The 10 Rules of **Contract Redlining**

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Law Insider

What is Contract Redlining Etiquette?

Contract Redlining Etiquette™ ("CRE") *is a set of 10 rules that are intended to promote quality, efficiency, and professionalism throughout the contract negotiation process. CRE should be used by all contracts professionals around the world, including in-house counsel, private practice attorneys, contract managers, procurement specialists, paralegals, entrepreneurs, or anyone who finds themselves lucky enough to be involved in a contract negotiation.*

WHAT IS CONTRACT REDLINING ETIQUETTE?

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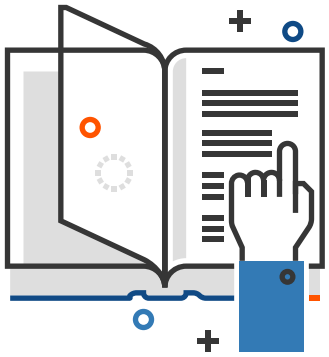

These days, commercial contracts are rarely signed as-is. More often than not, the parties will engage in some level of negotiation before agreeing on a final version. Traditional contract negotiations are conducted through an exchange of markups known as redlines. But redlines are so much more than markups.

In fact, the heart of all contract negotiations lies in between the redlines. In the comments, explanations, and revisions, that accompany the redlines. But not all contracts professionals redline the same way. Some never leave comments with their redlines, others leave too many. Some propose changes via email, while others do it in the document itself. Some track every single change they make, yet others hide substantive edits.

This lack of uniformity is due mainly to the fact that we all learned how to redline while on the job.
Not in law school. Not from a book or training course. And certainly not from a concise set of rules. That is, until now...

Why follow these rules?

CRE offers our community of conntracts professionals a set of 10 uniform and global rules that, when used properly, can lead to invaluable benefits for you and your clients.

Contracts professionals who apply and master these 10 Rules of CRE will see the following benefits:

- Higher acceptance rate of your proposed changes
- Smoother, faster, and more efficient contract negotiations
- Less confusion, clutter, and human errors
- Build trust with your counterparties and earn a reputation of integrity for yourself

When we have thousands of pages of redlines to review and only so many hours in a day, shouldn't we all get on the same page when it comes to contract negotiations? Absolutely!

This guide will provide a high-level overview of the 10 Rules of CRE. [1]

1 You can find more information on Contract Redlining Etiquette™ at www.ContractNerds.com.

RULE # 1

Always accompany redlines with explanatory **comments**.

Rule #1

COMMENTS

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Litigators flex their persuasive argument muscles in motions, briefs, and oral argument. Contract professionals flex our muscles in the comments. What you write in the comments is just as important as the language you draft in the redlines.

Generally, people are more likely to agree with you when they understand you. So don't just scribble a quick note that says, "We can't agree to this." Really think about what you are going to say, strategize it, edit it, and make as much use of that little comment box as you can.

Include any information that would assist the other side in understanding the "why" of your redlines. Explain why you made those changes or why you're not willing (or unable) to accept their language as-is. Give examples and share references where helpful. Don't be afraid to include both business and legal justifications to support your position.

Exceptions:

- Minor, obvious, or formatting changes.
- Longer explanations that would be better explained in an email or over the phone in a live negotiation (*see CRE Rules #3 and #4*).
- Strategic use of silent redlines (*see CRE Rule #2*).

RULE # 2

Silent redlines can be a powerful negotiation tool.

Rule #2

SILENT REDLINES

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Silence is undoubtedly a powerful negotiation tool in live negotiations. Contract negotiations, on the other hand, are not usually live. The process of redlining usually begins through an exchange of emails, which naturally slows down the conversation and allows the parties time and space to think about a response. What we want to do is speed up the contract negotiations process with silent redlines, never slow it down.

"Silent redlines" refers to the intentional lack of an explanatory comment with your proposed change. It applies to instances where you added a redline (e.g., struck existing language or proposed new language), but you purposefully did not include an explanatory comment due to a strategic decision on your part – namely, to make a strong point that will drive negotiations forward.

Examples of proper use:

- The original terms were so offensive or out of the norm that you don't feel the need to leave an explanatory comment; striking the language is sufficient.
- Your previous redlines or comments were ignored or deleted so you make your proposed change without repeating yourself.

Examples of improper use:

- Using them too often or as an excuse to be a lazy contract negotiator.
- To get under your counterparty's skin.
- Where it would be culturally insensitive or confusing due to language barriers or other cultural considerations.

RULE # 3

One email exchange, then switch to live negotiations.

Rule #3
EMAIL EXCHANGES

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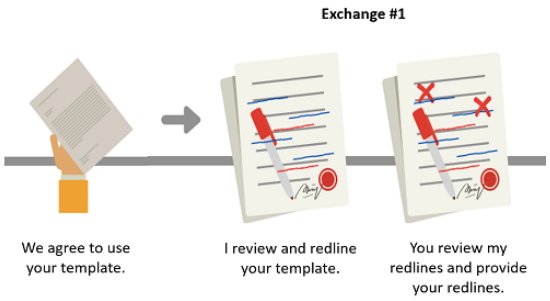
To facilitate an efficient and speedy contract negotiation, you should exchange redlines as few times as possible during the contract review process. As a rule of thumb, you should exchange redlines once (usually via email), and then switch to live negotiations over a virtual meeting or phone call.

An "exchange" of redlines means that each party has had an opportunity to review and provide redlines to the contract. In other words, the contract has been redlined by both sides once and therefore has the initial input from each party.



Exceptions:

- Short and simple contracts may not require a live negotiation.
- Long or complex contracts may require two or more email exchanges before the parties are ready to discuss live.
- Urgent or high priority contracts may require you skipping the email exchange altogether and hopping on the phone right away.
- Logistical issues when dealing with international parties in different time zones or a large group of stakeholders.
- To confirm or memorialize important points that you need to keep record of for compliance or CYA purposes.

RULE # 4

Run your contract **negotiation call** like it's an important business meeting.

Rule #4
CALLS
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After all, contract negotiation calls are important business meetings. The goal of the contract negotiation call (virtual or phone) is to close out the remaining open items and move the contract forward towards a final agreement.

Since you, as the contracts professional, are the lead on the contract negotiation, you will most likely be the meeting organizer and the meeting leader. So the success of the call is in your hands. To achieve maximum efficiency in your contract negotiation calls, use your redlines as an agenda, take diligent notes, and help drive decisions.

RULE #5

Leverage **internal redlines** to build internal alignment.

Rule #5
INTERNAL REDLINES

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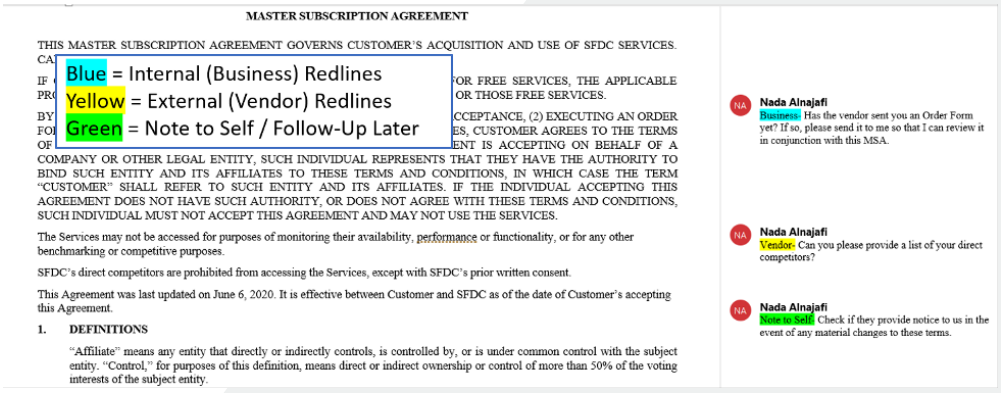
When we think of the contract negotiation process, most of us think only of the external legal negotiation and often neglect the importance of the internal negotiation.

The difference between external and internal redlines is the audience. External redlines are drafted by the contract negotiator for an external audience, e.g., the counterparty's business or legal representatives.

"Internal redlines" are drafted for an internal-only audience, e.g., your internal business clients, stakeholders, and subject matter experts. These types of redlines are used to gather information, requirements, and approvals from your internal clients, stakeholders, and subject matter experts. They typically involve clarification questions, flagging risks, and noting approvals or rejection of commercial terms.

As a tip, you should use color-coded comments (shown in example on right) to help distinguish between external and internal redlines and avoid exposing communications that would otherwise be protected by attorney-client privilege.



MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF SFDC SERVICES. CA

IF (…OR FREE SERVICES, THE APPLICABLE PR… …OR THOSE FREE SERVICES.

BY … …CCEPTANCE, (2) EXECUTING AN ORDER FO… …ES, CUSTOMER AGREES TO THE TERMS OF … …ENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

Blue = Internal (Business) Redlines
Yellow = External (Vendor) Redlines
Green = Note to Self / Follow-Up Later

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

SFDC's direct competitors are prohibited from accessing the Services, except with SFDC's prior written consent.

This Agreement was last updated on June 6, 2020. It is effective between Customer and SFDC as of the date of Customer's accepting this Agreement.

1. **DEFINITIONS**

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

NA **Nada Alnajafi**
Business- Has the vendor sent you an Order Form yet? If so, please send it to me so that I can review it in conjunction with this MSA.

NA **Nada Alnajafi**
Vendor- Can you please provide a list of your direct competitors?

NA **Nada Alnajafi**
Note to Self- Check if they provide notice to us in the event of any material changes to these terms.

RULE #6

When you propose a substantive revision, you should **re-draft** clearer contractual language to correspond with it.

Rule #6

RE-DRAFTING

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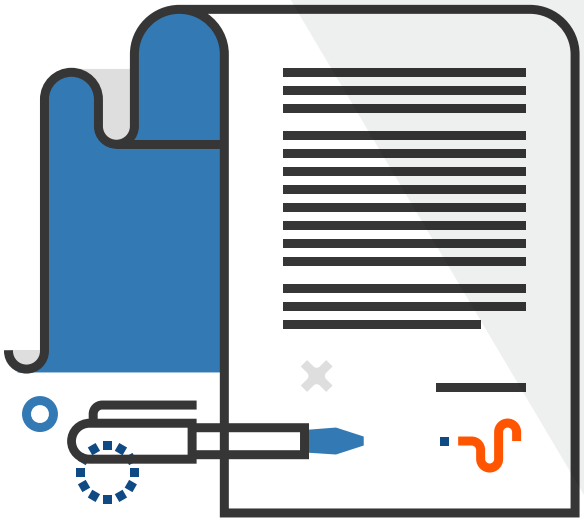
Each time a contract is redlined, it is being re-drafted. The key is to avoid sacrificing quality of drafting for quality of negotiation, or vice versa. But instead, to balance the two together so that they work in harmony with one another. The best way to accomplish this is for the party requesting a substantive change to propose the corresponding language.



Don't propose a revision *and* expect your counterparty to craft language that is supposed to be in your favor. They are not mind readers or scribes. If you ask for something, earn it by putting in the work to draft suitable and clear contractual language to correspond with your request.

The more work you put into your redlines, the more likely they are to be accepted.

RULE # 7

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Always be **transparent about every change** made to the contract until mutual agreement is reached.

Rule #7

TRACKING CHANGES

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The contract negotiation process requires logistical collaboration between the parties because we are all working from and redlining the same document. This, in turn, necessitates an inherent level of trust and expectation of transparency.

When introducing change in a contract (i.e., proposing to alter a clause, term, or section), keep your "Track Changes" or "Suggesting" mode on at all times. All changes should be communicated within the document. It is ok to reiterate or elaborate points via email or in accompanying business documents, but every proposed change and accompanying explanatory comments should be visibly tracked within the four corners of the document.

When responding to change (i.e., deciding whether to accept, reject, or continue discussions regarding a proposed change), keep your "Track Changes" or "Suggesting" mode on at all times.

If your counterparty's redlines are something you readily agree with, you can simply accept their redlines without making a comment. Otherwise, if you don't accept the change(s) as-is, you should respond with your counteroffer both in the redlines and in the explanatory comments (see CRE Rule #1).

To prepare the final version for execution, make sure you validate that the contract reflects the exact terms you agreed to. A fast way to do this is to use a document comparison tool to compare the initial draft with the final version, and reference previous redlines to cross-check the changes.

RULE #8

Control, verify, and clean, the **final version** of a contract before requesting signatures.

Rule #8
FINALIZING

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Control
Verify
Clean

Control

Always maintain control over your version of redlines throughout the contract review and negotiation process and when preparing the final version for execution. This will help streamline the verification process and reduce the chance of inconsistencies or errors.

Verify

Whether the contract was on your paper or your counterparty's paper, make sure to verify that the final version is a true and accurate representation of the terms agreed upon during negotiations. That means not only double checking that your counterparty applied all the changes they were responsible for applying, but also holding yourself accountable to reflect the changes you agreed to during negotiations.

Clean

It may sound redundant, but cleaning is an important stage of preparing the final version of a contract. In fact, entire case findings can turn on a single drafting or formatting error, like the placement of a comma or redundancy. Don't let a mere oversight or rush job haunt you later on down the line.

RULE # 9

Be mindful of inequities that may exist between the negotiating parties and **avoid contract biases**.

Rule #9
AVOIDING BIAS

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Language Bias

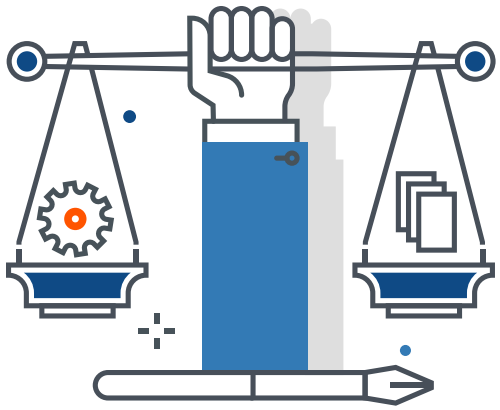
When the contract drafter assumes the other party is as fluent in English and English "legalese" as the contract drafter, this can result in a misinterpretation of the terms and intent of a contract.

To eliminate language bias from contracts: create a valid non-English translation of the English contract; use visual contracts that incorporate images alongside or even replace text; conduct the contract negotiation via email instead of phone to slow the pace and develop genuine understanding between the parties; replace English legalese with English plain language that even a non-native English speaker could understand.

Gender Bias

As the world moves towards gender neutrality, our contracts should, too.

To eliminate gender bias from contracts: move away from third-person pronouns altogether; use gender fair or gender-neutral language throughout the contract; don't use a gender catch-all clause as that only reinforces gender stereotypes; if necessary, ask clients or counterparties what their preferred gender pronoun is.



Resource Bias

Not all parties have the same access to legal technologies,

such as electronic signature tools or contract lifecycle management (CLM) platforms. Therefore, we should not assume that everyone can review contracts as quickly or efficiently as we can.

To eliminate resource bias from contracts: offer to create the final clean template for signature instead of asking the other party to; expect more time for contract review, negotiation and execution; leverage your tools for the other party's gain.

RULE # 10

Incorporate **legal technologies** into your contract lifecycle management process.

Rule #10

TECHNOLOGY & THE FUTURE OF REDLINES

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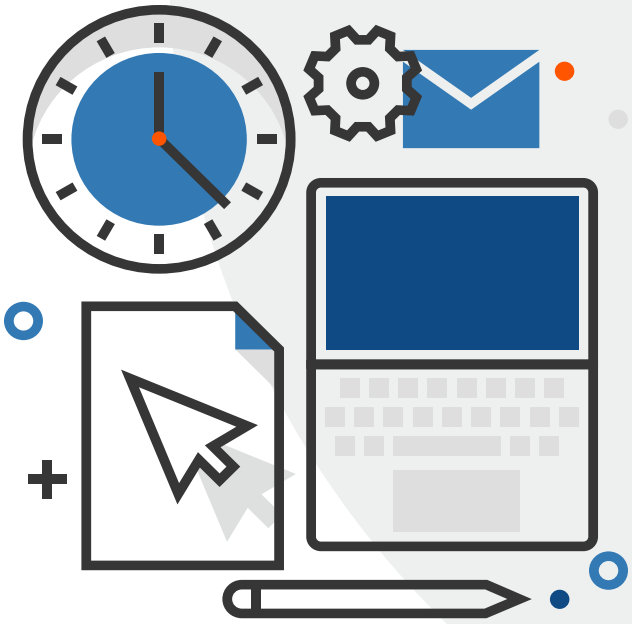
Advancements in legal technology have solved many of our industry's largest contracting problems. Such as a centralized contract repository, streamlined intake forms, tracking approvals, automating electronic signatures, etc.

But one phase of the CLM process that remains largely unsolved by technology is the contract negotiation phase. Whether we redline contracts with a red pen, by turning Track Changes on, through a collaborative platform, or in a virtual reality conference room, the art of redlining will live on into the future.

The better technologies and tools, the more effective your contract negotiations will be. And regardless of what tool you use to redline and negotiate contracts, you should continue to apply the Rules of CRE.



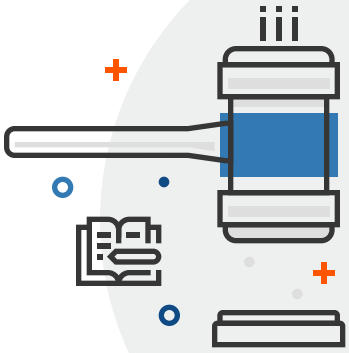
ABOUT

Nada Alnajafi

Nada Alnajafi is a contracts expert with over 12 years of experience drafting, reviewing, and negotiating various contracts and deals for cutting edge automotive and technology companies. Nada is currently serving as Corporate Counsel for Franklin Templeton, a Fortune-500 global financial services organization.

Nada is also the Founder of Contract Nerds (**ContractNerds.com**), a growing blog and community for everything contracts. In her posts, blogs, and newsletters, she provides skills-based resources about contract drafting, contract negotiation, and contract management. Her subscribers happily refer to themselves as certified #contractnerds.

Nada's most popular series on Contract Redlining Etiquette™ (**ContractNerds.com/contract-redlining-etiquette**) will soon be published in a book. To stay tuned, be sure to subscribe to the Contract Nerds newsletter and follow her on LinkedIn (**linkedin.com/in/nadaalnajafi**).



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