

Gen-AI Contracts Cheat-Sheet

(Also known as a checklist)

from David W. Tollen and



This is a consolidated checklist for contracts related to generative artificial intelligence. For more details on that topic, see our programs covering AI agreements – including [AI Contracts: Drafting and Negotiating](#) and the [Tech Contracts Master Class™](#). See also Tollen, [The Tech Contracts Handbook, 3rd ed.](#) (ABA Publishing 2021). (Note also that the questions here could be turned into prompts for gen-AI systems analyzing or even generating contracts about AI.)

The customer should ask these questions. (Customers should also review the vendor's questions below.)

1. Does the AI use our prompts, fine-tuning data, or other inputs as training data? If so, is that training limited to our own copy of the AI?
2. Does the vendor get ownership or other IP rights in our prompts, fine-tuning data, or other inputs?
 - a. If not, does the contract agree to *customer* ownership of inputs? Does it specifically assert that the inputs include customer trade secrets and content protected by compilation copyrights?
 - b. Have we relied too heavily on IP, forgetting the greater importance of control terms (addressed in question 4 below)?
3. If the vendor gets significant IP rights to our prompts, fine-tuning data, or other inputs or can use them train the AI, do we have a plan or policy to make sure no sensitive information goes into those inputs?
4. Does the contract restrict the vendor's *control* over our prompts, other inputs, and other data?
 - a. Does the contract restrict the vendor's use of data to provision of the AI and related support?
 - b. If the vendor can use our data to improve the system, does the contract place any limits on that use? Does it define "improve the system" – e.g., by excluding use as training data, mining, sharing with third parties, etc.?
 - c. Does the contract address applicable privacy law, either directly, by requiring compliance, or indirectly, through terms consistent with applicable privacy law? Does the contract include a data protection addendum (DPA)?

- d. Does the contract include data use restrictions typical of quality cloud services contracts?*
5. Is the vendor required to keep our prompts, other inputs, and outputs confidential?
6. Does the vendor agree to customer ownership of IP in outputs – or assign those outputs to us? If so, do those terms have any value in our jurisdiction (since the vendor may not contribute human effort to output creation, and in many jurisdictions, a computer cannot create copyrightable or patentable assets)?
7. Could outputs include our sensitive information?
 - a. Could outputs include information we might want to consider trade secrets?
 - b. Could outputs include information we would not want known among staff (salary figures, employee SSNs or health records, etc.)?
 - c. If the answers to 7.a or 7.b is yes:
 - i. Do we have policies in place to make sure staff don't share outputs around the office or outside it?
 - ii. Do we have policies or procedures limiting who can use the AI or how?
8. Has the vendor disclosed the frequency of hallucination, defamation, discrimination, or other harmful content in outputs?
9. Do we get indemnities, warranties, SLAs, or other terms protecting us related to personal injury, property damage, privacy violation, or other non-IP injuries caused by outputs? (This isn't common.)
 - a. If the vendor has refused or disclaimed such terms, do we nevertheless have indemnities, warranties, SLAs, or other terms addressing harms *not* related to outputs – typical software warranties of functionality, SLA uptime terms, etc.?
 - b. Have the vendor's disclaimers related to outputs led to broad disclaimers related to the whole product? (Not good.)
10. Does the contract include terms protecting us against IP infringement by outputs, including infringement of likeness rights?
 - a. Do we have an IP warranty covering outputs?
 - b. Do we have an IP indemnity covering third party claims re IP infringement by outputs?
 - c. If the vendor has refused or disclaimed such IP terms, do we nevertheless have indemnities or warranties addressing IP infringement *not* related to outputs – e.g., related to use of the software? Or have the vendor's disclaimers related to outputs led to broad disclaimers about all IP issues? (Not good.)

* See, [The Tech Contracts Handbook](#) or the [Tech Contracts Master Class™](#).

The vendor should ask these questions. (Vendors should also review the customer's questions above.)

1. Does our AI use customer prompts, fine-tuning data, or other inputs as training data?
 - a. If so, does the contract include a license to any content in that data subject to a copyright or trademark? Or does it give us ownership?)
 - b. If so and the contract includes confidentiality terms, does it provide exceptions for that data, allowing it to appear in outputs provided to third parties and/or to the customer's own staff?
2. Does the contract agree to customer IP rights in prompts, fine-tuning data, inputs, or outputs?
 - a. If so, does it assign those rights (bad) or just acknowledge them?
 - b. If so, do customer IP rights exclude any content in that data created independently, whether we own it or a third party does?
3. Does the contract include warranties, indemnities, or other terms protecting the customer against 3rd party IP issues?
 - a. If so, do the IP warranties exclude IP related to outputs? (They should.)
 - b. If so, do the IP indemnities exclude IP related to outputs? (Some vendors grant these, some don't.)
 - i. If so, does the indemnity exclude claims related to trade secrets and/or patents?
 - ii. If so, does the indemnity exclude claims related to trademarks?
 - iii. If so, does the indemnity exclude claims resulting from infringing material in customer prompts, fine-tuning data, or other inputs?
 - iv. If so, does the indemnity exclude claims resulting from customer interference with content filters or attempts to infringe?
 - v. If so, does the indemnity make clear that protection against third party claims does not mean we're liable as a result of third-party IP rights in outputs?
 - c. Does the contract disclaim liability resulting from IP infringement by outputs?
4. Does the contract include warranties, indemnities, SLAs, or other terms addressing harms caused by the AI or losses resulting from malfunction?
 - a. If so, do those terms disclaim liability for losses resulting from outputs?
 - b. Does the contract specifically disclaim liability related to harms caused by outputs?