

Contract Negotiation Clinic: Software as a Service

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Antitrust Guidelines

Welcome! With all Gartner peer activities, we are sensitive to topics that might implicate antitrust laws. To ensure you understand and comply, we provide these basic guidelines:

Do:

- Share best practices you have observed and/or employed.
- Discuss general licensing terms and pricing — not specific terms and pricing from any particular agreement.
- Share frameworks and toolkits you have created to guide negotiations.

Do Not:

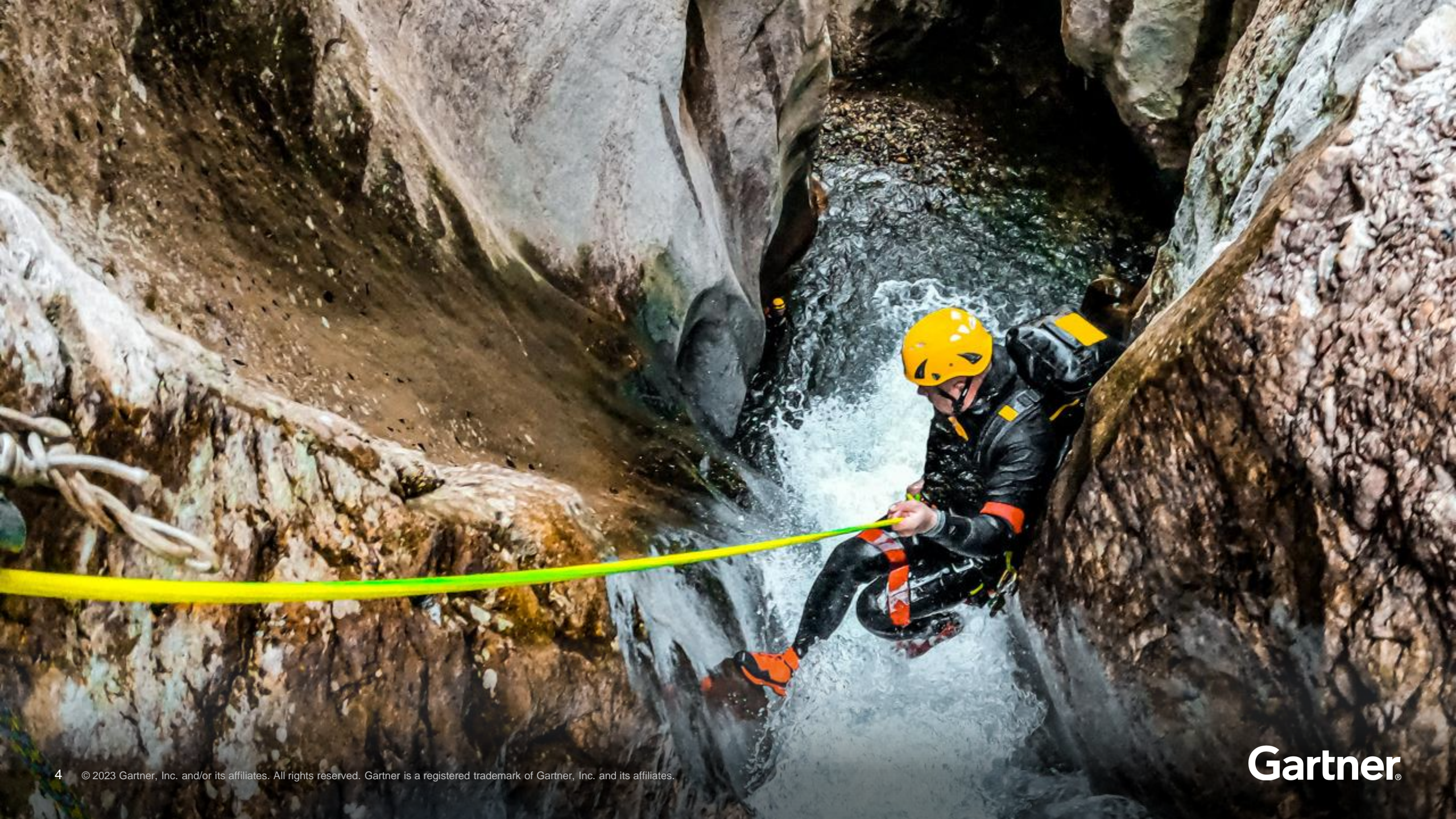
- Make any agreement regarding a joint action to take against a supplier.
- Agree with others at the session to refuse to deal with a particular supplier or obtain more favorable terms from a supplier, particularly where your firm is a large customer of that supplier.
- Agree with others at the session on similar terms and conditions regarding particular suppliers (e.g., pricing terms).

If at any time you sense that the discussion may be violating these guidelines, identify this to the facilitator.
For further guidance, please see Gartner's complete policy at: [Peer Activities and Antitrust Guidelines](#).

Gartner Confidentiality

Confidentiality

- Please do not share details of any specific deal, contract or offer involving your organization during this session.
- No deal-specific information will be discussed.
- We apply strict confidentiality standards to any subsequent use of information shared during these sessions. Please note that we cannot control how others manage information you share at this meeting.



Top Trends Impacting SaaS Negotiations



Key SaaS Terms to Negotiate



Negotiating for Success





Top Trends Impacting SaaS Negotiations



Top Trends Impacting SaaS Negotiations

1

Renaming/ Re-bundling/ Repackaging

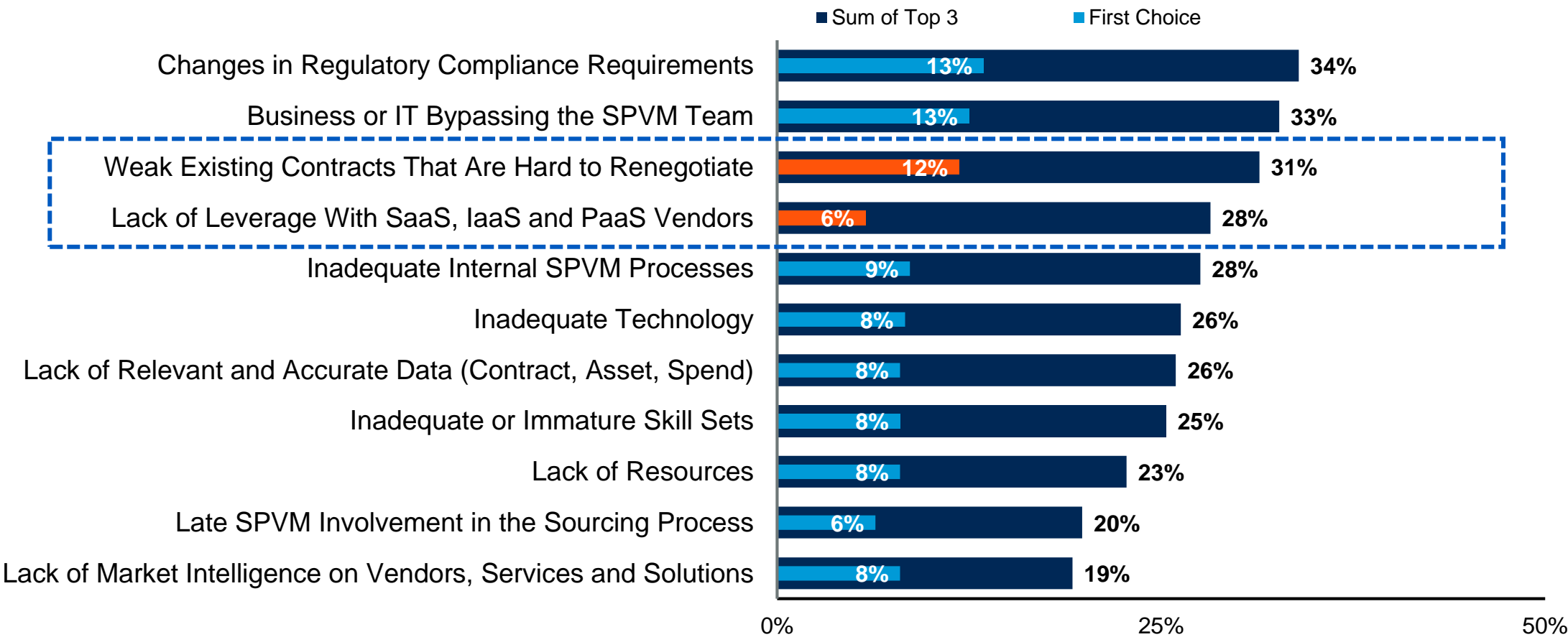
2

Inflation

3

Industry-Aligned Capabilities

Key Challenges SPVM Leaders Are Facing



n = 312; All SPVM Leaders
Q. What are the key challenges you face in meeting your (...) SPVM priorities?
Source: 2022 Gartner Signature SVPM Role Survey



Key SaaS Terms to Negotiate

1. Pricing Terms

- Renewal Price Caps
- Hidden Costs
- Payment Terms

Lock in a Maximum Renewal Uplift

Gartner's position: Renewal price caps are standard industry practice for SaaS agreements.

Negotiation checklist:

- Ensure a 3% to 5% cap or consumer price index (CPI), whichever is lower.
- Include a six-month minimum notification of vendor nonrenewal.
- Forbid autorenewals.





Expose and Negotiate Hidden SaaS Costs

Gartner's position: Costs associated throughout the term must be known and agreed upon upfront.

Negotiation checklist:

- List usage limits and potential additional costs in an exhibit.
- Rightsize sandboxes, support and optional extras with the business.
- Monitor and govern through vendor management.
- Lock in pricing for additional subscriptions.

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Align Payments With Demand

Gartner's position: Align the payment schedule to your intended usage.

Negotiation checklist:

- Align payments with rollout by negotiating the inclusion of a payment holiday.
- Negotiate monthly or quarterly payment terms.
- Negotiate payment terms of 45 days or more to improve cash flow.

2. Risk Terms

- Data Protection
- Security
- URL Links
- SLAs
- Subcontractor(s)

Protect Your Data

Gartner's position: Your data should not be a vendor negotiation lever.

Negotiation checklist:

- Ensure your data is backed up and encrypted.
- Control data return and destruction at termination.
- Define usage rights.
- Document permitted geographical locations.





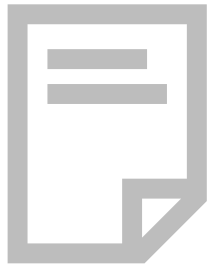
Assess Security Terms

Gartner's position: SOC 2 Type 2 and/or ISO 27001 are standard certifications for SaaS solutions.

Negotiation checklist:

- Review certifications.
- Insist on breach notification — 24 or 48 hours.
- Ensure non-diminishment of controls.
- Review audit reports annually.

SaaS Contracts Are Typically Very Short, but Incorporate Multiple Terms via URL Links



Order Form



MSA/
GTCs



Support
Policy



Service
Description



Security
Exhibit



Data Processing
Addendum



Subcontractor(s)



Service-Level
Agreement



Disaster Recovery
Policy

Address SaaS URL Links

Gartner's position: Include all exhibits in the contract, in form or by reference.

Negotiation checklist:

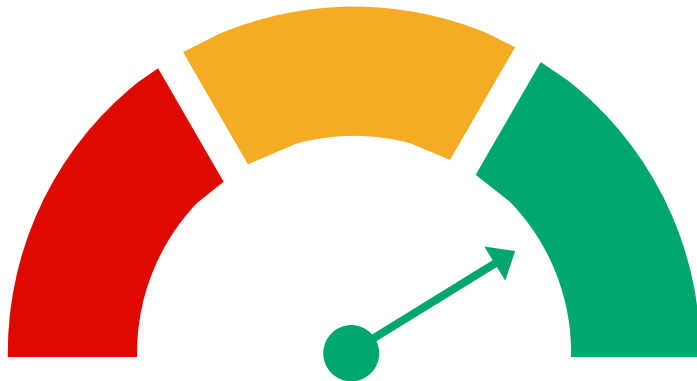
- Review all URL terms.
- Ensure referenced documents are addressed, named and dated/versioned.
- Include “not to diminish” terms.



SLAs Remain Insufficient

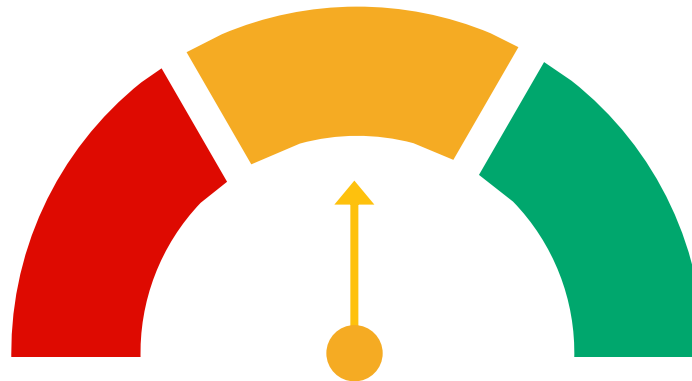
Commonly Tied To

- Uptime
- Scheduled Downtime



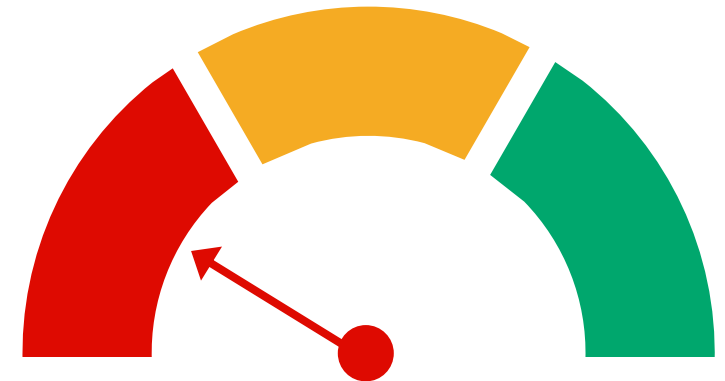
Sometimes

- Performance
- Backup and Recovery
- Initial Response



Rarely Tied To

- Security
- Resolution Time



Source: [SaaS SLAs: Reduce Risk and Improve Service by Negotiating These Key Terms](#) (G00749170)

Require SaaS Service Levels

Gartner's position: Mitigate risks by ensuring SLAs have meaningful remedies and termination rights.

Negotiation checklist:

- Include the right to terminate for three breaches within 12 months.
- Obtain meaningful credits for SLA misses.
- Compel the vendor to provide SLA reports and automatically apply credits.
- Enforce thorough vendor performance management practices.





Include SaaS Subcontractors

Gartner's position: SaaS vendors must be responsible for its subcontractor(s).

Negotiation checklist:

- Include all material subcontractors within an attached exhibit.
- Notify of proposed changes.
- Ensure subcontractor failure is not an excuse for poor performance.
- Negotiate the right to terminate if subcontractor change is unsatisfactory.

3. Exit Terms

- Transition
- Data Extraction or Retrieval



Require Transition Terms

Gartner's position: SaaS vendors will negotiate transition assistance

Negotiation checklist:

- Include a transition period of six to 18 months.
- Ensure transition services are not broad; push for clarification.
- Define data access and additional services.



A photograph of two rock climbers on a steep, light-colored rock face. The climber higher up is wearing a blue shirt and dark shorts. The climber lower down is wearing a green shirt and a large orange backpack. The sun is low on the horizon, creating a bright starburst effect. The sky is a clear, pale blue.

Protect Your Data and Costs

Gartner's position: Data ownership is yours, and you must have a right to retrieve and delete it throughout the term at no added cost.

Negotiation checklist:

- Test the extraction process during evaluations.
- Agree on the format and delivery mechanism.
- Include the right to retrieve data post-termination at no additional fee.



Negotiating for Success

Common Sales and Negotiation Tactics

- ☐ Research prospects.
- ☐ Align capabilities with sales priorities.
- ☐ Present proposals very late in the process.
- ☐ Instill time pressures.
- ☐ Present contracts as non-negotiable.
- ☐ Test prospect knowledge.
- ☐ Steer toward increased quantities and longer-term lengths.
- ☐ Entice over commitments by offering greater discounts.
- ☐ Create direct relationships with technical/ business leaders.



Mitigate These Issues

- Set your processes and timelines.
- Share your strategy with the entire team.
- Control outbound communication.
- Use your contract language repository/legal language standards.
- Buy only what you need!
- Push for additional concessions when adding on.
- Compare old order forms with newly proposed ones; ensure favorable terms are not lost.

Build Leverage in a New SaaS Deal

- ❑ Competitive Tension
- ❑ Competitive Intelligence
- ❑ Strategic Products in the Mix
- ❑ Deal Timing
- ❑ New Customer Standing
- ❑ Amount of Functionality
- ❑ Quantities
- ❑ Location and/or Vertical
- ❑ Standard Contract Terms for Amazon Web Services (AWS) Marketplace
- ❑ Annual Increased Demand Commitment
- ❑ Internal Controls
- ❑ Brand Association
- ❑ Intelligence on the Vendor
- ❑ Walk-Away Ability
- ❑ Longer-Term Lengths
- ❑ Reference Ability/Marketing
- ❑ Credibility

Source: [Tool: Leverage Online Marketplace Standard Terms for SaaS Contracting Optimization \(G00758673\)](#);
[3 Key Actions to Reduce Cost and Risk in Your New SaaS Agreement \(G00749171\)](#)

Create Leverage in SaaS Renewals

Long Lead Time:

- ☐ Competitive Tension
- ☐ Competitive Intelligence
- ☐ Timing

Shorter Lead Time:

- ☐ Vendor Go-to-Market Changes
- ☐ Additional Functionality
- ☐ Longer-Term Lengths
- ☐ Increase Quantities
- ☐ Relationship Factors

A photograph of four hikers jumping joyfully on a mountain peak. They are seen from behind, with their arms raised in the air. The hiker on the far left wears a bright blue jacket and yellow pants. The second hiker wears a dark jacket and a large blue backpack. The third hiker wears a dark jacket and blue jeans. The hiker on the far right wears a red and black jacket and a black backpack. They are standing on a rocky, reddish-brown mountain trail. In the background, there is a small pond and rolling hills under a clear blue sky.

1

**Top Trends Impacting
SaaS Negotiations**

2

Key SaaS Terms to Negotiate

3

Negotiating for Success

Recommended Gartner Research

- 🔍 [Toolkit: Checklist for Negotiating Optimal SaaS Cloud Contract Terms and Conditions](#)
Monica Baranwal, Jo Liversidge and Hannah Decker
- 🔍 [How to Negotiate for Success — Even When Your Leverage Is Compromised](#)
Bill Ryan, Quintin Casper and Mike Tucciarone
- 🔍 [Optimize Costs by Improving Cash Flow When Negotiating SaaS Payment Contract Terms](#)
Ishan Anand, Hannah Decker and Jo Liversidge
- 🔍 [Top 10 SaaS Terms to Negotiate to Avoid Putting Your Budget and Business at Risk](#)
Ishan Anand and Jo Liversidge
- 🔍 [Predicts 2023: Inflation's Permanent Impact on SaaS/Software Costs, Commercials and Business Practices](#)
Mike Tucciarone, Hannah Decker and Others
- 🔍 [Eight-Step Playbook to Optimize Software and SaaS Negotiations](#)
Jo Ann Rosenberger

Recommended Gartner Research

- 🔍 [How to Negotiate Better Pricing and Terms When Converting Perpetual Licenses to Subscriptions/SaaS](#)
Christopher Dixon and Jo Ann Rosenberger
- 🔍 [3 Key Actions to Reduce Cost and Risk in Your New SaaS Agreement](#)
Quintin Casper and Hannah Decker
- 🔍 [3 Steps to Improve SaaS/Software Renewals Using a Tiering Matrix](#)
Ben Jepson and Dawn Hubbard
- 🔍 [Quick Answer: How to Mitigate a Missing Price Cap on SaaS Renewals](#)
Quintin Casper, Bill Ryan and Jan Cook
- 🔍 [SaaS SLAs: Reduce Risk and Improve Service by Negotiating These Key Terms](#)
Hannah Decker and Jo Liversidge
- 🔍 [Negotiate Consumption-Based SaaS Pricing for Variable Demand and Uncertain Forecasts](#)
Hannah Decker and Jo Liversidge

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