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As more business documents and processes are digitized, new opportunities to generate value also arise. This is why it is essential to reassess how companies negotiate commercial contracts.

More organizations are using digital platforms to negotiate contracts. Recent surveys find that 74% of legal departments were already using contract management technology in 2020, and 44% of legal leaders plan to invest in Contract Lifecycle Management (CLM) technology in 2021.

Using CLM software to negotiate contracts generates valuable “negotiation data” and captures institutional knowledge. As organizations integrate contract software with CRM, ERP, and other business systems, they can link negotiation data to contract performance.

Companies gain unprecedented insight into the effectiveness of the decisions made during prior negotiations, which enables analytics-driven decision-making on optimizing contracts for value. Here is how digital negotiations will deliver more transparency to help you build a brighter future

Contracts are a Collection of Interoperable Clauses

It helps if you think of a contract as a collection of 15-22 (on average) units called clauses. Each clause has specific attributes (e.g., clause “types” such as those that establish jurisdiction, dollar amounts, dates, obligations). Each clause can also be acted upon (e.g., reviewed, edited, deleted) during negotiations. People and automated processes can act on clauses.

“Negotiation data” includes each clause’s attributes plus data relating to actions such as who reviewed the clause, who made what suggestions, what language was approved or rejected, by whom, over how many iterations, how long it took, the priority associated with the clause, and any other attribute.

Digitizing negotiations allows you to track and measure negotiation data. Digital negotiations use technology, typically CLM software, to perform and create a permanent record of five steps:

1. The initial request to create a contract.
2. Identify the specific attributes of each clause.
3. Identify the actions, people, and automated processes associated with each clause.

4. Automate clause review and redlining, including reconciling and validating internal and external clause data. This step is discussed in more detail below.
5. Assemble the final contract for signature and post-signature management.

Automate Clause Review and Redlining

CLM software can cross-reference your company's digital contract playbook to automatically add redlined suggestions that ensure each clause uses your preferred language and fallback positions. It is a level of built-in guidance that helps negotiators avoid adding improper language or omitting essential provisions.

Your contract playbook can include a policy layer for additional protection and required compliance (e.g., never allow Florida jurisdiction or always add a data protection clause to a specific type of agreement). The software also assesses clause dependencies and identifies non-standard clauses.

Automated workflows perform underlying processes for increased reliability. For example, you can set a specific clause attribute (such as a dollar amount or a type of clause) to trigger an escalation procedure that requires a manager or an executive to review a clause. Contracts that business users generate through self-serve automation can include triggers to mandate legal review.

More Effective Internal and External Collaborations

Using a modern CLM platform to negotiate offers efficient internal and external collaboration options. You can invite multiple team members and counterparties to work side-by-side in real time on an entire document or at a clause level. For example, when you invite someone to discuss a specific clause, they receive an email with a secure link to the exact clause that needs their feedback.

All parties have the option to work in either an internal or an external mode. In internal mode, only internal team members can see and discuss the redlines tagged "internal." Counterparties cannot see redlines and comments until you explicitly mark them as "external."

Confidentiality is protected when parties can work on internal and external redlines in the same contract and even within a single discussion at the same time. This way, when you reveal a redline to a counterparty, they cannot see internal discussions related to it.

An interactive discussion board records a time-stamped negotiation summary for a quick inside view into your progress, including every action and any outstanding tasks. To make collaboration even more efficient, subject matter experts and other occasional users are presented with the action items assigned to them across the contract portfolio.

Digitally Negotiated Contracts are Interactive Digital Assets

As a result, digitally negotiated contracts become three-dimensional digital assets—interactive files with shareable data. You can instantly determine what is in your contract and why it is there—two of the most often-asked questions about contracts.

When you integrate your CLM software with CRM, ERP, and other business systems, you can link a contract's negotiation data to its performance data. Tracking and analyzing data reveals how specific clauses may affect the company's future, giving you guidance for your decisions in today's negotiations to create a brighter future.

The Visibility and Control to Track, Measure, and Guide

In effect, CLM platforms capture and store critical institutional knowledge such as the negotiated clauses with specific companies (e.g., here are the clauses we negotiated with IBM in the past, which we will use with IBM now to minimize the current negotiation cycle.) CLM software stores every negotiation history, enabling companies to use the information for contract optimization, construction of fallback positions, and training purposes.

You gain a 360-degree view of every interaction among parties, contracts, people, and automated processes. You can determine factors such as what types of contracts each department uses and who negotiates which clauses most often.

You can optimize contract language and workflows to bring the highest value, minimize risks, and ensure your organization consistently produces standardized contracts that adhere to corporate governance protocols.

Digitizing contract negotiations is about far more than saving time and money. Digital negotiations empower legal teams to track data, assess performance, and make causal inferences. As a result, you are better informed and prepared to guide your organization to optimal action in a rapidly advancing digital world.