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# Agile Contracts for Software Consultants

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# About me...

Farmer	Plumber	Electrician	Cook
Doctor	Carpenter	Fireman	Pilot
Nurse	Secretary	Policeman	Writer

Artist	Actor	Tailor	Teacher
Dentist	Banker	Soldier	Nothing
Mailman	Lawyer	Sailor	Dancer

When I Grow Up, I Want to Be Policeman

Lion Tamer	Cowboy	Football Player
Truck Driver	Indian	Hairdresser
Astronaut	Frogman	Dress designer
Mechanic	Painter	Mathematician
Violinist	Bartender	Stock Broker
Taxi Driver	Baseball Player	Movie Star
Minister	T.V. Star	Photographer
Priest		Telephone Operator
Nun		Horticulturist
Steeplejack		Paleontologist
Librarian		Coal Miner
Musician		Gold Miner
Burglar		Rabbi



Judge	Gardener	Millionaire
Jockey	Senator	Singer
Jeweler	General	Cartoonist
President	Butcher	Locksmith
Milkman	Sculptor	Blacksmith
Accountant	Pianist	Salesman
Airplane Stewardess	Acrobat	Shopkeeper
Mother	Watchmaker	Fisherman
Magician	Dog Trainer	Statistician
Mayor	Explorer	Veterinarian
Sea Captain	Manufacturer	Zymologist
Window Washer		Yak Trainer
Bus Driver		
Camel Driver		





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*About you...*

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**You know Agile**





# promptworks





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# Disclaimer

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- ❖ I am not your lawyer
- ❖ I am not a lawyer at all
- ❖ Nothing you may take from this presentation should be considered legal advise
- ❖ Consult your own experts

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# Preamble

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# Professionalism





[image source](#)

“There is customer service, and then there is Japanese customer service”

*Tadashi Yanai, CEO, Uniqlo*





[image source](#)



“I just wanted to hug everyone”

*a friend visiting Japan for the first time*





[image source](#)





[image source](#)



In Japan,  
the customer is king  
...?



The customer is king



お持て成し  
Omotenashi

In Japan,  
the customer is incompetent,  
but is made to feel like a king









[image source](#)

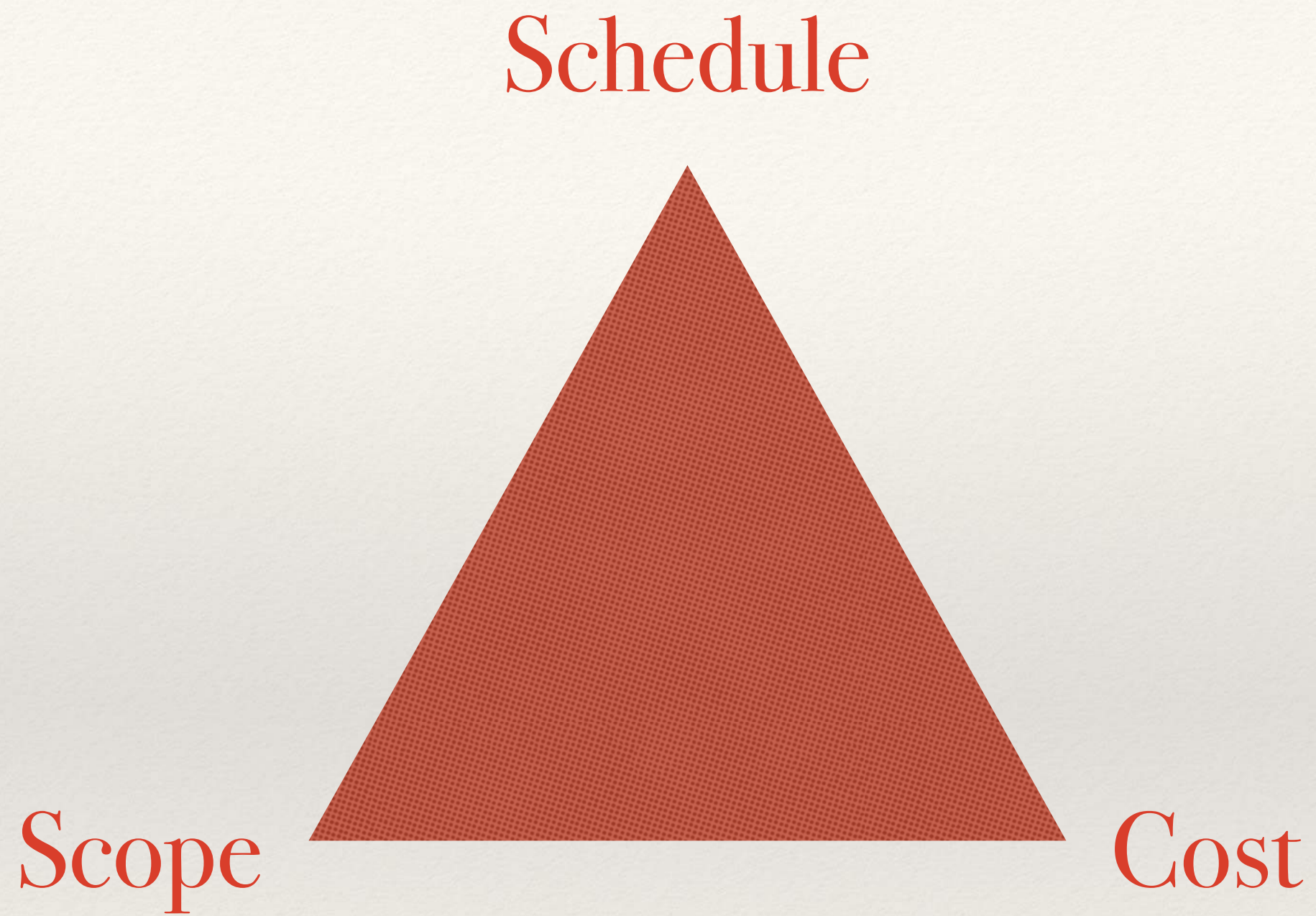


“We want a blog”

“Don’t do it that way,  
do it this way”



# Omotenashi and contracts







“I find your lack of faith disturbing”

**TRUST ME I'M A**  
**JEDI**





Examine the assumptions of  
fixed price - fixed scope (FPFS)  
contracts



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# Assumptions of FPFS contracts

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**Long lead times**

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# Assumptions of FPFS contracts

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**Limited feedback**



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# Assumptions of FPFS contracts

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**Infrequent, large payments**

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# Assumptions of FPFS contracts

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**Early termination = failed project**



These assumptions are invalid in an  
Agile project!

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# Frequent delivery of working software...

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- ❖ means the customer realizes value at regular intervals
- ❖ means the contractor can get paid at regular intervals
- ❖ mitigates risk and liability for both parties



Adapting to change decreases risk

FPFS contracts actually increase  
risk and cost



**An Agile contract is more an agreement  
about a collaboration process,  
and less about deliverables**

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# Contract documents

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- ❖ Project proposal
- ❖ Master Services Agreement (MSA)
- ❖ Scope of Work (SOW)



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# Project proposal

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- ❖ Supplier information
- ❖ Project motivation
- ❖ Initial requirements
- ❖ Risks
- ❖ Project participants
- ❖ Project plan
- ❖ Deliverables
- ❖ Project timeline
- ❖ Project cost
- ❖ Next steps

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# Peter Stevens: Types of Contracts

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- ❖ Time and Materials with Variable Scope
- ❖ Time and Materials with Variable Scope & Cost Ceiling
- ❖ Fixed Price, Fixed Scope
- ❖ Time and Materials with Fixed Scope & Cost Ceiling
- ❖ Phased Development
- ❖ Fixed Profit
- ❖ “Money for Nothing, Changes for Free”
- ❖ Joint Ventures



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# Our Time and Materials Approach

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- ❖ Ballpark project estimate based on initial requirements
- ❖ Do an initial prioritization if not already provided
- ❖ Give them a dedicated team
- ❖ Deliver working features weekly
- ❖ Bill monthly for “developer weeks”
- ❖ Work continuously to evolve and prioritize features
- ❖ Stop when it makes sense

About 50% raise concerns



How do I know we'll stay on budget?

How do I know we'll stay on schedule?

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# Responses

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- ❖ Provide references
- ❖ Re-iterate Agile advantages
- ❖ We can include a “not to exceed” clause
- ❖ Client can cancel at any time, with 30 days notice
- ❖ Our TDD code is portable to other contractors



We still lose about 25%...

...and that's ok



Greg,

I really appreciate your interest in the [REDACTED], and the time you & your team put into the proposals, but the projected costs and open-ended structure just don't work for this project.

I'll certainly keep Promptworks in mind for the future, particularly if we've got a project that would benefit more from the cooperative/iterative design process that your proposed.

Yours truly,

[REDACTED]

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# Master Services Agreement (MSA)

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- ❖ Services
- ❖ Term
- ❖ Cooperation
- ❖ Payment: Expenses
- ❖ Changes
- ❖ Warranties
- ❖ Confidentiality
- ❖ Ownership
- ❖ Infringement Indemnity
- ❖ Limitations of Liability
- ❖ Force Majure
- ❖ Miscellaneous



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# MSA Highlights

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- ❖ Code ownership
- ❖ Open source aspects
- ❖ 30 days notice to cancel by either party
- ❖ Services: “software development”
- ❖ Beware extreme requirements from clients
  - ❖ “most favored nation” clause

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# Scope of Work (SOW)

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**Keep it simple**



## STATEMENT OF WORK

The following is Statement of Work No. 1 (the “Statement of Work”), made as of \_\_\_\_\_ (the “Effective Date”), to the Services Agreement (the “Agreement”), by and between \_\_\_\_\_ (“Client”) and PromptWorks, LLC. Except as specifically stated herein, each capitalized term used in this Statement of Work shall have the same meaning as is assigned to it in the Agreement.

1. General Description of Services. PromptWorks will provide one (1) senior developer(s) to provide software development and consulting services.

2. Deliverables.

- Code changes to implement features supporting monthly recurring charges in the main Ruby on Rails application
- Unit and integration tests for the above functionality

3. Price of Services.

4. Timeline.

Development will begin on \_\_\_\_\_ and continue until the feature(s) are complete. Given the requirements communicated during our call on \_\_\_\_\_, PromptWorks estimates this work will take up to four (4) weeks.

Client agrees that the Project Manager listed below has full authority to direct and provide feedback relating to the Services described in this Statement of Work. Client may change its Project Manager from time to time, upon notice to PromptWorks and subject to the qualifications set forth in the preceding sentence.

*An Omotenashi relationship*



終わり

Questions?