

Sample Contract Checklist for AI Technology Contracts

If AI Technology is identified as part of any purchase or services agreement the Facility is considering, the contract review will include the following:

Identify the Intended Use(s) of the AI Technology within the Facility.

What types of information will the Facility share with the AI Technology?

If purchasing AI Technology from a Vendor for the Facility's use, evaluate the agreement to ensure the following provisions are included:

- Facility has the right to utilize the AI Technology for the Intended Use.
- Vendor has obtained all necessary government approvals and clearances, as applicable, for the AI Technology to be used for the Intended Use and will keep AI Technology in compliance with any required approvals, clearances, or other government requirements for the AI Technology.
- AI Technology is appropriate for the Intended Use.
- Vendor will comply with all applicable laws and regulations, including any transparency requirements.
- If the AI Technology is a patient care decision support tool, the AI Technology is evaluated for potential bias and discrimination and any potential bias or discrimination identified is appropriately addressed or information regarding the potential for bias or discrimination is provided to the Facility.
- If the Agreement does not contain a without cause termination right but has a lengthy term, the Facility have the right to terminate the Agreement without penalty in the event a change in law or regulation applicable to Facility makes continued use of the AI Technology by Facility impractical or infeasible?

- Vendor represents it owns or has the necessary IP rights to allow Facility the right to use the technology as contemplated and when used as intended in accordance with the Vendor's terms it will not infringe on other third parties' intellectual property rights.
- Vendor will indemnify and hold Facility harmless for any claims resulting from a breach of its intellectual property representations.
- If Protected Health Information will be shared with Vendor/AI Technology, confirm there is a Business Associate Agreement compliant with HIPAA and that any use/disclosure of PHI by the Vendor is in compliance with all applicable laws and regulations.
- If the Vendor is allowed to aggregate Facility's PHI with that of other covered entities, the use of the aggregated data is limited to improving the services provided to Facility or as otherwise allowed by HIPAA for data aggregation services.
- If Vendor has the right to de-identify and use/disclose de-identified information for any lawful purpose, the Vendor is required to de-identify the PHI in accordance with 45 C.F.R. § 164.514(b).
- Prohibit the use/disclosure of PHI post-termination unless the PHI is de-identified in accordance with 45 C.F.R. § 165.514(b) or for the Vendor's management/administration as allowed by HIPAA.
- Vendor is required to keep any Facility confidential information strictly confidential and limit the uses/disclosure of confidential information to what Facility is comfortable with based on the information to be shared with the Vendor/AI Technology.
- Provide for the return or destruction of the Facility's confidential information post-termination or if Vendor will be allowed to retain confidential information post-termination, require continued compliance with the confidentiality requirements in the agreement.
- Require the Contractor to comply with all federal and state laws applicable to the privacy, security, and confidentiality of any confidential information provided by Facility to the Contractor, including any state laws applicable to an individual's personal information.

If the AI Technology will be used by a Contractor in the provision of services for or to Facility evaluate the agreement to ensure the following are included:

- AI Technology will only be used as pre-approved by Facility and in accordance with any Facility requirements and the use approved by Facility.

- AI Technology has all necessary government approvals and clearances, as applicable, for it to be used as intended.
- Contractor will comply with all applicable laws and regulations in the use of the AI Technology, including obtaining any required third-party consents, such as patient consent.
- Contractor will provide Facility with any information forwarded by the Vendor relevant to the use of the AI Technology in the provision of services for Facility or which Facility reasonable requests and needs to evaluate the safety of the AI Technology.
- If the AI Technology is a patient care decision support tool, Contractor has and will continue to evaluate the AI Technology for potential bias and discrimination and to the extent any potential for bias or discrimination is identified will notify Facility.
- Facility has the right to revoke its approval for the use of the AI Technology.
- Contractor represents it owns or has the necessary IP rights to use the technology as contemplated, and use of the technology will not infringe on other third parties' intellectual property rights.
- Contractor will indemnify and hold Facility harmless for any claims resulting from a breach of its intellectual property representations.
- Prohibit any of Facility's confidential or proprietary information (including patient information) from being shared with the AI Technology unless Facility is notified and has approved of the information sharing and only if there are confidentiality protections in place which prohibit the further use/disclosure of the confidential, proprietary information except as otherwise agreed to by Facility and subject to any continued obligation to keep such information confidential after termination of the agreement.
- If Facility's patient's Protected Health Information ("PHI") will be shared with AI Technology, Contractor represents and warrants it has a Business Associate Agreement in place with the Vendor that complies with HIPAA.
- Require the Contractor to comply with all federal and state laws applicable to the privacy, security and confidentiality of any confidential information provided by Facility, including any state laws applicable to an individual's personal information.