

Best Practices in Outsourcing Agreements in the Video Game World

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Introduction

- Observations and Practice Notes
 - Business and Legal Considerations
 - Questions and Comments Encouraged
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Overview of Outsourcing Models

- Location
 - Onshore
 - Offshore
 - "Nearshoring"
 - Models
 - Project Based
 - Steady State
 - Staff Augmentation
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Alternatives

Captive Offshore

- Acquisition
- Organic Growth

Hybrid

- Build Operate Transfer
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Business Drivers

- Financial
 - Economies of Scale
 - Labor Arbitrage
 - Capital Intensive Projects
 - Timelines
 - Aggressive Development Schedules
 - Flexibility
 - Variable Staffing / Costs
 - Focus on Core Functions
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Market Trends

- Reflect Industry at Large
 - Market Size
 - Current Estimates
 - Projections
 - Regions
 - Mainland China
 - Taiwan
 - India
 - Eastern Europe
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Types of Outsourcing

Classifications

- Business Process Outsourcing (BPO)
- IT Infrastructure
- Application Development and Maintenance (AD&M)
- Knowledge Process Outsourcing (KPO)

Characteristics

- Repeatable
 - Fungible
 - Quantifiable
 - Margin
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Commonly Outsourced Functions

- Localizations
 - Cinematics
 - Sound and music
 - Art Assets
 - Porting
 - Re-skins
 - Internal Apps
 - Back Office
 - F&A, Order Processing, Tech Support
 - Hosting
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Structure of Outsourcing Transactions

- Approach
 - Incremental vs. Big Bang
 - Vendor Selection
 - RFP
 - MoU / Term Sheet
 - SoW / Spec / Requirements
 - Diligence / Transition
 - MSA
 - Local Agreements
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Issues: Transition

- Development of Transition Plan
 - Allocation of Transition Responsibilities / Liabilities
 - Risks / Remedies
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Risk Mitigation

- Multisourcing
 - Step-in Rights
 - Insourcing
 - Acquisition of equipment / software / personnel
 - Bid Assistance
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Intellectual Property

- Works Made for Hire
 - Vendor Tools
 - License Terms
 - Region-Specific Terms
 - Post Termination
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Personnel

- Continuity / Retention
 - Non-Compete
 - Regional issues
 - Cool-off Periods
 - Background Checks
 - TUPE
 - Post-Expiration
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Disaster Recovery

- Geographic Distribution
 - Force Majeure
 - Redundancy
 - Testing
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Governance

- Active vs. Passive Management
 - Viable Change Control Procedures
 - Gainsharing
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Performance

- Acceptance / Testing Criteria
 - SLAs
 - At Risk Pool
 - Baselineing
 - Reporting
 - Benchmarking / MFN
 - Standards and Certifications
 - Performance Proxies
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Pricing Models

- Fixed Fee
 - Milestone Based
 - Resource Based
 - Forecasting
 - ARC / RRC
 - Transaction Based
 - Transparency
 - Responsibilities
 - Pass Through
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Other Terms / Protections

- Insurance / LoL Considerations
 - Applicable Laws
 - Dispute Resolution / Governing Law
 - Data Privacy
 - EU
 - Federal / State
 - Termination Rights
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