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**PROGRAM MATERIALS**

**Program #35171**

**September 15, 2025**

# **Contract Negotiation in the Fast Lane for Lawyers Leveraging Redlining as a Principle- Based Negotiation Technique**

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# Contract Negotiation in the Fast Lane for Lawyers

Leveraging Redlining as a Principle-Based Negotiation Technique

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SEPTEMBER 15, 2025

**JASON KARP**

Partner

# Agenda

**01** Introduction/Objectives

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**02** Redlining's Role in Negotiations

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**03** Best Practices

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**04** Q&A/Key Takeaways



# Everything you Need to Know about Redlining, you Learned in Kindergarten



1. Use Your Words
2. Play Fair
3. Be Clear
4. Treat Others How You Wish to be Treated
5. Always Clean Up Your Mess
6. Work Together
7. Help Each Other
8. Check Your Work
9. Keep Your Stuff Organized
10. Say Please and Thank You



# Redlining & Contract Negotiations

# Redlining is Negotiation

- Redlining is **NOT** just editing
- It is communication
- It is psychology
- It is emotion
- It is mindset
- It is negotiation and mediation
- It is **NOT** about winning and losing

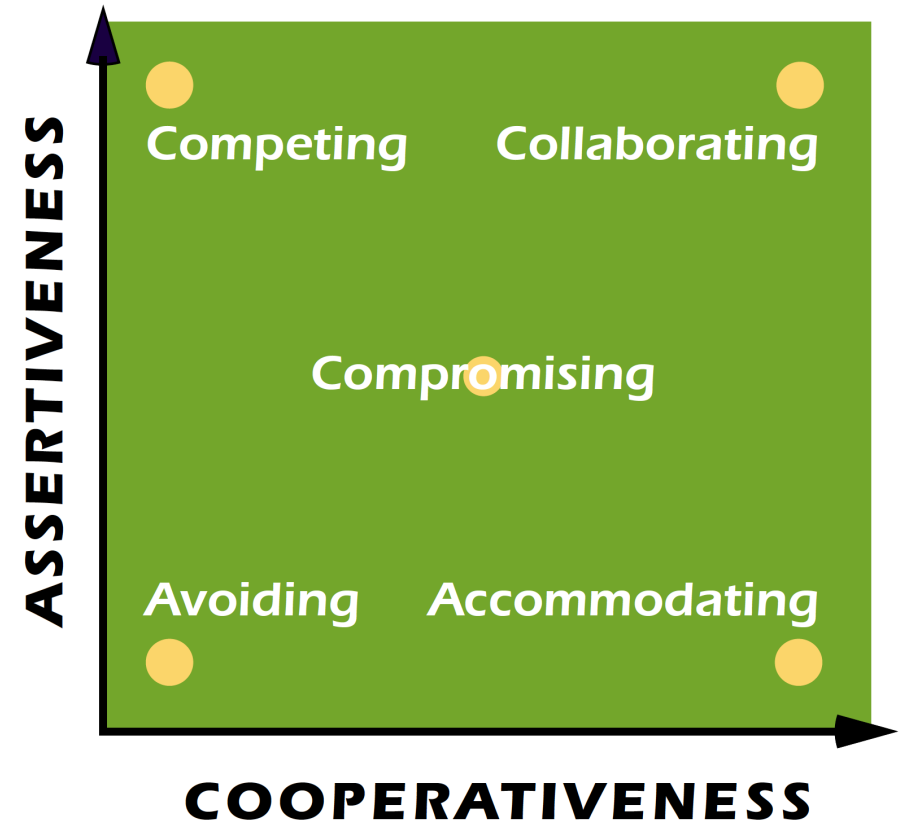


- Communication can make or break negotiations
- Effective redlining speeds up negotiations and results in better outcomes for both sides
- Conveys concerns, preferences and requirements **AND** encourages thoughtful responses and SOLUTIONS, not just positions
- Redlining can elicit an emotional response
- That response is up to you

# Negotiation Frameworks – Thomas-Kilmann Conflict Mode Instrument

- Negotiation is at the heart of almost all legal practice. Understanding different negotiation approaches and frameworks is critical for achieving desired outcomes for your clients.
- One widely recognized framework is the Thomas-Kilmann Conflict Mode Instrument (TKI)
  - Identifies how to handle conflict; a foundational approach in understanding legal negotiation behavior and approaches
- *TKI Negotiation Framework Elements*: (1) Competing; (2) Collaborating; (3) Compromising; (4) Accommodating; and (5) Avoiding
- The TKI Framework highlights the importance of understanding both your own style and that of opposing counsel in reaching mutually beneficial outcomes.\*

\*See also, *Getting to Yes: Negotiating Agreement without Giving In*, Roger Fisher, William Ury, & Bruce Patton of the Harvard Negotiation Project (May 3, 2011)



Source <https://kilmanndiagnostics.com/brief-overview-of-the-tki-assessment/>

# Achieving Negotiated Solutions Starts with Effective Redlining

- This is called: ***Principle-Based Negotiations\****
  - *Separate the person from the issues*
  - *Focus on interests, not positions* - move past the win/lose mentality and understand the rational business reason/interest behind a party's concern
  - *Develop creative options for mutual gain* - identify mutually acceptable solutions
  - *Use objective criteria* – move away from the battle of perspectives

\*See *Getting to Yes: Negotiating Agreement without Giving In*, Roger Fisher, William Ury, & Bruce Patton of the Harvard Negotiation Project (May 3, 2011)

## Position -

- P1: We only agree to a \$10,000 limitation of liability
- P2: We want unlimited liability

## Principle -

- P1: Because it is rationally related to the overall value of the transaction, and our pricing is established based on that level of risk. A higher level of risk would require us to significantly increase pricing
- P2: We are concerned your IP may be found to be infringing in this new market and need to be protected
- **Solution** – The limitation of liability applies only to first party claims between us, but we have excepted out higher risk third-party claims to provide rational mutual protection for IP infringement, bodily injury and property damage



# Negotiation Frameworks – the Harvard Program On Negotiation - 7 Elements Framework

The Harvard Program on Negotiation highlights a 7 elements framework to effective negotiations:

- **Interests:** includes our basic needs, wants, and motivations.
- **Legitimacy.** Establishing proposals that others will view as fair.
- **Relationships.** The need to manage the relationship, and build rapport with opposing counsel throughout the negotiation.
- **Alternatives and BATNA.** What are your client's alternatives if the negotiations are not successful? Understanding the Best Alternatives to a negotiated agreement (or "BATNA") is a critical part of negotiation preparation. This is emphasized in *Getting to Yes*.
- **Options.** Different possible outcomes parties might consider to satisfy their interests.
- **Commitments.** These include agreements, offers, or promises made by one or more party.
- **Communication.** Communication is paramount for any successful negotiated outcome, whether verbal, written or physical.

# Negotiations Frameworks – John Lande Framework on Advancing Negotiation

- Professor John Lande, of the University of Missouri School of Law posits that there have historically been only 2 general models of negotiation - (1) position-based negotiations, and (2) interest-based negotiations. In this study, however, he proposes a third framework, which he calls Ordinary Legal Negotiations (“OLN”).\*
- Under the OLN framework, lawyers try to reach a reasonable agreement based on shared norms, or the generally expected or typical outcome for a particular negotiated agreement.
- The typical outcome may differ, however, from the parties’ stated interests, but is what is nonetheless expected given the circumstances.
- The variables in the framework include: (1) the degree of concern, if any, negotiators have for the other side, (2) the communication process used in trying to reach agreement, (3) the extent that negotiators create value in the negotiation, (4) the negotiators’ tone, (5) the use of power, and (6) the source of norms that negotiators use.\*

\* See John Lande, A Framework for Advancing Negotiation Theory: Implications from A Study of How Lawyers Reach Agreement in Pretrial Litigation, 16 Cardozo J. Conflict Resol. 1 (2014)



# Redlining Best Practices for Achieving Principle-Based Negotiated Outcomes

# Create a Positive Working Relationship (or Rapport) with Opposing Counsel

- BEFORE sending any redlines to the opposing side, establish a personal connection with opposing counsel
  - Include an introductory note both within your document and in the email transmission
  - If feasible, call opposing counsel and establish a rapport at the outset of the deal





# Example Note to Opposing Counsel

## INDEPENDENT CONTRACTOR AGREEMENT

This Contractor Agreement is entered into on [EFFECTIVE\_DATE], 2024 (“**Effective Date**”) by and between ACME, Inc., a Tune Town limited liability company with principal address at One Looney Toon Way (“**Contractor**”) and Wile E. Coyote, a coyote with offices at Two Looney Toon Way (“**Purchaser**”). Contractor and Purchaser are each referred to herein as a “Party,” and collectively the “Parties.”

**NOW, THEREFORE**, and in consideration of the foregoing, and of the covenants and agreements herein contained, the Parties hereby agree as follows:

1. Services. Contractor shall perform for Purchaser or the applicable ordering subsidiary and/or affiliate of Purchaser, the Services listed in Statements of Work issued to Contractor.



Jason Karp



We have provided a redline of the agreement, attempting to minimize changes while focusing on the issues most important to ACME. We have supplemented our changes with margin comments with explanations and/or questions where relevant. If during your review, you have any questions, please don't hesitate to reach out so we can help expedite resolution. We look forward to working together.

Jason Karp, [jkarp@acmeandbugs.com](mailto:jkarp@acmeandbugs.com)

September 25, 2024, 8:35 PM

Reply

# Kindergarten Principle #1

## “Use Your Words”

Redlining helps articulate our concerns  
and preferences clearly to all parties



# Use Redlining Tools Effectively

**Choose a Redlining Tool and Use its Features Consistently**

**Use a Tool / Application that Facilitates Collaboration and Ease of Use**

- Try to avoid PDF tools or esoteric comparison apps that are not widely used
- The key is to make the process as easy as possible for you and the opposing side
- Do not create artificial roadblocks for opposing counsel – creates an immediate negative reaction



# Use Redlining Tools Effectively

- **Recommended Approaches**



- Do not send locked or non-editable documents, including PDF files (read that again)



- Use of password or other protections limiting the ability to edit should be discouraged in most situations



- Avoid the use of the “Restrict Editing” feature in Word if possible
  - While it can force the use of redlining, it makes the process of revising redlines much more cumbersome
  - It also can also foster a lack of trust from the outset
- Do run your own compare when receiving redlines back



# Use Redlining Tools Effectively

- **Key Redlining Features**

- *Track changes*: Critical for visibly recording all changes
- *Comment features*: Provides context, explanations, justifications & questions to opposing counsel
- *Color coding*: differentiates users' revisions and avoids confusion
- *Identify commenters*: redlines and comments should reflect each author, ideally with their role(s), so opposing counsel recognizes the lawyers comments versus others
- *Remove internal comments*: before sending to opposing counsel



# Redlining Tool Snafus for Lawyers to Avoid

Use of completely different font and sentence fragments

22.3. **Premises Rebuilt or Restored.** If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communications Facility, as applicable, Landlord agrees to permit Tenant to place temporary communications facilities on the Parcel at no additional Rent until the reconstruction of the Premises and/or the Communications Facility is completed. **The location of temporary facilities are subject to Landlord approval, not to be unreasonably withheld. \*\* for the temporary facilities would continue at the same rate as set forth in the Ground Lease Agreement.** If Landlord determines not to rebuild or restore the Parcel, Landlord will notify Tenant of such determination within thirty (30) calendar days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 22 (Casualty), then Landlord will promptly rebuild or restore any portion of the Parcel interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Parcel and/or the Premises are rebuilt or restored, unless Tenant places temporary communications facilities on the Parcel.

# Redlining Tool Snafus for Lawyers to Avoid



Opposing counsel did not use the redline function. Instead, they manually changed the text color and used the strike out function within Word Font menu

## 5. RENT.

5.1. **Rent Commencement.** Commencing **thirty (30) calendar days following the issuance of the building permit or four months after the option is exercised, whichever occurs first,** ~~on the first day of the month following the date that Tenant commences construction on the Premises~~ (the “**Rent Commencement Date**”), Tenant shall pay Landlord on or before the fifth (5<sup>th</sup>)

No comments or context provided anywhere in the document

Manual strike out function

# Why are Lawyer Comments Effective?

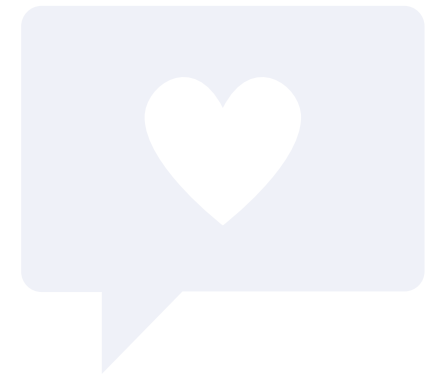
requested from time to time by the Company. The Consultant shall not engage the services of third party ~~contractors, subcontractors or consultants, but excluding any individual contracting personnel that Consultant may leverage as part of its ongoing day to day business in delivering the Services~~ (each, a "Subcontractor") in the performance of the Services without the prior written consent of the Company, ~~not to be unreasonably withheld, conditioned or delayed which may be granted or withheld in its sole discretion. In the event that the Company permits the Consultant to use the services of one or more Subcontractors, each such Subcontractor shall sign a written agreement agreeing to be bound by all of the provisions of this Agreement to the same extent as the Consultant and the Employees.~~ The Company shall have no responsibility or obligation to any such Subcontractor and Consultant shall remain responsible for the performance of all such Subcontractors.



2. Term. This Agreement shall commence on the Effective Date and shall continue for the term set forth in Exhibit A or the SOM (such period, as it may be extended or sooner terminated in accordance with the



# Why are Lawyer Comments Effective?



requested from time to time by the Company. The Consultant shall not engage the services of third party ~~contractors, subcontractors or consultants, but excluding any individual contracting personnel that Consultant may leverage as part of its ongoing day to day business in delivering the Services~~ (each, a "Subcontractor") in the performance of the Services without the prior written consent of the Company, ~~not to be unreasonably withheld, conditioned or delayed which may be granted or withheld in its sole discretion. In the event that the Company permits the Consultant to use the services of one or more Subcontractors, each such Subcontractor shall sign a written agreement agreeing to be bound by all of the provisions of this Agreement to the same extent as the Consultant and the Employees.~~ The Company shall have no responsibility or obligation to any such Subcontractor and Consultant shall remain responsible for the performance of all such Subcontractors.

2. Term. This Agreement shall commence on the Effective Date and shall continue for the term set forth in Exhibit A or the SOW (such period, as it may be extended or sooner terminated in accordance with the



jasonkarp@outsidegc.com



Please note that Company utilizes both FTEs and 1099 contractors as part of its business depending on the jurisdiction, so it is not feasible to seek approval of all of the same prior to conducting the training. Company remains responsible under this Agreement for all of its employees and contracting personnel, so Client has full recourse against Company in the case of any issues.

# Do not “Restore” Language Without Comments

Interpretation of this Lease shall be governed by the laws of the state of ~~California~~New York, without regard to conflict of laws. Tenant irrevocably submits to the nonexclusive jurisdiction of the courts of said state and agrees that all suits, actions, claims or proceedings may be heard and determined in such courts.

State of law was restored without note

Interpretation of this Lease shall be governed by the laws of the state of California, without regard to conflict of laws. Tenant irrevocably submits to the nonexclusive jurisdiction of the courts of said state and agrees that all suits, actions, claims or proceedings may be heard and determined in such courts.

Addition of “non” was accepted

Interpretation of this Lease shall be governed by the laws of the state of California, without regard to conflict of laws. Tenant irrevocably submits to the nonexclusive jurisdiction of the courts of said state and agrees that all suits, actions, claims or proceedings may be heard and determined in such courts.

# Kindergarten Principle #2



## “Play Fair”

Consistently using redlining features is like playing fair in a game—everyone needs to follow the same rules to avoid confusion and ensure fairness

# Be Concise and Precise

## Effective Editing Techniques



- Less is more – choose targeted and specific language
- Use the text provided where possible and avoid wholesale changes



- Avoid being vague or overly verbose
- Use plain English and try to avoid formal “legalese” where appropriate



- Avoid nit-picky formatting or word preference suggestions

- Happy ➡ Glad



- Use examples to illustrate complex business terms

**Dominion Motors & Controls, Ltd**

DMC is confronted with ~~the~~ high probability of losing market ~~share~~ in the Canadian oil well pumping motor market ~~due to~~ the field study results performed by Hamilton Oil Company. John Brides of Hamilton ranked DMC's motors as the 3<sup>rd</sup> ~~purchase~~ option. The results ~~had a~~ ~~negative~~ impact on DMC's market standing. To solve this problem DMC should choose ~~the~~ best option among the ~~available~~ scenarios.

~~Over~~ the long-term, some advantages make this option the best ~~choice~~. The new design of ~~the~~ 5 hp motor with a 70 lbs-ft torque will give DMC ~~the~~ opportunity to be the leader in market. ~~Thus~~ DMC can gain a 60% market because the Canadian oil well market is going to grow by 1000 wells ~~per year~~ ~~over~~ the next five years.

Another reason ~~for~~ this prediction is that ~~the~~ 5 hp motor can save important power costs over other products. Many customers will buy this product to save costs. That competitive advantage will force other competitors to invest in research and development. During the ~~short~~-term DMC can build the entry barrier by changing price (\$1,045 ~ \$1,200).

**Editing suggestions:**

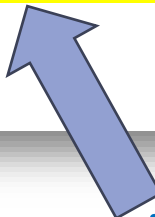
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- Deleted wording
- Deleted is choice
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- Deleted during
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# Use Examples To Clarify Complex Legal Principles

## 2. UNMANNED AIR SUPPORT A SERVICE SALE

▲ 2.1 Lease of Equipment. Supplier shall lease to Customer the unmanned systems and related equipment described in the Supplier Proposal (the “Equipment”) at the price described in the Supplier Proposal upon the terms and conditions set forth in this Agreement. Supplier maintains ownership of all the Equipment. Each year, as specified in the Supplier Proposal, the Customer will be provided with a designated number of batteries set forth in the Supplier Proposal. Customer may purchase additional Equipment at Supplier’s then current list price, which will be made available to Customer upon request. For purposes of clarification, all provided batteries will be exchanged at no charge after 500 complete charging cycles. In addition, all spares, or Equipment damaged by Customer are Customer’s responsibility.



Clarifying example  
provided to avoid  
ambiguity

# Avoid Wholesale Changes

Avoid wholesale replacements of sections; try to work with provided language

13. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN) IN THE AERODOME SOFTWARE OR AERODOME PRODUCTS, UNLESS RESULTING FROM AERODOME'S BREACH OF LIMITED WARRANTY, IN WHICH CASE SECTION 9 SHALL PROVIDE THE EXCLUSIVE REMEDY, OR (III) EXCEPT FOR THE PARTY'S RESPECTIVE INDEMNIFICATION OBLIGATIONS, FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) THE FEES PAID (OR PAYABLE) BY CUSTOMER TO AERODOME HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO A CLAIM HEREUNDER.

(a) IN NO EVENT SHALL CONSULTANT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL CONSULTANT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO CONSULTANT PURSUANT TO THE APPLICABLE STATEMENT OF WORK IN THE 12 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.



## Dominion Motors & Controls, Ltd

DMC is confronted with the high probability of losing market share in the Canadian oil well pumping motor market due to the field study results performed by Hamilton Oil Company.

John Brides of Hamilton ranked DMC's motors as the 3<sup>rd</sup> purchase option. The result had a

negative impact on DMC's market standing. To solve this problem DMC should choose the best option among the available scenarios.

Over the long-term, some advantages make this option the best choice. The new design of the 5 hp motor with a 70 lbs-ft torque will give DMC the opportunity to be the leader in market.

Thus DMC can gain a 60% market because the Canadian oil well market is going to grow by 1000 wells per year over the next five years.

Another reason for this prediction is that the 5 hp motor can save important power costs over other products. Many customers will buy this product to save costs. That competitive

advantage will force other competitors to invest in research and development. During the short-term DMC can build the entry barrier by changing price (\$1,045 ~ \$1,200)

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# Kindergarten Principle #3



## **“Be Clear and Use Simple Words”**

Just as we learned to use clear and simple words to communicate effectively as kids, concise and precise edits help avoid confusion and ensure everyone understands the changes in redlining

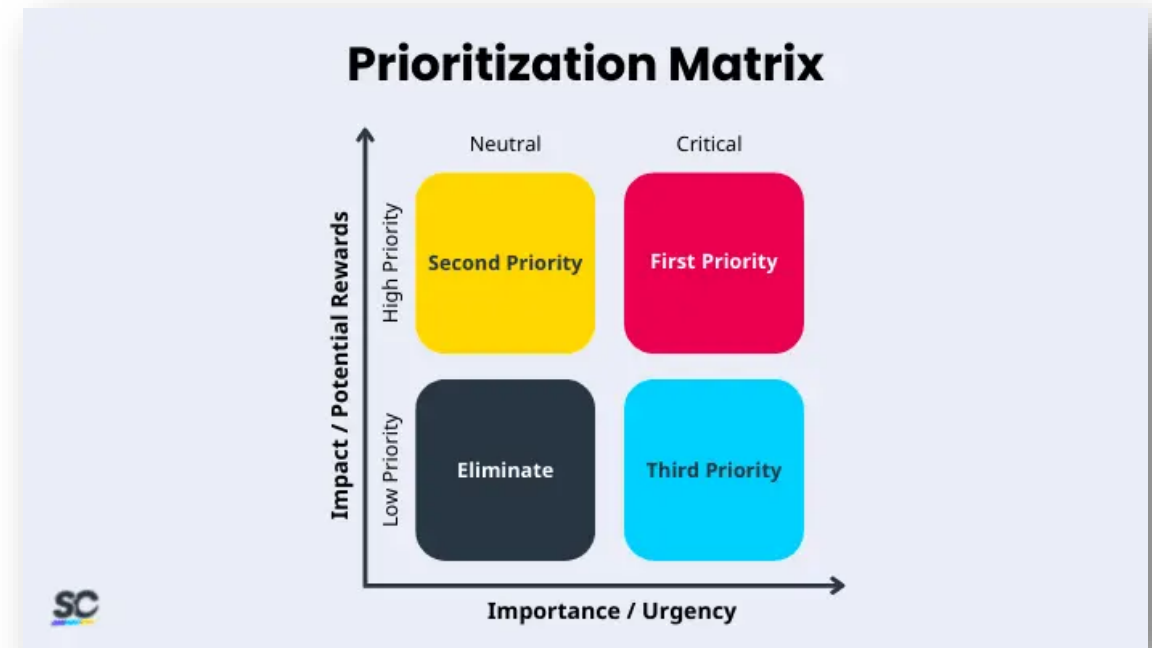
# Prioritize Changes to Focus on Key Legal Points

- Focus on Critical Points vs. Minor Edits
  - Read the entire contract before you begin redlining
  - Know when NOT to redline – conceptual disagreements
  - Avoid “redline shock” where possible
  - Highlight, annotate to flag areas needing further discussion
  - Tackling big issues first can help to keep things on track



# Examples of Priorities in Contracts

- Issues that could materially impair your client's business
  - Limitation of liability and exceptions
  - Indemnities
  - Data privacy / Info Sec
  - Intellectual Property
  - AI
  - Poorly scoped services or statements of work
  - Pricing / Fees
  - Others?





# Kindergarten Principle #4

## “Clean Up Your Mess”

Prioritizing changes is like cleaning up your mess –  
tackle the big problems first to make things easier and  
keep everything organized



# Maintain a Respectful Tone with Opposing Counsel

- Be Professional . . . always
  - Avoid confrontational / emotional language
  - Acknowledge the other side's perspective, even if unreasonable
  - Do not use Inflammatory typeface (ALL CAPS) and excessive or emphasized punctuation (??? !!!!!) in comments
  - Strive to promote constructive dialogue
  - Don't take the bait – “when they go low, we go high”



# Let's Not Do this

## 9.4 Warranty Limitations / Disclaimer

(a) THE WARRANTIES ABOVE SHALL NOT APPLY TO (I) DEFECTS, ERRORS, DAMAGES, OR LOSS RESULTING FROM CORRECTIONS, REPAIRS OR SERVICE NECESSITATED BY CUSTOMER'S OR USER'S SYSTEM, COMPUTERS, SERVERS, AND/OR OTHER EQUIPMENT OR ITS USE; (II) NEGLIGENCE, ABUSE, MISUSE, OR INTENTIONAL DAMAGE IN CONNECTION WITH ANY USE OF THE EQUIPMENT OR AERODOME PRODUCTS; (III) USE OF THE EQUIPMENT OR AERODOME PRODUCTS OUTSIDE THE PURPOSE, SCOPE, OR MANNER OF USE AUTHORIZED BY THIS AGREEMENT OR IN ANY MANNER CONTRARY TO THE DOCUMENTATION OR AERODOME'S INSTRUCTIONS; (IV) THE EQUIPMENT OR AERODOME PRODUCTS USED IN CONJUNCTION WITH ANY TECHNOLOGY (INCLUDING ANY SOFTWARE, HARDWARE, FIRMWARE, SYSTEM, OR NETWORK), EQUIPMENT OR SERVICE NOT PROVIDED BY AERODOME OR SPECIFIED FOR CUSTOMER'S USE IN THE DOCUMENTATION, UNLESS OTHERWISE EXPRESSLY PERMITTED BY AERODOME IN WRITING; (V) MODIFICATIONS TO THE EQUIPMENT AND AERODOME PRODUCTS BY ANYONE OTHER THAN AERODOME WITHOUT AERODOME' PRIOR WRITTEN PERMISSION; (VI) USE OF ANY VERSION OF THE EQUIPMENT AND/OR AERODOME PRODUCTS OTHER THAN THE MOST CURRENT VERSION, OR FAILURE TO TIMELY IMPLEMENT ANY MODIFICATION, UPDATE, AND/OR REPLACEMENT OF SUCH MADE AVAILABLE BY AERODOME; OR (VII) DUE TO FORCE MAJEURE.



Jason Karp



No!

September 27, 2024, 7:06 PM

Reply

# Or This

## Section 11. Limitation of Liability.

EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOSS OF PROFITS, GOODWILL, LOST COMPUTER TIME, DESTRUCTION, DAMAGE OR LOSS OF DATA, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, LIQUIDATED, OR PUNITIVE DAMAGES FROM ANY CAUSE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SOFTWARE, THE PORTAL, ANY SERVICES, OR ANY ACCESS, MAINTENANCE, OR USE, OR LACK THEREOF, OR THIS AGREEMENT. EXCEPT WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS, A PARTY'S LIABILITY FOR DIRECT DAMAGES RESULTING FROM THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF AMOUNT PAID BY THE LICENSEE TO LICENSE THE USE OF THAT SOFTWARE OR ONE HUNDRED DOLLARS (\$100.00).



Jason Karp



Unacceptable!! Have you lost your mind???

September 27, 2024, 7:11 PM

Reply

# Let's Do this

5. **PREPARATION SERVICES.** Vendor agrees to provide the services set forth in Schedule A, attached hereto and incorporated herein (the “Services”). Customer agrees to cooperate and abide by the requirements and standards set forth in Schedule A and in this Agreement. Vendor agrees and represents that it is qualified to properly provide the Services set forth herein, in a manner which is consistent with the generally accepted standards of Vendor’s profession, to the extent the same exists and is reasonably documented. Vendor shall designate a project manager who at all times shall represent Vendor before Customer on all matters relating to this Agreement.

declines deletion. understand that there is no current general accepted standard but that does not mean that will always be the case. If there is no generally accepted standard then this clause won't add any additional burdens on but if such generally accepted standard comes into existence later during the existence of this lease, then the expects to provide services in accordance with those generally accepted standards. See also Section 6 of contract.

August 29, 2024, 8:16 PM

Jason Karp

Ok understood. I have thus added a clause to that effect. However, please note that Supplier cannot be held to a standard that does not exist or is not reasonably ascertainable. Any provision that can result in liability cannot be subjectively determined by a third-party. Have modified accordingly.

September 13, 2024, 10:08 AM

Reply



# Kindergarten Principle #5

## **“Treat Others the Way You Want to Be Treated”**

Maintaining a respectful tone is like treating others the way you want to be treated—show respect and kindness to encourage positive interactions





# Ensure Internal Alignment with Your Client

- **Seek Feedback on Relevant Terms with Internal Client / Business Stakeholders**
  - Redlining and negotiations are a team sport
  - Include critical SMEs and client/company stakeholders in the review process
  - Ensure contract changes align with broader company objectives
    - Don't substitute what you believe is the best legal approach if it does not align with strategic business priorities

# Ensure Internal Alignment with Your Client

- **Internal Business Stakeholders Offer Unique Insight Impacting Contract Terms**
  - Use SMEs to identify areas of concern and help compromise on contract terms
    - Business stakeholders can often mitigate legal concern through SOPs
    - Helps ensure organization will comply with contract terms
  - Use collaboration tools like shared drives, where possible, to avoid having to track and consolidate multiple drafts
  - Consider internal discussions with stakeholders to align on positions and ensure all changes captured
  - A united front strengthens the contract and negotiation stance

# Use “Internal” Notes to Flag Issues for Your Client

3.9.3.10. COLA. Upon the first anniversary after go-live as set forth in each applicable SOW, and every year thereafter, all fees shall be subject to change to account for the prior year's inflation, through a cost-of-living adjustment (“COLA”). For Services performed in the United States, the Employment Cost Index (ECI) published by the United States Bureau of Labor Statistics shall apply. Services performed in all other locations will use the AON Radford Salary Increase and Turnover Study Index published by AON Radford for the applicable country. If any of the foregoing publications cease to be published for the applicable country, Supplier and Customer will agree upon a replacement index with substantially similar data.



Jason Karp



Internal - Attention Finance: I have included a COLA adjustment clause to allow for fee adjustment based on inflation. This is what we ordinarily recommend including, but would like you to verify how you prefer to handle based on current proposed pricing approach. Please advise.

September 30, 2024, 10:03 AM

Reply

# Operational Client Feedback is Critical

4.2.1 **Required Notice of Maintenance.** Supplier shall provide no less than fourteen (14) calendar day's written notice to Client in advance of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. Non-emergency maintenance shall not exceed five (5) hours in any given month. For emergency maintenance, Supplier shall provide as much advance notice a commercially practicable to Client and shall provide a detailed description of all emergency maintenance performed no greater than one (1) calendar day following the implementation of the maintenance



Jason Karp



**Internal - Attention Client Support:** this appears much too prescriptive regarding management of platform maintenance for a multi-tenant SaaS solution, including on notification timelines. Generally, I would not recommend customizing notifications for the platform on a per client basis as this is not scalable and could lead to missing a notification, putting the company in breach. Notification would generally be standard and provided through the platform to all clients. It also appears problematic to limit our maintenance window as that is something the company would need to manage from a business perspective. Please advise.

September 30, 2024, 10:17 AM



Jason Karp

**Client Support Response:** You are correct. We must take a uniform approach to notification and must retain flexibility in the amount of maintenance we employ in a given month. We need to be consistent across the platform and with all customers. Please revise accordingly.

# Kindergarten Principle #6

## **“Work Together”**

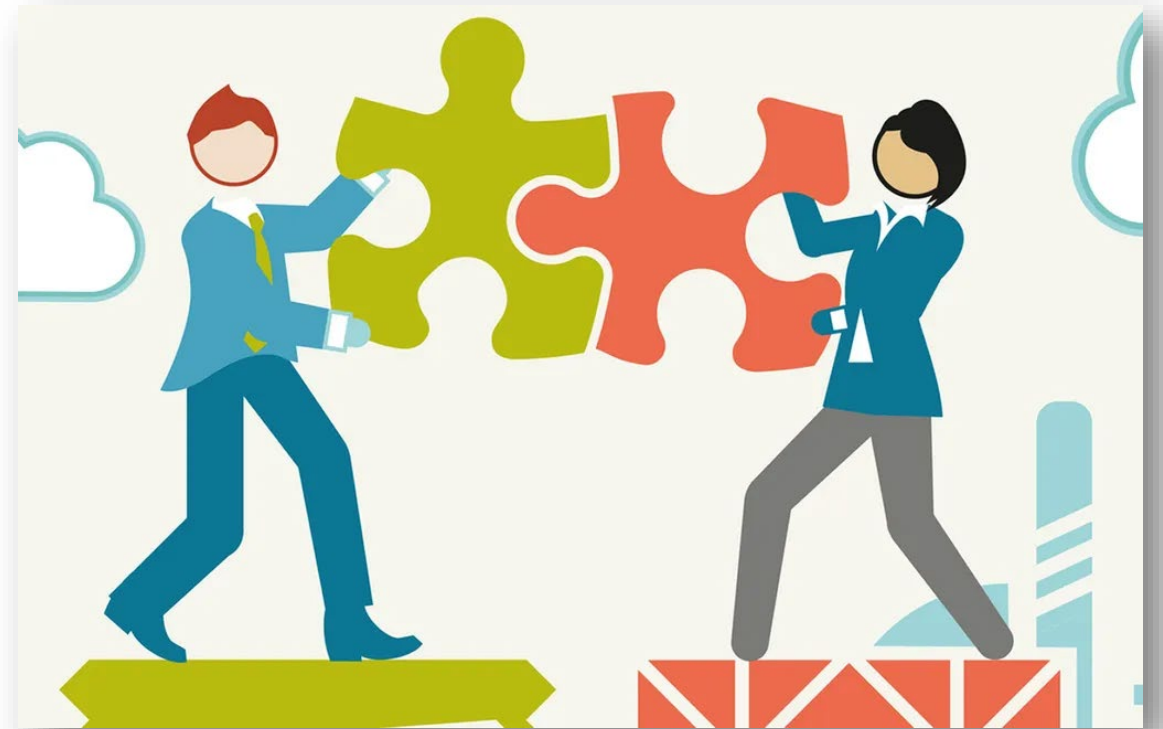
Ensuring internal alignment is like working together on a group project—everyone needs to be on the same page to achieve the best results





# Provide Context and Alternatives / Compromises to Legal Positions

- When proposing changes, transparency is key
  - Offer rationale for changes if not obvious or non-controversial
  - Attempt to provide a solution
    - Sometimes, an explanation is enough
    - Re-word wherever helpful
    - Offer a compromise, if possible, to address both sides' concerns.



# Use of Clarifying Language

*“Except for a breach of warranty, all costs of repair or replacement of the Equipment shall be borne by Customer”*

- **Concern:** This clause as written appears to shift all costs to Customer even if damage may be caused by the Supplier (not just for breach of warranty).



# Use of Clarifying Language

- **Potential Solution:** Replace with...

*“Except for breach of warranty or damage to the Equipment due solely to Supplier’s negligence or breach of a material term of the Agreement, all repair and replacement of damaged Equipment shall be the responsibility of Customer”*

- The revised language clarifies the intent of the clause which is if damage to the Equipment is not caused by the Supplier, then Customer is responsible.

# Use of Compromising Language

*“Notwithstanding anything to the contrary in this Agreement, Supplier’s liability in connection with this Agreement shall not exceed \$10,000”*

- **Concern:** This clause as written shifts liability from the Supplier to the Customer for damages in excess of \$10,000, even if the damage is caused by Supplier or a third-party.

# Use of Compromising Language

- **Potential Solution:** Compromise...

*“Notwithstanding anything to the contrary in this Agreement, except for Supplier’s indemnification obligations hereunder, Supplier’s liability in connection with this Agreement shall not exceed the amount of fees paid or payable to Supplier hereunder for the twelve (12) month period immediately preceding the action giving rise to the liability”*

- The revised language now accommodates third-party claims and ties the limitation to the value of the Agreement, while still rationally limiting Supplier’s liability.



# Kindergarten Principle #7

## "Explain and Help Each Other"

Providing context and alternative language is like explaining things and helping each other understand better—clarify your changes and offer solutions to work things out



# Review for Errors and Clarity

- Step away and revisit with fresh eyes
- Confirm that your edits make sense
- Spell check and grammar check
- Fix any formatting glitches
- Check for clarity and tone; streamline as needed
- Fill in custom fields
- Further simplify changes if possible
- Attention to these details speaks volumes about your approach



# Why Review & Proof?

- Enhances credibility
- Clarity of interpretation
- Improves flow and readability
- Accuracy
- Avoids later interpretations inconsistent with parties' intentions
- Instills confidence



# Review for Errors and Clarity

**14. SUBLEASE.** Tenant shall have the right to sublease or license any portion of the Premises and its rights herein, in whole or in part, to a third-party whose use is consistent with the Permitted Use at Tenant's sole discretion and without Landlord's consent. More specifically, Tenant shall have the right to sublease to four (4) sublessees, whose use is consistent with the Permitted Use, without Landlord's consent. Should Tenant desire to sublease to additional sublessees, Landlord's consent will be required. ~~Such~~ consent may be withheld at ~~Lanlord's~~ sole and absolute discretion if, for example, the parties are unable to ~~reacg~~ agreement on reasonable compensation to Landlord for such additional subleases.

# What is Wrong with this Picture?

## INDEPENDENT CONTRACTOR SERVICES AGREEMENT

This Independent Contractor Services Agreement (“**Agreement**”) is dated effective as of [REDACTED] (“**Effective Date**”) and entered into between [REDACTED], [REDACTED] (“**CLIENT**”) and [REDACTED] with principal address at [REDACTED] (“**Contractor**”). The parties hereby agree that this Agreement all work and services performed by Contractor for CLIENT as of the Effective Date.

### 1. DEFINITIONS. As used in this Agreement:

1.1 “**Confidential Information**” means all information disclosed or made available by CLINT or CLIENT’s affiliates to Contractor or Contractor’s affiliates during the term of this Agreement. Confidential Information may be disclosed in written or other tangible form or by oral, visual, or other means. Confidential Information includes, but is not limited to, (a) all information disclosed or made available by CLIENT that should reasonably have been understood by Contractor to be proprietary and confidential to CLIENT or to a third party because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, (b) all Work Product and (c) the terms of this Agreement.

1.2 “**Deliverables**” means the items to be provided or actually provided by Contractor to CLIENT under this Agreement, including items specifically designated or characterized as deliverables in a Statement of Work.

c. “**Intellectual Property**” means all products of the intellect, including algorithms, application programming interfaces (APIs), apparatus concepts, Confidential Information, data, databases and data collections, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, marks (including brand names, product names, logos, and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locaters (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

d. “**Intellectual Property Rights**” means all intellectual property rights throughout the world, including rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Intellectual Property; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

1.5 “**Services**” means the services to be performed or actually performed by Contractor for CLIENT.

1.6 “**Work Product**” means (a) all Deliverables, (b) all Intellectual Property, in any stage of development, that Contractor conceives, creates, develops, or reduces to practice in connection with performing the Services, and (c) all tangible embodiments (including models, presentations, prototypes, reports, samples, and summaries) of each item of such Intellectual Property.

### 2. ENGAGEMENT

2.1 **Statements of Work.** CLIENT may submit to Contractor written statements of work substantially in the form of Exhibit A that contain the terms for that CLIENT desires Contractor to provide. If Contractor begins to perform services under a statement of work, Contractor will be deemed to have accepted such statement of work. Upon acceptance of a statement of work by Contractor (in writing, by performance, or otherwise), such statement of work will be a “**Statement of Work**.” If, prior to execution of a Statement of Work, Contractor performs work that is within the scope of Services described in such Statement of Work, such work will be deemed a part of and subject to such SOW.

# What is Wrong with this Picture?

**INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

This Independent Contractor Services Agreement ("Agreement") is dated effective as of [redacted] ("Effective Date") and entered into between [redacted] ("CLIENT") and [redacted] ("Contractor"). The parties hereby agree that this Agreement all work and services performed by Contractor for CLIENT as of the Effective Date.

1. **DEFINITIONS.** As used in this Agreement:

1.1 "Confidential Information" means all information disclosed or made available by CLIENT or CLIENT's affiliates to Contractor or Contractor's affiliates during the term of this Agreement. Confidential Information may be disclosed in written or other tangible form or by oral, visual, or other means. Confidential Information includes, but is not limited to, (a) all information disclosed or made available by CLIENT that should reasonably have been understood by Contractor to be proprietary and confidential to CLIENT or to a third party because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, (b) all Work Product and (c) the terms of this Agreement.

☐ 1.2 "Deliverables" means the items to be provided or actually provided by Contractor to CLIENT under this Agreement, including items specifically designated or characterized as deliverables in a Statement of Work.

☒ c. "Intellectual Property" means all products of the intellect, including algorithms, application programming interfaces (APIs), apparatus concepts, Confidential Information, data, databases and data collections, designs, diagrams, documentation, drawings, flow charts, formulae, ideas and inventions (whether or not patentable or reduced to practice), know-how, materials, marketing and development plans, marks (including brand names, product names, logos, and slogans), methods, models, net lists, network configurations and architectures, procedures, processes, protocols, schematics, software code (in any form including source code and executable or object code), specifications, subroutines, techniques, test vectors, tools, uniform resource identifiers including uniform resource locaters (URLs), user interfaces, web sites, works of authorship, and other forms of technology.

☒ d. "Intellectual Property Rights" means all intellectual property rights throughout the world, including rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Intellectual Property; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

1.5 "Services" means the services to be performed or actually performed by Contractor for CLIENT.

1.6 "Work Product" means (a) all Deliverables, (b) all Intellectual Property, in any stage of development, that Contractor conceives, creates, develops, or reduces to practice in connection with performing the Services, and (c) all tangible embodiments (including models, presentations, prototypes, reports, samples, and summaries) of each item of such Intellectual Property.

2. **ENGAGEMENT**

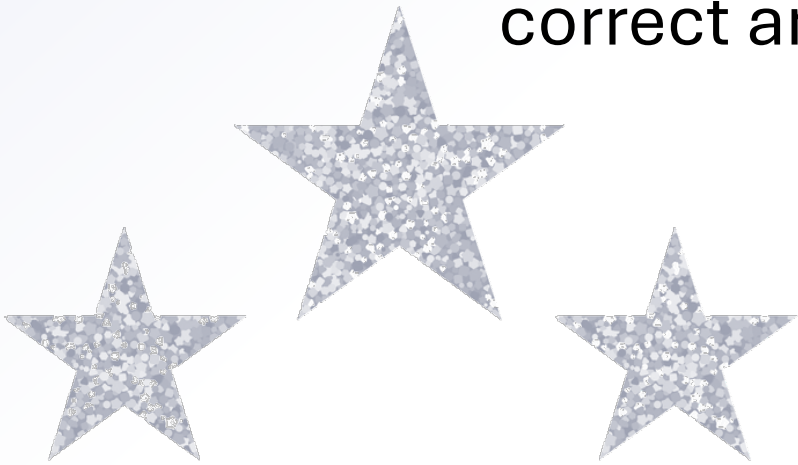
2.1 ☒ **Statements of Work.** CLIENT may submit to Contractor written statements of work substantially in the form of Exhibit A that contain the terms for ☐ that CLIENT desires Contractor to provide. If Contractor begins to perform services under a statement of work, Contractor will be deemed to have accepted such statement of work. Upon acceptance of a statement of work by Contractor (in writing, by performance, or otherwise), such statement of work will be a "Statement of Work." If, prior to execution of a Statement of Work, Contractor performs work that is within the scope of Services described in such Statement of Work, such work will be deemed a part of and subject to such SOW.



# Kindergarten Principle #8

## **"Check Your Work"**

Reviewing for errors and clarity is like checking your work before turning it in—make sure everything is correct and easy to understand, demonstrating you care and are diligent



# Mind the Versions

- Negotiations tend to involve several “turns of the crank” with multiple versions exchanged
- Failure to maintain version control can result in
  - Lost time and momentum
  - Additional effort
  - Inaccurate contracts
  - Frustration and loss of credibility
- Agree to an approach for saving new versions
- Maintain strong organization



Version Control is Critical to Ensuring the Final Bargained for Agreement is Accurately Reflected

# Mind the Versions

## Examples:

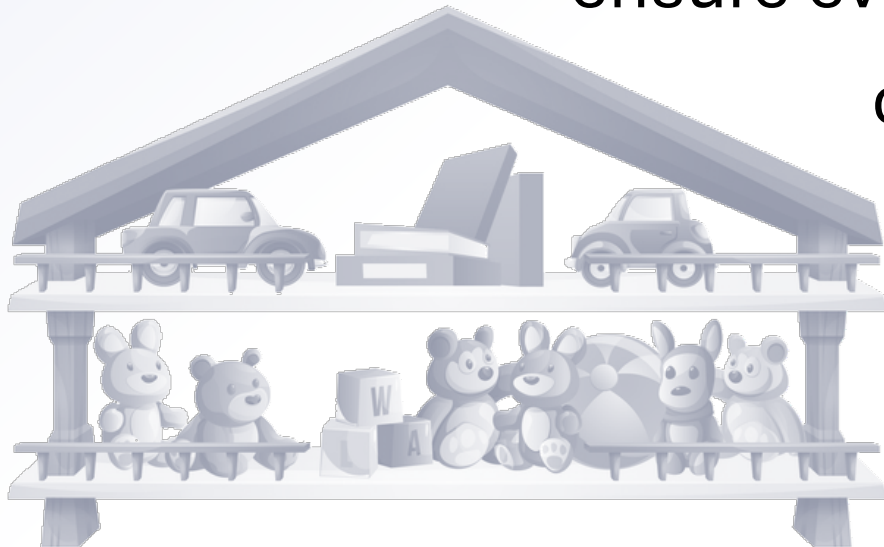
- **Parties with Running Description**
  - Acme\_WileECoyote\_MSA101124
  - Acme\_WileECoyote\_MSA\_WileECoyoteRev101224
  - Acme\_WileECoyote\_MSA\_WileECoyoteRev101223\_AcmeRev101324
- **Use of Version Control Number**
  - Acme\_WileECoyote-MSA V01
  - Acme\_WileECoyote-MSA V02W101124
  - Acme\_WileECoyote-MSA V03A101224



# Kindergarten Principle #9

## **"Keep Your Stuff Organized"**

Managing document versions is like keeping your stuff organized—  
ensure everything is in its place to avoid  
confusion and errors



# Follow Up with Opposing Counsel

## When sending a redline

- Offer explanatory notes upfront (in email or otherwise)
- Propose a timeline for next steps
- Pick up the phone and discuss in person

## When receiving a redline

- Acknowledge receipt and set expectations for review and response
- Don't be afraid to ask for clarification when needed
- Be polite and responsive

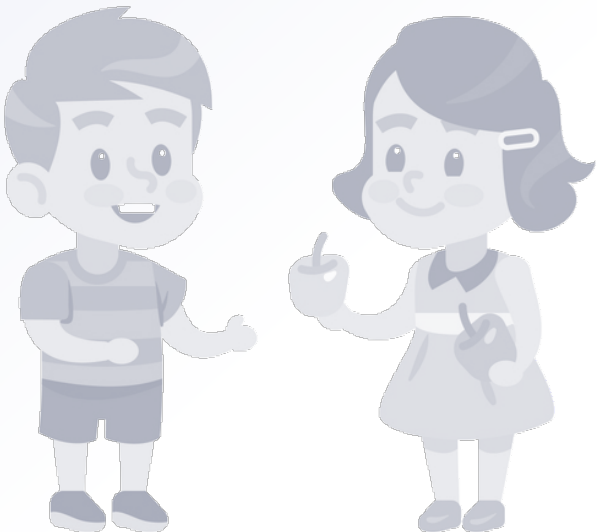
**In all cases,** respond to communications promptly and politely



# Kindergarten Principle #10

## **“Say Please and Thank You”**

Following up appropriately is like using polite words—  
respond promptly, ask for clarification when needed, and  
keep the communication courteous





# Q&A



# Key Takeaways

# Final Thoughts

*“Just like in kindergarten, the basics of good behavior go a long way in generating credibility, good will and positive outcomes—whether you're sharing crayons or redlining contracts”*



**Jason Karp**

Partner, OGC

# Redlining Principles Summary

# Everything you Need to Know about Redlining, you Learned in Kindergarten

## 1. Use Your Words

- **Lesson:** Clear communication is essential. Say what you mean and mean what you say.
- **Redlining Tip:** Articulate your concerns and preferences clearly; principle-based negotiation

## 2. Play Fair

- **Lesson:** Collaboration is key. Use tools that make collaboration easy and transparent.
- **Redlining Tip:** Follow the agreed upon rule to avoid confusion and ensure fairness.

## 3. Be Clear and Use Simple Words

- **Lesson:** Keep it simple and understandable.
- **Redlining Tip:** Keep edits precise, minimal and use plain English.

## 4. Clean Up Your Mess

- **Lesson:** Leave things better than you found them.
- **Redlining Tip:** Focus on the truly important issues first; avoid wholesales changes; read entire agreement before redlining.

## 5. Treat Others the Way you Want to be Treated

- **Lesson:** Be kind . . . always.
- **Redlining Tip:** Maintain a respectful tone; go high when they go low.

# Everything you Need to Know about Redlining, you Learned in Kindergarten

## 6. Work Together

- **Lesson:** Ensure all internal parties are aligned prior to responding to counter-party.
- **Redlining Tip:** Seek real-time input from internal stakeholders.

## 7. Explain and Help Each Other

- **Lesson:** Always provide an explanation; help them understand
- **Redlining Tip:** Provide comments with background, explanation and alternatives.

## 8. Check Your Work

- **Lesson:** Make sure everything is correct and easy to understand.
- **Redlining Tip:** Step away, then proof; streamline the document where possible.

## 9. Keep Your Stuff Organized

- **Lesson:** Ensure documents are complete and organized
- **Redlining Tip:** Use consistent naming conventions.

## 10. Say “please” and “thank you”

- **Lesson:** Follow up appropriately and be courteous.
- **Redlining Tip:** Respond promptly; set timing expectations; seek clarification and always say “thank you.”





# Thank You



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