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TECHNOLOGY MAY-RATHON
**THE NEXT FRONTIER: HOW ROBOTS AND
AUTOMATION ARE CHANGING OUTSOURCING AND
TECHNOLOGY AGREEMENTS**

Presented by Edward J. Hansen

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Morgan Lewis Technology May-rathon

Morgan Lewis is proud to present Technology May-rathon, a series of tailored webinars and in-person programs focused on current issues, trends, and developments related to technology that are of key importance to our clients.

This year is our 7th Annual May-rathon and we are offering 25 in-person and virtual events related to the new administration, disruptive technologies, issues in global tech, cybersecurity, and others.

Full listing and recordings of our tech May-rathon programs can be found at <https://www.morganlewis.com/topics/technology-may-rathon>

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Presentation Topics

1. Robotic Process Automation and Artificial Intelligence
2. Adjusting to Shifts in Services and Pricing Models
3. Addressing Robotics and Automation – Contractual Issues

ROBOT PROCESS AUTOMATION AND ARTIFICIAL INTELLIGENCE

WHAT ARE THEY?

WHAT ARE THE DRIVERS?

WHO ARE THE PROVIDERS?

WHAT ARE THE TRENDS AND PROJECTIONS?

What is Robotic Process Automation (RPA) Technology?

- Software “robot” that executes a business or computing process that is repetitive, repeatable and rules-based
- Partially or fully automates tasks that otherwise require a human to perform such as the administrative task of transferring data from multiple input sources like email and spreadsheets to an ERP or CRM system
- Software that operates at the graphical user interface layer, “on top” of a company’s IT infrastructure and therefore does not require changes to the underlying systems and does not need a lot of IT support
- Business people without programming expertise can, after being trained, automate processes with RPA tools

What Are the Drivers of RPA?

- Reduced cost of performance
- Outsourcing deals to date have primarily been based on taking advantage of less expensive labor, wherever it may be located. (India was especially attractive because of its large English-speaking population and highly educated labor force.)
- Cost benefits of labor arbitrage now not as good with labor costs of Service Provider personnel, including in India and other offshore locations, on the rise
- Need to find cost saving alternatives
- Evolution? Customer personnel → Service Provider personnel → Robotic software
- Everest Group/The National Association of Software and Services Companies (NASSCOM): RPA implementation can provide companies with a “cost reduction of 35-65 per cent for onshore process operations and 10-30 per cent in offshore delivery...[and] an investment recovery period as short as 6-9 months . . .”

What Are the Drivers of RPA?

- Reduced error rate, increased consistency
- Decreased cycle times and improved throughput: Software robots are designed to perform tasks faster than a person can and do not require sleep — making 24x7 operations possible.
- Scalability at a fixed and known level of price and service quality
- No loss of institutional knowledge when workers leave
- Reduced training and other costs associated with employee turnover capability
- Reduced risk of theft or misuse of information by Service Provider personnel
- Use in DR/BCP plans – less risk?

What Are the Drivers of RPA?

- Potential increase in employee morale as employees are relieved of repetitive and monotonous tasks and processes and can be refocused and redirected to more rewarding and higher value activities.
- Detailed data capture: The tasks performed by a software robot can be monitored and recorded at every step, producing valuable data and an audit trail that can support further process improvement and also help with regulatory compliance.
- Lower costs while improving service quality, increasing compliance (because everything the software does is logged), and decreasing delivery times.

Some Providers of RPA

- **IPsoft**



- IPcenter – IT services management platform
 - IT infrastructure management and first line IT problem identification and support.
 - Automatic detection and resolution of database failures
 - Determines why the failure occurred and takes steps to prevent future occurrences
- IPsoft case study:
 - Gentiva Health Services, US's leading provider of home healthcare services
 - Infrastructure management contract with IPsoft, under which IPsoft provides server and network infrastructure management with both IPcenter and human-delivered services
 - Enabled Gentiva's growth strategy, replacing older legacies technologies that were slow and at risk of failure
 - Annual savings of 32% in Gentiva's IT infrastructure budget, and additional annual cost avoidance of more than \$1.3M a year over the five years of the contract

Some Providers of RPA



- Automation Anywhere
 - Task Bots – “automate rules-based, repetitive tasks, in areas like HR administration, procure-to-pay, quote-to-cash, IT services, and much more, leading to immediate improvements in productivity, cost-savings, and error reduction”
 - Meta Bots –facilitates scalability for complex, scalable processes
 - Automation Anywhere case study:
 - Core Digital Media, leader in the online marketing and customer acquisition business
 - to deliver high-quality leads to end clients, Core had to manually extract information from around 50 different online publishers in formats including email, websites, and FTP — process that took six hours daily
 - Automation Anywhere Bots enable automated data-extraction processes for its key online publishers
 - Core saves 300 person-hours per month — \$150,000 per year

Some Providers of RPA



- **UiPath**

- UiPath Studio is a tool that enables business users with no coding skills to design robotic processes
- UiPath Robots execute processes and run either unattended in a virtual environment in a datacenter (Back Office Robots) or on a desktop shared with a human (Front Office Robots).
- UiPath Orchestrator is a browser-based server application that enables a customer to manage robots and processes. Provides ability to deploy, start, stop, and schedule processes and monitor their execution by the robots.

Some Providers of RPA



- **Blue Prism**

- Blue Prism’s Virtual Workforce is code-free and automates any processes that are clerical or administrative in nature –“automates any application and supports any platform”
- Scalable and can be deployed either in cloud or on-premises
- Blue Prism case study:
 - As of April 2015, Telefónica O2 (second-largest mobile telecommunications provider in UK) deployed over 160 “robots” that process between 400,000 and 500,000 transactions each month, yielding a three-year return on investment of between 650 and 800 percent
 - Reduced the turnaround time on some processes from days to just minutes.
 - Reduced customer follow-up calls by over 80 percent per year due to increased accuracy of performance
 - Scalability – the robotic workforce could be doubled almost instantly when new products were about to be launched—and then scaled back down after the surge
 - FTE reduction at India-based BPO service provider to Telefónica O2 “in the hundreds”

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Artificial Intelligence

- AI is intelligent software with human-like capabilities, such as recognizing handwriting, identifying images, and natural language processing.
- Can either directly assist people in the performance of nonroutine tasks or automate the tasks.
- AI tools are typically used to provide leverage to existing functions, focusing on increasing value rather than reducing cost.
- Unlike RPA, which requires a human expert to hard code a script or workflow into a system, AI can process natural language and unstructured data

Examples of Artificial Intelligence

- In 2011, IBM's Watson won a highly publicized game of Jeopardy!. Since then, the marketplace has begun to develop, and pioneering enterprises are leveraging AI for assorted purposes.



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Examples of Artificial Intelligence

- IPsoft's "Amelia" virtual service desk software that responds to email, answers and responds to phone calls.
- According to IPSoft, Amelia can, after two months of learning from her human colleagues, handle over 60% of support tickets on her own.



Examples of Artificial Intelligence

- Global banks are leveraging AI to improve the regulatory compliance processes by monitoring all electronic communications of employees for indicators of noncompliant activities.
- Global banks are also employing AI to improve fraud monitoring and detection.
- AI engine matches Airbnb guests with the housing they want
- Manufacturers use AI to predict when their machines will break (and fix them before they do)
- Doctors use AI to go through databases of medical images to identify and diagnose diseases
- Salesforce.com recently announced adding AI-based component called Einstein to its software, designed to automate tasks, predict behavior and highlight trends, prospects and other relevant information.
- So many more examples of technology companies shifting their focus to AI – Microsoft has > 5,000 employees in its AI division.

Examples of Artificial Intelligence

- ROSS, an “Artificially Intelligent Lawyer”
Powered by IBM’s Watson technology
 - ROSS “helps human lawyers research faster and focus on advising clients”
 - Currently used for research, but plans to add abilities to review and draft contracts, conduct e-discovery, etc.
- DoNotPay robot parking ticket appeal “attorney.”
 - Q&A chat with software bot, available for free online
 - Has successful appealed some \$3 million worth of tickets, saving drivers the cost of hiring a lawyer for the appeal
- Human lawyers remain ethically responsible for AI software’s mistakes

ROSS



Trends and Projections

- Transparency Market Research: the market for IT robotic automation globally is forecast to reach \$4.98 Billion by 2020, increasing by more than 60% per year
- RPA product offerings are more mature than AI offerings
- Everest Group/NASSCOM:
 - Of the amount spent on business process services, the “spend impacted by RPA is low” but over 2014-2015 it grew by more than a 100% compound annual growth rate
 - RPA is likely to impact 30-40% of the business process service spend in the long term
- International Data Corp. predicts the worldwide market for AI to grow from \$1.6 billion in 2015 to \$16.5 billion in 2019, increasing by more than 60% per year.
- The coming years will be about replacing some labor with RPA and AI

AI-Driven Market Shifts

- Using AI, providers will focus on:
 - Advanced analytics
 - AI-powered and increasingly autonomous business processes
 - AI-powered immersive, conversational and continuous interfaces
- Current and future shifts in the market:
 - Outcome based
 - Customer experience
 - Shorter terms
 - Innovation
 - Speedier access to new technology
 - Less focus on asset ownership

ADJUSTING TO SHIFTS IN SERVICES AND PRICING MODELS

Effect on the Traditional Outsourcing Providers

- Limits of labor arbitrage have or will be reached. While service providers previously relied on lower offshore salaries for savings, increased demand for labor has increased the costs of offshore outsourcers (and reduced labor arbitrage opportunities). But customers want to see continued savings.
- Expanding capabilities of RPA and AI threaten the traditional model of many traditional outsourcing providers. Many large global outsourcing providers built their business model around employing more people.
- Service Providers forced to adapt or lose business
- Offshore Service Providers starting to focus on higher-skilled services, using higher priced personnel (with reduced turnover). Services requiring more human intellect or required by law to have specifically licensed or trained humans perform (e.g., a regulated service offering such as care management).
- Services that are closer to Customers' core business?
- Traditional FTE-based pricing model giving way to transaction-based pricing models
- Move back onshore/in-house?

Effect on the Traditional Outsourcing Providers

- Infosys has a deal with IPsoft.
 - Infosys using IPsoft's IPcenter platform for its own infrastructure management and network management service delivery
 - Infosys including IPcenter in its ADM and BPO service offerings
- Cognizant and WIPRO also entered into deals with IPsoft
- Now, outsourcing firms are now taking the next step and acquiring/building their own RPA and AI capabilities.
- Cognizant acquired Trizetto.
- Wipro has created an AI platform called Holmes, which helps automate business processes such as managing and resolving help desk tickets.
- TCS is working on an AI platform called Ignio, which runs a variety of IT processes with a view to optimizing IT operations.
- Infosys has announced its development of an AI platform.

Effects on the Existing Outsourcing Contract

- Most existing contracts were not negotiated to contemplate RPA and AI. But the contracts, if drafted to be flexible and contemplate change, may have some available “hooks”
 - If service providers implement and reduce their costs of providing services, does the contract provide for a sharing of the cost savings by the customer?
 - Is there a benchmarking provision?
 - Will the benchmarking provisions apply as written if there are few other on-point deals with RPA/AI?

Effects on the Existing Outsourcing Contract

- If the pricing model is based on the number of service provider FTEs, what is the service provider's incentive to employ RPA and reduce the cost of delivery and improve service levels?
 - Again, a benchmarking provision may be helpful
 - Is there a provision requiring the service provider to use evolving technological advancements in delivering the services and to improve the methods of delivering the services?
 - Is there a provision requiring service provider to use commercially reasonable efforts to improve quality and efficiency of services to keep pace with industry practices?
- Are there any other specific continuous improvement obligations of the service provider that are relevant?
- Mid-term change order? Requested by customer and agreed to by service provider to solidify the customer relationship?
 - Who pays for implementation?

Effects on the Existing Outsourcing Contract

- Elimination of service provider personnel
 - Applicable labor laws
 - Efforts to re-deploy
 - Wind-down costs
- SLA burn in?
- Need to beef-up provisions relating to audits of service provider's systems?
- Need to modify pricing provisions to reflect a transaction or output-based model?
- Need to re-assess the IP provisions?

ADDRESSING ROBOTICS AND AUTOMATION CONTRACTUAL ISSUES

Discussion Topics

- Applicable Contractual Provisions
- Pricing and Cost Considerations
- New Service levels – Documenting Benefits
- Addressing Failures
- IP issues – New Developments
- Personnel provisions
- Back end considerations

Contractual Provisions

- Continuous Improvement Provisions
 - Typically Hardware Systems, Network and Operating Software
 - Provisions need to include current applications software and automated and robotics software
 - Typically service level improvement – need to also include cost/price improvement
 - Annual reviews – topic and review of state of industry
 - If no specific provisions, incorporated in operational / executive governance meetings

Continuous Improvement - Example

Provider undertakes at all times during the Term to: (a) actively monitor the nature and categories of (and the manner and method of delivery of) services provided by other outsourcing providers of services similar to the Services (to the extent reasonably possible and subject to any obligations as to confidentiality), and to keep Customer informed of developments which relate to the Services or which it reasonably believes to be of relevance to Customer; (b) be innovative and make reasonable efforts to seek to improve the quality, productivity and performance of the Services, to reduce Provider's costs and expenses incurred in providing the Services and to reduce the charges payable in respect of the Services, and to offer new or alternative services which may provide improved service levels, additional functionality, cost reductions and/or greater productivity for consideration by Customer; (c) maintain its investment in technology, equipment and associated skills so as to ensure it remains a supplier of high quality services and retains the knowledge base to fulfill Provider's obligations under this Agreement; (d) provide the Services using proven, current technology that will enable Customer to take advantage of technological advancements with, to the extent reasonably possible, minimum disruption to the business of Customer; and (e) operate in a timely, open and honest manner with regard to the aspirations, needs, commitments or difficulties of the business of Customer.

Any reductions in the costs and expenses of Provider in providing the Services achieved by Provider arising as a result of fulfilling Provider's obligations of Continuous Improvement and Innovation shall be shared between the Parties in accordance with the gainsharing principles set forth in Section X or as otherwise agreed by the Parties in a Change Control Item or Amendment.

Continuous Improvement - Example

- Every six (6) months, Provider shall provide to Customer an Innovation Program Plan (“IPP”) describing the opportunities to implement innovation initiatives for cost savings and/or improvement in the Services. Provider shall set out in the IPP the financial investment required by Provider and/or Customer and the projected financial impact on the ongoing fees.
- The objectives which the IPP is targeted to achieve include but are not limited to delivering:
 - a) a step change in end-to-end Service delivery that significantly improves the Services delivered to Customer;
 - b) significant reduction in the total end-to-end cost of the Services;
 - c) leveraging new and emerging technologies for added value and business benefit; and
 - d) supporting cost effective and speedy deployment for inorganic growth opportunities (e.g., by accelerating the integration of a new acquisition) requiring a step change or a dramatic rethink in the Services scope and delivery infrastructure.

Continuous Improvement - Example

- The IPP shall clearly set out applicable timescales and requirements of Customer, shall be amended to reflect Customer's input and shall be subject to Customer's approval.
- The detailed projected financial impact of each Customer approved IPP item on ongoing fees and any required investment by Provider and/or Customer shall be clearly set out for each agreed item. For avoidance of doubt, the innovation initiatives set out in the IPP may relate to delivery of the Services to Customer specifically, or to wider Provider initiatives impacting its overall service delivery model which are not specific to Customer, but will impact the underlying delivery of the Services to Customer. Provider shall formally disclose all such initiatives to Customer via the IPP process.
- The impact of all implemented IPP initiatives on the scope of Services delivered by Provider and/or the ongoing fees shall be documented via the Change Control Procedures.

Contractual Provisions

- Benchmarking Provisions
 - Not Just Price
 - Service Level Provisions
 - Impact on Customer Processes and Costs
 - Timing
 - Not one time/short term process
 - Right to benchmark if significant technology change
 - Expertise
 - Technology as well as price

Benchmarking - Example

- From time to time during the Term of this Master Services Agreement, following the first anniversary of the Commencement Date and not more frequently than every 12 months thereafter, Customer may initiate a Benchmarking pursuant to which the Parties shall engage the services of an independent third party (a "Benchmarker") to compare the charges and service level agreements for all or part of the Services and the methods of delivering the Services against prices charged, service levels agreed to, and service delivery methods used by a pool of other service providers to similar customers for work of a similar nature, type, volume and geography ("Benchmarking").

Benchmarking - Example

- The Benchmarker shall normalize the data points gathered in order to account for differences between the following factors (the “**Normalization Factors**”):
 - a) volume of services;
 - b) scope of services;
 - c) complexity of services;
 - d) degree of standardization of the services;
 - e) mode of service delivery;
 - f) levels of supplier investment;
 - g) balance of fixed and variable charges;
 - h) locations of service delivery; and
 - i) economies of scale; and any other relevant factors applicable to the entities comprising the data points.

Contractual Provisions

- Change Process
 - Party requesting
 - Issue – Change in Services vs. Method of Providing Service
 - Provide case for change in services / service levels
 - Add provision regarding technology changes
- Required Technology Changes

Required Technology Changes

- In the event that Customer wishes to introduce new technology or a major change or shift in then-current technology with respect to any of the Services, Customer may upon notice to Supplier elect to add, modify or remove a Service for purposes of reflecting the new technology or change in technology. Upon notice from Customer of such election, the Parties promptly shall (a) assess the impact to staffing and, if applicable, costs and (b) agree on, and amend the Master Services Agreement to reflect, the appropriate Services Levels and any changes to fees and rates applicable to such change, including up-front, baseline and variable costs/fees.

Pricing and Cost Impacts – Consider the Overall Impact

- **Costs of Automation.** Automation projects – at least at the outset – may not be without incremental expense. When considering an automation project it is important to consider the one-time and ongoing incremental costs and balance those against the anticipated efficiencies and benefits. Costs of automation may include:
 - *Software licensing and maintenance.* For proprietary products, many vendors are licensing their automation software as a standalone offering with standalone pricing. There also may be third party license and maintenance costs if the proprietary products require specific operating systems, Middleware or application software to operate.
 - *Software configuration, interfaces and implementation*
 - *Incremental infrastructure and capacity*

Pricing and Cost Impacts – Consider the Overall Impact

- **Personnel costs**

One impact of automation may (or may not) be the reduction of required headcount. If there is a reduction in headcount because less people are needed to provide a service that is not “automated,” will there be an adjustment to the fees? What are the adjustments? Will there be an adjustment regardless as to whether the vendor can actually reduce the headcount? Consider including a requirement that headcount cannot be reduced until the vendor can demonstrate that the documented benefits have been realized.

Cost Responsibility

- Sharing of Reduced Costs.
 - Contractual Provisions
 - Change Management Process
 - Issue: Customer cost reductions
- Example
 - In no event shall Customer be responsible for incurring any incremental costs or expenses (including for personnel, tools and infrastructure capacity and requirements) associated with Supplier's provision, implementation and ongoing support and operation of process and other improvements associated with achieving the Committed Productivity. Customer's approval of any changes to, or the introduction of new, processes or tools is not a dependency for Supplier's commitment to meet the Committed Productivity and Customer's non-approval shall not relieve Supplier of its obligations with respect to the Committed Productivity.

Better Service Levels

- Examples
 - Speed to respond / answer
 - Speed to report
 - Speed to resolve
 - Better accuracy
- Better monitoring
- Real time and better reporting
- Availability

Documenting Benefits

- **Documented Benefits (upfront and ongoing).** Automation sounds great, but what are the real benefits, As with any implementation, it is important to document the intended benefits of a project and the impact on the existing scope. Will there be a change in services? Will there be different or better service levels and / or reporting?

Availability

- Provider warrants that the software made available under the Agreement will maintain an average standard response time of seven seconds or less in all transactions within any 24-hour period. Provider additionally warrants that the software will be available 99.995% of the time during any 30 day period.
- Provider will be responsible for performing daily incremental backups on all servers on an hourly basis and full backups of all Customer Data on a daily basis.
- Provider will perform restore operations and provide infrastructure redundancies and rapid (48 hours or less) reliable data recovery to ensure business continuity.

Addressing Failures

Existing contracts focus on addressing human errors

- Confidentiality
- Security
- Audits

Potential failures of AI and RPA

- Higher-Level
- More Widespread
- Different Kinds of Oversight

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IP Issues

- **Ownership of Customer Data**
 - Data provided by Customer
 - Customer Data developed by Automated Tools
 - Deliverables – Data and Reports
 - Use by Vendor
 - Aggregation – identification issues
 - Removal on termination of agreement

IP Issues

- **Ownership of Software / Algorithms / Process Automations**

- Customer-specific process automations and learning methods
 - Difficulty in distinguishing from automated tool
 - Competitor use issues
 - Removal upon termination of agreement vs. license
 - Continued right to use settings, preferences and methods – for use with next software/algorithm
- General purpose algorithms
 - Ownership vs. license rights
 - Competitor use issues
 - Cost issues

- **Third Party Tools**

- Review contracts
- Direct contracting

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Customer Data Definition - Example

“Customer Data” means all text, files, data, output, programs, files, information or material (a) of or submitted by or relating to any Customer Entities or any of their users, personnel, representatives, customers or vendors, (b) residing on any In-Scope Systems, or (c) generated, obtained, developed, processed or produced by, as a result of or in connection with the Services or the use of the Services, including any changes, improvement, enhancements or updates thereto.

Ownership of Customer Data - Example

As between the Parties, Customer retains all intellectual property and other rights in Customer Data. Customer Data will be considered confidential information of Customer, which Provider must keep strictly confidential in accordance with the Agreement.

Use of Customer Data - Example

- Without Customer's approval (in its sole discretion), Customer Data shall not be (i) used by Provider other than in its aggregated and de-identified form (i.e., without individually-identifiable information regarding any Authorized Customer Customers and their Users or any of its employees or customers), (ii) used by Provider or Provider Personnel other than for the sole purpose of improving, enhancing or modifying the design and operation of the Anti-Fraud Model included in the Licensed Materials and also in connection with the performance of the ongoing support services and the Anti-Fraud Model used by Provider's licensees other than Customer, subject to the condition that such aggregated and de-identified Customer Data cannot be provided by Provider to, or used by Provider for the benefit of, any of its other licensees unless such licensee has agreed to the provision and use of its similar data, in an aggregated and de-identified form, for the benefit of Provider's other licensees, including Customer, for, among other things, the purposes set forth above in this clause (ii), (iii) disclosed, sold, assigned, leased, or otherwise provided to third parties by Provider, or (iv) commercially exploited except as set forth in this paragraph by or on behalf of Provider.

Work Product Definition - Example

Work Product, includes, but is not limited to, any tangible or intangible property, **data (including all data inputs and outputs)**, works of authorship (whether or not embodied in a tangible medium), **formulae, artwork, sketches, software code, designs, graphics, algorithms, data models, use cases, reports, data feeds, performance data, data warehouses, APIs, interfaces, data access logs, meta data, access control lists**, modifications, enhancements, configurations and customizations of source code, binary code, derivative works user interface, libraries, **data integration patterns**, data structures, automation patterns, artifacts developed through cognitive computing, architecture and related designs, discoveries, inventions, know-how, techniques, concepts, and improvements.

Ownership of Software - Example

- Ownership of Licensed Materials. Provider does and will continue to own all Intellectual Property Rights in or attached to the Licensed Materials subject to the license rights granted by Provider hereunder. Except for the license rights granted hereunder, nothing contained herein shall be construed as a transfer or conveyance by Provider to Customer of ownership or title to the Intellectual Property Rights in or attached to the Licensed Materials.

Ownership of Process Automations - Example

- Ownership of Process Automations. Customer does and will continue to own all Intellectual Property Rights in or attached to the Process Automations. Nothing contained herein shall be construed as a transfer or conveyance by Customer to Provider of ownership or title to the Intellectual Property Rights in or attached to the Process Automations. Customer shall have the right to use (or engage others to use on its behalf) the Process Automations with software other than the Licensed Software so long as in doing so Customer (or anyone acting on its behalf) does not use any Confidential Information of Provider. Customer shall have the right to perform (or have performed on its behalf) any conversion or modification necessary to achieve the use of the Process Automations with software other than the Licensed Software so long as in doing so Customer (or anyone acting on its behalf) does not use any Confidential Information of Provider. Provider does not warrant or represent in either case that the Process Automations will work with any software other than the Licensed Software or that they can be converted or modified as set forth above.
- “Process Automations” means the processes and procedures that are automated by Authorized Users using the Licensed Software.

Personnel Issues

- Relooking at staffing models
- Reshaping personnel projections
- What if the projected benefits are not achieved?
- Example:
 - Notwithstanding step downs in the headcount set forth in XXX, Supplier shall not decrease any of the headcount (i.e., implement the step downs) for the Services if Supplier cannot reasonably demonstrate, to Customer's reasonable satisfaction, through reasonable documentation of process and other improvements that it is able to meet the year over year Committed Output

Back End Considerations

- Term and Termination
 - Supplier knowledgebase/experience
 - Extended term (both transition and full terms)
 - Limit Supplier Rights to terminate
 - Strong Benchmarking / Change Management provisions
- Expiration/ Termination Assistance
 - Continued services / flexibility on transition date
 - Knowledge transfer
 - Before, during and after transition
 - Specific requirements – key personnel

Back End Considerations

- IP Provisions Key
- Customer Data
 - Need data provided by Customer and data developed by Automated Tools
 - Processes during term – access, delivery and storage of data
 - Format and organization of data
 - Use of Customer Data by Vendor
 - Maintenance until transfer – survival period
 - Transfer/cooperation with successor vendor
 - Aggregation – continued use past termination
 - Removal
- Work Product

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Back End Considerations

- Customer-specific processes and learning methods
 - Part of transfer
 - Testing issues – dual operations and back-up
 - Ownership issues – “catch-all license”
 - Removal upon termination
- General automation tools
 - Post termination use of Vendor Tools
 - Terms (Costs and Restrictions)
 - Support and Maintenance
 - Development of Vendor Tools
 - Ownership vs. license rights
 - Use following termination
 - Competitor use issues

Back End Considerations

- Third Party Tools
 - Continued Use
 - Vendor Terms – assignment/sublicensing
 - Direct contract
 - Successor vendor
 - Support and Maintenance
- Most Important - Establish up-front
 - Service Description / Statement of Work
 - Change Orders
 - Technology Development

Access to/Removal of Customer Data - Example

- Customer will have access to and the ability to easily download any Customer Data stored, hosted or controlled by Provider or any Provider agents at all times.
- Customer will have the right to remove or require Provider to remove Customer Data from the systems or software of Provider or any Provider agents. Provider will not destroy or purge any Customer Data without Customer's consent. Upon termination or expiration of the Agreement for any reason, or upon request by Customer at any time, Provider will immediately (or as otherwise directed by Customer in writing) cease to process the Customer Data and will promptly return to Customer all such Customer Data, or destroy the same, in accordance with Customer's instructions.

Provider Use of Customer Data - Example

- Both Parties will have the right to use performance data relating to the performance of the Services; provided, that, any use by Provider will be of aggregated, de-identified data that in no way references or implicates any Customer Entities.
- Indemnity re third-party claims for identification, re-identification.

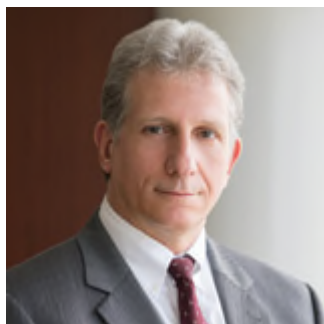
Post Termination Use of Fraud Detection Model - Example

- Provider hereby grants to Customer a perpetual, irrevocable, non-exclusive, royalty-free, fully paid-up, non-transferable limited license for Customer to use the settings, preferences and methods that are part of the licensed Anti-Fraud Model, upon the expiration or sooner termination of the Maintenance and Support Services Term and the Termination Assistance Period, solely for the purpose of providing for itself or having provided for Customer by third parties services similar to the Services and/or services to develop Software Products (provided that such Software Products must be created independently of the Software).

Post Termination Assistance with Use of Process Automation - Example

- Upon Customer's request in writing, (a) Customer's license rights under this Agreement and (b) Provider's obligation to provide the Support Services shall continue for up to 12 months after expiration or any termination of this Agreement (the "Termination/Expiration Transition Period"), but such rights and such Support Services will be in accordance with this Agreement. In addition, Provider shall, upon Customer's reasonable request but subject to available resources (which shall not be unreasonably withheld, delayed or conditioned by Provider), provide to Provider termination and wind down assistance services in addition to such Support Services and, if applicable, Provider's successor licensor and/or service provider to facilitate a reasonable transition of the Process Automations and maintenance and support for same ("Termination/Expiration Transition Services") during the Termination/Expiration Transition Period. Provider gives no warranty or representation that a successor licensor or another service provider will be able to use or support the Process Automations without the Licensed Materials.

Biography



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Edward J. Hansen brings more than 20 years of experience representing clients in technology transactions that involve significant business change. From the early stages of deals, Ed works closely with clients and their advisers on whole deal advice, often before a request for proposal is sent, and continues his support throughout the engagement's life cycle.

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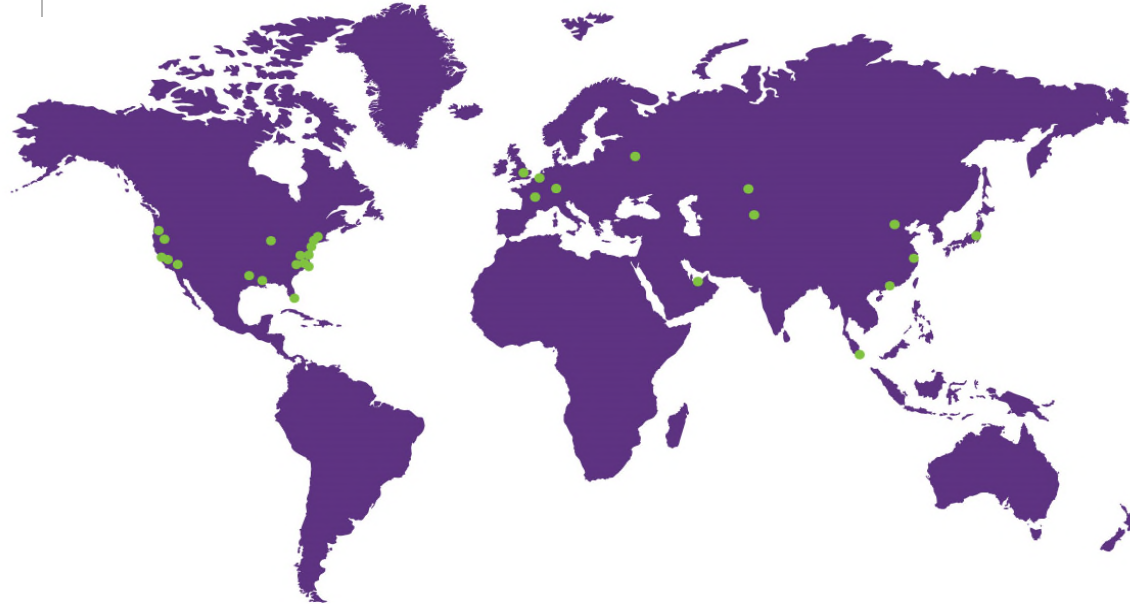


Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty	Dallas	London	Paris	Shanghai*
Astana	Dubai	Los Angeles	Philadelphia	Silicon Valley
Beijing*	Frankfurt	Miami	Pittsburgh	Singapore
Boston	Hartford	Moscow	Princeton	Tokyo
Brussels	Hong Kong*	New York	San Francisco	Washington, DC
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