one-size-fits-all’ model.”

According to Ganesh Natarajan, CEO and president of Mindcrest, his company adopts similar principles: “We follow a simple pricing philosophy: pricing models have to be predictable and flexible to meet our client’s changing needs; and pricing models have to be simple and easy to use for our clients.”

Traditional hourly fees

As the most venerable billing model around, hourly rates retain strong appeal for their familiarity and apparent simplicity. “The hourly billing model that law firms have used for so long is inherently inefficient, but it has been common practice for decades and some clients are still entrenched in that way of billing. It affords them a simple point of comparison that they can understand. They are comfortable with the model, and they are not going to be able to give it up overnight,” says Veator.

“That’s why we still work with some clients on an hourly billing model,” he adds. “Where we can, we prefer not to use hourly billing as we don’t want to replicate this inefficient model; even if we’re charging only US\$30 an hour rather than US\$200, it’s still inefficient.”

Hourly rates are applied in a range of situations. Maddox says, “Generally, hourly rates are more popular with respect to clients whose service requirements are project-based, such as legal research, due diligence and e-discovery”.

Sanjay Bhatia, head of operations at SDD Global, finds that this billing method suits “clients who have tried and tested our services and are convinced of the quality of our work products”. Vivek Hurry, COO of Exactus Corporation, reports that, “a lot of our projects tend to be continuous ones – some have been running for several years – and

these are usually man-hour based billing ones.”

Hourly rates can gain further client appeal by being capped, as at Clairvortex Knowledge Processes: “For our skill-intensive services, we have an hourly billing arrangement, which is capped to a maximum billable amount,” explains Sushil Kumar, the company’s vice president.

Full-time equivalent billing

The full time equivalent (FTE) model appeals to clients who, in effect, want an LPO staff member to replace an in-house staff member. Veator explains that under FTE, CPA Global works “as an extension of the client’s team – the client is effectively charged as if they were paying the salaries of a team in India.”

Lexadigm uses FTE for “clients with a more predictable need and where full integration of our personnel with the client’s processes makes sense and leads to overall improvements in efficiencies, such as contract management and drafting,” says Maddox.

Some providers allow flexible configurations in delivery, as is the case with Pangea3, whose co-CEO Sanjay Kamlani explains: “The equivalent of a dedicated client employee is delivered in the form of 100% of one Pangea3 lawyer’s time, 50% of two dedicated Pangea3 lawyers’ time, or 33.3% of three dedicated Pangea3 lawyers’ time; in all cases resulting in 150 hours per month of service”.

A variation of the FTE model, the monthly retainer or minimum monthly commitment (MMC) model entails “a commitment of hours or units in a month without reference to the concept of dedicated personnel constituting the equivalent of a client employee,” according to Kamlani.

Unit pricing

Unit billing, commonly offered by LPO providers, offers clients a straightforward, transparent relationship between the price paid and the product received.

Chopra says, “In the document review space, we are seeing companies bill by the page, document or gigabyte of data. LawScribe was actually the first LPO to establish per-document pricing for the end-to-end document process, from collection through review.”

Although Tusker Group typically bills by the hour, Dolan points out that many clients “are interested in a billing method that is more under their control, such as a billing

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Chris Veator
Executive Vice President
CPA Global



method per document to be reviewed, or per case. And we do bill that way.”

Under the unit price model, LPO providers need accurate estimates of what it's going to take to complete a project because they are taking on the cost risk for the completion of the work. As Dolan explains, “There has to be enough definition of the type of review, so that we essentially estimate the number of hours, and once we've done that the onus is on us to try to get the work done in as few hours as possible.”

Flat fees

Flat fees for a project are an attractive option for routine tasks, including certain IP-related work and multi-state surveys of law. At Lexadigm, Maddox says this billing method is typically used “for clients who have a consistent need for certain work, though the volume may scale up and down from month to month”.

Gondhalekar explains one situation in which flat fees hold strong appeal: “When it is a matter of high-end research

Bespoke billing solutions

Real life examples illustrate the substantial benefits offered by innovative fee structures

“Aphelion is currently providing services to a client under the terms of a work order and master services agreement. The work is being performed and billed on an hourly basis. As part of the relationship with the client, we provide monthly invoices with individual time-keepers' narratives describing the work performed for each task. Accordingly, the invoice provides a detailed description to the client of the work performed by Aphelion in a given month and allows the client to gauge efficiency and effectiveness in work performance. Invoices are submitted electronically.”

Hiren Patel, CEO, Aphelion Legal Solutions

“We have one client which sends us patentability searches every month. Our commitment is to complete all the searches provided on a monthly basis, whether there are 20 or 200. We have scaled for this client to perform up to 300 searches per month, which is the equivalent of six to eight full-time employees. When the client has surges in work, we are able to provide enough employees to complete their work. When their workflow is decreased, they don't have to pay for the excess capacity we have. Therefore, the client benefits from our ability to scale up and down without it affecting their costs.”

Kunoor Chopra, president & CEO, LawScribe

“A *Fortune 100* company regularly uses Lexadigm to draft patent applications and prepare responses to office actions during the prosecution stage. The patent applications are reviewed and prosecuted by the client's in-house patent attorneys. During the drafting process, there are one or more conferences between the client's inventors and patent attorney(s) and our drafting team. Given that the client has repeat and consistent need for such work, they have negotiated a flat price per patent application and per office action with us that provides them a draft application (including CAD drawings) per their specifications, subject to minor adjustments. Additionally, the client

has negotiated a discounted hourly rate for making substantive amendments to the applications that arise due to changes in the scope of the disclosure and similar substantive changes envisioned by the client during the patent drafting stage.”

JR Maddox, director of IP services, Lexadigm

“We were engaged by a client on a contract review project. We provided transaction-based pricing (per contract). The contract also specified timelines for completion of the work. This arrangement allowed our client to predict their overall project costs and set the appropriate delivery date expectations with their internal teams. In another case, we engaged with a client on a legal research project where we provided an hourly rate along with a total project price cap. This allowed our client to retain the flexibility of the hourly pricing model with the ability to predict total project costs. In a third example, we engaged with a client on a compliance management project where the client chose an FTE (full time equivalent) model. This allowed our client to predict their annual budget on compliance related matters.”

Ganesh Natarajan, CEO & president, Mindcrest

“A mid-size Florida law firm specializing in personal injury lawsuits decided to engage our services. The first assignment was a negotiated flat fee arrangement where our team in India received instructions on a Friday evening. The assignment involved the preparation of a legal memorandum on certain specific issues relating to swimming pool accidents in Florida and also briefing all the cases found. A four-member team worked throughout the weekend conducting the research and briefing the cases. Based on the research, an exhaustive 28-page memorandum (which included the case briefs) was prepared and sent to the client on Monday. Effectively, the client received a 28-page memo within one working day.”

Sanjay Bhatia, head of operations, SDD Global

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Kunoor Chopra
President & CEO
LawScribe



and the per-hour price is almost three times the normal price of review, then to let clients know we are working clean, we offer them a flat fee basis method.”

Kumar says Clairvortex also uses flat fees “for our routine and repetitive services, capped to a maximum amount”. Bhatia reports a further benefit for clients: “A lot of unpredictability in the billing pattern is avoided by entering into flat fee arrangements.

“At SDD Global, we are sensitive to the client’s requirements for getting high quality at low cost, which is why we encourage flat fee arrangements,” Bhatia says. “This ensures that the client budgets for our services plus has the freedom to seek clarifications or follow up without being charged for it.”

Balancing act

A complex combination of factors – including relationship length, the particular needs of the client, the strengths of the provider, the quantity and complexity of the work, and delivery requirements – means that the balance of elements in any particular service agreement will vary greatly.

Some LPO providers specify expense items like travel, photocopying and third party vendor costs in their bills; others don’t. There are numerous permutations and combinations of billing methods.

For example, some LPO providers apply a “filter” to their hourly billing, based on a definition of value adding. At SDD “the billable elements include all those services which add value to the end-product,” says Bhatia: “The time spent on research; the time spent on drafting; the time spent on client conferences and the like. We do not bill for time spent on routine interaction with clients.”

Some service providers follow a similar policy to that of Mindcrest, where Natarajan explains, “We do not have tiered pricing for different skill levels and experience of our attorneys. We do not add different pricing for process and project management or internal training.”

While clients need to be aware of different billing methods and their features, what really matters is how the particular agreement can be negotiated and modified to ensure that work is delivered to the required specification and quality.

Give and take

As in any professional billing scenario, requests for adjustments and negotiations of invoiced amounts often arise in LPO client-provider relationships. Hurry says: “A client usually estimates the project metrics [volume, productivity, life cycle, etc.] at the start of the project, but as the project evolves and its parameters change – which happens quite often – the client’s own estimates are not updated. Not surprisingly, this can lead to questions at billing time, but since we maintain our own detailed records, these are easily resolved.”

Increasingly, contracts specifically stipulate the conditions, handling procedures and consequences relating to adjustments. “What is starting to develop are provisions for adjustments based on not meeting or exceeding performance targets set by the client at the beginning of the contract,” explains Chopra.

Maddox agrees: “Adjustment in the rates is available and can be triggered by either party when certain preliminary assumptions or parameters are not met.”

Apart from adjustments that are triggered by contract terms, there is great scope for LPOs to use discretionary adjustments in order to ensure competitive and value delivery. Maddox says that pricing at Lexadigm “is closely compared and scrutinized for competitiveness and reasonableness”.

For work billed by the hour, in-house checks to ensure maximum output help keep clients happy. Bhatia explains that at SDD, “the time-record is scrutinized either by our head of operations or by me to determine if the work done justifies the time spent. If either of us feels that extra time [by industry standards] was spent on any particular aspect, we use our discretion to cut down on the hours.”

The “learning curve” is another significant area where providers can prove their dedication to providing maximum value. At LegalEase, says Akbar, “We indicate to our clients that the learning curve will be on our dime.”

Project scoping

Many LPO executives agree that correctly scoping the size, volume and nature of projects is one of the most difficult and important challenges they face. “A project’s volume and productivity requirements are often not known with anything but a vague idea at the start of the project,” says Hurry.

Natarajan agrees that “prediction of future volumes to a reasonable level of accuracy by the buyer is sometimes a challenge.”



FLAT FEES, UNIT PRICING OR HOURLY RATES? LPOs are offering an increasingly diverse range of billing arrangements.

To meet this challenge, it is vital for parties to communicate effectively. “In the case of transaction-based pricing and fixed fee models, there needs to be a lot more upfront communication and collaboration between LPOs and their clients to define work and transactions unambiguously,” says Natarajan.

Dolan at Tusker Group, which provides discovery document review services in litigation, explains: “There’s a start-up stage, and we’re doing that in conjunction with our clients’ outside counsel, generally large US law firms. We typically take direction from the client’s outside counsel, in deciding what documents to review, what type of review to do and which issues to look for.”

Once these variables are identified, it is possible for LPOs, especially those working in specialized and well-defined niches, to identify and develop a highly commoditized and uniform product, and to accurately predict the amount of time the project will take to complete.

More costs less

Within the constraints of the market, two key factors influence pricing. The first is the efficiency of LPO providers’ internal management. The second is the willingness of clients to commit to longer-term and larger projects with LPO providers, which allows for greater efficiencies that in turn lower the cost of outsourcing. Maddox explains: “Having a term commitment and lock-in period can lead to discounting on the pricing because it allows Lexadigm to plan ahead and achieve certain efficiencies, which are shifted to the clients.”

As Veator explains, “Factors influencing decisions over pricing and billing models include: how long the client is prepared to commit to us; their space requirements, e.g. dedicated or shared; the levels of quality control that need to be implemented; the technology solutions that are required; and the location of the work – is it offshore, onshore or multi-shore?”

Project scale and size has a definite relationship to efficiency and therefore pricing. In SDD’s MMC projects, “the client ‘buys’ a certain number of hours upfront. The more hours a client buys, the less is the average rate per hour,” explains Bhatia.

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Sanjay Bhatia
Head of Operations
SDD Global



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Vivek Hurry
COO
Exactus Corporation



Risks and rewards

In Kamlani’s words, “the real issue is how the client and the LPO provider are balancing who bears the risk and investment required at the outset and who ultimately earns the return from a fruitful relationship.”

Kamlani points out that in the initial stages of an FTE arrangement, the client is paying for the assigned LPO employee’s learning time in relation to the specific project, but efficiency improves with familiarity (which is the same as if an in-house employee was taken on, except without the substantial start-up and liability costs of the latter).

This pattern is reversed in the fixed price model, in which the LPO provider bears the cost of the time taken to get to grips with the project. As Akbar explains, “In many cases the [LPO] teams take months to reach the preset standards of efficiencies.” However, once operating at full efficiency the provider begins to reap the benefits of the improved efficiency.

As Akbar puts it: “Especially with high end work, there are efficiencies to be gained over a period of time where the LPO can build internal systems, best practices and training programmes to continually improve the efficiency of certain types of work.”

Solidifying a relationship between client and provider is vital and can produce lasting benefits, both practically and fiscally. “Non-receipt of payment is quite common,” explains Goswami at Intellextra. “This is the reason we refuse new assignments unless the client agrees for at least 50% payment in advance. For clients who have been working with us for over two years, we invoice after completion of the work.”

Kamlani echoes this policy: “New clients are required to pay the entire amount, or at least 50%, in advance. Repeat clients are permitted to pay after the services are rendered.

“Relationships that apportion the risk and the reward appropriately work best,” says Kamlani, citing long term FTE arrangements as a good example. For clients, “efficiencies and client-specific expertise enable an FTE team to deliver tremendous value at a very effective cost over time”, while for the provider, the security provided by a long-term project “enables the LPO to invest its own managerial and leadership resources in the relationship, ensuring its ultimate success”. ■