

Contract Considerations for AI Vendors

Although many attorneys vigorously examine and negotiate contracts on behalf of clients, attorneys procuring AI tools may view the agreements as "standard" or "nonnegotiable." However, attorneys should carefully read and consider negotiating these agreements to address common risks and limit exposure to liability. The chart below identifies key provisions and sample language that may be useful for drafting. The sample language is licensee friendly, and licensees who are not positioned to negotiate may need to consider their risk tolerance.

Topic	Sample Language
Human Oversight and Explainability: Procurement agreements typically include language that establishes the responsibilities of each party. These provisions may detail supplier deliverables or include warranties for continued risk management or human oversight. Often, these agreements accomplish this goal by setting up "Statements of Work." A well-drafted Statement of Work will typically specify the inputs required and outputs generated and be drafted to allow licensees to understand and monitor the supplier's compliance.	<i>Supplier will perform and provide deliverables as mutually agreed and described in written statements of work executed by the Parties from time to time (each, an "SOW") including all services, tasks, deliverables, and responsibilities identified in an SOW, or required for proper performance, development, or delivery (the "Services"). Supplier represents and warrants the design elements of the AI System contain sufficient human-machine interface tools to allow a natural person to understand and explain the Output and operation of the AI System, as well as allow for effective oversight of such operation and Output.</i>

Intellectual Property: To avoid confusion AI agreements typically clarify the ownership of inputs, outputs and the program itself. Generally, the supplier will exclusively own the program. However, purchasers will want to retain ownership of the data used for procurement (including any training materials developed) and the inputs/outputs.

As between the Supplier and Licensee, Supplier acknowledges and agrees that Licensee exclusively owns all right, title and interest to all materials, Intellectual Property and data used, whether generated by Supplier, Supplier's systems, whether preexisting or created after the Effective Date of the Agreement, including any derivatives thereof in or related to (i) the Procurement Process (including, but not limited to, any Training Materials developed by Licensee), and (ii) Inputs or Outputs.

Data Protection: The usage of data in an AI System may create client confidentiality concerns for attorneys under [TDRPC Rule 1.05](#). If an AI System will ingest or process personal data, licensees may want to require the supplier to comply with applicable data protection laws and note personal data should only be used in accordance with the agreement. Licensees may also ask suppliers to give an indemnity for third-party claims resulting from any breach of these obligations. However, some suppliers are unlikely to agree to indemnities and may even ask licensees to indemnify them for any claims associated with the Inputs. The parties may compromise by leaving the agreement silent on responsibility

All Inputs are Confidential Information of Licensee.

Supplier shall process all Inputs and other information provided by Licensee in compliance with applicable Data Protection Laws.

for third-party claims resulting from breach of the data protection obligations in the agreement.

Termination Rights: If a product does not function as intended or becomes burdensome licensees may desire to terminate their usage without having to provide a cause. Because outputs may be stored in the Supplier's environment, licensees may want to clarify that they continue to have access the outputs after any termination.

Either Party may terminate this Agreement for any or no reason upon thirty (30) days advance written notice to the other.

In the event of termination or expiration of this Agreement, for any reason, Licensee will continue to have access to and own all Outputs created prior to the date of such termination or expiration.

Regulatory Assistance: Because laws are changing rapidly in this area and many attorneys will be procuring AI Systems, rather than building their own, it may be advantageous to require the Supplier to assist the Licensee in responding to regulatory inquiries.

If a Regulator requires Licensee to verify its compliance with applicable laws enforced by such Regulator in connection with Licensee's use of the AI System ("AI Verification"), then, upon Licensee's written request, Supplier will promptly assist Customer with such AI Verification by providing any required information or documentation related to the AI System.