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## MORE AND MORE OUTSOURCING PROJECTS...WHY?... AND A CONTRACT CHECKLIST

Why more outsourcing ? The outsourcing trend which began in the early 90's is still very much in the forefront of the data processing industry.

The Information Age has created an increased level of competition and in response to such competitive pressures, both the private and public sector institutions have turned their attention to their core competencies. Institutions are also confronted with the increasing complexity of information technology and the proliferation of architectures causing difficult support and maintenance problems.

For those two reasons alone, outsourcing has become a viable alternative to today's corporate and governmental executives. Furthermore, major outsourcers are being more flexible in their approach utilizing shared risk contracts and offering more than the mere management of existing infrastructures. Hence, if an outside party is capable of providing a better service at better cost, outsourcing becomes a viable alternative.

### Summary

Recitals	2
Definitions	2
Term of the Agreement	2
Statement of Work	2
Project Administration	2
Change Order Control	3
Delivery and Installation	3
Client Resources and Responsibilities	3
Client Review and Acceptance	3
Control Mechanisms	4
License of Software	4
Product Support Services	4
Human Resources	4
Prices	5
Payment	5
Protection of Proprietary Information	5
Warranties and Disclaimers	5
Limitation of Liability	5
Patent, Copyright and Trade Secret Indemnification	5
Termination / Cancellation / Transition	5
Disaster Recovery	6

Outsourcing may also bring financial benefits. Often the outsourcer offers an initial cash infusion to the client by purchasing the assets of the client, thereby improving the cash position of the client.

The field of human resources is also an important component of outsourcing projects, especially in light of the high rate of corporate downsizings. Subject to all applicable labour laws, outsourcers will often keep human resources or portions thereof in order to perform their obligations under such contracts, thereby possibly solving the client's problems pertaining to reductions in personnel.

The foregoing are some of the reasons why outsourcing continues to be a popular solution for many organizations. However, such projects must be properly prepared and many issues have to be addressed. The following checklist identifies the points that should be present to ensure a solid contractual framework. The list is certainly not exhaustive and will not provide an answer to all issues that may arise during the negotiation of such an agreement, but assembles the most important.

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## RECITALS

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- Parties to the agreement
- Standalone agreement or reference to other documents (e.g.

RFP, Memorandum of Understanding, Non-disclosure agreement, etc.)

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## DEFINITIONS

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- Words to be defined to clarify the content of the agreement.

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## TERM OF THE AGREEMENT

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- Effective date
- Termination date
- Renewal

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## STATEMENT OF WORK

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- Preparation of a detailed Statement of Work to be attached to the agreement
- Preparation of complete functional specifications
- Operational responsibilities of both parties
- General industry standards

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## PROJECT ADMINISTRATION

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- Identification of a single point of contact to act as the official representative of each party
- Supplier's work schedule (same as client's ?)

- Early stage recognition of project deviations enabling prompt and cost effective corrective actions

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### **CHANGE ORDER CONTROL**

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- Change order control procedures
- Content of a change order request
- Parties' respective rights pertaining to change order requests
- Invoice for the evaluation of a change order request
- Approval of change order request

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### **DELIVERY AND INSTALLATION**

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- Documentation
  - Nature of documentation delivered
  - Type of media
  - Number of copies
- Installation
  - Responsibility for site preparation
  - Detailed delivery schedule for hardware and software
  - Installation site

- Risk of loss and damage to the system during transit
- Responsibility for the installation

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### **CLIENT RESOURCES AND RESPONSIBILITIES**

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- Obtainment of necessary approvals from landlords and secured creditors, for use of client's premises and equipment
- Identification of software use restrictions, transfer and upgrade, as well as software pricing policies
- Training of operational personnel
- Client's human resources provided at no charge or at a pre-established rate

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### **CLIENT REVIEW AND ACCEPTANCE**

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- Need of a contractually defined acceptance and performance testing procedures
  - Requirements
  - Responsibility for execution of tests
  - Start of testing procedures
  - Duration of testing procedures

- Data for the test
- Obligations of the parties
- Determination of the success of the test (who and when)
- Consequences of acceptance
  - Payment milestones
  - Warranty period begins
- Consequences of failure
  - Time frame for resolution
  - Escalation procedure
  - Reduction of maintenance fees
  - Liquidated damages
- Scope of review
  - Review of corrections only
  - Repetition of complete testing procedures
  - Procedures and forms to report problems

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### **CONTROL MECHANISMS**

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- Periodic reports
- Audits

- Customer satisfaction surveys

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### **LICENSE OF SOFTWARE**

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- Ownership of software
- Permission and costs associated with use of third party software
- If software to be developed, ownership and licensing rights

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### **PRODUCT SUPPORT SERVICES**

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- Type of services
- Conditions under which product support services are to be provided
- Possibility and conditions of termination

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### **HUMAN RESOURCES**

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- Offer of employment to all or portion of client's employees
- Responsibility for cost of severance and other labour conditions, if any
- Comparable job functions and benefits
- Labour union issues to be addressed, if any

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**PRICES**

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- Fees, charges and extras clearly identified
- Assets to be purchased - due diligence
- Ability for supplier to raise fees, restrictions on increases
- Minimum fee requirements
- Increases and decreases in volume of transactions
- Services rendered outside the scope of the contract

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**PAYMENT**

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- Per transaction, monthly or other periodic interval
- Credits
- Late payment charges and other consequences of non payment

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**PROTECTION OF PROPRIETARY INFORMATION**

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- Steps to be taken
- Use or disclosure of confidential information

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**WARRANTIES AND DISCLAIMERS**

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- Warranty period
- Scope of the warranty
- Conditions that will void the warranty
- Third party products

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**LIMITATION OF LIABILITY**

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- Written notice of failure
- Grace period for remedy of default situation
- Scope of damages to which supplier is exposed
- Liability for loss of profits, loss of use and any consequential damages

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**PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

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- Protection to be provided by supplier
- Protection to be provided by client

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**TERMINATION / CANCELLATION / TRANSITION**

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- Early termination for cause or at convenience

- Termination charges
- Advance notice of termination
- Effective date of termination
- Obligations to survive termination
- Transition between supplier and client or another outsourcer

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## **DISASTER RECOVERY**

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- Characterization of a situation as a disaster
- Responsibilities of parties in the event of disaster



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