

Agile Contracts: Effective Procurement for Enhanced Project Success in the Entertainment Industry^{1, 2}

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ABSTRACT

Carrying great promises, Agile methods nevertheless imply rights and duties, which must be enshrined in an adequate legal framework; especially in an industry like the Entertainment where large risks are at stake, contract and trust-issues are numerous, and flexibility is a key to remain competitive. Thus, we will explore Agile contracts to evaluate their ability to cope with the main issues that often hurdle entertainment projects and be an asset to support projects within the entertainment industry. Throughout this paper we will consider five types of contracts; to rank those feasible alternatives, we will evaluate them using several criteria and undertake a qualitative and quantitative analysis. In the end, we will observe that Target-Cost and Incremental Project Delivery contracts stand out, as both strongly support the implementation of Agile methods, while being singularly helpful for Entertainment companies. Indeed, those two types of contract can be a shield against many pitfalls and foster some vital key success factors. In addition, we will study some best practices regarding performance monitoring. Ultimately, we will state a simple yet essential idea: where proper Contract Management goes, project success follows.

Keywords: Agile, Contract, Entertainment, Incremental Delivery, Target Cost, Risk, Flexibility, Collaboration, Project, Management

INTRODUCTION

Agile contract. Those two words may easily seem utterly antithetical. On the one-hand contracts revolve around rigor and obligations, on the other hand Agile methods are all about iteration and adaptability. Thus, it seems hard to fathom what an agile contract could be.

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Nonetheless, the legal area has not been spared by the Agile trend sweeping throughout every sector over the past two decades. Indeed, from start-ups to big size companies, from local to international businesses, it feels like everyone is talking about Agile and integrating those methods into their processes.

It all started seventeen years ago during a ski weekend in Utah. 17 software developers gathered to exchange ideas and try to improve the traditional *Waterfall* project management approach³. Inspired by *the Scientific Method*⁴ of the 12th century, and determined to operate a shift in project management, they ultimately created the *Agile Manifesto* to describe the Agile philosophy, values, and principles⁵: “a focus on delivering value for customers, working in small teams in short cycles, and networked organizational arrangements rather than top-down bureaucracy and silos”⁶. And to this day, the adoption rate of Agile methods keeps growing⁷, as explained by Stephen Denning: “The Manifesto remains a landmark in software development but increasingly also for management innovation more generally, a radical new way of managing business complexity”⁸. Three companies out of four (71%) report using Agile approaches for their projects⁹. In 2017, Forbes interviewed more than 500 senior executives around the world and the results are unequivocal; 92% said they believe organizational agility is critical to business success¹⁰.

³ Jim Highsmith, for the Agile Alliance, *History: The Agile Manifesto* (2001). Retrieved from: <http://agilemanifesto.org/history.html>

⁴ Dr Jaap Van Ede, *Scientific Method: Core of all improvement methods* (2017). Retrieved from: https://www.business-improvement.eu/worldclass/scientific_method_process_improvement.php

⁵ Agile Alliance, *Manifesto for Agile Software Development* (2001). Retrieved from: <http://agilemanifesto.org/>

⁶ Steve Denning, *Why Agile Is Eating The World* (2018). <https://www.forbes.com/sites/stevedenning/2018/01/02/why-agile-is-eating-the-world/#19ed085a4a5b>

⁷ Max Steinmetz, *9 Agile Statistics That Actually Empower Teams* (2018). Retrieved from : <https://www.targetprocess.com/blog/agile-statistics/>

⁸ Stephen Denning *Updating the Agile Manifesto* (2015). Retrieved from : <https://www.emeraldinsight.com.ezp.skema.edu/doi/full/10.1108/SL-07-2015-0058>

⁹ Project Management Institute, *Pulse of the Profession 2017* (2017). Retried from : <https://www.pmi.org/-/media/pmi/documents/public/pdf/learning/thought-leadership/pulse/pulse-of-the-profession-2017.pdf>

¹⁰ Forbes Insights, *Achieving Greater Agility* (2017). Retrieved from : <https://www.forbes.com/forbes-insights/our-work/achieving-greater-agility/>



Figure 1 - Agile Values and Principles¹¹

Being no exception to the rule, the entertainment industry has also been embracing Agile over the last decade. The entertainment is an old but thriving sector in which revenue is expected to reach \$2.2 trillion by 2021¹². Nowadays, entertainment is everywhere; 80% of 2019 internet traffic will be generated by online video, which is no surprise according to YouTube, as mobile video consumption doubles every year¹³. And furthermore, the entertainment industry is made of several projects, programs, and portfolios which are perfectly aligned with the Guild definitions:

¹¹ Darrel K. Rigby, Jeff Sutherland, and Hirotaka Takeuchi, *Embracing Agile* (2016).
<https://hbr.org/2016/05/embracing-agile>

¹² Medium, *30 Stats that Reveal the Economics of the Entertainment Industry* (2018). Retrieved from:
<https://medium.com/singulardtv/30-stats-that-reveal-the-economics-of-the-entertainment-industry-18e9a5db493b>

¹³ Medium, *30 Stats that Reveal the Economics of the Entertainment Industry* (2018). Retrieved from:
<https://medium.com/singulardtv/30-stats-that-reveal-the-economics-of-the-entertainment-industry-18e9a5db493b>

		GUILD DEFINITION	ENTERTAINMENT EXAMPLES
Project		Special environment created in order to deliver one or several business outcomes, in a frame of a specified resources.	The creation of a video game as a project: a planned and controlled activity framed by the constraints of time, quality and cost, to achieve a particular purpose.
Program	Strategic Program	Set of related projects, combined with the purpose to attain the sponsor's future state. This program is linked to a specific strategic goal and its early results influence the further decision-making process	When a production company sign a contract with a famous Chef for hosting a culinary tv show for several seasons and episodes. The investment is strategic and stems from the value the Chef will bring to the show thanks to his image.
	Operational Program	Interdependent constituent projects, aiming to affect sponsor's day-to-day operations	During the realization of a 3D or an animation movie: equipment maintenance and repair, software and security updates for the computers, backing up data ...
	Multi-Project Program	Created interdependence of constituent project in order receive benefits from the synergy	An album benefits from the alliance of the songs featuring in the album, which each represents a project.
	Mega-Project	Project with significantly larger scale than the typical sponsor's projects have.	The creation of the Harry Potter amusement park was a project as atypical as complicated for Universal.
Portfolio	Portfolio of Projects	Is investment portfolio, where the main aim is to minimize risks and maximize returns.	An actor's brand image is a portfolio itself as to maintain and support it, the actor has to undergo several projects. The actor would also have to use informational, intangible, human, financial and physical assets to support his projects.
	Portfolio of Assets	Owner or Contractor has a portfolio of assets, that mean set of resources, which are dedicated to the projects, with the aim to generate those resources into the most desirable return.	

Figure 2 - The Entertainment as a Project Portfolio¹⁴

Moreover, we can also divide the entertainment industry into five categories of assets:

¹⁴ Guild of Project Controls Compendium and Reference (n.d.) Module 1, Figures 1-7. Retrieved from: <http://www.planningplanet.com/guild/gpccar/introduction-to-managing-project-controls> last accessed 18-11-19.

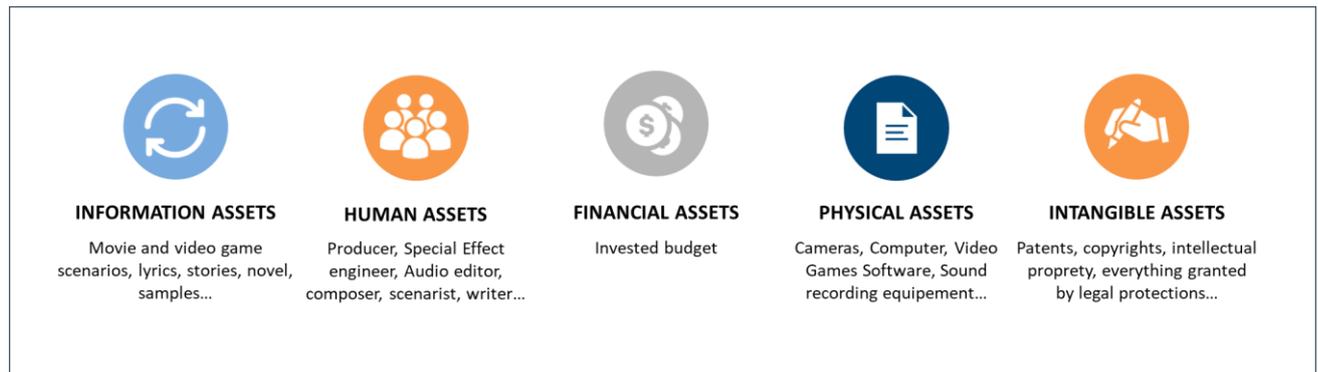


Figure 3 - Assets of the Entertainment Industry¹⁵

Those assets are deeply related to entertainment portfolios and projects and to their success. Indeed, those resources are allocated to different stakeholders (Producer, Engineer, Manager...) who use them within the project to convert them into benefits and positives outcomes. The management of those five types of assets, their allocation and prioritization are paramount regarding the accomplishment of the project.

But like in many other industries, most, if not all (97%), media companies report that digital has disrupted their sector¹⁶. So, to better cope with this context of digital innovation and with the disruption of its industry, the entertainment sector had to implement foundational and elemental changes, and to use Agile practices. Indeed, several entertainment companies such as the Walt Disney Park and Resort are now part of the Agile Alliance. In 2016, the Victorian government (Australia) decided to donate over \$50,000 to boost the Agile music industry¹⁷. This was an initiative it decided to renew in 2017 and raised the budget by donating \$62,000¹⁸.

¹⁵ By Author

¹⁶ AgileCraft, *A New Era for Entertainment* (n.d). Retrieved from: <https://agilecraft.com/entertainment>

¹⁷ Victorian Government, *Over \$50.000 Boosts Agile Music Industry* (2016). Retrieved from: [https://creative.vic.gov.au/news-archive/2016/over-\\$50,000-boosts-agile-music-industry#](https://creative.vic.gov.au/news-archive/2016/over-$50,000-boosts-agile-music-industry#)

¹⁸ Victorian Government, *More than \$62,000 to support an agile and responsive music industry* (2017). Retrieved from: [https://creative.vic.gov.au/news/2017/more-than-\\$62,000-to-support-an-agile-and-responsive-music-industry#](https://creative.vic.gov.au/news/2017/more-than-$62,000-to-support-an-agile-and-responsive-music-industry#)

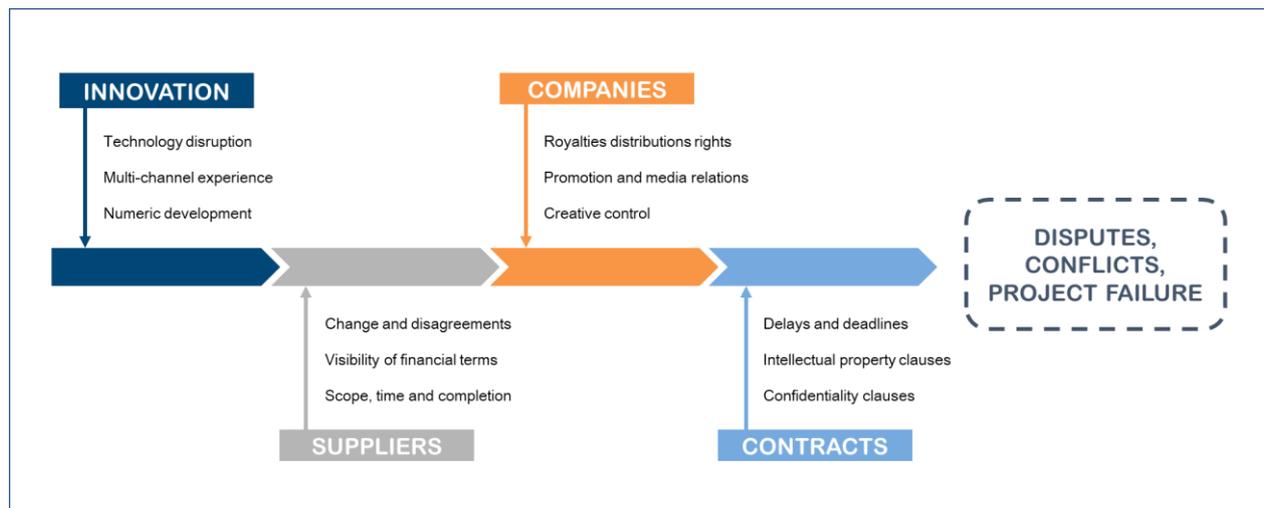


Figure 4 - Root Cause Analysis¹⁹

However, the omnipresence of Agile does not make it a panacea, and contract-wise this can generate many risks and pitfalls. Furthermore, it is no wonder that Legal Departments had to adapt themselves and draft new contracts to better fit Agile iterative processes, we can then evaluate how it works in this very particular and contract-heavy industry. The entertainment is a prosperous sector which, as Peter Falk (best known as his famous TV show character, Inspector Colombo) once said, “is loaded with extraordinarily talented people”²⁰, but it is also fueled with a diversity and variety of contacts. Contracts may vary from artist agreements, royalty rights, freelance agreements, supplier arrangements, or outside media relations; for each one of these contracts there is as much, if not twice, the risks and issues like deadlines or confidentiality. Indeed, if we drill down on what is the entertainment industry, to its core, it is all about emotions and contracts.

Thus, we can ask ourselves what exactly is the impact of agile regarding contracts in the entertainment industry? Can Agile contracts help to cope with the main issues that often hurdle entertainment projects? What are the main risks regarding Agile contracts in the entertainment industry and how can we mitigate them? How can we share and reduce the risks in entertainment contracts whilst remaining adaptable and agile?

Throughout this paper, we will study the impact of Agile contracts in the entertainment industry in order to underline some best practices and to suggest some useful contract alternatives.

¹⁹ By Author

²⁰ AV Club, *Interview of Peter Falk* (2004). Retrieved from: <https://www.avclub.com/peter-falk-1798208368>

METHODOLOGY

Step 1 – Problem

Carrying great promise, Agile methods nevertheless imply rights and duties for both parties, which must be enshrined in an adequate legal framework²¹.

Furthermore, it is important to acknowledge the differences between a traditional contract and a contract following Agile principles. In a conventional, fixed-price contract, the customer defines specifications that the supplier commits to deliver; on the opposite side an Agile contract must tolerate perimeter variation²², as its main focus is the value and quality delivered.

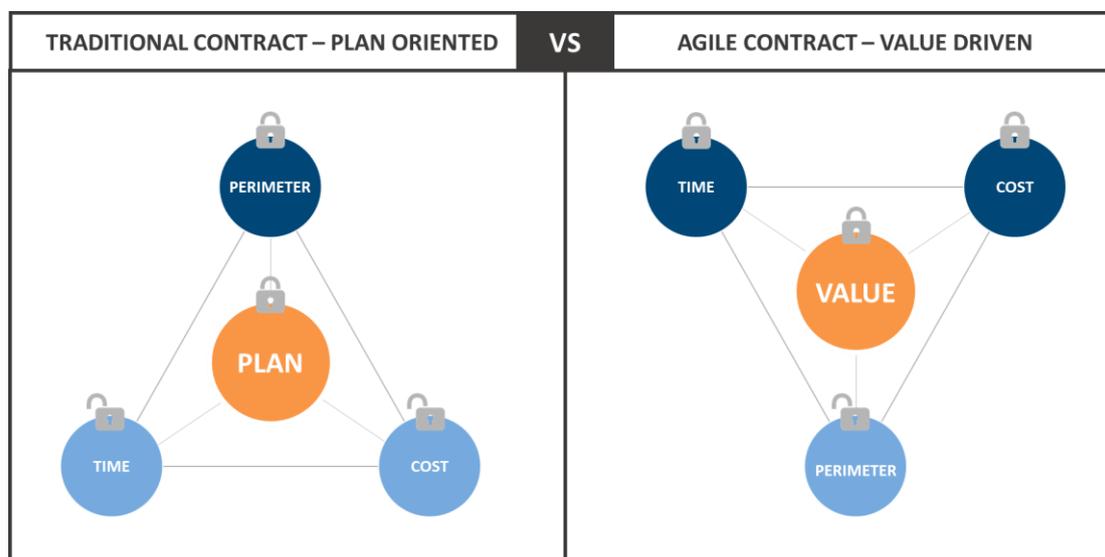


Figure 5 - Traditional VS Agile contract²³

“How can we promote collaboration and flexibility whilst still creating the certainty that clients and funders will look for from an Agile project?²⁴” asked Pan Ashby in his article *Agile Contracting & Why We Need it*. Indeed, the combination of flexibility and certainty are the sinews of war regarding Agile Contract.

Especially in an industry such as the entertainment where the context is fickle and the risks numerous. The economic background is changing as companies continually evolve and consumer

²¹ Contrat Agile, *Contrat Agile Open-Source* (n.d). Retrieved from: <http://www.contrat-agile.org/>

²² Pascal Perigault and Grégory ivanes, *Agilité, des difficultés d'une contractualisation client-fournisseur équitable* (2009). Retrieved from : <https://fr.slideshare.net/givanes/proxiad-agile-tour-2009-lille>

²³ Eléonor Varet and Sébastien Delayre, *Contractualisation Agile – Replace la valeur au centre du contrat* (2014). Retrieved from : <https://fr.slideshare.net/SébastienDelayre/2014-1009-agile-tour-rennes-contractualisation-agile>

²⁴ Pam Ashby for Agile Business Consortium, *Agile Contracting & Why We Need It* (2018). Retrieved from: <https://www.agilebusiness.org/blog/agile-contracting-why-we-need-it>

tastes change quickly²⁵. This instability urges companies to create contracts to protect them against economic risks, thus the entertainment industry relies mainly on complex contracts, “because entertainment companies often risk large losses, the contracts they use often contain clauses that artists may consider to be unnecessarily complex or one-sided”²⁶.

Therefore, it seems that an Agile contract can be a solution to hamper those issues if not to root them out. This idea stems from the three commitments regarding Agile contract: collaboration, transparency, adaptability²⁷. First of all, Agile principles and contracts are all about flexibility, which seems rather suitable for an industry submitted to so many unpredictable threats. Likewise, this notion of collaboration which lies in the very roots of the Agile could also strongly help to unravel the trust issues and never-ending contract renegotiation that plague the entertainment industry²⁸.

So, what are the feasible alternatives regarding the type of Agile contracts that can be implemented to foster trust and flexibility and to mitigate risk in this peculiar industry?

Step 2.a – Feasible Alternatives

We will study the following types of contracts as they can be chosen to frame an Agile project within the entertainment industry and may be a source of cooperation, adaptability and risk management.

A- Fixed-Price Contract

Fixed-price contracts are the traditional type of contracts: the client defines some requirements and the supplier is committed to delivering them according to the costs and delays defined in the contract.

Yet, we have to acknowledge that this type of contract often implies two main issues: most of the risks rely on the supplier’s shoulder which can nurture some rigidity on the client’s side²⁹.

²⁵ The Legal Dictionary, *Entertainment Law* (n.d). Retrieved from: <https://legal-dictionary.thefreedictionary.com/Unique+Aspects+of+Entertainment+Industry+Contracts>

²⁶ The Legal Dictionary, *Entertainment Law* (n.d). Retrieved from: <https://legal-dictionary.thefreedictionary.com/Unique+Aspects+of+Entertainment+Industry+Contracts>

²⁷ Greg Hutchings, *Contractualiser un project Agile* (2008). Retrieved from: <https://fr.slideshare.net/greghutchings/contrat-agile-2008>

²⁸ Cannon, Mihill & Winkles, *Contract in the Entertainment Industry: Know What You Are Signing* (2016). Retrieved from: <https://www.atlbusinesslawyers.com/blog/index.php/2016/06/27/contracts-in-the-entertainment-industry-know-what-you-are-signing/>

²⁹ Pascal Pégault and Grégory Ivanès, *Agilité, des difficultés d’une contractualisation client-fournisseur équitable* (2009). Retrieved from <https://fr.slideshare.net/givanès/proxiad-agile-tour-2009-lille>

Moreover, in fixed-price contracts changes are often seen as problems to be avoided, as within this type of framework it is expensive to deal with them³⁰, stifling the flexibility of the project.

At first glance, this type of contract appears to not be the most suited to Agile methods, though it still can be. Indeed, to be Agile a fixed-price contract needs to have some clauses regarding flexibility, communication, and feedbacks. Furthermore, an Agile project could be supported by a Fixed-Price contract which would establish some specific interim deliverables and payments. By doing so, such a contract would be able to support the iterative development of the project and its flexible character³¹.

B- Capped T&M Contract

The capped T&M contract is an extension to the common Time and Materials (T&M) contract. It is quite a simple contract: the supplier is paid according to the time he spent and the materials he used in the creation of the final product or service³².

“Capped T&M contracts provide benefit to the supplier early on by fully covering their expense; but also provide benefits to the customer towards the end of the project by providing a limit to the total exposure. It’s in both parties interest to deliver high-value functionality as early as possible and to avoid cost over runs.”³³

Indeed, this type of contract promotes efficiency and somehow spreads the risks a little. Nonetheless, capped T&M do not really encourage nor reward flexibility even though they are still less rigid than traditional fixed-price contracts.

C- Incremental Delivery Contract

Incremental Delivery Contracts are organized in an iterative fashion with several review points with the client and the team – usually between each sprint – so that they can assess the progress, evaluate the performance, make the perimeter evolve, and decide to continue or to terminate the development of the project³⁴.

³⁰ Softhouse, *Agile Contract in Five Minutes* (2014). Retrieved from: https://issuu.com/softhouse/docs/agile_contract_in_five

³¹ Berton Mannig, *Financial Management* (n.d.). Retrieved from: <http://acqnotes.com/acqnote/careerfields/contract-finance-payments>

³² Tara Naughter, *Three Types of Agile Contracts* (2018). Retrieved from: <https://www.contractworks.com/blog/three-types-of-agile-contracts>

³³ Softhouse, *Agile Contract in Five Minutes* (2014). Retrieved from: https://issuu.com/softhouse/docs/agile_contract_in_five

³⁴ Scrumology, *An Overview of Agile Contracts* (n.d.). Retrieved from: <https://scrumology.com/an-overview-of-agile-contracts/>

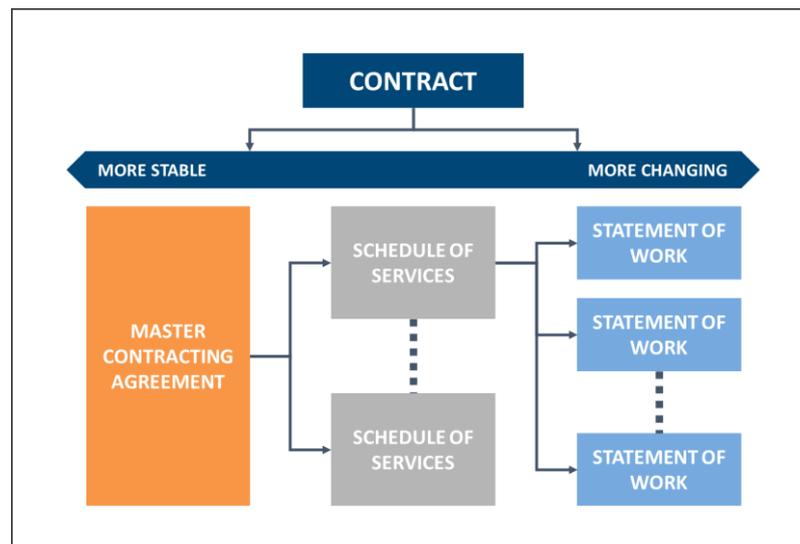


Figure 6 - How an Incremental Delivery Contract Works³⁵

Thus, this type of contract is particularly adapted to Agile project management as it “incorporates a great deal of flexibility and allows for ongoing improvements rather than a fixed timeline with concrete requirements”³⁶.

Still, incremental delivery contracts also have their downsides; sometimes the need is unclear, and it can give rise to stress and insecurities among the team, as they may not know whether or not they will be paid after the sprint.

D- Target Cost Contract

This type of contract is based on a target cost both parties agree on regarding the final price of the product or service. If the supplier spends less, then the client and the supplier both share those benefits. And it works with the same mechanism if the supplier goes over the budget, then the two organizations have to pay joint penalties³⁷.

Most of the time those contracts are fueled with financial incentives in order to foster efficient work and reduce costs, and “there is built in flexibility and the avoidance of overly harsh repercussions, which is the very core of an agile contract”³⁸. Yet, it also seems quite important

³⁵ J. Fewell, *Modern agile contracts for the real world* (2010). Retrieved from: <https://www.pmi.org/learning/library/modern-agile-approach-initiate-contract-6541>

³⁶ Tara Naughter, *Three Types of Agile Contracts* (2018). Retrieved from: <https://www.contractworks.com/blog/three-types-of-agile-contracts>

³⁷ Scrumology, *An Overview of Agile Contracts* (n.d). Retrieved from: <https://scrumology.com/an-overview-of-agile-contracts/>

³⁸ Tara Naughter, *Three Types of Agile Contracts* (2018). Retrieved from: <https://www.contractworks.com/blog/three-types-of-agile-contracts>

to avoid having only financial incentives as this system can be resolutely virtuous if the motivations are not only financial but also diversified³⁹.

Due to those procedures and principle Target Cost, contracts truly help to create collaboration and to share risks. The only tricky part is obviously to find and agree on this final price.

E- Integrated Project Delivery

Integrated Project Delivery contracts were first drafted in the construction industry in order to increase productivity through collaboration, data sharing, and waste reduction⁴⁰. However, not only the foundations of Integrated Project Delivery contracts are close to Agile, but also the eight main sequential phases to the integrated project delivery method can be easily used within an Agile project development⁴¹.

In practice, such a contract encapsulates a shift toward collaboration and toward the “master builder” concept in which the entire team – from producers to engineers through a subcontractor and general contractor – work together through the entire process. Therefore, such projects foster some key aspects of the Agile principles: flexibility, collaboration, transparency.

Usually, Integrated Project Delivery is supported by a multi-party agreement between which the main participants create a virtual organization to realize the project. Usually, compensations are tied to the overall project success and individual success depends on the contributions of all team members⁴².

Furthermore, one could note that the construction and the entertainment industry are somehow similar. Both are old yet striving sectors, both gather a vast diversity of stakeholders in their project, both are facing the risk of large losses and both are contract-heavy. Thus, as Integrated Project Delivery contracts are very efficient in the construction sector, it seems that they might also be very useful to support the development of entertainment projects.

³⁹ Yannick Martel, *Contractualisation Agile* (2009). Retrieved from: https://blog.octo.com/contractualisation_agile/

⁴⁰ Michael P. Gallaher, Alan C. O'Connor, John L. Dettbarn, Jr., and Linda T. Gilday, *Cost Analysis of Inadequate Interoperability in the U.S. Capital Facilities Industry* (2004). Retrieved from: <https://www.lagospm.com/03-benefits/articles/NIST.pdf>

⁴¹ The American Institute of Architects California Council, *Integrated Project Delivery: A Guide* (2007). Retrieved from: <http://aiad8.prod.acquia-sites.com/sites/default/files/2017-02/Integrated%20Project%20Delivery%20Guide.pdf>

⁴² The American Institute of Architects California Council, *Integrated Project Delivery: A Guide* (2007). Retrieved from: <http://aiad8.prod.acquia-sites.com/sites/default/files/2017-02/Integrated%20Project%20Delivery%20Guide.pdf>

Step 2.b – Attributes to Measure

So that we can compare, measure and assess the different feasible alternatives aforementioned, we set a short list of attributes. While those attributes not only reflect the needs of the entertainment industry, they also happen to be milestones for successful contract management. Thus, those criteria will help us to rank the options from best to worst.

A- Collaboration

“What we begin to see is that contracts are founded not on instruments, but on relationships,”⁴³ stated J. Fewell in his article for the Project Management Institute (PMI), *Modern Agile Contracts for The Real World*.

Indeed, even though ‘win-win’ may seem to be quite a shallow term, the approach to negotiation has been evolving over the past years. Executives do not see contract negotiation as a zero-sum game anymore and tend to grasp the benefits of collaboration and win-win contracts⁴⁴. As such, it seems as though Agile methods may help reinforce this shift toward collaboration.

The entertainment industry has also followed this trend as companies needed to become more efficient and to avoid getting contracts wrong⁴⁵. “Defensive, risk-averse, compliance-based contracts undermine results”⁴⁶ and can also have a heavy cost which explains why more and more entertainment companies are willing to use contracts that support collaboration.

B- Vision

“It’s also important for both organizations to come to an agreement about what each means when it says ‘agile’.”⁴⁷. Even though everyone has heard about Agile it seems necessary to reach a consensus about what it means in every particular project, as it can be quite vague. As Ján Meravý explains it in his article *Effective Leadership in Game Industry using Agile Methods*, having a same language, understanding, and vision regarding the project and Agile methods are paramount to the success of the project⁴⁸.

⁴³ J. Fewell, *Modern agile contracts for the real world* (2010). Retrieved from:
<https://www.pmi.org/learning/library/modern-agile-approach-initiate-contract-6541>

⁴⁴ Keld Jensen, *Is Win-Win Negotiation Becoming a Reality?* (2014). Retrieved from:
<https://www.forbes.com/sites/keldjensen/2014/05/09/is-win-win-negotiation-becoming-a-reality/#76cce1582530>

⁴⁵ Katie Shonk, *A Chance at a Win-Win Negotiation in Hollywood?* (2017). Retrieved from:
<https://www.pon.harvard.edu/daily/win-win-daily/in-hollywood-a-second-chance-at-a-win-win-negotiation/>

⁴⁶ Keld Jensen, *Is Win-Win Negotiation Becoming a Reality?* (2014). Retrieved from:
<https://www.forbes.com/sites/keldjensen/2014/05/09/is-win-win-negotiation-becoming-a-reality/#76cce1582530>

⁴⁷ Kent J. McDonald, *Create a Vendor Contract While Keeping Agile* (2013). Retrieved from:
<https://www.techwell.com/techwell-insights/2013/05/create-vendor-contract-while-keeping-agile>

⁴⁸ Ján Meravý, *Effective Leadership in Game Industry using Agile Methods* (2013). Retrieved from:
https://is.muni.cz/th/vkrbc/DP_Jan_Meravy.pdf

And more widely, in every industry and particularly in entertainment, having a shared vision, a common goal and a similar discourse are strong tools for project success. All the more so that the entertainment industry is the business of making dreams come true. To make those dreams a reality, it is important to have a sturdy vision. As Walt Disney said: "I dream, I test my dreams against my beliefs, I dare to take risks, and I execute my vision to make those dreams come true"⁴⁹.

C- Flexibility

"You have to remain flexible, and you must be your own critic at all times" once explained the famous composer Hans Zimmer⁵⁰. An idea that also goes deep in the core of Agile methods. As a matter of fact, flexibility is at the heart of Agile methods as it promotes ongoing improvements.

Moreover, nowadays being flexible is a stepping-stone toward success, especially in the entertainment industry. As we have seen previously, the entertainment area is known for being uncertain and unstable. Which lead us to believe that, in accordance with Agile principles, that in order for a project to be successful it is important to embrace change rather than see it as a threat.

For those reasons, it is key to use a contract that promotes flexibility and that avoid putting the team, the client and the project in some rigid positions.

D- Risk management

Traditionally, a waterfall contract puts all the risk management regarding the customer and the technical feature on the shoulder of the supplier. However, there are drifts, with the supplier trying to transfer part of his risk to the customer, and vice versa.

Furthermore, in such a risk-heavy industry like entertainment, the trend is increasingly pushing toward a shared risk management structure, in accordance with Agile ideas. Lawyers usually tend to want to mitigate risk and protect their client above all, "which leads to entrenched positions and avoidance of change. Essentially, the traditional approach to contracts simply doesn't work for Agile", as explained by the commercial lawyer Stewart James⁵¹

Thus, it seems that sharing risk is a strong milestone in drafting an Agile contract in the entertainment industry.

⁴⁹ Pat Williams and Jim Denney, *How to be like Walt: Capturing the Disney Magic Every Day of Your Life* (2004). Retrieved from: https://books.google.fr/books/about/How_to_Be_Like_Walt.html?id=f2qjAgAAQBAJ&redir_esc=y

⁵⁰ Hans Zimmer, *Twitter* (2012). Retrieved from: <https://twitter.com/hanszimmer/status/227418139271507968>

⁵¹ Pam Ashby for Agile Business Consortium, *Agile Contracting & Why We Need It* (2018). Retrieved from: <https://www.agilebusiness.org/blog/agile-contracting-why-we-need-it>

F- Planning

“It is a myth that agile methods forbid up-front planning. It is true that agile methods insist that up-front planning be held accountable for the resources it consumes.”⁵². Indeed, continuous planning and regular iterations are at the core of Agile development. Moreover, it has appeared that Agile projects involve more and even sometimes better planning than waterfall projects⁵³ as the project lies on continuous planning as opposed to a rigid one.

Yet, those iterations and planning should be properly framed to avoid the project to go sideways. If iterations can strongly benefit the project as they succeed to each other and the team hits its stride, they can also turn into a risk if they are wrongfully drafted⁵⁴.

On this account, it is important to have a criterion that evaluates whether or not the feasible alternatives truly nurture and strengthen this planning aspect.

G- Costs and Benefits

Being another element of the famous triple constraint, we cannot leave the cost area unnoticed regarding the establishment of our criteria.

As Agile projects tend to be flexible and continuously adapt themselves to the context, the costs can strongly variate⁵⁵. Yet, it is needless to say that those variations can be a synonym of fear, conflict, and dismay for the different contractors. And it is the same regarding the benefits and penalties, as they too can vary.

Thus, regarding this criterion, we will reflect on how the benefits and penalties are shared, how the costs are estimated throughout the project lifecycle and ultimately how they can evolve during the project.

H- Quality-driven

As we saw in the first step, Agile contracts are quality-driven. Yet, being quality-driven does not merely mean pursuing the highest quality, it also implies following the following and encouraging the following aspects around which lean management is articulated:

⁵² CollabNet VersionOne, *Characteristics of Agile Development Success* (n.d.). Retrieved from: <https://resources.collab.net/agile-101/agile-development-success>

⁵³ CollabNet VersionOne, *Characteristics of Agile Development Success* (n.d.). Retrieved from: <https://resources.collab.net/agile-101/agile-development-success>

⁵⁴ Dave Bowett, *Proactively Planning for Risks to Your Agile Project* (2016). Retrieved from: <https://www.agileconnection.com/article/proactively-planning-risks-your-agile-project>

⁵⁵ Agilest, *Agile Budgeting: How much will it cost?* (n.d.). Retrieved from: <https://www.agilest.org/agile-project-management/budgeting/>



Figure 7 - Four integrated disciplines of Quality⁵⁶

Indeed, many entertainment companies such as Sony has developed a *Pledge of Quality* and a *Quality Management System Framework*⁵⁷ to make active use of feedback and improvement to deliver enhanced value to customers.

I- **Communication**

Communication is one of the main pillars of a project success. In their report *The High Cost of Low Performance: The Essential role of communications*, PMI strongly underlines the importance of communication within a project. It is estimated that 56% of projects are at risk due to ineffective communication, and one project out of five is unsuccessful due to ineffective communication⁵⁸.

⁵⁶ Zachary Surak, *The continuous improvement leader: Engaging people for a digital age* (2017). Retrieved from: <https://www.mckinsey.com/business-functions/operations/our-insights/the-continuous-improvement-leader-engaging-people-for-a-digital-age>

⁵⁷ Sony, *Product Quality and Quality Management* (n.d). Retrieved from: https://www.sony.net/SonyInfo/csr_report/quality/management/

⁵⁸ Project Management Institute, *The High Cost of Low Performance: The Essential role of communications* (2013). Retrieved from: <https://www.pmi.org/-/media/pmi/documents/public/pdf/learning/thought-leadership/pulse/the-essential-role-of-communications.pdf>

As important as the topic is, numerous are the discussions about it. Indeed, how many books are published, how many conferences are held, and how many videos are posted about this subject? And as suggested by S. Rajkumar, communication is a key to success for any project⁵⁹, especially in agile entertainment projects.

Therefore, it seems impossible to overlook this criterion and we should study whether or not the different feasible alternatives efficiently support communication within the different stakeholders.

J- Continuous improvement

Continuous improvement is at the heart of Agile and should be supported throughout the whole project lifecycle and with the several iterations: “At regular intervals, the team reflects on how to become more effective, then tunes and adjusts its behaviour accordingly”⁶⁰. Thus, the contract should somehow ensure that knowledge is spread and shared across the organization and that improvement can be implemented continuously⁶¹.

This idea seems to be particularly important in an industry like entertainment as “Continuous improvement increases fan satisfaction and drives improved business results”⁶². Indeed, as feedback is received and incorporated during the development of the project, it strongly helps to reach higher customer satisfaction, which is paramount in an industry where the customer’s taste can easily change.

Therefore, it seems really important to verify that the several feasible alternatives can encourage such practices.

K- SMART

If we narrow down to the essence of a contract within the scope of a project, it is a binding agreement between two or more parties used to frame and reach a goal⁶³.

The SMART methodology for goal setting has already proven its worth. As explained by the Corporate Finance Institute: “A SMART goal is used to help guide goal setting. SMART is an acronym that stands for **S**pecific, **M**easurable, **A**chievable, **R**ealistic, and **T**imely. Therefore, a SMART goal incorporates all of these criteria to help focus your efforts and increase the chances

⁵⁹ Sivasankari Rajumar, *Art of communication in project* (2010). Retrieved from: <https://www.pmi.org/learning/library/effective-communication-better-project-management-6480>

⁶⁰ Agile Alliance, *Manifesto for Agile Software Development* (2001). Retrieved from: <http://agilemanifesto.org/>

⁶¹ Amir Ghahrai, *12 Qualities of a Good Agile Leader* (2017). Retrieved from: <https://www.testingexcellence.com/12-qualities-good-agile-leader/>

⁶² UL, *Sports and Entertainment* (n.d.). Retrieved from: <https://industries.ul.com/continuous-improvement/sports-and-entertainment>

⁶³ Business Dictionary, *Contract* (n.d.). Retrieved from: <http://www.businessdictionary.com/definition/contract.html>

of achieving that goal.”⁶⁴. This method emphasizes the goal itself, as a goal is only as legit as it is properly set.

As explained by the company Zycus, procurement usually has to face many pitfalls⁶⁵, such as: scope creep, undefined business objectives or even lack of a focused team. Yet, developing some SMART goals can help to root out some of the main causes of contract and project failure.

Setting a SMART goal is crucial to further project success and it has demonstrated its usefulness on countless occasions. Thus, to ensure that the several feasible alternatives are efficient they need to be SMART.

L- Innovation

Dr. Adrian Burde gives several Critical Success Factors for Performance-Based Contracts, one of them is innovation as: “innovation is a driving force at the core of the performance-based maintenance contracting approach”⁶⁶.

And this seems all the more true in the context of Agile contracts where innovation is of greatest importance, or in the entertainment industry where a company constantly has to innovate in order to meet customers’ needs and expectations and to cope with the growth of digital.

However, as stated by Tendayi Viki for Forbes: “Executives, managers and employees across the globe are working hard to figure out how to succeed with innovation.”⁶⁷. Indeed, even though there is a common understanding toward the crucial role innovation should play during the development of a project, it is not that easy to create a healthy contract that fosters innovation. On this account, it seems important to have a criterion monitoring this innovation aspect.

M- Negotiation

“Customer collaboration over contract negotiation” assert the Agile Manifesto⁶⁸. While not only what is written in the contract is important, but also the context in which it has been written. Poor contract negotiation could bring conflicts and tensions even before the very beginning of

⁶⁴ Corporate SMART Goal, *SMART Goal*, (n.d.). Retrieved from:
<https://corporatefinanceinstitute.com/resources/knowledge/other/smart-goal/>

⁶⁵ Zycus, *Critical Success Factors for Contract Management Automation* (2012). Retrieved from:
<https://fr.slideshare.net/Zycus/critical-success-factors-for-contract-management-automationiacm>

⁶⁶ Dr. Adrian Burde, *Critical Success Factors for Performance-Based Contracts* (2016). Retrieved from:
<https://www.irf.global/critical-success-factors-for-performance-based-contracts-pbc/>

⁶⁷ Tendayi Viki, *Why Companies Must Align Innovation Strategy With Business Strategy* (2018). Retrieved from:
<https://www.forbes.com/sites/tendayiviki/2017/06/12/why-companies-must-align-innovation-strategy-with-business-strategy/#44f31c1344a5>

⁶⁸ Agile Alliance, *Manifesto for Agile Software Development* (2001). Retrieved from: <http://agilemanifesto.org/>

the project, and in the same way, a good and sane contract negotiation can resolves many breaches and clarify many uncertainties⁶⁹.

Especially in the entertainment, as unhealthy contract negotiation has been corroding the industry for many years: “a quick perusal of any of the entertainment industry’s major trade papers such as *Daily Variety* or *The Hollywood Reporter* reveals the considerable number of pending court cases, arguments, disputes, and the sheer variety of conflicts that arise in the business.”⁷⁰. As a result, the industry has seen many specialized books and attorneys regarding this issue and many failed negotiations has been publicized.

Thus, being the stepping-stone of the contract and its implementation, it appears utterly necessary to monitor the contract negotiation phase through a criterion.

Step 3 – Pair-wise comparison

In order to compare those attributes, we use a non-compensatory model based on a disjunctive reasoning: a Pair-Wise comparison⁷¹.

	Collaboration	Vision	Flexibility	Risk	Planning	Costs	Quality	Communication	Improvement	SMART	Innovation	Negotiation	Sum	Rank
Collaboration		1	1	0	0	0	0	1	1	1	1	1	7	5
Vision	0		0	0	0	0	0	0	0	0	0	0	12	12
Flexibility	0	1		0	0	0	0	1	1	0	0	1	4	8
Risk	1	1	1		0	0	0	1	1	1	1	1	8	4
Planning	1	1	1	1		0	0	1	1	1	1	1	9	3
Costs	1	1	1	1	1		0	1	1	1	1	1	10	2
Quality	1	1	1	1	1	1		1	1	1	1	1	11	1
Communication	0	1	0	0	0	0	0		1	0	0	1	3	9
Improvement	0	1	0	0	0	0	0	0		0	0	0	1	11
SMART	0	1	1	0	0	0	0	1	1		0	1	5	7
Innovation	0	1	1	0	0	0	0	1	1	1		1	6	6
Negotiation	0	1	0	0	0	0	0	0	1	0	0		2	10

Figure 8 - Pair-Wise Comparison of the Criteria⁷²

⁶⁹ Lopez & Prajin Attorneys at Law, *Contract Negotiation* (n.d.). Retrieved from: <http://www.lopezprajin.com/Practice-Areas/Entertainment-Law/Contract-Negotiations.aspx>

⁷⁰ Tim Ostrander, *A Comparative Analysis of the Uses of Mediation in the Entertainment Industry* (2013). Retrieved from: <http://www.cornellhrreview.org/a-comparative-analysis-of-the-uses-of-mediation-in-the-entertainment-industry/>

⁷¹ Sullivan, Wickes & Kroelling *Engineering Economics* (2014). Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

⁷² By Author

Now we understand that the most important criterion when drafting a contract is quality. Indeed, not only are agile contract *quality-driven* as we previously saw but also, in order to be truly quality-driven, a contract should integrate all the other criterion as they will serve this purpose.

Step 4 – Qualitative analysis

Now the question narrows down to which feasible alternative might be the best regarding those criteria. To measure this, we used a multi-attribute decision-making model based on a qualitative analysis⁷³. Utilizing this method, we compared the attributes to each of the alternatives solutions to underline the best fit concerning our problematic.

	Fixed-Price	Capped T&M	Incremental	Target Cost	IPD
Collaboration	Low	Low	Medium	Strong	Strong
Vision	Medium	Medium	Strong	Medium	Medium
Flexibility	Low	Medium	Strong	Strong	Strong
Risk	Low	Low	Medium	Strong	Medium
Time	Medium	Strong	Medium	Medium	Strong
Costs	Strong	Strong	Medium	Strong	Strong
Quality	Strong	Medium	Strong	Strong	Strong
Communication	Low	Medium	Strong	Strong	Strong
Improvement	Low	Medium	Strong	Strong	Strong
SMART	Strong	Medium	Medium	Strong	Strong
Innovation	Low	Low	Strong	Medium	Strong
Negotiation	Medium	Medium	Medium	Medium	Strong

Low
Medium
Good

Figure 9 - Qualitative Analysis⁷⁴

To better analyze this sheet, we weighted each attribute:

⁷³ Sullivan, Wickes & Kroelling *Engineering Economics* (2014). Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

⁷⁴ By Author

	Fixed-Price	Capped T&M	Incremental	Target Cost	IPD
Collaboration	0,2	0,2	0,6	1	1
Vision	0,6	0,6	1	0,6	0,6
Flexibility	0,2	0,6	1	1	1
Risk	0,2	0,2	0,6	1	0,6
Time	0,6	1	0,6	0,6	1
Costs	1	1	0,6	1	1
Quality	1	0,6	1	1	1
Communication	0,2	0,6	1	1	1
Improvement	0,2	0,6	1	1	1
SMART	1	0,6	0,6	1	1
Innovation	0,2	0,2	1	0,6	1
Negotiation	0,6	0,6	0,6	0,6	1
TOTAL	6	6,8	9,6	10,4	11,2

Figure 10 - Weighted Qualitative Analysis⁷⁵

After weighing the attributes, we can see that some feasible alternatives can be eliminated. While studying the sheets, we decided that each alternative with a total score under 10 would be eliminated, as it does not embody the best fit.

Indeed, Fixed-Price contract and Capped T&M are not the best suitable options concerning the entertainment industry. On the one hand, Fixed-Price contracts are rigid and are not really appropriate to support Agile methods and puts all the risk on the supplier. On the other hand, Capped T&M may not be as rigid, but they still do not really embrace change nor share the responsibilities and risks. Moreover, if both can be helpful to foster the implementation of a vision, this aspect is not truly present at the core of both contracts. Even though it can be implemented as a best practice in some particular cases, it seems dodgy to recommend it on a broader scale. Finally, both tend to hamper collaboration and do not really represent a nice field for win-win negotiation and contract, which are two cornerstones for successful contracting in many entertainment projects.

Those findings can be underlined by the case of the failed Agile development of Universal Credit Programme. In the article “Why Agile Development Failed for Universal Credit,” Mark Ballard explains how compelling it is to have a contract adapted to the Agile methods⁷⁶. Indeed, it seems that the main cause for failure was the contract: “The fundamental problem was procurement. [...] Our hands were tied because of procurement. If you don't set up the contract properly, you

⁷⁵ By Author

⁷⁶ Mark Ballard, *Why Agile Development Failed For Universal Credit* (2013). Retrieved from: <https://www.computerweekly.com/news/2240187478/Why-agile-development-failed-for-Universal-Credit>

are on a hiding to nothing”. As the contract was not able to support the several criteria we study, it was hindering the use of Agile principles and thus the development of the project.

All in all, it is no wonder the alternatives of Fixed-Price contract, Incremental and Capped T&M have to be dismissed as they do not properly meet the idea of supporting creating and flexibility which are two essential features regarding the success of project in the entertainment industry, nor do they help to implement Agile principles or to balance the triple constraint.

FINDINGS

Step 5 – Additive weighting technique

In order to clarify our results and sharpen the decision-making process of the study, we decided to use an additive weighting technique⁷⁷. By normalizing the rank of the different criteria and comparing it to the weight of the different feasible alternative we were able to rank them.

	STEP 1	STEP 2	FIXED-PRICE		CAPPED T&M		INCREMENTAL		TARGET COST		IPD	
	Relative ranking	Normalized weight (A)	B	A x B	C	A x C	D	A x D	E	A x E	F	A x F
Collaboration	7	0,09	0,2	0,02	0,2	0,02	0,6	0,05	1	0,09	1	0,09
Vision	12	0,15	0,6	0,09	0,6	0,09	1	0,15	0,6	0,09	0,6	0,09
Flexibility	4	0,05	0,2	0,01	0,6	0,03	1	0,05	1	0,05	1	0,05
Risk	8	0,10	0,2	0,02	0,2	0,02	0,6	0,06	1	0,10	0,6	0,06
Time	9	0,12	0,6	0,07	1	0,12	0,6	0,07	0,6	0,07	1	0,12
Costs	10	0,13	1	0,13	1	0,13	0,6	0,08	1	0,13	1	0,13
Quality	11	0,14	1	0,14	0,6	0,08	1	0,14	1	0,14	1	0,14
Communication	3	0,04	0,2	0,01	0,6	0,02	1	0,04	1	0,04	1	0,04
Improvement	1	0,01	0,2	0,00	0,6	0,01	1	0,01	1	0,01	1	0,01
SMART	5	0,06	1	0,06	0,6	0,04	0,6	0,04	1	0,06	1	0,06
Innovation	6	0,08	0,2	0,02	0,2	0,02	1	0,08	0,6	0,05	1	0,08
Negotiation	2	0,03	0,6	0,02	0,6	0,02	0,6	0,02	0,6	0,02	1	0,03
TOTAL	78	1	0,58		0,59		0,79		0,85		0,90	

Figure 11 - Additive Weighting Comparison⁷⁸

This confirmed our latest findings: Fixed-Price, Incremental and Capped T&M contracts are the least suited to help the entertainment industry to thrive. On the opposite, our analysis tends to

⁷⁷ Sullivan, Wickes & Kroelling *Engineering Economics* (2014). Retrieved from: <http://www.planningplanet.com/guild/gpccar/managing-change-the-owners-perspective>

⁷⁸ By Author

show that Target Cost and Incremental Project Delivery contracts are the most suited alternative to support collaboration and win-win dynamics amongst the team, to help to maintain a balanced triple constraint to create and implement a strong vision, to foster flexibility and change management while sharing the risks efficiently amongst the signatory in order to ultimately achieve the highest quality.

Step 6 – Selection of the preferred alternative

In the end our study and its results we came to understand that the two best solutions according to our criteria were Incremental Project Delivery Contracts and Target-Cost contracts, with the first type being suitable in 90% of the cases according to our analysis.

And indeed, it seems that both tend to be a match when it comes to dealing with complex stakeholders and large risks and thus implies to undertake a more sophisticated procurement approach. As we can see with Zycus's graphism⁷⁹, they seem to be both among the front-runners concerning contract intelligence.

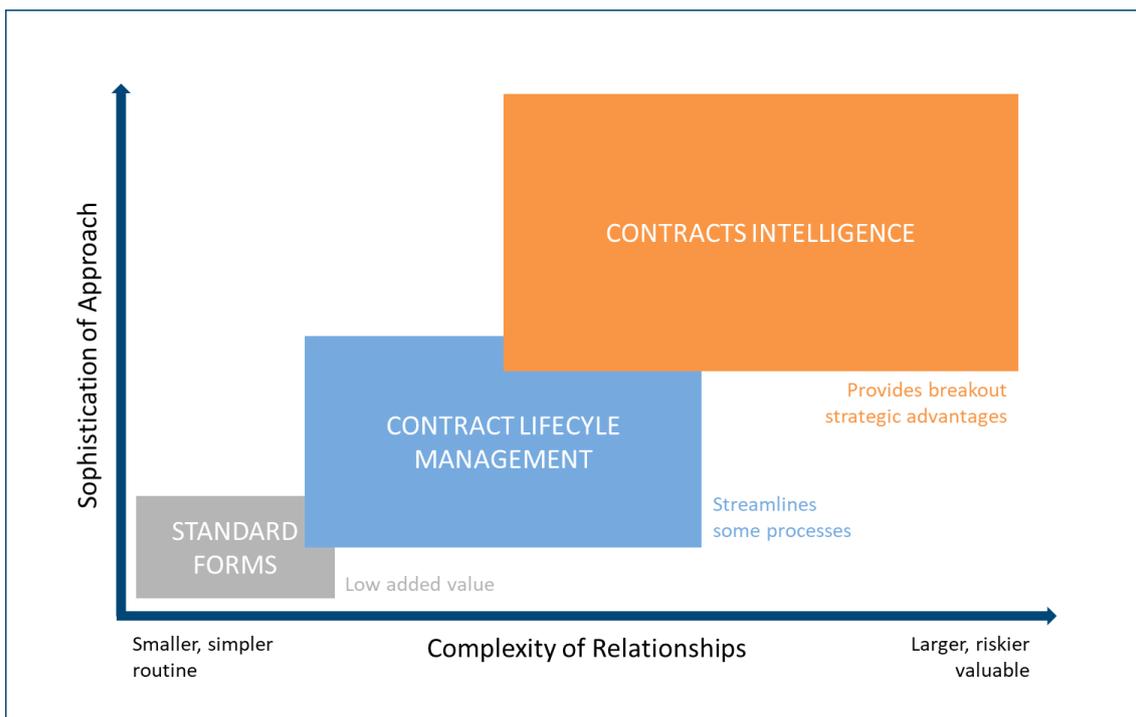


Figure 12 - Procurement: from Standards forms to Contracts Intelligence⁸⁰

⁷⁹ Zycus, *Critical Success Factors for Contract Management Automation* (2012). Retrieved from: <https://fr.slideshare.net/Zycus/critical-success-factors-for-contract-management-automationiacm>

⁸⁰ Zycus, *Critical Success Factors for Contract Management Automation* (2012). Retrieved from: <https://fr.slideshare.net/Zycus/critical-success-factors-for-contract-management-automationiacm>

A- Incremental Project Delivery Contracts

By breaking down a longer project into smaller, distinct mini-projects and sprints, and gathering the whole team into one virtual organization, the Incremental Project Delivery contracts tend to strongly uphold the flexibility of the team. As explained by Scrumology in their Overview of Agile Contracts, “this style of contract works quite naturally for Agile teams because they simply work in an iterative fashion until the point of inspection”.

Furthermore, we have seen previously that this type of contract was widely used on a large-scale construction project. So, the many similarities between this industry and the entertainment underpin the idea that Incremental Project Delivery Contracts might be genuinely useful.

Thus, we believe this type of contract can be strongly efficient in the entertainment industry when it comes to dealing with and satisfying the consumer as often as possible. Along with this idea, Willem-Jan Ageling takes the example of a Holiday Park in his article Agile incremental delivery – how to explain Agile, MVP and Incremental delivery to anyone. He takes the case of Tom and Jane who bought a piece of land in the French Alps to start a beautiful holiday park. For Tom and Jane, it is essential to deliver incrementally during the project, in other words, starting with building a basic campsite (the MVP), then adding the reception, next toilets and showers, and so forth up until the swimming pool and the camp shop. All those features can be realized from a project management point of view through one sprint for each. Based on those facts we can easily say that it can be utterly interesting for Tom and Jane to use Incremental Project Delivery Contracts as it allows them to efficiently manage their cost and time, to benefit from customer feedbacks, to make their project evolve and change and to terminate it as soon as a majority of value is met.

In addition, Incremental Project Delivery Contracts have an edge on Target-Cost contracts regarding two decisive criteria: negotiation and innovation. First, even though it is mainly flexible, by setting a Target-Cost, the eponymous type of contract might not foster that much innovation⁸¹. The signatories might prioritize the achievement of the goal rather than adding value and innovation to the project. Moreover, whilst the contract negotiation is quite hard in Target-Cost contracts as it is not an easy task to agree on a Target-Cost; it seems to be easier to negotiate in the context of an Incremental Project Delivery Contract.

Thus, we can understand how Incremental Project Delivery Contracts can be seen as the most powerful type of contract for many projects in the entertainment sector as they encourage direct and steady contact with the consumer and within the team, while facilitating innovation, negotiation and the balance of the triple-constraint, which ultimately helps to manage creativity and deliver high quality.

⁸¹ François Campagnolla, *Les Formes Contractuelles de l'Innovation Technologique*. (2017). Retrieved from ; <https://www.village-justice.com/articles/Les-formes-contractuelles-innovation-technologique,25551.html>

B- Target Cost contracts

Nonetheless, even if they might not be the perfect fit to uphold every criterion, Target Cost contracts are really beneficial as they help to get the interests of the contractor and the client aligned, insofar as their benefits and penalties are linked. “Because target cost contracts are a powerful motivation for the contractor to stay under budget, they tend to also have other positive repercussions on the project. By having a stake in the project's final budget, contractors are more likely to keep costs low, complete deliverables faster and produce an end product of higher quality” as explained by Tara Naughter for ContractWorks⁸². On this account, it is strongly supporting collaboration and the sharing of the risks and threats.

Furthermore, by using a Target-Cost it helps to set a common and SMART goal without risking the team to scatter its work. Thus, it looks like Target-Cost contracts could be quite efficient to set a vision within the team, while also helping to stay focused and keeping the triple-constraint balanced. J. Brandon Davis also gives account for this idea in his article “Optimum Contracting Model For (Most) Construction Project.”⁸³ He says that in his 15 years of real-world implementation, his experience tends to show that in most cases Target Price is the best approach. And as we previously saw, the construction and the entertainment industry are both old and contract-heavy, thus we can believe that if Target Cost contracts are strongly recommended in the first sector it should also be a good fit for the second.

Indeed, we can think of many cases where a Target Cost contract could be useful in entertainments projects. From Tom and Jane Holiday park, up to the realization and production of a music album and through the creation of a video game. Even though they might not be the best fit to foster innovation and contract negotiation they still embody some great promises and benefits.

Step 7 – Performance monitoring

First and foremost, it seems that the primary points to monitor are those regarding the project Triple Constraint. Indeed, balancing time, cost and scope to achieve quality is the crux of the matter as regards to project success, thus it seems vital to monitor those aspects. In order to accurately track the performance a good practice to adopt would be to use some key indicators. Those indicators should take into account not only the criteria related to the triple constraint but also those relating to the implementation of Agile principles, while also allow grasping a complete mapping of the project from a technical as human point of view. For instance, in their framework Contract-Agile introduces five indicators⁸⁴:

⁸² Tara Naughter, *What Are Target Cost Contracts?* (2017). Retrieved from:
<https://www.contractworks.com/blog/what-are-target-cost-contracts>

⁸³ J Brandon Davis, *Optimum Contracting Model For (Most) Construction Projects* (2013). Retrieved from:
http://blog.cleveland.com/building-blocks/2012/07/optimum_contracting_model_for.html

⁸⁴ Contrat-Agile, *PQS Suivi de projet, métriques* (n.d). Retrieved from : <http://www.contrat-agile.org/pqs.html>

1. Predictability
2. The productivity of the team
3. Quality of the product or service
4. Involvement of the team
5. Client satisfaction

Moreover, it seems quite inappropriate to associate to each of those indicators a numerical threshold and a penalty, particularly when things go wrong on a project all the indicators tend to demean: if productivity is in free-fall, there is no more predictability and satisfaction indicators drop. In this case, applying penalties systematically when exceeding the threshold comes back to accumulating penalties without knowing the cause of the issue⁸⁵.

Instead, one should focus on the tendency of the indicator rather than their mere numerical value at a certain time. It appears more important to focus on how this value evolves and to put in place some red flags to underline abnormal situation in the development of the project.

Secondly, a substantial fact we should highlight regarding those two types of contracts is that they both stimulate collaboration and help to spread the risks. To achieve higher performance regarding that topic, two clauses are usually used in accordance with the Agile principle: change for free and money for nothing.

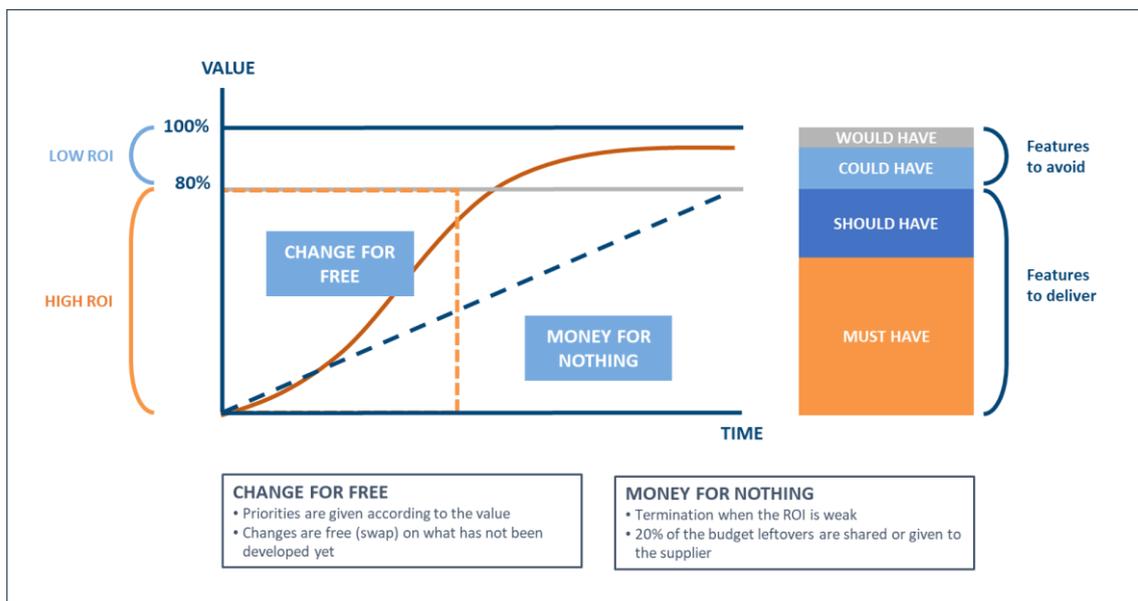


Figure 13 - Change for Free and Money for Nothing⁸⁶

⁸⁵ Contrat-Agile, *PQS Suivi de projet, métriques* (n.d). Retrieved from : <http://www.contrat-agile.org/pqs.html>

⁸⁶ Franck Beulé, *Le Contract Agile : ce n'est pas si simple que ça* (2016). <https://fr.slideshare.net/franckbeule7/le-contrat-agile-ce-nest-pas-si-simple-que-a>

Those two practices are often recognized as very useful if not essential concerning the success of the procurement for an Agile project⁸⁷ as they foster the proper utilization of the cost and time. Thereby, it seems important to monitor the application of those two methods by also using some key indicators.

All in all, we came to the conclusion that in order to properly monitor and track Incremental Project Delivery and Target Cost contracts it should be important to have some KPIs or clauses regarding the balance of the triple-constraint and the identified risks of the project, as well as some clauses regarding change for free and money for nothing; and the performance of those topics should be framed and monitored by indicators where the penalty is based on the evolution of the indicator.

CONCLUSION

Agile originally started as an in-house method for software development in the private sector: it was not prepared nor envisioned as a contracting method⁸⁸. And indeed, the two very words *Agile* and *Contract* do not seem to belong to the same sentence. Yet, we can now see that not only *Agile* and *Contract* are nowhere near being opposite; they can represent a strong and efficient alliance that can help the entertainment industry to thrive.

The goal of this paper was to evaluate whether or not agile contracts could help to cope with the main issues that often hurdle entertainment projects and determine if we can share and reduce the risks in entertainment contracts whilst remaining adaptable and agile.

We have studied five contract types. If the Fixed-Price and Capped T&M contract can be useful for some Agile project within the entertainment industry, it seems that they might hamper collaborative dynamics and be too rigid, which may ultimately lead to project failure as in the failed agile development of Universal Credit Programme⁸⁹.

And indeed, our qualitative and quantitative analysis tends to show that the best fit for Agile projects in the entertainment industry are Incremental Project Delivery and Target Cost contracts as they can strongly support the development of projects in this unstable sector while fostering the implementation of Agile principles and methods.

⁸⁷ Franck Beulé, *Le Contract Agile : ce n'est pas si simple que ça* (2016). <https://fr.slideshare.net/franckbeule7/le-contrat-agile-ce-nest-pas-si-simple-que-a>

⁸⁸ William D. Eggers and John O'Leary, *When Agile meets government* (2017). Retrieved from: <https://www2.deloitte.com/insights/us/en/industry/public-sector/agile-in-government-culture-shift.html>

⁸⁹ Mark Ballard, *Why Agile Development Failed For Universal Credit* (2013). Retrieved from: <https://www.computerweekly.com/news/2240187478/Why-agile-development-failed-for-Universal-Credit>

The benefits of using such contracts – provided that they adequately monitor performance and risks – are countless. Uncertainty is more than often present in the entertainment industry: regarding consumers tastes, the service itself and contracts⁹⁰. Thus, the flexibility allowed by Incremental Delivery and Target Cost contracts is paramount: it is not only a solution to cope with the plentiful uncertainties but also, a great way to hear and adapt to consumer feedbacks and thus to ensure the delivery of a product or service with a maximum value.

Moreover, the entertainment industry suffers from many conflict and trust issues. As such, adding more collaboration in the contract and sharing the risks between the signatories could be a solution to avoid those pitfalls and to draft some win-win contracts, which in the end is beneficial for everyone in this industry.

To sum it all up, we will cite a both truthful and inspiring quote of William D. Eggers and John O’Leary “the contract isn’t really the key to success, contract management is”⁹¹.

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About the Author



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Sarra Messai is a young Project Manager and a former PGE Student at SKEMA Business School where she did the MSC Project and Program Management and Business Development. She has a strong international background since she lived in France, Brazil, and England.

After graduating from High school and passed her scientific “baccalaureate” with honors, she did a Preparatory class for competitive entrance into French Business School during 2 years in Paris. She integrated the “Programme Grande Ecole” of SKEMA BS in Management in 2015. During her time in SKEMA BS, Sarra also had several significant work experiences. She started from being President of the main Student Club of her school in Lille, then did an internship for an Oil&Gas startup in London and worked as a Project Manager Assistant for Publics Conseil in Paris afterward. She is now working as a Project Manager for a consulting company based in Paris specialized in Project Management and Business Analysis for IT projects.

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