Transforming Outsourcing Agreements for AI, RPA and Big Data

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Transforming Outsourcing Agreements for AI, RPA and Big Data Analytics

Traditional outsourcing approaches replace employee labor with supplier labor, often offshore. Increasingly, however, suppliers are able to automate work using robotic process automation (RPA) and artificial intelligence (AI). These technologies result in dramatic changes to the cost model, and require all suppliers to produce and control new and highly valuable streams of big data. Traditional outsourcing contracts lack the protections that customers need with these new technologies, creating new risks even in existing contracts. However, customers have tremendous opportunities to use supplier tools to reduce cost, optimize performance and provide a wealth of new and valuable big data insights. This presentation will describe how to reduce those risks and capture those benefits.

Learning Objectives

– Why AI, RPA and big data analytics are game-changers for outsourcing
– What to ask for from outsourcing suppliers now
– How to identify and negotiate the new legal and contracting issues
– How to restructure, retrofit, re-price and renegotiate existing outsourcing arrangements for RPA, AI and big data
Speakers

Brad Peterson  
*Mayer Brown, Partner*

Brad Peterson leads the Technology Transactions practice at Mayer Brown. As a corporate technology lawyer, Brad helps global companies work more effectively with their technology and operations suppliers, and he is one of the nation’s most experienced and highest-ranked outsourcing lawyers. In the past five years, he has represented clients in increasing numbers of contracts with digital services providers, including cloud, data analytics, “as a Service” and automated process scopes and cyber security and privacy issues related to those scopes.

Elena Christopher  
*HfS Research, Vice President*

Elena Christopher is Vice President, Industry Research at HfS. Elena is responsible for driving the industry-specific research agenda for HfS - digging into the major trends impacting each in-scope industry and the implications for business process and IT services. She collaborates with her fellow analysts to cultivate the industry angle on major trends such as automation, artificial intelligence, blockchain, digital business models and smart analytics. Elena’s primary coverage areas are High-Tech and Banking. In addition, she drives the industry point of view across all HfS research. Elena brings more than 20 years of IT and business process services expertise to HfS, having served as either an advisor or vendor partner for major clients in industries such as financial services, high-tech, communications, retail, automotive and energy.
Mayer Brown’s Technology Transactions Practice

- More than 50 lawyers around the world focused on helping clients develop and manage relationships with suppliers of critical services and technology
- Experience in 400 critical services sourcing deals with a total contract value exceeding $200 billion, including data, digital, outsourcing and software

Recognized Market Leader

“Band 1” ranking in IT/Outsourcing for 14 consecutive years (Chambers 2004-2017)

Named “MTT Outsourcing Team of the Year” in 2014 and ranked in the top tier from 2010 through 2017

Ranked as one of the top law firms 2009 - 2017 on World’s Best Outsourcing Advisors list for The Global Outsourcing 100™

Named 2016 “Technology Practice Group of the Year”

“They have current cutting-edge knowledge and are savvy about attuning their counsel to the needs of the client to arrive at a satisfactory solution to many sticky issues.”
~ Chambers USA 2017

“They are very good at being able to communicate and synthesize information in a useful and easily understandable way.”
~ Chambers USA 2016

“They’re very practical in terms of trying to identify solutions and giving very good advice on areas where it’s reasonable for us to compromise or, alternatively, where to hold our ground.”
~ Chambers USA 2015

“Their knowledge in this area is tremendous. They know us so well they blend into our deal teams and become a natural extension to our in-house team.”
~ Chambers USA 2014

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HfS’ Analyst 2.0 model creates Knowledge and Influence for the Operations Industry

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- The Leading Publisher of Operations Research
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<table>
<thead>
<tr>
<th>THEY'RE INFLUENTIAL</th>
<th>THEY'RE BUYERS</th>
<th>THEY'RE EAGER TO PARTICIPATE</th>
<th>THEY'RE WILLING</th>
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<td>74%</td>
<td>40%</td>
<td>93%</td>
<td>79%</td>
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- C-level, VP, director or managers from multiple industries
- are buyers or evaluators
- want to discuss global business initiatives
- want to participate in HFS surveys

Awards and recognitions

- Analyst of the Year – 2016
- Independent Analyst Firm of the Year – 2015
- Top 3 Demand Side
- Top 10 EMEA
- Top 5 Americas

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The Future of Operations in the Robotic Age: The OneOffice

One that is focused on creating an impactful customer experience and intelligent operations to enable and support it.
The RPA Continuum

- RPA allows businesses to tailor complex automations for their end-to-end transactional processes, thereby removing the human component from many repetitive, complex, ruled-based actions and processes.
- When an RPA robot is at work, it performs tasks just like a human would: logging in, operating applications, entering data, performing complex calculations, and logging out.
- RPA excels at performing high-volume rule-based transactional tasks, including record maintenance, queries, calculations, and transactions.
- Programmable automation means that RPA can be configured to perform almost any rule-based task.
Just like Intelligent Automation, AI should be seen as continuum.

AI refers to the simulation of human-thought processes across enterprise operations, where the system makes autonomous decisions, using high-level policies, constantly monitoring and optimizing its performance and automatically adapting itself to changing conditions and evolving business rules and dynamics. It involves self-learning systems that use data mining, pattern recognition and natural-language processing to mimic the way the human brain works without continuous manual intervention.
## HfS Automation Maturity Model

<table>
<thead>
<tr>
<th>Automation maturity</th>
<th>Goal</th>
<th>Impact on current process</th>
<th>Target areas</th>
<th>Deployment model</th>
<th>Scalability focus</th>
<th>Data usage focus</th>
<th>“Bot” lifecycle</th>
<th>Intelligent Automation alignment</th>
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<tr>
<td>Level 4: Integrate</td>
<td>+ Service delivery synchronization</td>
<td>Re-imagined processes</td>
<td>End-to-end enterprise processes</td>
<td>Integrated “bots” managed independently</td>
<td>End-to-end enterprise processes</td>
<td>Used for solving business problem</td>
<td>“bots” as shared capability across client available on demand</td>
<td>Integrated solutions across RPA and AI</td>
</tr>
<tr>
<td>Level 3: Institutionalize</td>
<td>+ Standardized process delivery</td>
<td>Re-engineered processes</td>
<td>Processes with judgment-based tasks</td>
<td>Shared pool of co-ordinated “bots”</td>
<td>Across standardized processes</td>
<td>Used to re-engineer process</td>
<td>“bots” as shared capability across client available on demand</td>
<td>Investigating alignment between RPA and Artificial Intelligence (AI)</td>
</tr>
<tr>
<td>Level 2: Implement</td>
<td>+ Process efficiency and effectiveness</td>
<td>Looking for common process components</td>
<td>Processes with unstructured data</td>
<td>Co-ordinated “bots”</td>
<td>Common shared processes</td>
<td>Used for driving process efficiency</td>
<td>Dependent on each client and process</td>
<td>RPA dominates</td>
</tr>
<tr>
<td>Level 1: Investigate</td>
<td>Cost-reduction</td>
<td>As-is / no-change</td>
<td>Simple rule-based</td>
<td>Individual “bots”</td>
<td>Specific tasks / processes</td>
<td>Used for performance management</td>
<td>Not specified</td>
<td>No alignment</td>
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HfS Triple A Trifecta – Automation, Analytics, and AI

The Holy Grail of service delivery transformation is at the intersection of the Trifecta

**Robotic Process Automation (RPA)**
- Increase efficiency / productivity
- Primarily structured data
- Requires human intervention for judgment-intensive tasks and to make changes / improvements
- Non-disruptive to legacy IT, business user friendly

**Smart Analytics**
- Improves decision-making
- Structured and unstructured data
- Humans take final decisions basis insights and recommendations that improve/learn over time
- Ability to sense, comprehend, adapt, and recommend

**Artificial Intelligence**
- Solve business problems
- Structured and unstructured data
- Humans only involved in setting objectives and initial training
- Combination of reasoning, knowledge, planning, learning, natural language processing, and/or perception
Days of double-digit BPS growth are long gone

Average Quarterly Growth for 75 of the Leading IT and Business Process Service Providers to Q1 2017

Source: HfS analysis of individual company financials (adjusted for acquisitions over half the revenue of original company)
We are finally moving beyond labor arbitrage

How will offshore use change in outsourcing and shared services over the next two years? (Net increase/decrease.)

Source: HfS Research in Conjunction with KPMG, "State of Operations and Outsourcing 2017"
Sample: n=454 Enterprise Buyers
Total Impact of Automation and AI on IT/BPO Services
Workers across the Global Services Industry
The Most Successful Enterprises Make Collaborative Partnerships With Providers

How would you best describe your current primary service provider in relation to your digital transformation journey?

- A true partner that proactively innovates and invests with you to...
  - Lowest Quartile: 40%
  - Highest Quartile: 61%
- A competent partner that provides access to skills, global scale,…
  - Lowest Quartile: 40%
  - Highest Quartile: 31%
- Efficient vehicle to drive out cost and improve efficiencies
  - Lowest Quartile: 15%
  - Highest Quartile: 7%
- Promises a lot, but constantly disappoints
  - Lowest Quartile: 1%
  - Highest Quartile: 5%
- Provides access to cheap labor, but not much beyond that
• **The last decade was about securing cheaper labor.** The coming decade will be about replacing cheaper labor with RPA and AI.

• **One software robot could replace multiple employees.** In one case study, 10 software robots replaced 20 human FTEs. The observation was that software robots accurately follow steps whereas humans, on the other hand, typically make 10 errors during a 100-step process.

• **Additional software robots can be deployed with relatively low marginal cost.** Consequently, software robots could be an effective means of scaling throughput at a fixed and known level of service and quality by comparison to marginal labor costs, *unless* the license fees make the marginal costs higher for the customer.

• **RPA will redefine roles and require new skills and training.** Training or recruitment of appropriately skilled personnel have to be factored into evaluating RPA solutions. There will be increased pressure to move from “jobs” to “tasks” that are allocated to human and non-human agents.
Effect On Outsourcing

- **RPA threatens the traditional model of many traditional outsourcing providers.** Many large global outsourcing providers built their business models around employing more people. More than three million people in India are employed in BPO work and about one million in the Philippines.

- **Outsourcing firms are responding by building up RPA and AI capabilities.**
  - Through acquisition and investment: Cognizant acquired Trizetto; Genpact acquired Rage Frameworks; Wipro has created an AI platform called Holmes; Accenture has myWizard; Infosys has Nia; TCS has Ignio, which is now its own standalone platform.
  - Through partnership with RPA and AI vendors: AutomationAnywhere; Blue Prism; UiPath; Ipsoft; Automic; Celaton.
WHAT DO RPA AND AI MEAN FOR YOUR SOURCING CONTRACTS?
Restructure, Retrofit, Realign and Reform Existing Contracts

• Many service providers are already using RPA and AI to dramatically lower their costs without passing their savings onto customers.

• Contracts written years ago often have no barriers to the provider’s use of RPA and AI.

• Customers need to be proactive in demanding to share in the benefits of these RPA and AI innovations that are already taking place.
Include RPA and AI in Sourcing Events

• Include RPA and AI capabilities as a criterion in your evaluation and selection of outsourcing service providers.

• You may be able to include an onshore-plus-automation solution as a supplement to, or substitute for, a purely offshore solution.

• Focusing on RPA and AI may lead to identifying new potential service providers.
Include Contract Language Specific to Automated Services

- Visibility and perhaps approval rights on the use of RPA and AI solutions.
- Obligations for RPA or AI to meet Specifications
- Access, license and support clauses similar to a SaaS contract
- Change control protections
- Obligations to modify RPA and AI solutions as your business changes
- Service-level measures designed for service delivery model
- Data privacy and security
- Reasonable exit path reflecting whether there is any “export” function
Watch Out for Data Leakage

• Data has little protection under intellectual property laws
  – Data is not protected by copyright in the United States (*Fiest*)
  – Thus, strong contract rights are critical for preserving competitive advantage

• Contracts with outsourcers may leak data rights
  – “we may use data that you provide to use to improve our services and for other business purposes”
  – “Supplier may aggregate and utilize Customer Data in combination with other similar data in an aggregated manner

• Separately provide for rights in derived data and insights
Re-think Ownership and Use Rights for RPA and AI Solutions

• Include the ownership or use rights the customer will in the tool to avoid lock-in or unanticipated costs.
  – Determine whether you can separate what the AI software learn from the AI system (i.e., neural network “black box”)?
  – Do you need rights during steady state?
  – Do you need rights after disengagement?

• Who has what rights in what AI software learns?

• Specifically provide that work produced by RPA or AI will be treated as if it were produced by Supplier Personnel.
Restructure Pricing for Automated Services

• Build in cost-reduction commitments from the provider to take advantage of cost reductions available with RPA and AI capabilities.

• Consider project-based pricing for transformation projects to implement RPA/AI.

• Consider replacing FTE measures with task-based or outcome-based measures.

• Reconsider cost-of-living adjustments.
Analyze Whether Use of RPA Software Affects Compliance With the Licenses for Your Other Software

• For example, if you have a license for software that is priced based on the number of users, how will the substitution of a software robot in place of humans be counted?
  – As zero users?
  – As a single human user?
  – As middleware, turning the former stakeholders into users?

• Do your other software licenses impose limits on interfacing RPA software with your other licensed software?
Consider Hybrid Customer/Supplier Solutions

- Because RPA and AI software are geographically agnostic, customers may retain responsibility for RPA and AI software and outsource the rest.
  - Requires balancing the costs of licensing RPA and AI software and acquiring staff to configure and train software vs. leveraging a service provider’s leveraged capabilities.
  - In some cases, a customer may want to host a service provider’s RPA or AI software to avoid regulatory restrictions or privacy concerns, but this splits accountability for operational success of solution.
Conclusions

• **Probable RPA and AI Trend.** RPA and AI are likely to have a major transformative effect on how companies operate and what services they buy, but we are still in a relatively early phase of that trend.

• **Impact on Outsourcing.** The traditional outsourcing service delivery model is under threat, but many service providers appear to be responding by building or incorporating RPA and AI capabilities.

• **Re-evaluate Existing Contracts.** Service providers are seeing dramatic reductions in their costs, but existing customer contracts may not enable customers to share in those reductions or may not provide any incentives for the service provider to reduce their FTE count.

• **Re-tool New Contracts.** In new sourcing contracts, secure commitments and incentives for suppliers to leverage RPA and AI with appropriate customer protections.
QUESTIONS

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