

ROBOTIC PROCESS AUTOMATION AND ARTIFICIAL INTELLIGENCE

Securing the benefits of technological advancement



INTRODUCTION

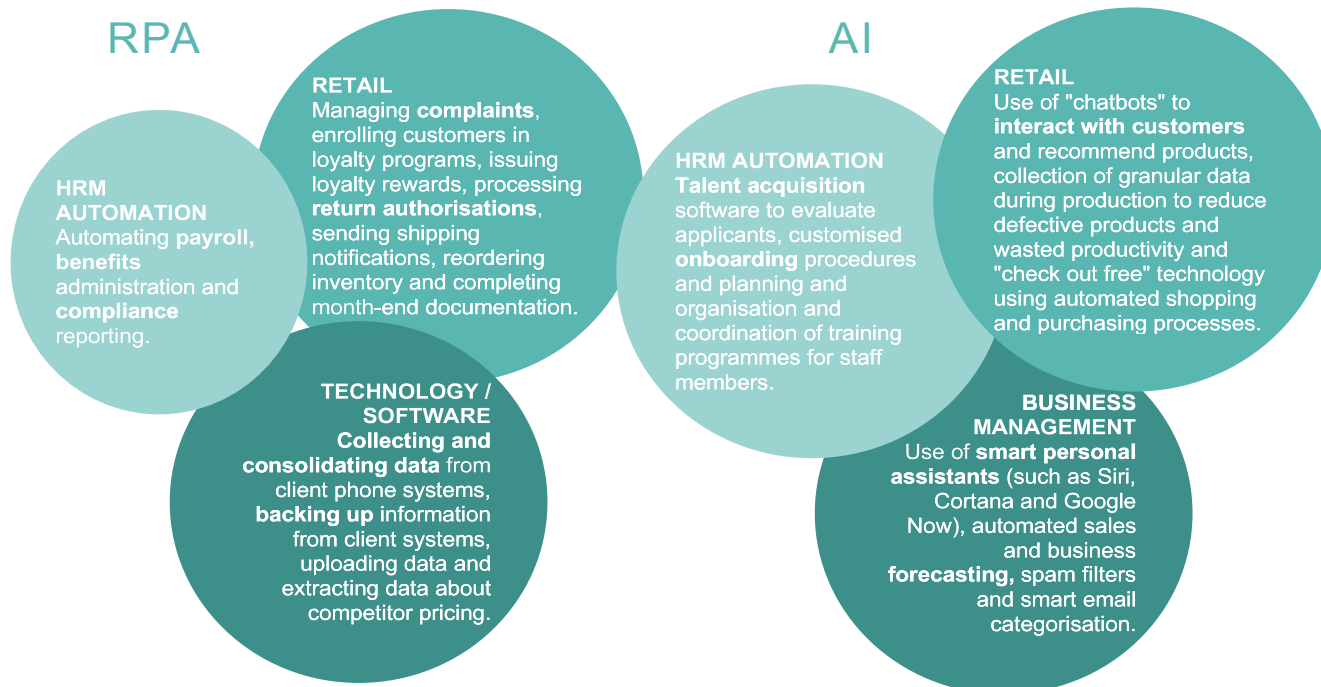
Robotic Process Automation (**RPA**) has been helping organisations **improve the efficiency of processes** by automating routine business processes for a number of years – indeed, the automation of back office processes has become an increasingly standard offering. The more recent development of Artificial Intelligence (**AI**) adds a new layer of autonomy to robotic automation due to its "self-learning" capability, opening up the possibility of automating more processes and more steps in those processes.

The market is rapidly advancing with recent developments in technology.

- ▶ We are now seeing advances in the application of RPA and AI in **customer-facing functions** as providers add cognitive capabilities to their tools.
- ▶ Large scale automation is possible and end-to-end processes can be performed with very little human interaction.

PwC has estimated that **45%** of all work activities eventually might be automated this way (*PwC: Organize your future with robotic process automation*).

EXAMPLES OF USE



WHO TO CONTACT

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POTENTIAL BENEFITS

- Cost efficiency** – the cost of operating a software robot can be much less than onshore (or even offshore) labour.
- Accuracy** – processes are more predictable, consistent and less prone to errors than those handled by people.
- Performance** – robots can perform processes faster than a person.
- Business agility** – robots can perform 24/7 and can be re-scheduled or re-assigned as needed.
- Data** – data gathering from automated processes can help achieve better performance monitoring.
- Productivity** – employees do not have to undertake monotonous activities and can instead focus on more important and interesting tasks.

SOME KEY CONTRACTUAL AND PRACTICAL CONSIDERATIONS

IP ownership and rights of use

- ▶ The RPA / AI system provider will most likely own the IP rights in the solution (unless it is a bespoke solution which would come at a cost) so careful consideration about the scope of the licence will be needed – for example:
 - ▶ Can the provider license the solution to direct competitors?
 - ▶ Who needs rights to use the solution; for example, do third party contractors or customers need to be able to use the solution?
- ▶ The situation will become more complex where machine learning develops new processes and know-how so careful consideration about the ownership of arising IP rights will also be needed.

Service levels and credits

- ▶ These are key for monitoring and incentivising performance – consider key metrics such as:
 - ▶ availability (% uptime);
 - ▶ processing speed and accuracy; and
 - ▶ response and resolution times.
- ▶ Seek to avoid service credits as sole remedy – a damages claim and termination rights should be available for persistent or very poor performance.
- ▶ Consider including a service level review mechanism to account for developing technology. Current service models may need to be revised to reflect the increasing capabilities of RPA / AI systems and their different modes of failure.

Contracting structure and risk allocation

- ▶ Consider whether you are contracting on a licence-only model or for a managed service. Leading RPA / AI tool providers tend to adopt licence-only models but this means that the provider does not take overall responsibility for overall solution delivery. Instead, it may be more attractive to work with a managed service provider who takes on this risk though this has cost implications.
- ▶ The use of a managed service provider for AI solutions in particular may be more attractive rather than buying the licence directly, as teaching processes may be time consuming and require technical and operational knowledge.

Business continuity and exit

- ▶ For critical processes, consider how business continuity will be achieved if the RPA / AI solution is not able to operate (for example, whether it is possible to revert to manual processing).
- ▶ Failures with RPA / AI systems may have a significant business impact, so detailed business continuity and insurance provisions should be included.
- ▶ Consider the business' dependence on the RPA / AI provider and what would be needed to manage an orderly exit - exit provisions should address exit assistance obligations (including how data can be exported to another provider) and any continued rights of use required to avoid business disruption.

Impact on licensing model

- ▶ Consider how RPA / AI systems will interact with your existing IT systems and what impact this may have on your licensing model - this is particularly important given the increased prevalence of under-licensing claims relating to indirect access of core ERP systems.
- ▶ Will robots be counted on a per-user basis (though numbers may differ vastly from the required number of human users) or will other payment models be applied? For example, SAP has announced the introduction of a payment model for indirect licensing which differentiates between direct / human and indirect / digital access.

Locking in contractual benefits

- ▶ Consider how you can secure the benefit of cost savings achieved as a result of technological developments, both in existing and future contracts.
- ▶ Savings may not automatically be passed on under existing pricing models but other contractual provisions may assist such as:
 - ▶ continuous improvement provisions and efficiency and productivity initiatives with price reduction commitments;
 - ▶ use of gain sharing mechanisms to ensure that any cost benefit is realised whilst encouraging ongoing collaboration; and
 - ▶ exercising benchmarking rights to compare prices in the market and reduce charges to within certain parameters.
- ▶ At the end of the contractual term, engage business and technical teams to assess new RPA and AI solutions to leverage the negotiation process on renewal.

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