Future Processing

What to include in an IT partnership contract

Checklist
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Introduction

Every business relationship needs some agreements to be written down, so that both parties know what to expect and cooperate smoothly with the aim of fulfilling previously established goals. As the Future Processing’s Head of Business Development, I have had an opportunity to take part in a great amount of business negotiations.

I found out that regardless of the IT project’s topic, there are some common aspects that should be analysed and decided on beforehand in all the cases.

Basing on my experience I was able to prepare a checklist including all the matters that I find important while signing an IT cooperation contract. There are enumerated and shortly described in this document.

I hope that sharing it with you will help your IT partnership go smoothly and lead to desired results.
Cooperation

Before the cooperation even starts, its main rules are to be agreed on by two parties. The aspects that I believe should be focused on are:

1. Model of cooperation

How are we going to cooperate? This is undoubtedly the first aspect that should be decided on. The most popular models of cooperation in terms of IT projects include:

<table>
<thead>
<tr>
<th>Time &amp; Material (T&amp;M)</th>
<th>Fixed price</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The main characteristics of the model are:</strong></td>
<td><strong>The main advantages of this model are:</strong></td>
</tr>
<tr>
<td>• the supplier provides a scalable team of experts,</td>
<td>• the product specification is delivered by the client or prepared together with the IT partner before the work starts,</td>
</tr>
<tr>
<td>• the client decides what are the project’s priorities and what functionalities to develop and implement,</td>
<td>• the time and budget are predetermined,</td>
</tr>
<tr>
<td>• the thorough specification is usually not needed,</td>
<td>• the high quality of the product is guaranteed,</td>
</tr>
<tr>
<td>• client shares general requirements of the project, details are discussed before every sprint,</td>
<td>• the bugs are mended as a part of acceptance procedure or later, under the maintenance agreement.</td>
</tr>
<tr>
<td>• service is billed in relation to hours/days of work,</td>
<td></td>
</tr>
<tr>
<td>• it is possible to adjust it to the market’s changing requirements.</td>
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**But**

The project has to be well managed as its price and deadlines are not specified at the beginning of the cooperation.

**But**

In this model there is very little flexibility and a great degree of work is necessary before embarking on the project. If the costs are more than the agreed-upon amount, the service provider bears additional costs.
Other
There are a lot of cooperation models available when it comes to IT partnership. This variety makes it possible to perfectly adjust a model to the project. All to make the cooperation as efficient and satisfying for both sides as possible.

Flexible scope (DSDM)
This framework is a stand-alone, full lifecycle Agile project management and delivery method. Its main advantages are:
- clear definition of roles and responsibilities for all involved,
- effective prioritising (use of the MoSCoW method),
- consisting of detailed analysis and requirements gathering even though the development itself takes place in an Agile manner,
- involving collaboration of empowered individuals.

But
This framework requires a cultural shift in terms of development team’s thinking. What is more, it may be costly to implement as it requires developer and user training.

Pain share / Gain share
The main characteristics of this model are:
- risk and attitude to it is discussed by parties at the initial stage of cooperation,
- the gain-share/pain-share mechanism is at the heart of target cost arrangements,
- contractor gains a bonus if the actual cost is below the target cost but shares the cost if goes above it,
- both parties are incentivised to deliver to baseline.

But
This model requires strict change management processes, so it is not appropriate unless/until the design is clear, and not for small or open-ended work assignments.
2. Insurance

There are various kinds and ranges of insurance that are associated to the IT partnership:

- Professional Indemnity (the provision of services with respect to the creation of computer programs)
- Employer’s Liability
- Civil liability/Public liability (business activity other than the one insured in terms of Professional Indemnity)
- Cyber Risk Insurance

Please bear in mind that not every software house provides insurance services, as they can be too expensive, especially for smaller companies. I would suggest making sure that the supplier has such insurance provided by a universally respected insurer for an amount adequate to the implemented project.

3. Offer

At this stage it is worth discussing the most important business issues regarding the project, cooperation model, rules connected to contract termination, payments, etc.

Include the representatives from your legal department to discuss general matters rather than technical issues related to the project. This will reduce legal costs in the future and shorten the time necessary to sign the contract. I also encourage personal contact / online meetings between lawyers or suppliers and clients because it is much more efficient than exchanging comments in documents.

I believe that all the arrangements should be written down in the form of an offer.

It doesn't mean that it should not be possible to modify it later. All the subsequent changes can be added in a form of e.g. annexes.

If it is decided not to write an offer, it is a good practice to write down all the arrangements agreed on during meetings/calls and get a written acceptance by the client e.g. through e-mail. The mail can be later shared with the legal department and treated as a summary of arrangements related to the project.

Tip

It is a good practice to sign an NDA at the very beginning of negotiations. Feel free to use our template.

It should be also decided if the project will include processing of personal data like during e.g. data migration. If yes, one shall not forget about GDPR.
Payment

Depending on conditions concerning the cooperation there are various aspects that influence the payment and the following should be determined:

1. Model of cooperation

One of the crucial aspects that influences payment is related to a chosen model of cooperation. As there are plenty of them to choose from, there are also various possibilities concerning time of payment, instalments etc.

When it comes to the Time & Materials model the IT partner is payed accordingly to daily/hourly rates for the time spent on the project. Therefore, sick leaves, vacation and trainings are not included. The proposed daily rates do not include VAT and are subject to negotiations on a yearly basis. Very often, all the additional costs that arise due to the nature of the project, i.e. travelling and visit expenses will be subject to the approval and covered separately by the client.

In case of the Fixed Price model on the other hand, payments are associated with achieving a certain goal in product development e.g. after reaching a milestone, acceptance criterion etc. The price includes all the aspects and risks, and the payment schedule is based on the project’s milestones.

2. Bug – fixing

While working on any IT project bugs appear. One of the aspects that should be discussed is the payment when it comes to their fixing. Should they be fixed and payed within the development stage, acceptance procedure or maintenance contract (payed accordingly to the Security and Maintenance agreement)?

Do remember to talk about it before the work begins.

3. Overtime / work on holidays & at nights

Working on nightshifts, during holidays and overtime may sometimes result in higher charges (it may be between 150% or 200% of the standard working hour charge).

Do not forget to ask how it affects your standard rates while discussing the payment.
4. **Date of payment**

The sides should decide on the date of payment beforehand. Usually it is to be settled within 14 – 30 days of the project’s delivery. It is also important to discuss when the intellectual property rights related to the code will be transferred to the customer (e.g. at the stage of development or after the implementation).

5. **Rate update**

The final agreement, as well as the offer, is to include information about rates’ change (if they take place e.g. on an annual basis) and promotion policy regarding members of the engaged team. These should be presented to the client at the initial stage of business negotiations as they influence the overall cost of the delivery.

6. **Knowledge transfer**

Another aspect that can influence the cost of the project is knowledge transfer. As various situations may occur (rotation in the team, change of the team member imposed by the client) it should be decided beforehand which side on the contract will cover its cost in which situation.

7. **Currency**

It is very often the case that the customer and the supplier operate in different countries and on different currencies. That is why it is a good practice to determine both parties’ approach to currency’s fluctuations and exchange from the moment the contract is signed.

The fact that we put the customer’s currency in the contract does not mean that there is no risk regarding its exchange for the supplier. When thinking about entering into a long term partnership, it is worth creating a mechanism that divides the risk between two parties and allows them to benefit from a better course in the future.
People

In Future Processing we put people first.

It’s not just a fancy motto, but a principle that we act accordingly to.

There are a lot of people working together to turn a vision into a software solution that meets previously established goals. Consequently, there are a lot of aspects connected to human factor that should be discussed by contract’s parties.

1. Special roles in the project

There are special roles necessary in the project delivery process such as Team Leader, Scrum Master and Product Owner.

It is worth to include key personnel in the contract and determine who will act as the Product Owner on the client’s side (if the project is implemented in Scrum) and if the Product Owner will have enough time to get acquainted and involved in the project. If not, the supplier can support such a person by appointing e.g. a Business Analyst (PO Proxy).

Each project is led by a Team Leader or a Scrum Master whose role is to ensure high quality and timely delivery, improve communication and support governance activities and manage the team. There are successfully led projects in which the Scrum Master is on the client’s side, but in case of a Team Leader, it is a good practice to include the one from the service provider’s organisation.

2. Competency Profile

Usually the client is informed that the IT partner provides the competences (e.g. Senior Quality Assurance Engineer) not particular people. It doesn’t mean that there is no possibility to look into the team’s CV if asked for.

3. Change of seniority level

If there is a probability that some of the team members assigned to the project are to be promoted, and consequently their salary is to be lifted, the client should be informed about it beforehand. In situations like this service provider should share the team’s promotion plan with you.
4. Changes in team members, knowledge transfer

As a standard probably you will not be guaranteed that there will be no changes regarding specialists engaged in the project while the cooperation lasts.

The main idea is to provide the client with competences not particular people.

There are many reasons that may result in the change of people working on the project. It should be determined which side of the contract pays for the knowledge transfer in which situation.

5. Security

Is it possible to provide the client with security services including e.g. pen tests? Does the company have competences assuring your software will be secure? Any ISO certifications?

Ask these questions before signing an agreement.

6. Additional Competences

Apart from security matters, while running a project there are also non-functional requirements you should remember about. Things like performance, usability or simply making sure that the product is well-adjusted to the market are just some of the competencies you may require.

Even if you do not need them at the beginning, make sure your contract allows to add more competencies to your project team later on.

7. Methodology

The sides should decide on the methodology to be used while working on the project and possible, non-standard, adjustments that will be included in the cooperation.
8. Patents

While creating a software solution regulating Intellectual Property Rights or patent clearance issues is crucial.

At the contract level, you must ensure that the provider’s company cannot use the code to which it has no rights, e.g. copied from the Internet or from other projects. In the same way, the rights to the code created by the supplier are transferred to the client.

In case of patent clearance, especially in the Time & Material model (where the vendor operates under client’s instructions and implements his guidelines), expecting that the clearance patent will be on the supplier’s side may not be optimal because an unnecessary increase in costs may follow.

It is a good practice to discuss the expectations regarding patents and costs related to them before the cooperation begins.

Wrap-up

Apparently, signing a contract with an IT partner requires a lot of aspects to be discussed on and some of them are always there regardless of the scale of the project. I believe that using this checklist will make it smoother than expected and will not let any of the crucial aspects to be omitted.

Good luck with your project! I hope it will meet all your expectations.
Checklist

Cooperation

- Model of cooperation
- Insurance
- Writing down an offer

Payment

- Model of cooperation
- Bug-fixing
- Overtime/ work on holidays and at nights
- Date of payment
- Rate update
- Currency

People

- Employees, subcontractors, B2B
- TL/Scrum Master
- Competency Profile
- Change of seniority level
- Changes in team members, knowledge transfer
- Clients from the USA
- Security
- Methodology
If you would like to know more about the details or have any further questions – let us know straight away. **We’ll be happy to help and offer our advice.**