



# Artificial Intelligence (AI) Model Clauses

Digital Transformation Agency

Version 2.0

## Digital Transformation Agency



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## AI MODEL CLAUSES

### Note:

Buyers may select from and use these AI model clauses where they are procuring AI Systems or services provided by a Seller who is using an AI System.

There are three main use cases:

1. Procuring services where the Seller may be using AI Systems in the provision of the services – refer to model clauses in Section 1 that relate to this use case;
2. Developing an AI tool within the Buyer organisation with assistance from a consultant (including to assist development of automated decision making tools) – refer to model clauses in Section 2 that relate to this use case; and
3. Procuring a software product with embedded or integrated AI capabilities – DTA will add model clauses for use case 3 as part of work for the Software and Cloud Module of the DMP 2 Panel Agreement.

Buyers may also select from and use these AI model clauses as appropriate for other use cases.

Buyers should select which clauses to use based on the AI requirements under the Contract and the specific risks associated with the planned use of AI. Buyers should tailor the clauses to their Contract and may include different or additional clauses as needed.

Whilst all model clauses are optional, some clauses are specifically labelled as <sup>^</sup>Optional<sup>^</sup>. This indicates that these clauses either provide additional detail, which may or may not be needed for a particular Contract, or that they apply only to certain types of AI System procurements.

Some clauses are the same as or similar to clauses in other DTA contracts or model clauses, for example, the privacy clauses. Buyers should review and amend these clauses as necessary to ensure consistency and avoid repetition.

Before preparing an approach to market or draft contract, Buyers should consider [Australia's AI Ethics Principles](#), [AI in government policy](#), [AI Assurance Framework](#) and associated guidance.

These sample clauses are examples only and DTA does not require Buyers to use them. Buyers are responsible for selecting and using contract clauses suitable for their Contracts.

Capitalised terms are defined in clause 14 of these AI model clauses. Any capitalised term that is not defined in clause 14 has the meaning given in DTA's DMP 2 Panel Agreement.

**SECTION 1 – MODEL CLAUSES FOR USE CASE 1****1. Artificial Intelligence (AI)****Note:**

This clause is appropriate where the Seller uses an AI System to assist in the provision of products and services.

Where the Seller is providing a bespoke AI System to the Buyer, the Buyer should use clauses from Section 2 of these AI model clauses.

**1.1. Seller use of AI must be approved by Buyer**

1.1.1. Where the Seller intends to use an AI System for the provision of the products and services, it must:

- a. notify the Buyer prior to the provision of the products and services with details of the proposed AI System technology and functionality relevant to the provision of the products and services; and
- b. obtain the Buyer's prior written approval for such use.

1.1.2. The Seller must only use an AI System in accordance with:

- a. the Buyer's approval and any conditions to the approval, if given; and
- b. the terms of the Contract, including those in relation to:
  - i. Intellectual Property;
  - ii. confidentiality;
  - iii. Official Information;
  - iv. security,
  - v. privacy; and
  - vi. data usage.

1.1.3. The Seller is fully responsible for the performance of this Contract regardless of any use of an AI System at any point in the Supply Chain used to deliver the AI System. This includes where the use is approved by the Buyer.

**1.2. Seller to confirm accuracy**

1.2.1. Where the Seller uses an AI System for the provision of the products and services, it must conduct quality assurance checks on the AI System outputs to ensure they are accurate and reliable.

**1.3. Seller to keep records**

1.3.1. Where the Buyer approves the use of an AI System, the Seller must ensure that it retains detailed records of:

- a. the AI System used;
- b. the scope of the AI System's use in providing the products and services;

- c. any data collected, processed and stored by the AI System; and
- d. any systems that the AI System interacts with in connection with providing the products and services.

1.3.2. The Seller must promptly provide these records to the Buyer if asked.

**Note:**

On 4 February 2025, the Department of Home Affairs issued a mandatory Direction (001-2025 DeepSeek Products, Applications and Web Services). This Direction requires Australian Government entities to prevent the use or installation of DeepSeek products, applications and web services and where found remove all existing instances of DeepSeek products, applications and web services from all Australian Government systems and devices.

Buyers should include the following clause in their Contracts. DeepSeek and any other banned AI System should be specified in the Contract's Statement of Requirement/Specification.

**1.4. Seller not to use Banned AI Systems**

- 1.4.1. The Buyer has banned the use of the AI System/s specified in <sup>^</sup>the Statement of Requirement/Specification<sup>^</sup> (**Banned AI System**).
- 1.4.2. The Seller must ensure that a Banned AI System is not used in the provision of the products and services, including that it is not:
  - a. used in any part of the Supply Chain used to provide the products and services;
  - b. installed on an Australian Government system; or
  - c. used in any web services or applications to be provided to the Seller under this Contract.
- 1.4.3. If the Seller discovers that a Banned AI System has been used in contravention of clause 1.4.2, the Seller must immediately notify the Buyer and remove the Banned AI System from use.
- 1.4.4. The Buyer may immediately terminate this Contract under <sup>^</sup>insert reference to Contract termination clause<sup>^</sup> if the Seller does not fully comply with this clause 1.4.

## SECTION 2 – MODEL CLAUSES FOR USE CASE 2

**Note:**

These AI model clauses are designed to be used where a Buyer is procuring the development of a bespoke AI System.

Buyers should select which clauses to use based on the AI requirements under the Contract and the specific risks associated with the planned use of AI. Buyers should tailor the clauses to their Contract and may include different or additional clauses as needed.

These clauses anticipate the Seller will be responsible for most aspects of the development and implementation of the AI System. Depending on the circumstances of the procurement, Buyers may need to amend the clauses to reflect the intended allocation of responsibilities under a Contract (for example, the Buyer may be responsible for training the AI System or supplying the Training Data, and not the Seller).

Where the AI System consists of software only, the Buyer should include all usual clauses relating to software development, delivery, licensing, testing and support in the Contract.

Where the AI System includes elements of hardware, the Buyer should include additional clauses relating to hardware in the Contract.

## 2. Provision of an AI System

### 2.1. Supply of AI System

- 2.1.1. The Seller must develop, deliver, install and integrate the AI System in accordance with the <sup>^</sup>Statement of Requirement/Specification<sup>^</sup>.

**Note:**

Buyers should be as prescriptive as possible about AI requirements in the Statement of Requirement/Specification.

The Statement of Requirement/Specification should detail:

- the Intended Use of the AI System or outcome that it is required to achieve;
- the environment within which the AI System is to be deployed (e.g. on premises, public cloud, private cloud or a combination of these);
- any integration requirements with other systems;
- training and testing methodology (including types of training), duration and approval process;
- acceptance testing requirements and process;
- if applicable, the installation date of the AI System;
- required AI Datasets;



- if applicable, Buyer specific customisations to an existing software and AI System;
- reporting requirements for the AI System;
- how issues are reported and resolved and the level of support offered;
- how outputs will be generated and who is responsible for verifying the outputs; and
- how transparency and explainability standards will be met (e.g. regular reports).

## 2.2. Intended use of the AI System

2.2.1. The intended use of the AI System is <sup>^stated in the Statement of Requirement/Specification^</sup> [OR] <sup>^as follows:</sup>

a. <sup>insert intended use of AI System^</sup>,  
(the **Intended Use**).

2.2.2. The Seller must develop, deliver, install and integrate the AI System to achieve the Intended Use.

## 2.3. Underlying AI model transparency

2.3.1. The Seller must only use an underlying AI model in the AI System that is:

- stated in <sup>^the Statement of Requirement/Specification^</sup>; or
- approved in writing by the Buyer following a request under clause 2.3.3.  
(**Approved underlying AI model**).

2.3.2. The Seller must ensure that the Approved underlying AI model conforms to the requirements:

- stated in the <sup>^Statement of Requirement/Specification^</sup>; or
- approved in writing by the Buyer,  
including:
  - its country of origin;
  - the details of its ownership; and
  - the location of data at rest and during processing.

2.3.3. The Seller must request written approval from the Buyer before any change is made to the Approved underlying AI model that would result in it not conforming with clause 2.3.2.

2.3.4. The Buyer may:

- approve;
- approve with conditions; or
- not approve,

any request under clause 2.3.1.b or clause 2.3.3.

2.3.5. If the Buyer does not approve a request under clause 2.3.1.b or clause 2.3.3, the Buyer may terminate the Contract in accordance with <sup>^insert reference to</sup> **Contract termination clause**<sup>^</sup>.

2.3.6. The Seller is fully responsible for the provision of the products and services regardless of the Buyer's approval, approval with conditions or non-approval of an underlying AI model.

## **2.4. Notification of incidents**

2.4.1. The Seller must:

- a. notify the Buyer immediately; and
  - b. comply with all reasonable directions of the Buyer,
- if:
- c. an AI Incident has occurred;
  - d. an AI Hazard exists in relation to the AI System;
  - e. circumstances set out in the <sup>^Statement of Requirement/Specification</sup> occur;
  - f. <sup>^Optional</sup> the AI System is malfunctioning or producing incorrect or harmful outputs;
  - g. <sup>^Optional</sup> the AI System behaves in a way that was not intended or predicted, which adversely affects outputs or the delivery of a Buyer service; or
  - h. <sup>^Optional</sup> the AI System is operating in a way that does not comply with law, including any of the laws or policies listed in clause 3.1.1.

## **2.5. Circuit breaker – intervene or disengage the AI System**

2.5.1. The Seller must ensure that the AI System contains a circuit-breaker capable of interrupting and stopping the AI System immediately:

- a. upon the Buyer's instructions to the Seller; and
- b. via a human-machine interface tool accessible to the Buyer.

2.5.2. <sup>^Optional</sup> The Seller must stop the AI System immediately:

- a. if the Seller becomes aware of an AI Incident or AI Hazard;
- b. as set out in the <sup>^Statement of Requirement/Specification</sup>; and
- c. in the circumstances set out in clauses 2.4.1.f-2.4.1.h.

2.5.3. Notwithstanding clause 2.5.2, if the Seller reasonably considers that stopping the AI System immediately will cause irreversible harm over and above the harm caused by allowing the AI System to continue operating, the Seller must immediately contact the Buyer to determine a resolution.

## 2.6. Fairness

**Note:** Buyers may wish to consider including clauses 2.6.1.c to 2.6.1.f depending on the level and types of risk identified in the Buyer's risk assessment.

### 2.6.1. The Seller must ensure that the AI System:

- a. does not discriminate, or cause or facilitate discrimination, against any person or group on the grounds of any protected characteristic set out in the anti-discrimination legislation listed in clause 3.1.1;
- b. is otherwise developed, installed, integrated and will operate on an ethically sound basis;
- c. ^Optional^ does not negatively affect public accessibility or inclusivity of government services;
- d. ^Optional^ does not unfairly discriminate against or perpetuate stereotyping or demeaning representations of individuals, communities or groups;
- e. ^Optional^ does not harm individuals, communities, groups, organisations or the environment; or
- f. ^Optional^ does not pose a reputational risk to or undermine public confidence in the government.

**Note:**

There may be cases where the Buyer is also responsible for managing the risk of the AI System being unfair. For example, ensuring that Buyer Data is not discriminatory or setting parameters of the model used for the AI System which are not discriminatory.

Clause 2.6.2 reduces the Seller's obligations in clause 2.6.1 to the extent that the Buyer may cause or contribute to a breach of those obligations. Buyers should consider whether clause 2.6.2 is appropriate with reference to the circumstances of their particular procurement.

- 2.6.2. ^Optional^ The Seller's obligations under clause 2.6.1 do not apply to the extent that the Buyer causes the Seller to be, or contributes to the Seller being, in breach of such obligations.

## 2.7. Warranties

### 2.7.1. The Seller warrants that the AI System:

- a. is suitable and appropriate for the Intended Use;
- b. will be free from any material defect in design;
- c. will be developed with reasonable care and skill, in accordance with best industry practice; and
- d. meets or exceeds the requirements set out in this Contract.

### 3. Compliance with laws and policies

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- 3.1.1. The Seller must comply with all applicable laws and policies relating to the development, delivery, installation and integration of the AI System and must not do anything that, if done by the Buyer, would be a breach of the applicable law or policy, including:
- a. *Privacy Act 1988* (Cth);
  - b. *Age Discrimination Act 2004* (Cth);
  - c. *Disability Discrimination Act 1992* (Cth);
  - d. *Racial Discrimination Act 1975* (Cth);
  - e. *Sex Discrimination Act 1984* (Cth);
  - f. *Competition and Consumer Act 2010* (Cth);
  - g. *Archives Act 1983* (Cth);
  - h. Department of Industry, Science and Resource's Australia's AI Ethics Principles; and
  - i. Digital Transformation Agency's policy for the responsible use of AI in government.
  - j. <sup>^</sup>insert other relevant laws/policies including Buyer's departmental policies, applicable national security legislation, applicable State/Territory based equivalents to the discrimination legislation and any applicable Buyer policies<sup>^</sup>

- 3.1.2. The Seller must provide reasonable assistance to the Buyer in complying with its legal and regulatory obligations in connection with the AI System.

**Note:** If the Buyer includes the following clause, it should specify any known legal and regulatory obligations where it will require the assistance of the Seller.

- 3.1.3. <sup>^</sup>Optional<sup>^</sup> The Seller must:
- a. <sup>^</sup>insert legal/regulatory obligations where the Buyer requires the Seller's assistance to comply. E.g. any mandatory reporting obligations<sup>^</sup>.

### 3.2. Updates to laws and policies

- 3.2.1. The Seller must comply with new laws and policies that:
- a. are introduced during the term of the Contract; and
  - b. apply to the AI System or Intended Use.
- 3.2.2. <sup>^</sup>Optional<sup>^</sup> The Seller must comply with any additional laws and policies as notified by the Buyer from time to time, provided that:
- a. if the Seller incurs (or will incur) any material expenses which are directly related to complying with clause 3.2.1, the parties may negotiate any appropriate variation to this Contract to reflect the Seller's reasonable and substantiated costs of such compliance. When determining whether an

expense is material, the parties will have regard to the total value of this Contract including the value of any extension options exercised by the Buyer;

- b. unless such variation is agreed between the parties, the Seller is solely responsible for the costs of complying with clause 3.2.1; and
- c. the Seller must not refuse to comply with clause 3.2.1 or delay such compliance pending the outcome of any negotiations under clause 3.2.2.a.

3.2.3. Failure by the Seller to comply with this clause 3.2 will be a breach of this Contract entitling the Buyer to terminate this Contract under clause <sup>^insert</sup>reference to Contract termination clause<sup>^</sup>.

#### 4. Privacy

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**Note:** The Buyer should consider whether a privacy impact assessment is necessary based on the purpose and intended use of the AI System.

##### 4.1. Seller's Privacy Act obligations

4.1.1. The Seller agrees, in providing the AI System:

- a. to comply with its obligations under the Privacy Act (including as a 'contracted service provider'); and
- b. not to do anything that, if done by the Buyer, would be a breach of an Australian Privacy Principle under the Privacy Act.

4.1.2. The Seller must ensure that Subcontractors:

- a. comply with their obligations under the Privacy Act; and
- b. do not do anything that, if done by the Buyer, would be a breach of an Australian Privacy Principle under the Privacy Act.

4.1.3. The Seller must promptly notify the Buyer if, in providing the AI System, the Seller:

- a. is required by law to disclose Personal Information; or
- b. receives a request for, or an inquiry about, Personal Information from:
  - i. the Privacy Commissioner, or
  - ii. any individual to whom any Personal Information held by the Seller or Subcontractors relates.

##### 4.2. Seller to act on Eligible Data Breaches

4.2.1. If the Seller becomes aware of an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Contract or its provision of the AI System, the Seller must:

- a. notify the Buyer in writing as soon as possible, which must be within 72 hours; and
- b. carry out an assessment in accordance with the requirements of the Privacy Act (unless the Buyer notifies the Seller that an assessment is not required).

4.2.2. Where the Seller is aware that there has been, or where the Buyer notifies the Seller that there has been, an Eligible Data Breach in relation to any Personal Information held by the Seller as a result of this Contract or its provision of the AI System, the Seller must:

- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
- b. unless otherwise directed by the Buyer, take all other action necessary to comply with the requirements of the Privacy Act; and
- c. take any other action as reasonably directed by the Buyer.

4.2.3. The Seller agrees to notify the Buyer immediately if it becomes aware of a:

- a. breach; or
- b. possible breach,

of any of its obligations under this clause 4.2.

#### 4.3. Supply Chain

**Note:**

Buyers should consider whether supply chain management is already covered under the Contract. If so, this clause will not be needed.

Buyer approval of Subcontractors should also be covered in the Contract. Refer to DTA's DMP 2 Panel Agreement for an example clause.

4.3.1. The Buyer may conduct a:

- a. due diligence; and/or
- b. risk review,

of the Seller's Supply Chain and all Supply Chain Elements used in the Seller's Supply Chain, at any time during the term of this Contract, to ensure security risks for the Buyer are adequately addressed. The Seller must assist the Buyer with any due diligence or risk review.

4.3.2. The Buyer may, by notice to the Seller, require the Seller to remove or cease using one or more Supply Chain Element used to provide the AI System to the Buyer following any due diligence or risk review under this clause 4.3. If it is practical to do so, the Buyer will consult with the Seller before issuing this notice.

4.3.3. If the Seller incurs (or will incur) any material expenses to comply with clause 4.3.2, the Seller may request a contract variation to cover the Seller's reasonable and substantiated costs of compliance. When determining whether an expense is material, the Buyer will consider the total value of this Contract. Unless such variation is agreed, the Seller is responsible for the costs of complying with clause 4.3.2. The Seller must not refuse to comply with clause 4.3.2. The Seller must not delay such compliance pending the outcome of any negotiations under this clause 4.3.3.

## 5. Oversight, explainability and transparency

### **Note:**

These clauses set out broader obligations that the Seller must comply with for human oversight of the AI System. Buyers will need to tailor the clauses for their particular procurement and should provide further detail in the Statement of Requirement/Specification.

For example, the Buyer could set out requirements that the AI System:

- include prompts to remind users to critically analyse outputs; and
- provide multiple outputs for users so they can select the output they consider most accurate.

The Buyer may also wish to set out clear roles and responsibilities for Seller Personnel relating to human oversight in the Statement of Requirement/Specification.

### 5.1. Human oversight

#### 5.1.1. The Seller must:

- a. design and develop the AI System so that:
  - i. it can be effectively overseen and monitored by humans, including with appropriate human-machine interface tools; and
  - ii. it complies with any technical and organisational measures described in the ^Statement of Requirement/Specification^;
- b. ensure that Seller Personnel responsible for human oversight of the AI System as set out in the ^Statement of Requirement/Specification^:
  - i. are aware of and sufficiently understand the relevant capacities and limitations of the AI System;
  - ii. are able to monitor the AI System, so that signs of anomalies, dysfunctions and unexpected performance can be detected and addressed as soon as possible;
  - iii. ^Optional depending on the scope of the Statement of Requirement/Specification^ are able to correctly interpret the AI System's output, taking into account the particular characteristics of the system and the interpretation tools and methods available; and
  - iv. ^Optional depending on the scope of the Statement of Requirement/Specification^ are able to decide, in any particular situation, not to use the AI System or otherwise disregard, override or reverse the output of the AI System;
- c. provide relevant information and guidance to Buyer Personnel responsible for human oversight or decision making using the AI System (as set out in the ^Statement of Requirement/Specification^) so that those Buyer Personnel:

- i. are aware of and sufficiently understand the relevant capacities and limitations of the AI System;
- ii. are able to monitor the AI System, so that signs of anomalies, dysfunctions and unexpected performance can be detected and addressed as soon as possible;
- iii. are informed of the possible tendency of automatically relying or over-relying on the output produced by the AI System, in particular if the AI System is used to provide information or recommendations for decisions to be made by Buyer Personnel;
- iv. are able to correctly interpret the AI System's output, taking into account the particular characteristics of the system and the interpretation tools and methods available; and
- v. are able to decide, in any particular situation, not to use the AI System or otherwise disregard, override or reverse the output of the AI System.

## 5.2. Competence and expertise

### 5.2.1. The Seller must:

- a. ensure Seller Personnel are competent and have the necessary expertise on the basis of their education, training and experience, in relation to the AI System; and
- b. retain appropriate evidence of competence and expertise of Seller Personnel and provide this evidence to the Buyer on request.

## 5.3. Transparency and explainability

### 5.3.1. The Seller must ensure the AI System is designed, developed and tested in a way which ensures that its operation is sufficiently transparent to enable:

- a. the Buyer to understand and use the AI System appropriately;
- b. ^Optional^ the Affected Persons to understand ^how the AI System arrived at a particular decision/output or influenced an outcome^ [AND/OR] ^the role of the AI System in the provision of the government services^; and
- c. where possible, its output to be traced back to the input data.

**Note:** The following clauses go towards Buyers requesting information on a particular output from the AI System. Further clauses are below in relation to record keeping, reporting, training, testing, ongoing monitoring and validation of the AI System.

### 5.3.2. The Seller must provide the Buyer, ^on request OR for each output^, all technical and other information which allows the Buyer to understand:

- a. the logic behind an individual output from the AI System; and
  - b. which features of the AI System contributed to the output of the AI System,
- in each case, in accordance with best industry practice ^Optional^ and in accordance with the requirements stated in ISO/IEC 42001:2023 Information Technology – Artificial intelligence – Management System.



**Note:** The Buyer may wish to set out additional details of technical and other information that the Seller is required to provide in response to a request under clause 5.3.2. In determining what information to request, the Buyer should consider the characteristics of the particular procurement and its risk assessment.

If appropriate, the Buyer should insert a new clause to follow clause 5.3.2 that states:

*“The Seller must include in a response to a request under clause 5.3.2:”*

The Buyer may then list information it requires. For example:

- a clear indication of the key factors that led the AI System to arrive at a particular result, including any key AI modelling features that influenced the output; and
- the changes to the input that must be made in order for it to arrive at a different output.

#### **Data information**

- the AI Datasets, parts of AI Datasets or information relating to the AI Datasets requested by the Buyer, which may include AI Datasets the AI System was trained on;
- the time period that the relevant AI Datasets (or data in an AI Dataset) apply to;
- details of assumptions and quality measures taken on the quality of the data in the AI Datasets; and
- information about the data used to develop the AI System including how the data was obtained and edited, and any assumptions in relation to the data.

#### **Technical system information**

- a description of the elements used for creating the model for the AI System;
- substantiation of the choice for the particular model of AI System;
- the parameters of the model used for the AI System;
- the weightings associated with the parameters that most influence a given output of the model used for the AI System;
- the algorithm used, including any associated model learning/training methodology;
- the technical specifications used, including specifications for design and system architecture;
- details of any technical limitations including in relation to error rates, accuracy and reliability;

- details of any technical assumptions including details of the run-time environment, related software and hardware capabilities; and
- the source code of the AI System.

**Other information**

- details of measures taken to ensure quality of the AI System; and
- details of risk management activities.

5.3.3. Without limiting other rights and obligations under this Contract, the Seller grants the Buyer the right to use, copy and disclose the information provided in a response to clause 5.3.2:

- a. to the extent necessary to inform the Affected Persons about the functioning of the AI System;
- b. in any legal proceedings; or
- c. for any other Buyer purpose.

**6. Training, testing and monitoring**

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**6.1. Training Data**

**Note:**

The Buyer should:

- include clause 6.1.1.a where the Buyer will provide any Training Data;
- include clause 6.1.1.b where the Seller will provide any Training Data; or
- include both clauses 6.1.1.a and 6.1.1.b where both parties will provide Training Data.

For Training Data provided by the Seller, the Buyer should ensure the Statement of Requirement/Specification references:

- the source of the Training Data;
- whether the Training Data includes Personal Information; and
- whether the Training Data includes Indigenous Data.

6.1.1. Training Data will be provided as follows:

- a. the Buyer must provide the Training Data in accordance with the requirements in the ^Statement of Requirement/Specification^.

[AND/OR]

- b. the Seller must:
  - i. provide the Training Data in accordance with the requirements in the ^Statement of Requirement/Specification^;

- ii. identify any uncontrolled bias in the Training Data and mitigate that bias to the extent reasonably possible; and
- iii. ensure the use of the Training Data does not infringe any rights of a third party.

**Note:** Include clauses 6.1.2 and 6.1.3 if the Buyer would like to review the Training Data to determine whether there are any flaws.

- 6.1.2. ^Optional^ The Seller must, if requested, permit the Buyer to review the Training Data, or samples of the Training Data, to determine whether it complies with clause 6.1.1.b or otherwise contains any flaws that should be remedied.
- 6.1.3. ^Optional^ If the Buyer considers that the Training Data contains flaws that should be remedied, the Seller must rectify the flaws and resubmit the Training Data to the Buyer in accordance with clause 6.1.

**6.2. Training, testing and monitoring of the AI System**

**Note:**

Buyers should consider the scope and responsibilities in respect of training the AI System, and select and amend the clauses below to reflect their required approach.

If the **Buyer** will be responsible for training the AI System, include clause 6.2.1. The Buyer may also consider including clause 6.2.2 where it would be appropriate to set out details on how the Buyer will conduct such training.

If the **Seller** will be responsible for training the AI System, include clauses 6.2.3 to 6.2.5. The Buyer may wish to remove or amend obligations where appropriate (for example, if it is not possible for the Seller's training to identify bias in the AI System).

If both the **Buyer** and **Seller** will be responsible for training the AI System, include clauses 6.2.1 to 6.2.5. The Buyer should amend and develop these clauses to detail the scope of responsibilities of each of the parties.

- 6.2.1. The Buyer may conduct training, testing, monitoring and validation of the AI System.
- 6.2.2. ^Optional^ The Buyer will ensure that such training, testing and monitoring of the AI System:
- a. ^insert relevant requirements OR as specified in the Statement of Requirement/Specification^.
- [AND/OR]
- 6.2.3. The Seller must conduct training, testing, monitoring and validation of the AI System on a ^Buyer to insert frequency OR as specified within the Statement of Requirement/Specification^.
- 6.2.4. The Seller must ensure that such training, testing and monitoring of the AI System:

- a. identifies any output or model performance which:
  - i. may result in an individual being treated differently on the basis of a protected characteristic set out in the anti-discrimination legislation listed in clause 3.1.1; or
  - ii. may result in bias;
- b. ensures the AI System is fit for the Intended Use ^including identifying hallucinations or model drift^;
- c. is conducted in accordance with the ^Statement of Requirement/Specification^; and
- d. is otherwise conducted in accordance with this Contract.

6.2.5. If requested by the Buyer, the Seller is required to conduct such training, testing and monitoring of the AI System in the Buyer's Digital System.

**6.3. Acceptance Testing ^Optional^**

**Note:**

Include the below clause where the AI System requires Acceptance Testing by the Buyer. For procurements using the Contract under DTA's DMP 2 Panel Agreement, Acceptance Testing clauses are included in Part C – Contract Terms and do not need to be included here.

Buyers may want to include an AI System test plan as a deliverable under the Contract. This could be a plan that is required to be developed by the Seller, delivered and approved by the Buyer. The plan would then govern the AI System testing.

- 6.3.1. The Buyer will carry out Acceptance Testing.
- 6.3.2. The Seller must assist the Buyer to ensure that the AI System meets the Acceptance Test Criteria stated in the ^Statement of Requirements/Specification OR AI System test plan^.
- 6.3.3. If requested by the Buyer, the Seller must provide details of tests to perform for the:
  - a. certification;
  - b. installation;
  - c. commissioning; or
  - d. acceptance,of the AI System that the Buyer may use to develop its Acceptance Tests.
- 6.3.4. The details referred to in clause 6.3.3 should be in writing and contain a test methodology detailing:
  - a. the conditions under which each test should be conducted;
  - b. full details of each test;

- c. how each test should be conducted;
- d. the input or data required for each test;
- e. the expected result of each test;
- f. any assumption behind, qualification to, or known shortcoming of, each test; and
- g. suitable test data.

6.3.5. The Seller must provide test data in the format and on the type of media requested by the Buyer.

6.3.6. The Buyer may ask the Seller to carry out Acceptance Testing in which case the Seller must allow the Buyer to observe the performance of the tests.

6.3.7. The Seller must, comply with any reasonable request by the Buyer for further testing in relation to the AI System.

**Note:** Buyers should consider the specific requirements for their procurement and proposed AI System when determining an appropriate Acceptance Testing duration. For reference, the Contract under DTA's DMP 2 Panel Agreement sets a default Acceptance Testing duration of 10 business days.

6.3.8. If the Buyer finds that the Seller:

- a. *has satisfied the Acceptance Criteria* – the Buyer must notify the Seller within ^insert duration^ that the AI System has passed Acceptance Testing. The AI System will then be deemed to have been Accepted by the Buyer; or
- b. *has not satisfied the Acceptance Criteria* – the Buyer must notify the Seller within ^insert duration^ that the AI System has not passed Acceptance Testing including details. The Seller must then:
  - i. do everything necessary to rectify any problems to ensure that the Acceptance Criteria are met;
  - ii. notify the Buyer that it believes it meets the Acceptance Criteria; and
  - iii. repeat the Acceptance Testing as soon as practicable or within the time period agreed by the parties.

6.3.9. Clause 6.3.8 will apply to any repeated Acceptance Testing.

6.3.10. If the Buyer notifies the Seller that the AI System has passed Acceptance Testing under clause 6.3.8.a:

- a. the Buyer may impose conditions on Acceptance; and
- b. it is not a waiver of the Buyer's rights under this Contract.

6.3.11. If the Seller has not met the Acceptance Criteria for the AI System within:

- a. ^insert duration^ after the commencement of Acceptance Testing; or
- b. if further Acceptance Testing is required under clause 6.3.13, such further period as notified by the Buyer,

the Buyer may treat the Seller's failure to meet the Acceptance Criteria as a failure to comply with the Seller's obligations under the Contract and the Buyer will be entitled to terminate the Contract in accordance with clause <sup>^insert reference to Contract termination for default clause^</sup>.

- 6.3.12. The Seller must perform its obligations under this Contract in such a way that the Buyer is able to participate in any necessary:
- a. inspections of work in progress;
  - b. tests; or
  - c. evaluations,
- of the AI System.
- 6.3.13. The AI System will be subject to repeat Acceptance Testing in accordance with this clause 6.3 if:
- a. specified in the <sup>^Statement of Requirements/Specification^</sup>;
  - b. the Seller updates the AI System; or
  - c. the Buyer notifies the Seller that it requires repeat Acceptance Testing.
- 6.4. **Pilot Testing** <sup>^Optional^</sup>

**Note:**

If the Buyer is conducting pilot testing, the Buyer can choose to tie it to Acceptance Testing (clauses 6.4.1-6.4.3) or have a right to terminate the agreement following the pilot study in any event (clauses 6.4.4-6.4.5).

The Buyer may want to include a pilot study plan as a deliverable under the Contract for the Buyer's approval.

Buyers should consider the specific requirements to their procurement and proposed AI System when determining an appropriate pilot test duration. For reference, the Contract under DTA's DMP 2 Panel Agreement sets a default pilot test duration of 45 days.

The Buyer should ensure the Contract sets out what is to happen with regards to pricing if the Buyer terminates the Contract after the pilot testing. The Buyer should also include the conclusion of the pilot study as a termination event in the applicable termination provisions.

*Option 1 – Pilot testing subject to Acceptance Testing*

- 6.4.1. The Seller acknowledges and agrees that Acceptance Tests may include a pilot study of up to <sup>^insert duration^</sup>.
- 6.4.2. The Seller must comply with the requirements for the pilot study stated in the <sup>^Statement of Requirements/Specification or pilot study plan^</sup>.
- 6.4.3. If the Seller has not met the Acceptance Criteria for the AI System during the pilot study in accordance with clause 6.3, the Buyer may treat the Seller's failure to meet the Acceptance Criteria as a failure to comply with the Seller's obligations

under the Contract and the Buyer will be entitled to terminate the Contract in accordance with clause <sup>^insert reference to Contract termination clause^</sup>.

*Option 2 – Pilot testing not subject to Acceptance Testing*

6.4.4. The Seller must comply with the requirements for the pilot study stated in the <sup>^Statement of Requirements/Specification or pilot study plan^</sup>.

6.4.5. The Buyer may terminate this Contract following the pilot study.

**6.5. User Manual <sup>^Optional^</sup>**

6.5.1. The Seller must provide the Buyer with a User Manual at the time stated in the <sup>^Statement of Requirements/Specification^</sup> or if no time is stated, at the time of delivery of the AI System <sup>^as part of the Contract Material^</sup>.

6.5.2. The User Manual must:

- a. accord with best industry practice;
- b. provide the Buyer with adequate instructions to enable effective installation and use of the AI System;
- c. provide the Buyer with meaningful information about the logic involved in the AI System;
- d. be concise, complete, accurate, relevant, accessible and comprehensible to the Buyer; and
- e. enable the Buyer or a third party to assess the compliance of the AI System with this Contract, including the requirements included in the <sup>^Statement of Requirement/Specification^</sup>.

6.5.3. The User Manual must contain the following information:

- a. the characteristics, capabilities and limitations of performance of the AI System, including:
  - i. any clearly known or foreseeable circumstance, related to the use of the AI System in accordance with the Intended Use or under conditions of reasonably foreseeable use, which may lead to risks of harm or risks to the health and safety or rights of individuals, communities or groups;
  - ii. the degree to which the AI System can provide an explanation for decisions it makes;
  - iii. relevant information about user actions that may influence system performance, including type or quality of the input data; and
  - iv. any other relevant information in terms of the training, validation and testing data sets used, taking into account the Intended Use of the AI System;
- b. any changes to the AI System and its performance which have been pre-planned by the Seller;
- c. any data preparation required before data can be input into the AI System including any cleaning, normalisation, transformation or encoding required;

- d. the human oversight measures referred to in clause 5.1.1, including the technical measures put in place to facilitate the interpretation of the outputs of the AI System by the Buyer;
  - e. the expected lifetime of the AI System and any necessary maintenance and care measures to ensure the proper functioning of the AI System; and
  - f. a description of the mechanisms included within the AI System that allow users to properly collect, store and interpret the logs.
- 6.5.4. ^Optional^ The Buyer will provide the Seller with the information listed in the ^Statement of Requirements/Specification^ for completion of the User Manual. If the provision of any information is delayed, the Seller must:
- a. promptly notify the Buyer what is outstanding; and
  - b. produce the User Manual by the required date, leaving such gaps as are reasonably necessary.
- 6.5.5. The Seller must update the User Manual:
- a. at the times stated in the ^Statement of Requirements/Specification^;
  - b. as required during the term of the Contract to ensure compliance with clauses 6.5.2 and 6.5.3; and
  - c. with every substantial change or update to the AI System during the term of the Contract.
- 6.5.6. The Seller must provide the updated User Manual to the Buyer.
- 6.6. User Training ^Optional^**
- 6.6.1. The Seller must provide training for the Buyer on the installation and use of the AI System, including any User Training requirements stated in the ^Statement of Requirements/Specification^.

**Note:**

The Buyer should consider including in the Statement of Requirements/Specification:

- the initial training users should receive from the Seller before using the AI System;
- the ongoing training users should receive to stay up to date with changes or updates to the AI System; and
- what support is available to users if they have questions or encounter issues when using the AI System.

The Buyer may also wish to include support and maintenance clauses to provide for customer support and maintenance of the AI System. Suggested support and maintenance clauses are included in the DTA's DMP 2 Panel Agreement.

- 6.6.2. ^Optional^ The Seller must offer training to the Buyer when the Seller updates or makes changes to the AI System in order to ensure compliance with clause



6.6.1. The Seller must provide this training during the support and maintenance period.

## **7. Iterations, updates and code**

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### **7.1. Iterations ^Optional^**

- 7.1.1. The Seller must maintain the previous ^insert number^ iterations of the AI System for ^insert period of time^ and a log of the key differences between each.
- 7.1.2. The Seller must ^immediately following the Buyer's request [OR] as soon as reasonably practicable following the Buyer's request^ roll-back the AI System to an earlier iteration.

### **7.2. Source code ^Optional^**

- 7.2.1. The Seller must deliver to the Buyer an up-to-date and annotated version of the Source Code in the AI System:
- a. prior to each Acceptance Test,
  - b. immediately after the date of Acceptance; and
  - c. on each occasion on which the Seller provides the Buyer with an updated or upgraded version of the AI System.
- 7.2.2. Any Source Code delivered to the Buyer under clause 7.2.1 must be in the format and on the type of media as the Buyer may specify.

**Note:** The Buyer may wish to include an option for Source Code to be held in escrow on the Buyer's behalf. If so, the Buyer would need to include additional escrow clauses in the Contract.

### **7.3. Upgrades and updates ^Optional^**

- 7.3.1. For ^insert period^ OR ^the period stated in the Statement of Requirement/Specification^, the Seller must provide the Buyer with any updates or upgrades to the AI System as often as is reasonably required for the proper functioning and security of the AI System in accordance with this Contract.
- 7.3.2. The Seller warrants the provision of any such updates or upgrades to the AI System will not have any adverse effect on the functionality, performance or compatibility of the AI System and will not result in any reduction in the features, functionality, characteristics or performance of the AI System.

## **8. Security**

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### **8.1. Digital Security**

**Note:**

The Buyer should consider whether additional cyber risk clauses should be inserted into the Contract, including by referencing DTA's cyber risks model clauses.

Please note, various prohibitions on Buyer Data are already included in these AI model clauses at clause 11, some of which are also included in the cyber risk model clauses and DTA's DMP 2 Panel Agreement.

## 9. Record Keeping

### 9.1. Reporting

9.1.1. The Seller must, if requested, give the Buyer any reports or information in relation to the AI System:

- a. within 10 business days (or other timeframe stated by the Buyer) from a request by the Buyer; and
- b. in the form and format requested by the Buyer.

9.1.2. In addition to clause 9.1.1, the Seller must provide the following reports to the Buyer every <sup>^3 months or insert other timeframe^</sup> during the Contract term <sup>^Buyer to insert reports it requires^</sup>:

**Note:**

Buyers should insert any reports the Seller must provide periodically, for example:

- a bias/discrimination assessment assessing the Seller's compliance with clause 2.3.5;
- a report demonstrating compliance with clause 5.1 in relation to human oversight of the AI System;
- system decision registries; or
- documentation in relation to reliability and safety.

Buyers may also wish to consider the guidance set out at clause 5.3.2 for additional technical and other information it may request from the Seller under this clause.

Buyers may also consider removing any reporting obligations where appropriate.

9.1.3. <sup>^Optional^</sup> The Seller must provide to the Buyer a report every <sup>^3 months or insert other timeframe^</sup> during the Contract term:

- a. in relation to Training Data provided by the Seller:
  - i. specifying the source of the Training Data;
  - ii. specifying the dates on which the Training Data was collected;
  - iii. setting out an audit trail showing assigned custody and traced accountabilities for any flaws in the Training Data;
  - iv. specifying how the Training Data used in building the model was evaluated for harm or bias;

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- v. demonstrating how the model was adjusted (if at all) to compensate for any harm or bias in the Training Data;
- vi. confirming that the use of the Training Data does not infringe any third party Intellectual Property Rights;
- vii. indicating whether the Training Data includes Personal Information and if so how this has been managed to comply with the *Privacy Act 1988* (Cth); and

**Note:** All Australian Public Service agencies are required to implement the [Framework for Governance of Indigenous Data \(GID\)](#).

If the data used to operate, train or validate the AI System, or any outputs from the AI System, is Indigenous Data, the Buyer should consider the guidelines in the GID.

- viii. indicating whether the Training Data includes Indigenous Data.

- b. **^Optional^** in relation to Training Data provided by the Buyer:
  - i. specifying the source of the Training Data;
  - ii. specifying the dates on which the Training Data was provided to the Seller;
  - iii. setting out an audit trail showing assigned custody and traced accountabilities for any flaws in the Training Data from the date the Training Data was provided to the Seller;
  - iv. specifying how the Training Data used in building the model was evaluated for harm or bias; and
  - v. demonstrating how the model was adjusted (if at all) to compensate for any harm or bias in the Training Data.

**Note:** Do not include this clause 9.1.3.c if the Buyer will be solely responsible for training of the AI System.

- c. **^Optional^** in relation to training, testing, monitoring and validation of the AI System conducted by the Seller:
  - i. a summary of the testing objectives, methods and metrics used;
  - ii. results for each test case;
  - iii. any bias detected;
  - iv. how the model was adjusted (if at all) to compensate for any harm or bias in the Training Data provided by the Seller;
  - v. robustness to noise, outliers and edge cases detected;
  - vi. stability and consistency of performance over the duration of the testing;
  - vii. an analysis of the root causes of any identified issues or failures; and

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- viii. recommendations for remediation or improvement (if any), and whether the improvements should be done before deployment or as a future release.

- 9.1.4. ^Optional^ The Seller must give the Buyer evidence to support the accuracy of any reports or information delivered, if requested by the Buyer.
- 9.1.5. ^Optional^ The Seller agrees that reports provided to the Buyer under this clause 9.1 may be made publicly available at the discretion of the Buyer.
- 9.1.6. ^Optional^ The Seller must provide to the Buyer reports in accordance with the AI Risk Management System.

**9.2. Document retention ^Optional^**

**Note:** The Buyer may wish to set out certain records that the Seller must keep and provide them to the Buyer on request in addition to other rights already held under the Contract including for Reporting and Audit. If so, the Buyer could insert the following clause.

- 9.2.1. The Seller must:
  - a. retain records in relation to the AI System in accordance with the ^Statement of Requirement/Specification^; and
  - b. provide copies of these records to the Buyer:
    - i. by ^Buyer to insert date^; and
    - ii. upon request.

**9.3. Audit ^Optional^**

**Note:** The Buyer should consider adding to its existing audit rights under its Contract to permit audit of the Seller's records relating to the AI System by including the following clause.

- 9.3.1. The Seller must provide the following to the Buyer on request:
  - a. risk assessments;
  - b. records in relation to Training Data including datasheets;
  - c. system decision registries;
  - d. documentation in relation to reliability and safety;
  - e. training and trial assessments;
  - f. bias/discrimination assessments; and
  - g. any documents generated for the purposes of design, development, implementation, functioning and decommissioning of the AI System.

**9.4. Logging capability**

- 9.4.1. The Seller must ensure that the AI System keeps automatic records of events ('logs') while the AI System is operating.

- 9.4.2. The AI System's logging capabilities must:
- a. conform to best industry practice or common specifications; and
  - b. be in accordance with the requirements stated in ISO/IEC 42001:2023 Information Technology – Artificial intelligence – Management System.
- 9.4.3. The logging capabilities must ensure an appropriate level of traceability of the AI System's functioning throughout its lifecycle for the Intended Use of the system and any reasonably foreseeable misuse. They must allow the recording of events relevant to identifying situations that may:
- a. result in the AI System presenting a risk to the health or safety or to the protection of a person's rights; or
  - b. lead to a substantial change to the AI System.
- 9.4.4. ^Optional^ The Seller must provide the Buyer access to the logs automatically generated by the AI System on a real time basis.
- 9.4.5. The Seller must keep the logs automatically generated by the AI System for the term of the Contract. At the end of the Contract, the Seller must provide these logs to the Buyer without delay.

## 10. Intellectual Property and AI Datasets

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**Note:**

The following clauses are sample clauses for Intellectual Property in relation to the procurement of an AI System.

Buyers should tailor the sample clauses to their contract:

1. to ensure consistency with their contract (including defined terms); and
2. to ensure that they are consistent with the Buyer's risk assessment, and desired ownership of Intellectual Property.

### 10.1. Rights in Contract Material

**Note:**

The Buyer should include either clause 10.1.1 or 10.1.2.

Clause 10.1.1 covers the standard position under a Contract where the Buyer will own IP in Contract Material.

Clause 10.1.2 covers the alternative position, where the Buyer prefers to give IP in Contract Material to the Seller and receive a broad licence of the Contract Material.

The Buyer should carefully consider what to include as Contract Material when preparing the Statement of Requirements/Specification. In particular, the Buyer should consider the Intellectual Property Rights arising in any bespoke software, User Manuals and any technical documentation relating to the AI System.

10.1.1. *Standard – Buyer owns IP in Contract Material*

- a. Intellectual Property Rights in all Contract Material vest immediately on creation in the Buyer; and
- b. the Buyer grants a:
  - i. royalty-free; and
  - ii. non-exclusive,  
licence for the Seller to:
  - iii. use;
  - iv. reproduce; and
  - v. adapt,the Contract Material for the purposes of this Contract and any purpose stated in <sup>^</sup>the Statement of Requirement/Specification<sup>^</sup> (if any).

10.1.2. *Alternative – Seller owns IP in Contract Material and licences it to Buyer*

- a. Intellectual Property Rights in all Contract Material vests or will vest immediately on creation in the Seller; and
- b. the Seller grants to (or must procure for) the Buyer a:
  - i. perpetual;
  - ii. irrevocable;
  - iii. royalty-free;
  - iv. world-wide; and
  - v. non-exclusive,  
licence (including a right of sub-licence) to:
  - vi. use;
  - vii. reproduce;
  - viii. adapt;
  - ix. modify;
  - x. perform;
  - xi. distribute;
  - xii. communicate;
  - xiii. publish; and
  - xiv. exploit,Contract Material for any purpose.

**10.2. Incorporated IP**

**Note:** Background IP includes Seller AI Datasets. Third Party IP includes Third Party AI Datasets.

- 10.2.1. The Seller grants to (or must procure for) the Buyer a:
- a. perpetual;
  - b. irrevocable;
  - c. royalty-free;
  - d. world-wide; and
  - e. non-exclusive,
- licence (including a right of sub-licence) to;
- f. use;
  - g. reproduce;
  - h. adapt;
  - i. modify;
  - j. perform;
  - k. distribute;
  - l. communicate;
  - m. publish; and
  - n. exploit,
- any Incorporated IP for any purpose, subject to clause 10.2.2.
- 10.2.2. The Buyer must ask for permission from the Seller to publish:
- a. logos; or
  - b. distinctive branding,
- included in the Incorporated IP. The Seller must be reasonable in responding to such a request.
- 10.2.3. The Seller agrees that the licence granted in this clause 10.2 includes a right for the Buyer to licence the Incorporated IP in conjunction with the Contract Material to the public under an Open Access Licence.
- 10.2.4. The Seller agrees, on request by the Buyer, to:
- a. create;
  - b. sign;
  - c. execute; or
  - d. otherwise deal with,
- any document necessary or desirable to give effect to this clause 10.

10.2.5. In relation to Base Third Party Software, this clause 10.2 is subject to clause 10.3.

10.2.6. ^Optional^ The rights in this clause 10.2 include the right to use Seller AI Datasets and Third Party Sets for the further development of the AI System, including any new versions of the AI System, by the Buyer or a third party.

### 10.3. Base Third Party Software

**Note:** Where the Seller needs to use Base Third Party Software to deliver the AI System, details of the required Software must be provided to the Buyer. Any software licence terms that apply to the use of Base Third Party Software should be stated in the Statement of Requirement/Specification or in a Schedule to the Contract.

#### *Option 1 – Buyer procures licence for Base Third Party Software*

10.3.1. The Seller warrants that any Base Third Party Software required for the AI System is stated in ^the Statement of Requirement/Specification^. The Seller must provide the AI System so that is fully interoperable with the Base Third Party Software.

10.3.2. The Buyer will procure a licence to the Base Third Party Software and provide it to the Seller. The licence will be on ^terms that are consistent with clause 10.5 [OR] subject to any applicable licence terms stated in the Contract Details/Statement of Requirements or attached to the Contract^.

10.3.3. The Seller must comply with the licence terms for Base Third Party Software as stated in clause 10.3.2.

10.3.4. The Seller is responsible for ensuring that the AI System functions and performs in accordance with its specifications and in all cases works efficiently and effectively with the Base Third Party Software.

#### *Option 2 – Seller procures licence for Base Third Party Software*

**Note:** Where this option applies, the Seller must ensure that the cost of the Base Third Party Software (e.g. any licensing fee) is included in the Contract price.

10.3.5. The Seller warrants that all Base Third Party Software required for the AI System is stated in ^the Statement of Requirement/Specification^.

10.3.6. The Seller will procure a licence to the Base Third Party Software for the Buyer on ^terms that are consistent with clause 10.2 [OR] the terms attached to this Contract^.

10.3.7. ^Optional^ The Buyer and Seller will comply with any terms and conditions applicable to Base Third Party Software in the ^the Statement of Requirement/Specification^.

10.3.8. The Seller is responsible for ensuring that the AI System functions and performs in accordance with its specifications and all cases efficiently and effectively with the Base Third Party Software.



**10.4. Intellectual Property warranty**

**Note:** Buyers should consider including an indemnity in their favour if the Seller infringes on a third party's Intellectual Property Rights in their liability/indemnity provisions.

10.4.1. The Seller warrants that:

- a. the Contract Material and the Buyer's use of the Contract Material will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- b. the Seller:
  - i. is entitled; or
  - ii. will be entitled at the relevant time,to deal with the Intellectual Property Rights and Moral Rights in the Contract Material in accordance with this Contract.

**10.5. Use of Buyer Material and Buyer AI Datasets**

10.5.1. The Buyer agrees to provide Buyer Material to the Seller including as stated in **^the Statement of Requirement/Specification^**.

**Note:** Buyer Material includes Buyer AI Datasets.

10.5.2. The Buyer grants (or will procure) a royalty-free, non-exclusive licence for the Seller to:

- a. use;
- b. reproduce; and
- c. adapt,

the Buyer Material for the purposes of this Contract subject to:

- d. the conditions and restrictions under this Contract; and
- e. any direction from the Buyer.

10.5.3. All rights, including any Intellectual Property Right, relating to Buyer AI Datasets will vest in the Buyer.

**11. Seller use of Buyer Data**

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**11.1. Seller must only use Buyer Data in accordance with the Contract**

**Note:**

Buyers should carefully consider the Intellectual Property ownership conditions in clause 10.1 in the context of data protection.

Where the Seller owns IP in Contract Material it will be able to do the actions below with Contract Material.

11.1.1. The Seller must only use, reproduce and adapt Buyer Data in accordance with this Contract.

- 11.1.2. The Seller must not, at any time:
- a. use Buyer Data for any purpose other than the performance of this Contract;
  - b. sell, licence or otherwise permit any third party to access or use Buyer Data;
  - c. remove any Buyer Data or allow removal of any Buyer Data from the Buyer's systems or premises or Seller's systems or premises; or
  - d. transmit, store, take or access Buyer Data or allow Buyer Data to be transmitted, stored, taken or accessed by any means outside of Australia,
- unless the Buyer has given the Seller prior written approval to do so.

**11.2. Data Mining and ingesting**

- 11.2.1. The Seller must not, at any time:
- a. conduct Data Mining activities with any Buyer Data; or
  - b. ingest Buyer Data into a large language model or any AI model,
- unless otherwise specified in this Contract including as part of the provision of the AI System.
- 11.2.2. If the Seller ordinarily conducts the activities set out in clause 11.2.1 by means of an automated process, the Seller must disable it.

**11.3. Prohibitions not to be superseded by other agreement**

- 11.3.1. The prohibitions in clauses 11.1 and 11.2 apply even if a user is required to click through and accept any Seller terms permitting the Seller to conduct the activities listed in clauses 11.1 and 11.2 on a user account or a collection of user accounts. Such terms have no effect whatsoever.

**11.4. Security of Buyer Data**

**Note:** The below is a high-level clause. Buyers should insert more detailed provisions under the Security heading above at clause 8 including by referring to DTA's cyber risk model clauses.

- 11.4.1. The Seller must have in place all necessary measures to protect Buyer Data. If the Seller or any Subcontractor use their Digital Systems to access, transmit or store Buyer Data, the Seller must ensure the Buyer Data is protected from:
- a. unauthorised access or use by a third party; and
  - b. misuse, loss, damage, destruction, alteration or corruption.
- 11.4.2. The Seller must have in place administrative, physical and technical protective measures that are consistent with best industry practice for the AI System.

**12. Handover and Destruction of AI Datasets and Buyer Data**

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**12.1. Handover of AI Datasets**

- 12.1.1. Upon request by the Buyer, the Seller must:
- a. hand over Buyer AI Datasets to the Buyer; and

- b. hand over the most recent version of the Seller AI Datasets and Third Party AI Datasets to the Buyer, except as otherwise provided in the ^Statement of Requirement/Specification^.

12.1.2. The AI Datasets must be handed over to the Buyer by the Seller in the format and on the type of media requested by the Buyer.

## 12.2. Destruction of AI Datasets

**Note:** Buyers should be aware that the default position under this clause is for the Seller to destroy Buyer AI Datasets on expiry or termination of the Contract. Buyers should consider whether this is appropriate in the circumstances of their Contract.

12.2.1. The Seller must promptly destroy originals and copies of Buyer AI Datasets, except as otherwise provided in the ^Statement of Requirement/Specification^, on request or on expiry or termination of this Contract.

12.2.2. Upon request by the Buyer, the Seller must provide evidence of the destruction of Buyer AI Datasets under clause 12.2.1.

## 12.3. Return of Buyer Data

12.3.1. For Buyer Data not in scope of clauses 12.1 and 12.2, the Seller must:

- a. return Buyer Data to the Buyer on request; and
- b. deal with Buyer Data as directed by the Buyer on expiry or termination of this Contract.

## 13. Risk management ^Optional^

### 13.1. Seller must comply with Buyer's AI policy/risk management system

**Note:** Where the Buyer has established an AI management system in the Buyer's organisation in accordance with ISO/IEC 42001:2023, the Buyer may wish to include the following clause.

13.1.1. The Seller must comply with the Buyer's ^describe name of AI policy/management system^ in providing the AI System.

**Note:**

The Buyer may require the Seller to prepare an AI management system by including either clause 13.2 or clauses 13.3 to 13.6. The Buyer should consider its risk assessment to decide on the appropriate clauses for the Contract, noting that the Seller may seek to increase the price for the AI System to reflect the resources required to comply with these clauses.

Clause 13.2 requires the Seller to implement an internal management system (not project specific) based on the ISO/IEC 42001:2023 Information Technology – Artificial intelligence – Management System. Under this clause, the Buyer will not approve the management system but may request evidence of compliance with ISO/IEC 42001:2023. This clause is more appropriate for lower risk projects.

Clauses 13.3 to 13.6 are a more complex set of clauses requiring the Seller to implement an internal management system based on the Buyer's specific requirements for the procurement. The Buyer will review and approve the management system and the Seller must report its compliance with the management system to the Buyer. This clause is more appropriate for complex, higher risk projects.

**13.2. Compliance with ISO/IEC 42001:2023 Information Technology – Artificial intelligence – Management System**

13.2.1. The Seller must:

- a. establish, implement and maintain an AI management system in accordance with ISO/IEC 42001:2023;
- b. ensure that Seller Personnel working on the AI System are aware of and comply with the Seller's AI management system; and
- c. provide evidence of compliance with ISO/IEC 42001:2023 and the Seller's AI management system to the Buyer within <sup>^</sup>10 business days or insert other timeframe<sup>^</sup> of a request by the Buyer.

[OR]

**13.3. Seller must establish and implement an AI Risk Management System**

**Note:** If clauses 13.3 to 13.6 are included, the Buyer should amend AI clauses where '*Statement of Requirements/Specification*' is stated to also refer to the AI Risk Management System.

13.3.1. The Seller must:

- a. establish and implement a risk management system in relation to the AI System (AI Risk Management System); and
- b. provide the AI Risk Management System to the Buyer prior to the delivery of the AI System or as specified in the <sup>^</sup>Statement of Requirement/Specification<sup>^</sup>.

13.3.2. <sup>^</sup>Optional<sup>^</sup> The AI Risk Management System must comply with ISO/IEC 42001:2023 Information Technology – Artificial intelligence – Management System.

**13.4. Contents of AI Risk Management System**

13.4.1. The AI Risk Management System must at least comprise the following:

- a. identification, estimation and evaluation of the known and reasonably foreseeable risks of the use of the AI System that are likely to arise in the light of the Intended Use of the AI System and reasonably foreseeable misuse. This includes risks of the use of the AI System breaching the:
  - i. fairness (clause 2.6);
  - ii. compliance with laws and policy (clause 3.1.1);
  - iii. privacy (clause 4);

- iv. confidentiality;
  - v. Intellectual Property;
  - vi. data protection; and
  - vii. security (clause 8),
- requirements of this Contract; and
- b. adoption of appropriate and targeted risk management measures designed to address the risks identified under clause 13.3.1.a.

c. ^insert additional required components of AI Risk Management System^

13.4.2. The Seller must ensure that the risk management measures referred to in clause 13.4.1.b:

- a. eliminate or reduce identified risks as far as technically feasible through adequate design and development of the AI System;
- b. where appropriate, implement adequate mitigation and control measures in relation to risks that cannot be eliminated;
- c. provide adequate information to the Buyer;
- d. result in the Buyer being able to understand and use the AI System appropriately by understanding:
  - i. how the AI System works; and
  - ii. what data it processes; and
- e. allow the Buyer to explain the decisions taken by the AI System to Affected Persons.

### **13.5. Approval and implementation of AI Risk Management System**

13.5.1. The Buyer may either:

- a. notify the Seller to implement the AI Risk Management System; or
- b. notify the Seller to revise the AI Risk Management System, in which case the Seller must revise and resubmit the AI Risk Management System within 5 business days (or such time stated in the notice) as required in the notice.

13.5.2. If the Buyer gives the Seller a notice under clause 13.5.1.a, the Seller must immediately implement the AI Risk Management System and:

- a. provide the AI System in accordance with the AI Risk Management System;
- b. keep the Buyer fully informed of any proposed modification to the AI Risk Management System;
- c. promptly provide the Buyer with any information that it reasonably requests about the AI Risk Management System or any related matter; and
- d. provide an updated AI Risk Management System if requested by the Buyer.

### 13.6. Due diligence, retaining records and updating the AI Risk Management System

- 13.6.1. The Buyer may conduct due diligence in respect of the AI Risk Management System.
- 13.6.2. The Seller must document all risks identified, measures taken and tests performed in the context of compliance with this clause 13. The Seller must make this documentation available to the Buyer <sup>^insert frequency (for example 3 months)] [OR] on request from the Buyer [OR] at the time stated in the Statement of Requirement/Specification<sup>^</sup>.</sup>
- 13.6.3. If permitted by the Buyer, this documentation may be included as part of the User Manual of the AI System.
- 13.6.4. The AI Risk Management System must be a continuous and iterative process run throughout the term of the Agreement. After the delivery of the AI System the Seller must:
- regularly review and update the risk management process, to ensure its continuing effectiveness;
  - keep the documentation described in clause 13.6.2 up to date; and
  - make every new version of the documentation described in clause 13.6.2 available to the Buyer without delay.
- 13.6.5. <sup>^Optional<sup>^</sup></sup> If the Buyer's use of the AI System continues beyond the term of the Agreement, at the expiry or termination of the Agreement, the Seller must provide the Buyer with the information necessary for the Buyer to maintain the AI Risk Management System.

### 14. Definitions

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Term	Definition
<b>Acceptance</b>	means accepted by the Buyer in accordance with a Contract. <b>Accept</b> and <b>Accepted</b> have a corresponding meaning.
<b>Acceptance Criteria</b>	means a list of criteria that the AI System must meet before the Buyer will Accept the AI System, set out in the <sup>^Statement of Requirements/Specification<sup>^</sup></sup> .
<b>Acceptance Testing</b>	means the testing of the AI System against the Acceptance Criteria.
<b>Affected Persons</b>	means the persons or group of persons which will: <ol style="list-style-type: none"> <li>access or receive services from; or</li> <li>be otherwise affected by,</li> </ol>

	the AI System.
<b>AI Datasets</b>	means all data sets used in the development and operation of the AI System including: <ul style="list-style-type: none"> <li>a. Buyer AI Datasets;</li> <li>b. Seller AI Datasets; and</li> <li>c. Third Party AI Datasets.</li> </ul>
<b>AI Incident</b>	means an event, circumstance or series of events where the development, use or malfunction of the AI System directly or indirectly leads to any of the following harms: <ul style="list-style-type: none"> <li>a. injury or harm to the health of a person or groups of people;</li> <li>b. disruption of the management and operation of critical infrastructure;</li> <li>c. a breach of obligations under any law or policy intended to prevent discrimination, protect employment or protect Intellectual Property Rights; or</li> <li>d. harm to property, communities or the environment.</li> </ul>
<b>AI Hazard</b>	means an event, circumstance or series of events where the development, use or malfunction of the AI System could plausibly lead to an AI Incident.
<b>AI Risk Management System</b>	means the system established and implemented by the Seller to identify and manage risks relating to the AI System in accordance with clause 13.
<b>AI System</b>	means the machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI Systems vary in their levels of autonomy and adaptiveness after deployment.

<b>AI System Data</b>	means any data produced by and resulting from the Buyer's use of the AI System or the training of the AI System on the Buyer Training Data, and which are stored, contained or embedded in the AI System or its underlying model(s), including any statistical and aggregated data.
<b>Australian Privacy Principle</b>	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth).
<b>Background IP</b>	<p>means Intellectual Property Rights (other than Third Party IP) that are:</p> <ul style="list-style-type: none"> <li>a. in existence at the commencement of the Contract or are subsequently brought into existence other than as a result of the performance of a Contract; and</li> <li>b. embodied in, or attach to, the AI System or otherwise necessarily relate to the functioning or operation of the AI System.</li> </ul> <p><b>Background IP</b> does not include Intellectual Property Rights that subsist in any Buyer Material.</p> <p><b>Background IP</b> includes Seller AI Datasets.</p>
<b>Banned AI System</b>	has the meaning given in clause 1.4.1.
<b>Base Third Party Software</b>	means any third party Software on which the AI System is based and that is required for the Buyer to operate and use the AI System.
<b>Buyer</b>	means each entity identified as such in the Contract associated with that Contract or such other departments, agencies or authorities of the Commonwealth (or a State, Territory or Local Government) as are from time to time responsible for administering the Contract.



<b>Buyer Data</b>	<p>means any:</p> <ul style="list-style-type: none"> <li>a. document;</li> <li>b. device;</li> <li>c. article; or</li> <li>d. medium,</li> </ul> <p>which embodies Buyer Material, Buyer AI Datasets, Official Information or other Material owned or licensed by the Buyer, but only includes Material owned by the Seller to the extent it is licensed to the Buyer.</p>
<b>Buyer AI Datasets</b>	<p>means the AI Datasets (or parts of AI Datasets):</p> <ul style="list-style-type: none"> <li>a. provided by the Buyer to the Seller under the Contract (including Buyer provided Training Data); or</li> <li>b. created or collected as part of the Contract, including any modified or extended versions of the AI Datasets referred to under paragraph a (for example due to annotation, labelling, cleaning, enrichment or aggregation).</li> </ul>
<b>Buyer Material</b>	<p>means any Material:</p> <ul style="list-style-type: none"> <li>a. provided by the Buyer to the Seller for the purposes of a Contract;</li> <li>b. owned by or in the possession, custody or control of the Buyer; or</li> <li>c. derived at any time from the Material referred to in paragraph a or b.</li> </ul> <p><b>Buyer Material</b> includes Buyer AI Datasets.</p>
<b>Contract Material</b>	<p>means any Material:</p> <ul style="list-style-type: none"> <li>a. specified as such in the <b>^Statement of Requirement/Specification^</b>;</li> <li>b. created by the Seller for the purposes of the Contract (including any reports or other deliverables that the Seller has to give under the Contract);</li> <li>c. given or required to be given to the Buyer as part of the provision of the AI System; or</li> </ul>

	<p>d. derived at any time from the Material referred to in paragraphs a, b or c.</p> <p><b>Contract Material</b> does not include:</p> <p>a. Buyer Material;</p> <p>b. Background IP; or</p> <p>c. Third Party IP.</p>
<b>Data Mining</b>	<p>means analysing or searching for patterns and anomalies in data sets to extract information whether through automated or human means. This includes:</p> <p>a. data clustering;</p> <p>b. data scraping;</p> <p>c. classification;</p> <p>d. text mining;</p> <p>e. anomaly detection;</p> <p>f. regression; or</p> <p>g. similar methods.</p>
<b>Digital System</b>	<p>includes any electronic or other system, or any related:</p> <p>a. process;</p> <p>b. equipment;</p> <p>c. tool;</p> <p>d. device;</p> <p>e. infrastructure;</p> <p>f. network;</p> <p>g. data;</p> <p>h. information;</p> <p>i. transmission;</p> <p>j. communication;</p> <p>k. software; or</p> <p>l. facility,</p> <p>whether stand-alone or connected with any other item.</p>
<b>Eligible Data Breach</b>	<p>has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth).</p>

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<b>Incorporated IP</b>	means any Background IP or Third Party IP: <ul style="list-style-type: none"><li>a. incorporated into the Contract Material; or</li><li>b. otherwise forming part of the AI System.</li></ul>
<b>Indigenous Data</b>	means information or knowledge, in any format or medium, which is about and may affect Indigenous peoples both collectively and individually.
<b>Intellectual Property Rights or IP</b>	includes: <ul style="list-style-type: none"><li>a. all copyright (including rights in relation to phonograms and broadcasts);</li><li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li><li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li></ul> but does not include: <ul style="list-style-type: none"><li>d. Moral Rights;</li><li>e. the non-proprietary rights of performers; or</li><li>f. rights in relation to Confidential Information.</li></ul>
<b>Intended Use</b>	has the meaning given in clause 2.2.1.
<b>Material</b>	means any thing in relation to which Intellectual Property Rights arise.
<b>Moral Rights</b>	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"><li>a. the right of attribution of authorship;</li><li>b. the right of integrity of authorship; and</li><li>c. the right not to have authorship falsely attributed.</li></ul>
<b>Official Information</b>	means any information: <ul style="list-style-type: none"><li>a. developed;</li><li>b. received; or</li><li>c. collected,</li></ul> by or on behalf of the Buyer to which the Seller gains access under or in connection

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	with the Contract, and includes any Material contained in the AI System and the terms of the Contract.
<b>Open Access Licence</b>	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government Open Access Licence and any Creative Commons Attribution licence (see the <a href="#">Creative Commons webpage for more information</a> ).
<b>Personal Information</b>	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth).
<b>Personnel</b>	means: <ol style="list-style-type: none"> <li>in relation to the Seller – any natural person who is an officer, employee, contracted staff member, agent or professional adviser of the Seller or of a Subcontractor; and</li> <li>in relation to the Buyer – any natural person, other than a person referred to in paragraph a, who is an officer, employee, contracted staff member, agent or professional adviser of the Buyer.</li> </ol>
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Commissioner</b>	means the Privacy Commissioner for the Commonwealth or the equivalent State or Territory office holder.
<b>Seller</b>	means each entity that is identified as such in the Contract associated with the Contract. Where the context requires, <b>Seller</b> includes the Seller's Personnel.
<b>Seller AI Datasets</b>	means the AI Datasets (or parts of) owned by the Seller used in the development and operation of the AI System, including Seller provided Training Data.
<b>Subcontractor</b>	means any person (other than the Buyer) that, for the purposes of the Contract, provides products and services directly or indirectly to the Seller.

	<b>Subcontract</b> has a corresponding meaning.
<b>Supply Chain</b>	<p>means any Subcontractor, agent, supplier or entity:</p> <ul style="list-style-type: none"> <li>a. in a direct or indirect business relationship (whether within Australia or internationally) with the Seller; or</li> <li>b. which contributes directly or indirectly to the supply of the deliverables to the Buyer,</li> </ul> <p>including entities in the network of business entities or individuals performing, providing, producing, handling, storing, transmitting or distributing:</p> <ul style="list-style-type: none"> <li>c. the AI System; or</li> <li>d. components of the AI System.</li> </ul>
<b>Supply Chain Elements</b>	means an entity in the Supply Chain.
<b>Third Party AI Datasets</b>	means the AI Datasets (or parts of AI Datasets) owned by a Third Party used in the development and operation of the AI System.
<b>Third Party IP</b>	<p>means Intellectual Property Rights owned by a person other than the Buyer or the Seller that are incorporated by the Seller into Contract Material, or used or required to be used by the Seller in the course of providing the AI System under the Contract.</p> <p><b>Third Party IP</b> includes Third Party AI Datasets.</p>
<b>Training Data</b>	means data which the AI System processes and/or the Seller or Buyer uses pursuant to this Contract in order to develop or train the AI System.
<b>User Manual</b>	means the user manual provided to the Buyer by the Seller in accordance with clause 6.4 and includes technical documentation about the AI System.

**Note:** DTA has not included the words '*in its absolute discretion*' or '*at the Seller's cost*' in the above clauses. Buyers may wish to add the following interpretation provisions to its clauses/Schedule in relation to Interpretation:

*"In the Contract, unless the contrary intention appears, wherever the Contract:*

- gives the Buyer the right to take (or not take) certain action, then the Buyer may (or may not) take the action in its absolute discretion; and*
- provides that the Seller has an obligation to do (or not do) something, the Seller must comply with that obligation at its cost."*