

Proposal for standard contractual clauses for the procurement of artificial intelligence by public organisations version 0.9.1 – light version

Disclaimer

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Introductory remarks

These standard contractual clauses have been drafted for public organisations wishing to procure an AI System developed by an external supplier. These standard clauses are based on the standard clauses for the procurement of algorithmic systems developed by the City of Amsterdam in 2018 (<https://www.amsterdam.nl/innovatie/digitalisering-technologie/algorithmen-ai/contractual-terms-for-algorithms/>).

The standard contractual clauses presented are based to a large extent on the requirements and obligations for high-risk AI Systems included in the Title III of the proposal for a Regulation on artificial intelligence* ("AI Act"). This proposal is subject to ongoing negotiations so the clauses will need to be revised to take into account any changes made and fully align them with the final regulation adopted by the Council and the European Parliament.

Considering that the proposed AI Act is still under negotiations, public organisations that decide to use the standard contractual clauses may do that on a voluntary basis assessing on a case-by-case basis whether the various sections of these standard contractual clauses are sufficient and proportionate for procuring a particular AI System. The full version of the standard contractual clauses targets in particular AI systems classified as 'high-risk' within the meaning of Article 6 and listed in one of the areas covered by Annexes II and III of the proposed AI Act.

For non-high risk AI the application of these requirements is not mandatory under the AI Act, but recommended to improve trustworthiness of AI applications procured by public organisations. This light version of the standard contractual clauses targets in particular non-high risk AI systems.

Where appropriate and justified depending on the impact of the system on the individuals and the society, public organisations may also extend the application of these clauses, either the full version or this light version, to other algorithmic systems that may not be necessarily qualified as 'AI' to cover in addition simpler software rule-based systems, considering that their use in the public sector may also require in certain cases increased accountability, control and transparency.

The standard contractual clauses only contain provisions specific to AI Systems and on matters covered by the proposed AI Act, thus excluding other obligations or requirements that may arise under relevant applicable legislation such as the General Data Protection Regulation. Furthermore, these standard contractual clauses do not comprise a full contractual arrangement. For example, these standard contractual clauses do not contain any conditions concerning intellectual property, acceptance, payment, delivery times, applicable law or liability. The standard contractual clauses are drafted in such a way that they can be attached as a schedule to an agreement in which such matters have already been laid down.

* Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence and amending certain union legislative acts,

Section A - DefinitionsArticle 1 Definitions

1.1. Capitalised terms used in these Clauses will have the meaning as defined in this article.

- Agreement: the entire agreement of which the Clauses, as a schedule, are an integral part;
- AI System: the AI system(s) as referred to in **Annex A**, including any new versions thereof;
[optional] The parties may agree that these Clauses or parts thereof also apply to any algorithmic system regardless of whether the system is based on artificial intelligence or other digital technologies as described in Annex A.
- Clauses: these standard contractual clauses for the procurement of artificial intelligence by public organisations;
- Public Organisation Data Sets: (parts of) the Data Sets provided by Public Organisation to the Supplier under the Agreement or to be created or collected as part of the Agreement;
- Data Sets: the data set or data sets as described in **Annex B**, including any modifications or extensions thereof, as well as any other data sets created after the conclusion of the Agreement that are used in the context of the Agreement;
- Delivery: the time at which the Supplier informs Public Organisation that the AI System satisfies all agreed conditions and is ready for use;
- Intended Purpose: the use for which an AI System is intended by Public Organisation, including the specific context and conditions of use, as specified in Annex B, the information supplied by the Supplier in the instructions for use, promotional or sales materials and statements, as well as in the technical documentation;
- Reasonably Foreseeable Misuse: the use of the AI System in a way that is not in accordance with its Intended Purpose, but which may result from reasonably foreseeable human behaviour or interaction with other systems;
- Supplier: the natural or legal person, public authority, agency or other body that supplies the AI System under its own trademark or name to Public Organisation pursuant to the Agreement;
- Supplier Data Sets and Third Party Data Sets: (part of) the Data Sets that do not qualify as Public Organisation Data Sets.

Section B – Essential requirements in relation to the AI-systemArticle 2 Risk management system

- 2.1. The Supplier ensures that, prior to the Delivery of the AI System, a risk management system shall be established, implemented and documented in relation to the AI System.
- 2.2. The risk management system shall at least comprise the following steps:
 - a. identification and analysis of the known and foreseeable risks to health, safety and fundamental rights of the European Union that are likely to arise in the light of the Intended Purpose of the AI System and Reasonably Foreseeable Misuse;
 - b. estimation and evaluation of the risks that may emerge when the AI System is used in accordance with its Intended Purpose and under conditions of Reasonably Foreseeable Misuse;
 - c. evaluation of other possibly arising risks;
 - d. adoption of suitable risk management measures in accordance with the provisions of the following paragraphs.
- 2.3. The risk management measures referred to in paragraph 2.2, point (d) shall take into account the generally acknowledged state of the art, including as reflected in relevant harmonised standards or common specifications.
- 2.4. In identifying the most appropriate risk management measures referred to in paragraph 2.3, point (d), the following shall be ensured:
 - a. elimination or reduction of risks as far as possible through adequate design and development;
 - b. implementation of adequate mitigation and control measures in relation to risks that cannot be eliminated;
 - c. provision of adequate information, in particular as regards the risks referred to in paragraph 2.2, point (b) of this article.
- 2.5. The Supplier ensures that, prior to the Delivery of the AI System, the AI System is tested in order to verify whether the AI System complies with the Clauses and whether the risk management measures referred to in paragraph 2.2, point (d) are effective in light of the Intended Purpose and Reasonably Foreseeable Misuse. If requested by the Public Organisation, the Supplier is obliged to test the AI System in the environment of Public Organisation.
- 2.6. All risks identified, measures taken and tests performed in the context of compliance with this article will be documented by the Supplier. The Supplier must make these documents available to Public Organisation at the time of Delivery. The Supplier must update this documentation at least with every change made to the AI System during the term of the Agreement, and subsequently make it available to Public Organisation.

Article 3 < for AI Systems which make use of techniques involving the training of models with data/for other systems applicable only as relevant >
Data and data governance

- 3.1. The Supplier ensures that the Data Sets used in the development of the AI System, including training, validation and testing, shall be subject to appropriate data governance and management practices. Those practices shall concern in particular:
 - a. the relevant design choices;
 - b. data collection;
 - c. relevant data preparation for processing operations, such as annotation, labelling, cleaning, enrichment and aggregation;
 - d. the formulation of relevant assumptions, notably with respect to the information that the data are supposed to measure and represent;
 - e. examination in view of possible biases;
 - f. the identification of any possible data gaps or shortcomings, and how those gaps and shortcomings can be addressed.
- 3.2. The Supplier ensures that the Data Sets used in the development of the AI System are relevant, representative, free of errors and complete. The Supplier ensures that Data Sets have the appropriate statistical properties, including, where applicable, as regards the persons or groups of persons on which the AI System is intended to be used. These characteristics of the Data Sets may be met at the level of individual data sets or a combination thereof.
- 3.3. The Supplier ensures that the Data Sets used in the development of the AI System take into account, to the extent required by the Intended Purpose, the characteristics or elements that are particular to the specific geographical, behavioural or functional setting within which the AI System is intended to be used.
- 3.4. The obligations under this article apply not only to the development of the AI System prior to Delivery, but also to any use of Data Sets at any other time during the term of the Agreement.

Article 4 Technical documentation and instructions for use

- 4.1. The Delivery of the AI System by the Supplier includes the handover of the technical documentation and instructions for use.
- 4.2. The technical documentation must enable Public Organisation or a third party to assess the compliance of the AI System with the provisions of the requirements set in these Clauses and at least satisfy the conditions described in **Annex C**.
- 4.3. The instructions for use shall include concise, complete, correct and clear information that is relevant, accessible and comprehensible to Public Organisation. The instructions for use must at least satisfy the conditions described in **Annex D**.
- 4.4. The Supplier must update this documentation at least with every change made to the AI System during the term of the Agreement, and subsequently make it available to Public Organisation.

- 4.5. **<optional>** The technical documentation and instructions for use must be drawn up in English.
- 4.6. **<optional>** Public Organisation has the right to make copies of the technical documentation and instructions for use to the extent necessary for internal use within the organisation of Public Organisation, without prejudice to the provisions of article 6 and article 7.

Article 5 Record-keeping

- 5.1. The Supplier ensures that the AI System shall be designed and developed with capabilities enabling the automatic recording of events ('logs') while the AI System is operating. Those logging capabilities shall conform to recognised standards or common specifications.
- 5.2. The logging capabilities shall ensure a level of traceability of the AI System's functioning throughout its lifecycle that is appropriate to the Intended Purpose of the system.

Article 6 Transparency

- 6.1. The Supplier ensures that the AI System shall be designed and developed in such a way to ensure that the operation of the AI System is sufficiently transparent to enable Public Organisation to interpret the system's output and use it appropriately.

Article 7 Explainability

- 7.1. **<optional>** During the term of the Agreement, the Supplier is obliged to assist Public Organisation at Public Organisation's first request to explain on an individual level how the AI System arrived at a particular decision or outcome. In any event, this will include a clear indication of the key factors that led the AI System to arrive at a particular result and the changes to the input that must be made in order for it to arrive at a different outcome.
- 7.2. **<optional>** The obligation as described in article 7.1 comprises in any event the provision to Public Organisation of all the technical and other information required in order to explain how the AI System arrived at a particular decision or outcome and to offer the other party and any other interested parties the opportunity to verify the way in which the AI System arrived at a particular decision or outcome. The Supplier hereby grants the Public Organisation the right to use, share and disclose this information, if and to the extent necessary to inform natural persons about the functioning of the AI System and/or in any legal proceedings.
- 7.3. **<optional>** The obligations referred to in article 7.1 and article 7.2 include the source code of the AI System, the technical specifications used in

developing the AI System, the Data Sets, technical information on how the Data Sets used in developing the AI System were obtained and edited, information on the method of development used and the development process undertaken, substantiation of the choice for a particular model and its parameters, and information on the performance of the AI System.

Article 8 Human oversight

- 8.1. The Supplier ensures that the AI System shall be designed and developed in such a way, including with appropriate human-machine interface tools, that it can be effectively overseen by natural persons.
- 8.2. The Supplier ensures that, prior to the Delivery, appropriate measures shall be embedded in the AI System and taken to ensure human oversight. These measures, which could include inter alia training of employees of Public Organisation, shall enable the individuals to whom human oversight is assigned to do the following, as appropriate to the circumstances:
 - a. fully understand the capacities and limitations of the AI System and be able to duly monitor its operation, so that signs of anomalies, dysfunctions and unexpected performance can be detected and addressed as soon as possible;
 - b. remain aware of the possible tendency of automatically relying or over-relying on the output produced by the AI System ('automation bias'), in particular if the AI System is used to provide information or recommendations for decisions to be taken by natural persons;
 - c. be able to correctly interpret the AI System's output, taking into account in particular the characteristics of the system and the interpretation tools and methods available;
 - d. be 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;
 - e. be able to intervene on the operation of the AI System or interrupt the system through a "stop" button or a similar procedure.

Article 9 Accuracy, robustness and cybersecurity

- 9.1. The Supplier ensures that the AI System shall be designed and developed in such a way that it achieves, in the light of the Intended Purpose and Reasonably Foreseeable Misuse, an appropriate level of accuracy, robustness and cybersecurity, and performs consistently in those respects throughout its lifecycle.
- 9.2. The levels of accuracy and the relevant accuracy metrics of the AI System are described in **Annex E**.

- 9.3. The Supplier ensures that the AI System shall be resilient as regards errors, faults or inconsistencies that may occur within the system or the environment in which the system operates, in particular due to their interaction with natural persons or other systems.
- 9.4. The AI System shall be resilient as regards attempts by unauthorised third parties to alter their use or performance by exploiting the system's vulnerabilities.
- The technical solutions to address AI specific vulnerabilities shall include, where appropriate, measures to prevent and control attacks trying to manipulate the training dataset ('data poisoning'), inputs designed to cause the model to make a mistake ('adversarial examples'), or model flaws.

Article 10 Compliance with Section B and corrective actions

- 10.1. The Supplier must ensure that the AI System complies with the requirements established in Section B of these Clauses.
- 10.2. If the Supplier considers or has reason to consider that the AI system is not in conformity with these Clauses, whether in response to a comment by Public Organisation or not, it shall immediately take the necessary corrective actions to bring that system into conformity, to withdraw it or to recall it, as appropriate. The Supplier shall inform the Public Organisation accordingly.

Section C – Rights to use the Data Sets

Article 11 **<optional>** Rights to the Public Organisation Data Sets

- 11.1. All rights, including any intellectual property right, relating to the Publication Organisation Data Sets will accrue to Public Organisation.
- 11.2. The Supplier is not entitled to use the Publication Organisation Data Sets for any purpose other than the performance of the Agreement.
- 11.3. On first request of Public Organisation, the Supplier must destroy the Publication Organisation Data Sets. If Public Organisation so demands, the Supplier must provide evidence of the destruction of the Publication Organisation Data Sets.

Article 12 **<optional>** Rights to Supplier Data Sets and Third Party Data Sets

- 12.1. All rights, including any intellectual property right, relating to the Supplier Data Sets and Third Party Data sets will accrue to the Supplier or a third party.
- 12.2. The Supplier grants Public Organisation a perpetual, non-exclusive right to use the Supplier Data Sets and Third Party Data Sets that is in any event sufficient for performance of the provisions of the Agreement, including the Clauses.

- 12.3. **<optional>** The right of use described in article 12.2 includes the right to use Supplier Data Sets and Third Party Sets for the further development of the AI System, including any new versions thereof, by Public Organisation or a third party.

Article 13 **<optional>** Hand over of the Data Sets

- 13.1. On first request of Public Organisation, the Supplier will hand over the most recent version of the Data Sets to Public Organisation.
- 13.2. The Data Sets must be handed over to Public Organisation by the Supplier in a common file format to be designated by Public Organisation.

Article 14 **<optional>** Indemnification

- 14.1. The Supplier will indemnify the Public Organisation against all claims brought by third parties in respect of any breach of their intellectual property rights and equivalent claims relating to knowledge, unlawful competition and so forth with regards to the Data Sets.
- 14.2. The Supplier is obliged, as soon as the Public Organisation so requests, to assume responsibility for defending any proceedings brought against the Public Organisation in connection with the Data Sets for breach of the intellectual property rights of a third party. For this purpose the Public Organisation will immediately inform the Supplier of any such proceedings and provide the Supplier with the necessary powers of attorney and assistance. The Supplier will also indemnify the Public Organisation against all damages and costs that it may be ordered to pay in such proceedings and against the costs of the proceedings themselves, including, but not limited to, the costs of obtaining legal advice in this connection.

Section D – AI register and audit

Article 15 **<optional>** AI register

- 15.1. At the Public Organisation's first request, the Supplier will provide Public Organisation with the most recent version of the information described in Annex C and Annex D.
- 15.2. Public Organisation will be entitled to share the information described in article 15.1 with third parties and to disclose it, for example in a register for AI Systems.
- 15.3. If Public Organisation so demands, the Supplier will assist in registering the AI Systems in any relevant register.

Article 16 Compliance and audit

- 16.1. At first request of Public Organisation, the Suppliers must make available to Public Organisation all information necessary to demonstrate compliance with these Clauses.
- 16.2. The Supplier is obliged to cooperate in an audit or other type of inspection to be carried out by or on behalf of Public Organisation to assess whether the Supplier complies with its obligations laid down in these Clauses at all times. Such cooperation will include providing all information required by Public Organisation, providing an insight into the risk management system implemented, making Supplier staff available for interviews and providing access to the locations of the Supplier.
- 16.3. Public Organisation will prepare, or cause the preparation of, a report in which the conclusions of the audit are recorded. In the report, Public Organisation will record the extent to which the Supplier complies with the obligations under the Agreement. If Public Organisation establishes that the Supplier does not comply with the obligations under this article, the Supplier will be obliged to remedy the defects identified by Public Organisation within the reasonable term set by Public Organisation in the report. If the Supplier fails to remedy the defects identified by Public Organisation within the term set in the report for remedying such defects, the Supplier will be in default by operation of law.
- 16.4. Public Organisation will be entitled to publish the conclusions of the report referred to in article 16.3.
- 16.5. Public Organisation will be entitled to perform, or cause the performance of, an audit once per calendar year or in relation to any substantial modification.
- 16.6. Public Organisation may decide to have all or part of the audit performed by an independent auditor.
- 16.7. The costs of the auditor to be engaged by Public Organisation, if any, will be paid by Public Organisation. Public Organisation will pay the Supplier a reasonable fee for any costs to be incurred by the Supplier in the context of the audit. In no event will a dispute about the amount of such fee give the Supplier the right to suspend its obligations under these Clauses. No such fee will be owed by Public Organisation if the audit reveals that the Supplier has failed to perform its obligations under these Clauses.

Annex A – The AI System

Within the scope of these clauses are all systems or components of systems provided by the Supplier to Public Organisation under the Agreement that meet the following definition:

“software that is developed with one or more of the techniques and approaches listed below and can, for a given set of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with;

- (a) Machine learning approaches, including supervised, unsupervised and reinforcement learning, using a wide variety of methods including deep learning;
- (b) Logic- and knowledge-based approaches, including knowledge representation, inductive (logic) programming, knowledge bases, inference and deductive engines, (symbolic) reasoning and expert systems;
- (c) Statistical approaches, Bayesian estimation, search and optimization methods.”

<Optional> In addition to the systems that fall within the scope of the aforementioned definition of an AI system, also the algorithmic systems or components of systems described below fall within the scope of the Clauses:

Please provide a description of the system. This can also be an algorithmic system that does not qualify as an AI System under the AI Act.



Annex B - The Data Sets and the Intended Purpose

Data Sets

Please provide a description of the Data Sets used for the training (if applicable), validation and testing of the AI System.

Intended Purpose

Please provide a description of the use for which the AI System is intended.

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Annex C Technical documentation

The technical documentation shall contain at least the following information, as applicable to the relevant AI System:

1. a general description of the AI System including:
 - 1.1. its intended purpose, the person/s developing the system the date and the version of the system;
 - 1.2. how the AI System interacts or can be used to interact with hardware or software that is not part of the AI System itself, where applicable;
 - 1.3. the versions of relevant software or firmware and any requirement related to version update;
 - 1.4. the description of all forms in which the AI System is placed on the market or put into service;
 - 1.5. the description of hardware on which the AI System is intended to run;
 - 1.6. where the AI System is a component of products, photographs or illustrations showing external features, marking and internal layout of those products.

2. a detailed description of the elements of the AI System and of the process for its development, including:
 - 2.1. the methods and steps performed for the development of the AI System, including, where relevant, recourse to pre-trained systems or tools provided by third parties and how these have been used, integrated or modified by the Supplier including a description of any licencing or other contractual arrangements related to such third-party inputs;
 - 2.2. the design specifications of the system, namely the general logic of the AI System and of the algorithms; the key design choices including the rationale and assumptions made, also with regard to persons or groups of persons on which the system is intended to be used; the main classification choices; what the system is designed to optimise for and the relevance of the different parameters; the decisions about any possible trade-off made regarding the technical solutions adopted to comply with the requirements set out in these Clauses;
 - 2.3. the description of the system architecture explaining how software components build on or feed into each other and integrate into the overall processing; the computational resources used to develop, train, test and validate the AI System;
 - 2.4. where relevant, the data requirements in terms of datasheets describing the training methodologies and techniques and the

training data sets used, including information about the provenance of those data sets, their scope and main characteristics; how the data was obtained and selected; labelling procedures (e.g. for supervised learning), data cleaning methodologies (e.g. outliers detection);

- 2.5. where applicable, a detailed description of pre-determined changes to the AI System and its performance, together with all the relevant information related to the technical solutions adopted to ensure continuous compliance of the AI System with the relevant requirements set out in these Clauses;
- 2.6. the validation and testing procedures used, including information about the validation and testing data used and their main characteristics; metrics used to measure accuracy, robustness, cybersecurity and compliance with other relevant requirements set out in these Clauses as well as potentially discriminatory impacts; test logs and all test reports dated and signed by the responsible persons, including with regard to pre-determined changes as referred to under point 2.5.

Detailed information about the monitoring, functioning and control of the AI System, in particular with regard to: its capabilities and limitations in performance, including the degrees of accuracy for specific persons or groups of persons on which the system is intended to be used and the overall expected level of accuracy in relation to its intended purpose; the foreseeable unintended outcomes and sources of risks to health and safety, fundamental rights and discrimination in view of the intended purpose of the AI System.

3. a detailed description of the risk management system in accordance with article 2;
4. a description of any change made to the system through its lifecycle.

Annex D Instructions for use

The instructions for use shall contain at least the following information, as applicable to the AI System:

1. the identity and the contact details of the Supplier and, where applicable, of its authorised representative;
2. the characteristics, capabilities and limitations of performance of the AI System, including:
 - 2.1. its intended purpose;
 - 2.2. the level of accuracy, robustness and cybersecurity referred to in article 9 against which the AI System has been tested and validated and which can be expected, and any known and foreseeable circumstances that may have an impact on that expected level of accuracy, robustness and cybersecurity;
 - 2.3. any known or foreseeable circumstance, related to the use of the AI System in accordance with its intended purpose or under conditions of reasonably foreseeable misuse, which may lead to risks to the health and safety or fundamental rights;
 - 2.4. its performance as regards the persons or groups of persons on which the system is intended to be used;
 - 2.5. when appropriate, specifications for the input data, or any other relevant information in terms of the training, validation and testing data sets used, taking into account the intended purpose of the AI System.
3. the changes to the AI System and its performance which have been pre-determined by the Supplier, if any;
4. the human oversight measures referred to in article 8, including the technical measures put in place to facilitate the interpretation of the outputs of the AI System by the Public Organisation;
5. the expected lifetime of the AI System and any necessary maintenance and care measures to ensure the proper functioning of that AI System, including as regards software updates.



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Annex E Levels of accuracy

Describe here the required levels of accuracy.

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