

# Contracting for RPA

Incorporating Robotic Process Automation into the business can enhance productivity, enable accuracy and engage transformation. Morgan Lewis shares insight on the deployment of RPA from a contractual perspective.

**R**obotic process automation (RPA) uses software ‘robots’ to perform tasks that can be defined and repeated at scale.

RPA presents a significant opportunity for businesses in the Middle East to increase the capacity, scale and quality of relevant processes, including back-office and customer-facing activities. This can be achieved without requiring additional workforce resources, overcoming many of the challenges faced in the region as it continues to improve the learning and development of its working capital.

At the same time, RPA can result in a change of delivery philosophy from an opaque, people-focused process to something which is defined from a contractual and service perspective, in particular with specific service parameters, volumetrics and service levels.

RPA can introduce a degree of precision that is often unachievable by human action alone. This can rapidly translate into improved back office performance and ultimately improved customer service and satisfaction.

Additionally, such RPA software works



hand in hand with legacy IT systems without the need for traditional, and often complex IT transformation programmes, making deployment less challenging and complex.

**THE CHALLENGES**

RPA presents both technology-specific challenges, for example, surrounding the selection and deployment of the RPA solution, while potentially compounding traditional risks associated with implementation challenges, service risks such as errors and omissions, and vendor lock-in.

We discuss some of the common themes we have seen emerge, often at an early stage but sometimes post implementation, in sourcing and contracting for RPA.

**PROCURING AN RPA SOLUTION**

Once a decision has been made to automate, it is important for organisations to consider from the outset:

1. Who will be responsible for the implementation and continued operation of the RPA software?
2. Will the RPA software be licensed directly from the technology provider, or through an outsourced provider?

These decisions will often require detailed discussion with any potential or incumbent suppliers and should form part of any RFP process relating to transformation activities or outsourced services that are anticipated or might benefit from RPA deployment in future.

In our experience, customers will often want to hold a direct relationship, including licence terms, with the RPA solution provider in order to avoid potential vendor lock-in but also to retain an in-house understanding of the technology being deployed and potentially to facilitate roll-out of the technology to other parts of the business.

The RFP process should address these questions head-on. It is an important opportunity for the customer to gauge both incumbent and potential supplier experience with RPA, whether they have their own solution and if they use a third-party partner solution, the strength and breadth of that relationship.

**IMPLEMENTING RPA**

RPA implementations present specific challenges that are often not adequately

addressed by traditional contractual project processes. For example, it is often difficult to know at the outset of the project whether, and to what extent, RPA is suitable for deployment in a particular environment and process flow.

Therefore, it is important to consider how the solution will be deployed, including phasing of the project along with the form and scope of acceptance testing. Because legacy systems and processes can vary widely from one business unit to another, it is often very important to incorporate ‘pilot’ phases on a per-business unit basis rather than for the RPA project as a whole.

**OPERATIONAL RISK**

Once implemented, RPA offers a multitude of benefits: from speed and scalability of process execution to cost savings and freeing-up employees to focus on aspects of their jobs that are intrinsically ‘human’ in nature.

However, there are some key operational risks that should be considered when contracting for RPA. For example, operational risks associated with errors in the RPA processes themselves and impacts on the RPA solution of other changes to the customer’s environment and procedures.

The flipside to RPA’s speed and scale of execution is that any errors in the process steps undertaken by the robot or within the robot’s underlying code can result in errors and omissions that can propagate with a consistency and swiftness that would be unheard of in a human-led operation.

For example, in an insurance context, an error in the preparation of policy packs for new customers could lead to incorrect information being sent to policyholders. In this case the insurer could be left with significant remediation costs such as those arising from manual data re-entry and additional staff to handle customer enquiries and complaints, reputational damage and costs and penalties associated with regulatory action.

In addition, for the reasons outlined above in relation to implementation, robots can be particularly sensitive to changes in a customer’s environment. Seemingly minor updates to some desktop software may have a significant impact on the robot’s ability to correctly perform its function.

From a contractual perspective therefore, it is necessary to consider:

- » What steps will the parties be required to



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take to mitigate and remediate the potential impacts in the immediate aftermath of an incident?

» If the RPA solution and managed services are procured from multiple parties, how will those activities be coordinated? Will the parties be required to adopt a 'fix first' approach?

» Which party will be responsible for maintaining the robots once implemented? Will this be the customer, RPA provider, a managed service provider or a combination of all of the above?

» Which party will be responsible for the long-term effects of those errors (including costs and penalties of the type set out above)? For more bespoke RPA solutions, where the provider is responsible for the deployment, configuration and maintenance of the robots, it may be more appropriate to follow a traditional outsourcing approach, whereby the vendor takes on a more significant degree of risk in relation to errors and omissions. However, if the RPA solution has been procured on an 'off the shelf' basis directly from a developer and 'imposed' on an outsourced services provider, customers may have to accept a greater degree of risk.

**EXITING THE RELATIONSHIP**

As mentioned above, RPA deployment can exacerbate the risks associated with vendor lock-in.

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For example, if the RPA solution has been procured through a managed services provider, can the customer continue to use the RPA solution post exit? If so, is the cost of continued use known at the outset or will this be subject to negotiation at the time?

People challenges and considerations

While RPA can be seen as a threat to the employment of people in performance of affected operations, proponents of RPA often cite the human benefits; freeing employees of those aspects of their role that are monotonous or routine and enabling them to focus on aspects of their jobs that are more reliant on human ingenuity and interaction with colleagues and customers.


Demographic changes are also an important consideration, with millennials

now making up more than half of the local Middle East workforce, who bring with them different needs and attitudes to work when compared to prior generations. This younger workforce generally desires greater flexibility in the work place, and more engaging work place tasks.

In the Middle East, there is significant opportunity for businesses to expand their capacity and capability while at the same time using existing, valuable resources in these different and more expansive roles. In addition, it also means that there is now opportunity to undertake this expansion without corporates having to rely on offshoring services to vendors. Work can be retained locally, serviced by local expertise, and with data also being retained in-region. This is an opportunity not just for local corporates to avoid the sensitivities and challenges of offshoring, but also for vendors to develop and promote such RPA offerings.

**BRINGING IT ALL TOGETHER**

The potential benefits of a successful RPA deployment are significant. However, not all RPA deployments are the same. In fact, they are more often than not, highly bespoke to the particular business and IT environment.

As a result, buyers should approach aware of the different challenges of RPA, and ensure that contracts are appropriately stress tested against the key risks and issues associated with the particular deployment 



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