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## Deliverable based contract

This is our first in a series on contracts. We've only got the first and the last ones written so far, so it may be a short series. But we're shooting for at least 4 entries on this one. Over the years, I've used every kind of contract there is. The way you set up your pricing will determine the kind of contract you use. For those of you just starting out, you may not have decided on how to price your services just yet. If that's the case, you still need a contract, even if it's just a placeholder until you define your pricing and services more concretely. Contracts can be long, beastly documents. And there's no quick and dirty solution that's going to keep you and your business dry in a bad weather situation. The most common contracts are: Milestone or Deliverables-based contracts Time and Materials Contracts Retainer Contracts Rules of Work contracts Milestone or Deliverables-based Contract In a milestones contract, you tie payment to the completion of a specific deliverable. You can negotiate your pricing to be based on a flat project fee or a fee per deliverable. Setting clear milestones, like performance measures or outcomes, is another way you can set up a deliverables-based contract. The challenge is in establishing measurables that are meaningful and results you can actually achieve. Time and Materials Contract The opposite of a deliverables-based contract is one based on time and materials (T&M). The client agrees to pay you based on the work you do based on your hourly rate and the cost of any expenses, such as sub-contractors or pre-built software. The biggest advantage is that you never have to worry about you and your team being under-paid for a project. The challenge is finding clients who are willing to pay on time and materials. Many clients are wary of hourly rates because isn't a ceiling on how much a project will cost. I believe, however, that so long as you are open and transparent with the client about costs then a T&M contract will be to both parties' benefit. With time and materials contracts, you may still encounter scope creep, but clients are less likely to let it go on if they are paying for every new feature or change.. Of course, you can saddle the fence and set up a T&M contract that has incentives linked to milestones. Retainer Contract In a retainer contract, the client agrees to pay you in advance for a certain number of hours of work during the billing cycle. It's great for you because you get recurring revenue on an ongoing basis. It's great for the client because they can bank on you putting in hours for them. Gregory Cicotti in Bidsketch says the biggest advantage of working on a retainer contract is that it gives "stability that is often lacking in many freelance careers." Business writer Thursday Bram advises freelancers to include these important items in any retainer contract: The amount you're to receive each month The date you're to be paid by Any invoicing procedures you're expected to follow Exactly how much work and what type of work you expect to do When your client needs to let you know about the month's work by What notification you need before the retainer relationship can be ended Anything else that is relevant for ensuring that work is completed in a timely fashion Rules of Work Contract After cycling through the other contracts over the years, rules of work has been the stickiest for us. The "rules of work" are simply your terms of service that the client agrees to, and you don't need to include deliverables. The advantage is that you don't have to create a new contract for each new job, no matter what it is. The one disadvantage of a rules of work contract is simply how big it is. It can be a challenge to get a client to sign a 20-page Rules of Work agreement, plus send them 15-20 pages of project scope. The thing that makes this easy is that you can send your rules of work contract with no deliverables and tell the client "these are the rules by which we work, no deliverables here" and they are more likely to sign your contract. Budget Projections The budget projection is a document we usually send off at the same time we request contract agreement. It's like a project proposal, but less in depth and more informal. Our budget projections include, a project staff list, an executive summary, and an estimate. We have separate budget projection templates for small, medium and large projects. For projects that involve larger institutions or more bureaucratic entities (government, boards, committees, etc.), we would use a formal proposal and skip the budget projection. There's a lot more to be said on contracts, and we're only just getting started. I hope you'll return for the next post in the "Contract Negotiation" series where I'll share actual examples of contracts my business has used for clients. Which contract are you more likely to use for your business? In the first part of this series, I shared a primer on NDAs, MSAs, SOWs and COs. In this post, I'll dive deeper into Time and Materials contracts – their pros and cons and things to look for during negotiations. You've signed an MSA – congratulations! Now it's time to define the details of the actual project by crafting the Statement of Work (SOW). The first step in this process is selecting the type of SOW you want to have. Many big companies have policies around which type of contract they are willing to accept. If that's the case, you don't have a lot of room to maneuver. Also, depending on the type of project, some Vendors might not be comfortable with a particular type of SOW, and that could be a deal breaker. Assuming you can choose, let's look at your options, starting with T&M. Time and Materials SOWs Time & Materials contracts (a.k.a. T&M) are contracts where a Client pays only for the time spent by the Vendor and any materials they buy to finish the project. Proposals for T&M projects should come with a rate card outlining how much the Vendor will charge for the time of each of their team members. For example, \$X/hr for developers and \$Y/hr for Q&A testers. Some companies also have daily rates (instead of hourly rates). T&M SOWs might loosely define deliverables but the Vendor will not be held accountable for completing them. If the contract has a budget limit, the Vendor will stop work once they've spent the budget. If the contract has no budget limit, the Vendor will stop work when the Client is satisfied with the work. In both cases, there is no guarantee of how much actual work will get done. Because of this, in T&M contracts, the Client bares most of the risk. Time & Materials contracts are great when the scope of your project is not fully defined T&M contracts have their advantages though. They are great when the scope is not fully defined or the nature of the work is hard to quantify. For example, they can be a great first contract with a new Client or Vendor to finalize requirements and come up with a solid proposal for the next phase. T&M contracts are also good for creative or design engagements where ideation or exploration is required. In those cases, it's very difficult to determine the exact deliverables for the project, so it's often easier to work with a T&M arrangement. I've often heard managers say that Time & Materials contracts are dangerous because the Vendor has no incentive to finish the job. The longer they take, the more money they'll get. This sounds convincing, but I can tell you from many years of being on the Vendor side that there is a definite incentive to finish the project. Vendors want to delight the Client so they can further penetrate the account. Trustworthy Vendors will work with you to ensure you are satisfied with the work produced within the agreed upon hours. That's why it's important to choose the right Vendor. Related article: Internet of Things: A Primer for Product Managers. Key Watchouts for Clients: 1. Rate card: Make sure you see the rate card and agree to it, and make sure that it will remain valid throughout the agreement. 2. Daily rate: If the rate card specifies a daily rate, make sure you are getting the right value for your money. Some roles (i.e. supervisory and supporting roles) might not need to charge full days to your project. For these partial roles, it's more cost effective to get them on an hourly basis. It's okay to have daily and hourly rates for different people within the same SOW. 3. Invoicing: Review your invoices to understand how many hours each role is charging to your project. You might be surprised to learn that high-level people are doing most of the work and therefore consuming your budget more quickly than it needs to be. 4. Materials: If you know the materials needed for your project (i.e. servers, circuit boards, automation hardware, etc.) you might save money if you buy those items directly. If the Vendor buys those items for you, they'll add a markup to 1) cover their operational costs and 2) make some profit off the materials (usually between 5% to 10%). If you are able to buy the materials on your own, you can put the money you saved back into your project in the form of labor. This, of course, will need to be documented in the SOW before the project starts. 5. Close communication: It's important to keep close communication with the Vendor's project manager and get weekly burn reports (detailing amount of money spent to date and progress made). You want to avoid surprises and keep on top of how much progress is being made for the amount of budget spent. 6. Change Orders: Although Time & Materials contracts don't specify deliverables, you do need to stay on top of changes. As you are notified of progress and budget burned, you may need to do some adjustments (i.e. add more hours, increase the number of team members in the Vendor team, etc). Anything that changes the estimation of budget and timeline should be documented with a Change Order. Key Watchouts for Vendors: 1. Client wants specific deliverables: Some Clients might not fully understand what Time & Materials means. They might say they are OK with the format, but they'd word the contract as Fixed Price (i.e. with specific deliverables). This should be a big red flag for you. In this scenario, you can word the contract to show you are not committing to those deliverables. For example, you can write something like: "this SOW might include the following deliverables". Might is the key word here. Clearly state that you will work with the Client to prioritize tasks and will deliver as much work as possible until the budget runs out. Related article: How to negotiate Fixed Priced contracts 2. Don't let the Client dictate your team: Sometimes, clients disagree with the roles and number of people you included in the SOW. They might prefer only senior people or they might not want to pay for project management. This could be a sign that this Client does not fully understand the value of your team, your company and your process. If you are certain that the team you proposed is the right one for the job, then negotiate with the Client. Explain to the Client why you chose that team and how you have their best interests in mind. Don't give in, especially if they want to remove project management. You can't ensure the success of a Time & Materials project without the PM constantly setting expectations and driving the team to get the most out of the budget. 3. Client has never worked with Vendors before: In this scenario, I recommend adding enough project management time to the SOW. The Project Manager will constantly work to ensure Client expectations are clear at all times. A Client that has never worked with an external vendor will have a hard time with a Time &Materials SOW, specially the part of not getting exactly what they want for the money they are paying. It's up to Sales to convince them on the value and make sure the Client understands what they'll be getting before starting the project. I can't tell you how many projects I've started where the expectations were not set correctly. The projects can still be successful but it takes a lot of management effort to please those clients and still be profitable. 4. Client has no clear point of contact: If the Client doesn't have a day-to-day contact or a dedicated project manager, you should be concerned. This is one of the main roads to overrunning your project. I don't know how many times I've heard Clients say "you can call any of us" or "all of us will be providing feedback and acceptance". That's dangerous. Work with the Client to appoint a key point of contact that can get internal consensus and provide unified feedback. You can even turn this into a revenue opportunity for your company by selling them one of your project managers' time to manage their side of the engagement. 5. Be flexible, but keep an eye on the scope: Since Time & Materials SOWs don't have fixed deliverables, you have the flexibility to adapt to the ever-changing requests of your Client. This is a great advantage of Time & Materials contracts, but make sure you watch your scope and budget as you agree to any changes. Yes, you can accommodate any new requirement from your Client, but you have to let them know that the project will take longer (i.e. it will be more expensive) or that other tasks won't get done. As long as the Client prioritizes what they want and they understand they'll only get as much work as the budget allows, then everything will be OK. Time & Materials SOWs have a lot of advantages. In fact, many software pundits claim that a Time & Materials SOWs is the only way to go in a software project given the uncertain nature of the software industry. I disagree. Time & Materials projects are a great tool when the requirements are fuzzy and more work needs to be done in the area. But don't do Time & Materials projects forever. At some point, the requirements need to be defined and the direction set. That's when a Fixed Price contract comes into play. If you continue to struggle to solidify the direction of your projects, I suggest you step back and figure out what the real issues are. You'll be glad you did. So where do you go from here? Now that you've gone through Part 2: Time & Materials contracts, it's time to look at the other articles in the series: Part 1: What Every Product Manager Ought to Know About Contract Negotiations Part 2: How to Negotiate Time & Materials Contracts Part 3: How to Negotiate Fixed Price Contracts Part 4: How to Negotiate Retainer & Staffing Contracts A deliverable is a tangible or intangible good or service produced as a result of a project that is intended to be delivered to a customer (either internal or external).[1][2] A deliverable could be a report, a document, a software product, a server upgrade or any other building block of an overall project.[3] A deliverable may be composed of multiple smaller deliverables. It may be either an outcome to be achieved (as in "The corporation says that becoming profitable this year is a deliverable") or an output to be provided (as in "The deliverable for the completed project consists of a special-purpose electronic device and its controlling software"). Some deliverables are dependent on other deliverables being completed first; this is common in projects with multiple successive milestones.[4] In this way many time-savings are possible, shortening greatly the whole project final supply term. This designing activity can be represented in the drawings with a "cloud" around a not yet designed part which means: "this part (size, or other characteristics) will be studied later". The part settled can be "delivered" to the interested parties. A deliverable differs from a project milestone in that a milestone is a measurement of progress toward an output, whereas the deliverable is the output delivered to a customer or sponsor.[5] For a typical project, a milestone might be the completion of a product design, while the deliverable might be the technical diagram or detailed design report of the product. In technical projects, deliverables can be further classified as hardware, software, or design documents. In contracted efforts, deliverable may refer to an item specifically required by contract documents, such as an item on a contract data requirements list or mentioned in the statement of work. References ^ Kermit Burley, "What Is a Deliverable in Project Management?". Houston Chronicle. Small Business section. Hearst Corporation, 2013. ^ "Goal: Define project deliverables". Microsoft Office website. Accessed December 9, 2013. ^ Cutting, Thomas, "Deliverable-based Project Schedules: Part 1". 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