

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

AI Series

Contacting Intelligence How To Contract for AI Services, and How To Implement Them

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What we will cover today

- A walk through of some key clauses in a contract for an AI system
- What is different about contracting for AI systems?
- Practical insights when procuring AI systems

Preliminary Matters

- AI systems are very varied – one size doesn't fit all
- Market standards for AI systems are developing, but a long way off maturity
- Negotiating power will have a big impact on AI contracts in the short term
- Some types of contract for AI related work will require a different approach e.g. consultancy contracts for prompt engineering
- Left column is primarily for a COTS
- Right column is primarily for a more bespoke system

What are you contracting for?



COTS (Commercial off-the-shelf software)

- AI system will comply with a published specification
- No other or limited warranties or conditions
- Express exclusion that the AI system meets a Customer's requirements



BESPOKE SYSTEMS

- AI system to comply with a customer requirements schedule
 - Requires significant effort to draft properly
 - Can these requirements actually be met?
 - Better to include benchmarked and measurable outcomes?

How will acceptance function?



COTS

- Typically off the shelf, so no formal acceptance process
- Trial run or proof of concept useful to evaluate performance



BESPOKE SYSTEMS

- “Bog standard” acceptance procedures may be inappropriate
- Is iterative development envisaged, in which case aspects of Agile acceptance procedures might be appropriate

Updates, Upgrades and Source Code



COTS

- Can the supplier roll out updates/upgrades without consulting customer?
- Typically no access to source code



BESPOKE SYSTEMS

- Will the supplier be required to provide updates/upgrades?
- Is the customer required to take updates/upgrades?
- How are updates/upgrades tested/accepted?
- Is there any requirement for re-training with an upgrade/update?

User Manuals/User Training



COTS

- Can see obligations on the customer to comply with user manuals and user training



BESPOKE SYSTEMS

- Provision of a user manual and training can be key to properly using an AI system
- Consider whether there are on-going training requirements or requirements to update user manual
- Human oversight needs to be enabled

Warranties



COTS

- Typically limited to material compliance to published specifications



BESPOKE SYSTEMS

- How useful are “good industry practice”, “materially free from defects”, “satisfactory quality”?
- Compliance with law (e.g. AI Act)
- IP infringement
- Explainability

Circuit Breakers/Roll-Back



COTS

- Supplier may include the ability to interrupt and stop AI system from functioning
 - Notification requirements?
 - Liability for loss of use
 - Roll back?



BESPOKE SYSTEMS

- Customer to consider whether a circuit breaker is required
- Is there a right/requirement to roll back to previous iterations

Records, logging and audit rights



COTS

- Can require customers to maintain records, with associated audit right
- Access to log data may be required



BESPOKE SYSTEMS

- Customer should clearly detail what records a supplier is obliged to maintain
- The AI system may have log generation requirements
- What happens if records/logs are not maintained and there is a dispute?

Intellectual Property Considerations



COTS

- Typically a limited licence to use the AI system
- What use of customer materials/data is permitted?
- Who owns outputs?
- How are improvements to an AI system dealt with?



BESPOKE SYSTEMS

- Underlying AI system will be background IP (owned by supplier or open source)
- Often integrates third party supplier IPR
- Will bespoke IP be owned by the customer?
- Is source code escrow relevant?

Indemnity Protection

- Indemnity protection for breach of third-party IP rights is common
- Is a broader indemnity reasonable in relation to other types of third-party claim?
- Consider the impact of limitation of liability provisions
- Is the provider a good mark in the event of a claim?

Security



COTS

- Include standard IT security requirements for SAAS agreements



BESPOKE SYSTEMS

- Consider whether there should be specific security requirements for AI system risks (e.g. addressing model inversion attacks, data poisoning, adversarial examples, model flaws)

Termination



COTS

- What run off rights might be required?
 - Migration of customer data
 - Is there a requirement for on-going access to support for the purposes of explainability?



BESPOKE SYSTEMS

- More detailed support to migrate to a different provider
- Delivery of materials to permit on-going use of a bespoke system

Functionality and scalability



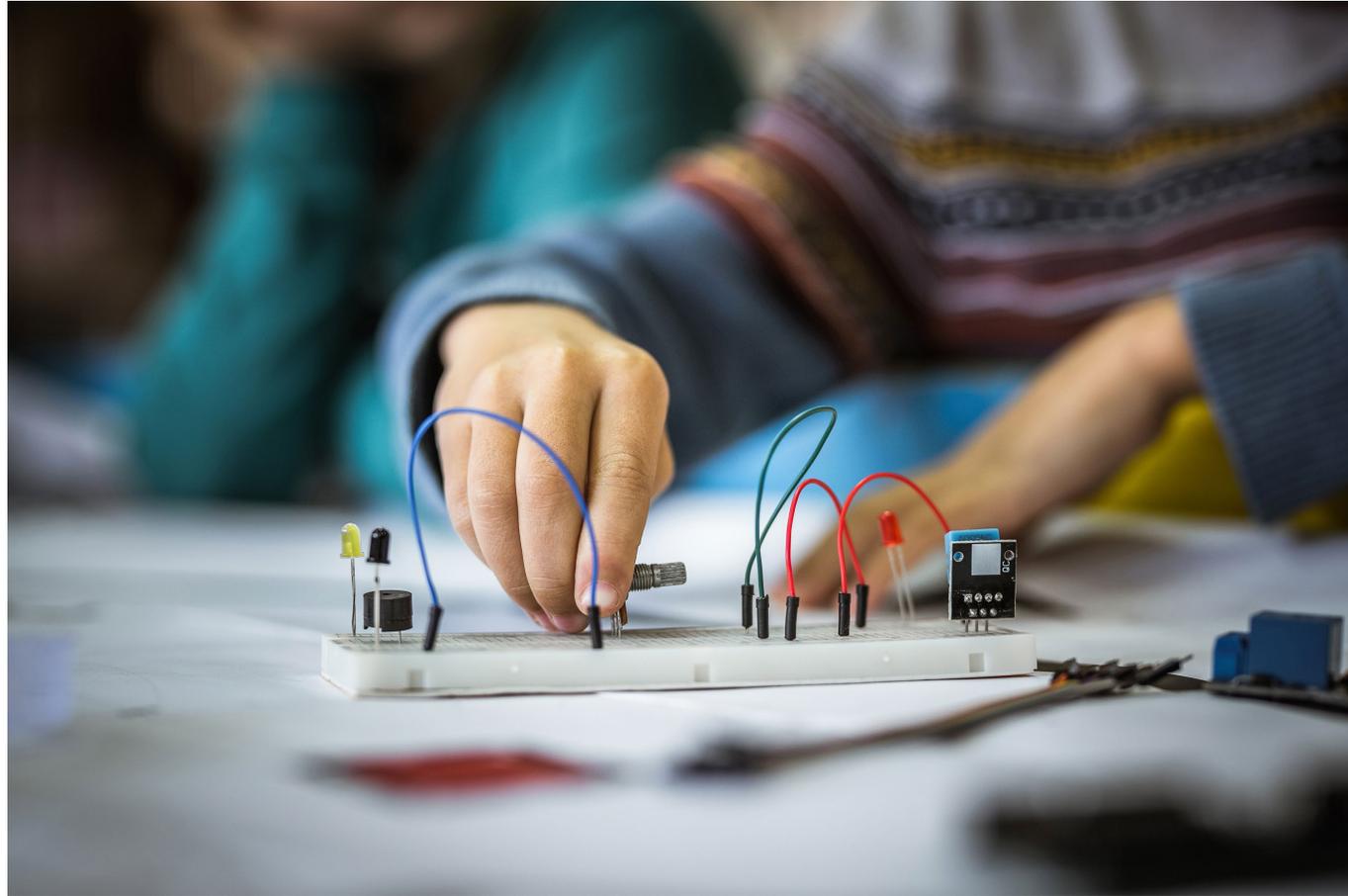
Compatibility



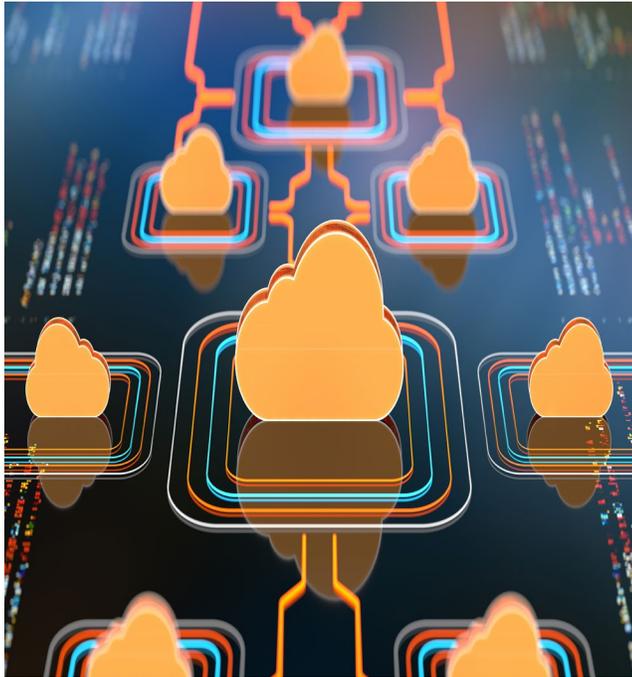
Pricing



Pilots / Testing



Data Hosting & “Locked Box”



Support / Service & Training



Future-proofing



Questions?

