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Executive Summary

If you're renegotiating a software delivery contract this year, you're not negotiating against the same baseline you used last year. The economics of how software gets built have shifted, and the people on both sides of the table are openly naming the shift. The questions showing up in procurement reviews — and the clauses landing in new statements of work — reflect that.

This piece walks through what's changing, why it's changing now, and what enterprise buyers are actually putting into their contracts.

A gap the market is naming out loud

Productivity inside AI-fluent services firms has climbed sharply. McKinsey's most recent figures put the gain at 15–40% on mature deployments. Haus Advisors documented a 5x improvement on a specific module of work where one agency's invoice for the same deliverable dropped from $3,500 to $700.

Prices, meanwhile, have hardly moved. As Consulting Quest summarized:

> “While productivity has soared inside consulting firms, prices haven't moved significantly. The average day rate or project fee looks suspiciously similar to what it was before generative AI entered the picture, and the gap between what work costs to deliver and what clients are charged is widening.”

The gap between cost-of-delivery and price-charged is the entire commercial story right now. Every other trend in this article is a response to it.

Haus Advisors named the supplier-side version of the same gap the **Efficiency Penalty**: under traditional hourly billing, faster delivery converts directly into lower revenue. Suppliers that adopt AI fastest see margins erode first — unless they restructure how they price. Industry commentary has begun to describe this as a “Kodak moment for global consultants” (Reuters, cited in subsequent analysis), and the recent public results from major consultancies — slowing growth, layoffs, visible AI re-tooling — are read as the first visible squeeze.

What buyers are doing about it

The buyer-side response is no longer theoretical. Procurement leaders and CIOs are taking concrete steps in 2026:

Renegotiating existing outsourcing contracts. Multi-year FTE-based deals are being reopened mid-term. Productivity-sharing clauses are being inserted on renewal. AI-tool disclosure is being asked for retroactively.

Inserting new clauses on new deals. The same productivity-sharing clauses are now standard items in procurement clause libraries — moved from think-piece to template in under twelve months.

Asking for AI disclosure as a procurement requirement. Security questionnaires now include AI-system questions. RFPs increasingly require model cards, evaluation artifacts, and acceptable-use policies.

Capping their own exposure on new vendor pricing experiments. Vendors are changing AI prices monthly. CIOs are responding with fixed-price contracts, usage caps, FinOps-for-AI practices, and architectural choices that avoid single-vendor lock-in.

The common thread: buyers no longer assume the productivity gain between supplier and client should remain inside the supplier.

The five clauses now appearing in software-services contracts

Five clauses are appearing in new and renegotiated contracts, with references converging across InformationWeek legal commentary, Gouchev Law, Michalsons, and the IAPP-published EU model contractual clauses for AI procurement.

1. **AI tool disclosure.** Supplier discloses which AI systems were used in producing each deliverable, at what stage, with what level of human review.

2. **Data-protection prohibition.** Client data may not be used to train any model — vendor's, third-party, or aggregated. Often paired with audit rights.

3. **IP ownership of AI-generated outputs.** Explicit assignment of AI-generated artifacts to the buyer. Closes the ambiguity around derivative works and human-review thresholds.

4. **Liability for AI errors and hallucinations.** Who is on the hook when the model produces something defective, biased, or non-compliant. Suppliers initially try to disclaim; buyers increasingly refuse.

5. **Productivity-sharing.** The headline clause. Prevents supplier from capturing 100% of efficiency gains from AI tooling. Three common flavors:

    > **Rate-card haircut on renewal**, triggered by demonstrated AI deployment on the engagement.
    >
    > **Gain-share trigger** — at a velocity-improvement threshold, supplier returns a fraction of fees.
    >
    > **Reopener clause** — contract can be renegotiated mid-term if the delivery model materially changes.

Public-sector procurement is setting the template

If you don't have an internal AI clause library yet, you don't need to write one from scratch. Public-sector procurement has already set reference templates the rest of the market is tracking:

OMB M-25-22 (effective September 30, 2025): mandatory AI-procurement guardrails on federal solicitations.

OMB M-26-04 (December 2025 / March 2026): federal LLM procurements must request model cards, evaluation artifacts, and acceptable-use policies.

California EO N-5-26 (March 30, 2026): state-agency vendor certification for AI-enabled products and services.

EU model contractual clauses for AI procurement (IAPP-published practical guide): a reference template for European deals.

These are public, audited, and explicit. Private-sector buyers without dedicated AI-procurement expertise are copying them directly into RFPs and MSAs. Expect to see this language in nearly every enterprise deal touching AI-assisted delivery within the next twelve to eighteen months.

What this means for buyers right now

A few practical observations for anyone heading into a 2026 contract review or RFP cycle.

Your existing contracts are interpretable.

If you have a multi-year FTE-priced agreement with a software services supplier, you do not need to wait for renewal to ask: what AI tools are you using on our engagement, and how is that priced into our SoW? The question is reasonable; the answer is informative regardless of how the supplier responds.

Productivity-sharing is a clause shape, not a single demand.

The three flavors above (rate haircut, gain-share, reopener) cover different risk allocations. A reopener clause is the lightest touch — it doesn't force a pricing change today; it preserves your right to renegotiate if delivery economics shift. Worth asking for even when the other forms are too aggressive for the relationship.

AI-disclosure asks lose less than buyers fear.

The expectation a year ago was that suppliers would resist disclosure strongly. The picture in 2026 is more mixed: transparent suppliers are increasingly winning deals on the back of the disclosure conversation, while opaque suppliers are increasingly losing them on the same axis.

Baselines matter.

The largest open gap on the buyer side is internal: most buyers do not yet have a credible “without AI” baseline against which to measure productivity-sharing or gain-share clauses. Closing that gap — even at a rough order of magnitude — converts these clauses from conceptual to enforceable.

A note from the publisher

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Published at portablemind.ai/resources/productivity-pricing-gap · May 10, 2026