# *Standard Clauses for Procurement of Trustworthy Algorithmic Systems*

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# User’s guide

This document provides Standard Clauses for the procurement of Algorithmic Systems from a third party by a government or other organization wanting to make provisions to ensure that they can use the systems in a trustworthy way; as well an extensive explanation of the clauses. The document is provided by the City of Amsterdam and licensed [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/deed.en).

# How to use

This document is a template. With a few steps, it can be used in your procurement process:

1. Replace the words NAME OF ORGANIZATION with the name of your organization.

2. Replace the words CITIZEN and CITIZENS with the type of actor that is affected by your use of Algorithmic Systems (for example: user, person, customer, company).

3. If needed, replace the orange text in the document with text relevant to your organization (mostly examples).

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# Explanation of the Standard Clauses for Procurement of Trustworthy Algorithmic Systems

# Introduction

# 1.1 Why Standard Clauses for Trustworthy Algorithmic Systems?

Governments use Algorithmic Systems in the services they provide to their citizens, businesses or others. If a government uses Algorithmic Systems when making a Decision that affects citizens, they should be able to explain how the Decision has come about.

However, not all Algorithmic Systems or their outcomes are self-evident. This means that if NAME OF ORGANIZATION uses an Algorithmic System that is provided to us by a Contractor, certain arrangements need to be made with that Contractor to enable NAME OF ORGANIZATION to make lawful, ethical and robust Decisions using an Algorithmic System. These Standard Clauses offer the tools to make this possible for NAME OF ORGANIZATION.

When preparing the Standard Clauses, existing legislation and other frameworks developed for the use of Algorithmic Systems have been taken into account to the extent possible. This explanatory memorandum will refer to those frameworks wherever possible.

These Standard Clauses and Explanation were first published in 2020 by the City of Amsterdam. Amsterdam had decided to prepare the Standard Clauses because contractually enforceable provisions such as these simply did not exist at the time of preparation. The Standard Clauses and Explanation were edited by Amsterdam in 2021 to include references to the European Commission’s Proposal for a Regulation laying down harmonised rules on artificial intelligence.[[1]](#footnote-2) Once the EU Regulation is revised and adopted, revisions of the Standard Clauses might be necessary, especially in regards to the definition of Algorithmic Systems and to any compulsory risk management measures.

**1.2 In what situations can these Standard Clauses be used?**

# The Standard Clauses are intended for use in the situation where NAME OF ORGANIZATION purchases an Algorithmic System from an external supplier.

# The Standard Clauses are intended for a specific group of Algorithmic Systems, namely Algorithmic Systems that, when used by NAME OF ORGANIZATION, may affect CITIZENS of NAME OF ORGANIZATION, visitors to NAME OF ORGANIZATION, or companies established in NAME OF ORGANIZATION to a significant extent. In such event, NAME OF ORGANIZATION wishes to implement certain safeguards, which are provide for in these Standard Clauses.

# For purposes of application of the Standard Clauses, the form in which the supplier provides the Algorithmic System to NAME OF ORGANIZATION is irrelevant. The Standard Clauses are worded such that they can be applied irrespective of whether the Algorithmic System is an existing product that is made available to NAME OF ORGANIZATION the product is built specially for NAME OF ORGANIZATION by a supplier, or the product is provided to NAME OF ORGANIZATION as part of a service.

# The Standard Clauses are worded such that they can be added to the general terms and conditions of NAME OF ORGANIZATION. Article 1 of the Standard Clauses is worded such that the Standard Clauses will apply only to those situations for which the Standard Clauses are intended.

The Standard Clauses may be declared applicable both to an agreement that is entered into after going through a European tender procedure and to a contract that is awarded to a supplier after private negotiation.

**1.3 What is the status of this explanatory memorandum?**

This explanatory memorandum is to support the users of the Standard Clauses, while at the same time accounting for the choices made in the Standard Clauses.

This explanatory memorandum will not form part of any agreements to which the Standard Clauses will be applied and will, as such, not have any legal status.

# Explanation of the Definitions

**A. Algorithmic System**

The Standard Clauses define the term "Algorithmic System" as follows:

*"software that automatically makes predictions, makes decisions and/or gives advice by using data analysis, statistics and/or self-learning logic."*

Although in common parlance, "Algorithms" is often used, the software for which the Standard Clauses have been prepared will, as a rule, comprise a combination of algorithms. Therefore, when preparing these terms and conditions, it was opted to use the term "Algorithmic System" rather than the term "Algorithm".

This is, incidentally, not uncommon. In December 2019, under the auspices of the Council of Europe, a draft recommendation was published on the impacts of Algorithmic Systems on human rights.[[2]](#footnote-3) That document refers to "Algorithmic systems".

An Algorithmic System is *"software that automatically makes predictions, makes decisions and/or gives advice"*. This means, for example, that if only a non-automated mathematical model is used, it is not an Algorithmic System, because it does not involve software. If software is used, but the decision-making process is not automated, for example because it is the direct result of entirely human actions, it is still not an Algorithmic System.

If, for example, an employee of NAME OF ORGANIZATION makes a decision after review of a digital register in which certain data is structured in alphabetical order, although software is involved, it is not an Algorithmic System because the software is not being used automatically to make predictions, make decisions and/or give advice, so that these are entirely human actions.

An Algorithmic System does not require any form of self-learning logic (such as machine learning). When preparing the Standard Clauses, it was opted to bring applications using data analysis and/or statistics, and other elements of the term "Algorithmic System" under the scope of the Standard Clauses as well. The reason was that, in actual practice, software is also often used that does not contain any self-learning logic, but the application of which may have great and sometimes unknown or unintended impact on CITIZENS. By laying down that all software that uses data analysis, statistics and/or self-learning logic may qualify as an "Algorithmic System", NAME OF ORGANIZATION hopes to discuss the applicability of the Standard Clauses on the basis of the impact that the Algorithmic System has on CITIZENS (see the definition of the term "Decision") rather than on the basis of the technology used.

For example, NAME OF ORGANIZATION uses a system that makes automated decisions about the acceptance of children at primary schools within NAME OF ORGANIZATION. This system makes decisions on the basis of several programmed priority rules. The system does not contain any self-learning logic. Nevertheless, the decisions made by the system may have far-reaching impact on a CITIZEN of NAME OF ORGANIZATION. Therefore, NAME OF ORGANIZATION wishes the Standard Clauses to be applicable to those systems as well.

Incidentally, it is not uncommon to extend the scope of rules on Algorithmic Systems beyond Algorithmic Systems that use self-learning technology. The the Ethics Guidelines for Trustworthy AI[[3]](#footnote-4), the draft recommendation of the Council of Europe[[4]](#footnote-5) as well as the Proposal for a Regulation laying down harmonised rules on artificial intelligence by the European Commission[[5]](#footnote-6) are not restricted to self-learning logic.

The term "data analysis" should be broadly interpreted. Data analysis may include the combining, cleaning, sorting, classifying, and deriving of data.

**B. Intended Use**

The Standard Clauses define the term "Intended Use" as follows:

*"solving the problem or problems defined by* NAME OF ORGANIZATION *prior to using the Algorithmic System."*

The Algorithmic System will be used to achieve certain goals. When preparing the Standard Clauses, it was assumed that, in many cases, the Algorithmic System can contribute to the achievement of the goal but will not, in itself, be able to achieve it.

For example, an Algorithmic System that is able to recognise garbage bags will contribute to efficient waste collection by NAME OF ORGANIZATION, however, efficient waste collection requires more than just an Algorithmic System.

For that reason, the Standard Clauses do not demand that the Algorithmic System must be suitable to realise the goal of NAME OF ORGANIZATION, but for the Intended Use.

The Intended Use refers to the specific problem or problems that the Algorithmic System is to solve. The term "problem" should be broadly interpreted. The developer of the Algorithmic System gives each Algorithmic System a duty that must be performed. "Solving problems" as used in the definition of "Intended Use" refers to the performance of that duty.

In the foregoing example, the problem to be solved by the Algorithmic System is the recognition of garbage bags in pictures.

For an Algorithmic System to be properly used, it is crucial to define in advance what problem or problems the Algorithmic System is to solve. The term "Intended Use" is, therefore, based on the principle that the problem or problems will be defined.

**C. Decisions**

The Standard Clauses define the term "Decisions" as follows:

*"decisions of* NAME OF ORGANIZATION *that are of an administrative, private-law and/or factual nature and that directly or indirectly affect one or more* CITIZENS *of* NAME OF ORGANIZATION*, visitors to* NAME OF ORGANIZATION *or companies or other institutions established in* NAME OF ORGANIZATION *to a significant extent."*

The term "Decisions" should be broadly interpreted. The definition does not require a specific decree or a decision in any legal meaning of the word. The term "Decisions" may also cover decisions of NAME OF ORGANIZATION that are private-law or factual in nature.

In principle, the decision of NAME OF ORGANIZATIONto collect waste at a particular location does not have any legal significance and is factual in nature.

The Standard Clauses are intended for Decisions that are made by NAME OF ORGANIZATION. Decisions made by third parties, including the Contractor, do not come under the scope of the Standard Clauses.

A Decision within the meaning of the Standard Clauses means that the decision of NAME OF ORGANIZATION directly or indirectly affect *one or more* CITIZENS *of* NAME OF ORGANIZATION*, visitors to* NAME OF ORGANIZATION *or companies or other institutions established in* NAME OF ORGANIZATION to a significant extent. By using this language, the Standard Clauses not only offer protection for CITIZENS of NAME OF ORGANIZATION, but also for other’s possibly affected. The words "*one or more*" are intended to avoid a requirement that a Decision needs to impact an identified or identifiable person to a significant extent. A Decision within the meaning of these Standard Clauses also includes a decision that impacts a group of CITIZENS of, or visitors to, NAME OF ORGANIZATION to a significant extent.

Whether a decision of NAME OF ORGANIZATION impacts a CITIZEN *to a significant extent* will have to be determined for each individual case. If a decision of NAME OF ORGANIZATION violates any fundamental rights of a CITIZEN, has legal consequences for a CITIZEN, or financially impacts a CITIZEN, it will often be a Decision within the meaning of the Standard Clauses. If, for example, a decision affects the quality or speed of the service provided by NAME OF ORGANIZATION to a CITIZEN, a CITIZEN may be impacted to a significant extent as well.

If, for example, as a result of a decision of NAME OF ORGANIZATION, less waste will be collected in a specific district, leading to a degradation of the streetscape, such a decision will impact a group of CITIZENS to a significant extent. Algorithmic Systems that are intended solely to optimise software will not often impact CITIZENS to a significant extent.

A decision of NAME OF ORGANIZATION that *impacts a* CITIZEN *to a significant extent* does not necessarily mean that the decision has negative consequences for a CITIZEN. A decision with a positive outcome for a CITIZEN may still impact a CITIZEN to a significant extent and, thus, constitute a Decision within the meaning of the Standard Clauses. The rationale behind this is that, if one group of CITIZENS is *positively* impacted to a significant extent by a Decision, another group of CITIZENS may be *negatively* impacted to a significant extent.

If, for example, as a result of a Decision, a citizen qualifies for a permit to organise a party, that will also impact the neighbours who may not be too happy about the noise nuisance of that party.

When preparing the Standard Clauses, it was opted to seek a link with Article 22 of the General Data Protection Regulation (GDPR). That Article provides, *inter alia*, that a data subject has the right not to be subject to a decision based solely on automated processing of personal data, which produces legal effects concerning him or her *or similarly significantly affects him or her.* The difference between Article 22 GDPR and the Standard Clauses is that Article 22 GDPR only sets restrictions for automated decision-making based on *personal data* processing. The Standard Clauses may extend beyond that: if a Decision is made that impacts a group of persons, without processing personal data, the Standard Clauses may still apply.

If, for example, as a result of a Decision, less waste is collected in a specific district, this does not necessarily involve personal data processing, but it may, nevertheless, impact the CITIZENS of that district to a significant extent.

The question as to whether a decision will impact a CITIZEN to a significant extent may be answered in line with the interpretation given to Article 22 GDPR, for example by the Data Protection Board.[[6]](#footnote-7)

**D. Procedural Transparency**

The Standard Clauses define the term "Procedural Transparency" as follows:

*"the provision of information on the purpose of the Algorithmic System and the process followed in the development and application of the Algorithmic System and the data used in that context, which should in any event be deemed to include the provision of an understanding of the choices and assumptions made, the categories of data used in the development of the Algorithmic System, the way in which human intervention is provided for in the Algorithmic System, the method used to identify risks, the risks identified, and the measures taken to mitigate the risks, as well as the parties that were involved in the development of the Algorithmic System and their roles."*

By obtaining Procedural Transparency, NAME OF ORGANIZATION seeks to gain an understanding of the process followed by the Contractor in the development and application of the Algorithmic System and the choices made by the Contractor during that process.

Based on that information, NAME OF ORGANIZATION wants to form an opinion on the quality of an Algorithmic System without needing the information that is required if Technical Transparency is to be provided (see Technical Transparency).

Based on the information that NAME OF ORGANIZATION obtains if Procedural Transparency is provided, NAME OF ORGANIZATION also wishes to be able to provide accountability to CITIZENS for the use of an Algorithmic System and to explain the operation thereof.

Procedural Transparency does not seek to gain an understanding of all the data used in the development and application of the Algorithmic System (which is the purpose of Technical Transparency), but regards the method used in obtaining, selecting and/or editing the data used in the development of the Algorithmic System. Procedural Transparency does regard the categories of data used in the development and application of the Algorithmic System.

**E. Technical Transparency**

The Standard Clauses define the term "Technical Transparency" as follows:

*"the provision of information enabling* NAME OF ORGANIZATION *to understand the technical operation of the Algorithmic System, which may in any event be deemed to include the disclosure of the source code of the Algorithmic System, the technical specifications used in developing the Algorithmic System, the data used in developing the Algorithmic System, technical information on how the data used in developing the Algorithmic 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 Algorithmic System."*

By obtaining Technical Transparency, NAME OF ORGANIZATION seeks to gain an understanding of all the information it requires to assess the technical quality and the technical operation of the Algorithmic System. Article 5 describes when and on what conditions the Contractor is to provide Technical Transparency.

**F. Explainable/Explainability**

The Standard Clauses define the term "Explainable/Explainability" as follows:

*"Being able to explain on an individual level why an Algorithmic System leads to a particular decision or outcome. Unless the Parties expressly agree otherwise, this will in any event include a clear indication of the key factors that have led an Algorithmic System to a particular result and the changes to the input that must be made in order to arrive at a different result. Making an Algorithmic System Explainable includes the provision of all the technical and other information required in order, in objection proceedings, appeal proceedings or other legal proceedings, to explain how a Decision has come about and to offer the other party and any other interested parties the opportunity to assess the way in which a Decision has come about, so as to offer the other party realistic legal protection."*

Obtaining Procedural Transparency and Technical Transparency mainly focuses on obtaining the information that NAME OF ORGANIZATION expects to need to assess the Algorithmic System. In addition, obtaining Procedural Transparency also focuses on providing CITIZENS with general information on the use of an Algorithmic System.

The purpose of making an Algorithmic System Explainable is different, namely to be able, at an individual level, to explain to a CITIZEN why an Algorithmic System arrives at a particular decision or result, and to offer the citizen the opportunity to question this decision or result, if necessary in legal proceedings. As a result, information that is submitted to NAME OF ORGANIZATION when providing Procedural Transparency or Technical Transparency may overlap with the information required to make an Algorithmic System Explainable.

Unless the Parties expressly agree otherwise, making the Algorithmic System Explainable will in any event include a clear indication of the key factors that have led an Algorithmic System to a particular result and the changes must be made in order to arrive at a different result. When preparing the Standard Clauses, it was opted not to require the Contractor to explain *why* an Algorithmic System arrives at a particular result, but *what the key factors are* that have led an Algorithmic System to a particular result. Especially with Algorithmic Systems using a layered model (also called "deep learning" or "deep neural networks"), it may often not be possible to trace exactly why an Algorithmic System has arrived at a particular result, but it will be possible to see what the key factors are that have led to a particular result.

Another basic principle is that, for purposes of Explainability, it must be possible to explain what changes that must be made to the input to arrive at a different result. The rationale behind this is that NAME OF ORGANIZATION wishes to be able to explain to a CITIZEN what changes should be made in order to arrive at the Decision that the CITIZEN desires.

It was deliberately opted to offer the Parties the opportunity to derogate from the foregoing principle in the agreement to be entered into. It would be conceivable that, in a specific situation, it may not be technically feasible, or even necessary, to provide a clear indication of the key factors that have led an Algorithmic System to a particular result or of the changes to the input that must be made in order to arrive at a different result. This will have to be determined when applying the Standard Clauses. If necessary, a derogating provision may be included in the Agreement.

# Article-by-Article Comments

1. Applicability
   1. These terms and conditions will apply if the Contractor provides NAME OF ORGANIZATION with an Algorithmic System to be used by NAME OF ORGANIZATION when making or preparing Decisions or in the context of enforcement or fraud investigations.
   2. These terms and conditions will also apply if the Contractor provides NAME OF ORGANIZATION with an Algorithmic System to be used to make or prepare decisions on NAME OF ORGANIZATION staff.
   3. These terms and conditions will apply regardless of whether Contractor provides the Algorithmic System to NAME OF ORGANIZATION by way of a product, as part of a service or as part of a development agreement.
   4. If the Algorithmic System forms part of one or more software products that are jointly provided to NAME OF ORGANIZATION by the Contractor, such software products will jointly constitute the Algorithmic System to which these terms and conditions apply, unless agreed otherwise between the Parties.

Explanation:

The Standard Clauses will apply if the Contractor provides an Algorithmic System to NAME OF ORGANIZATION. In this respect, it is irrelevant whether the Algorithmic System is provided to NAME OF ORGANIZATION by way of a product, as part of a service or as part of a development agreement. The Standard Clauses will not apply if NAME OF ORGANIZATION independently develops an Algorithmic System using staff from an external party.

The Standard Clauses will apply if the Algorithmic System is to be used by NAME OF ORGANIZATION when making or preparing Decisions or in the context of enforcement or fraud investigations. Although enforcement or fraud investigations may also qualify as preparation of Decisions, NAME OF ORGANIZATION wishes, given the high risk of human rights violations, to emphasise that Algorithmic Systems used in this domain come under the scope of the Standard Clauses.

It would be conceivable that the Algorithmic System is not the only product that the Contractor provides to NAME OF ORGANIZATION, but that the Algorithmic System forms part of one or more software products that are provided to NAME OF ORGANIZATION by the Contractor as a single service or as a single application. NAME OF ORGANIZATION wants to avoid a discussion about the question as to what part of such software products do, and what parts do not, qualify as an Algorithmic System. Therefore, article 1.4 provides that, if an Algorithmic System forms part of one or more software products that are jointly provided by the Contractor to NAME OF ORGANIZATION, all such products jointly should qualify as the Algorithmic System and, thus, come under the scope of the Standard Clauses. If the Parties wish to agree otherwise, they will have to make additional arrangements.

1. Data quality
   1. If and to the extent that the Algorithmic System is developed on the basis of data provided by NAME OF ORGANIZATION to the Contractor, the Contractor will take the measures that may reasonably be expected of it to ensure that the data used in the development of the Algorithmic System will be analysed, structured and/or edited:
      1. according to a motivated approach, the purpose of which includes, without limitation, the avoidance of socially constructed distortion, inaccuracies, errors, mistakes, and bias in such data to the extent possible;
      2. in a manner that is in compliance with applicable laws and regulations.
   2. If and to the extent that the Algorithmic System is developed on the basis of data not provided by NAME OF ORGANIZATION to the Contractor, the Contractor will ensure that the data used in the development of the Algorithmic System will be collected, analysed, structured and/or edited:
      1. according to a motivated approach, the purpose of which includes, without limitation, the avoidance of socially constructed distortion, inaccuracies, errors, mistakes, and bias in such data to the extent possible;
      2. in a manner that is in compliance with applicable laws and regulations.
   3. If and to the extent that the Contractor has developed the Algorithmic System prior to conclusion of the Agreement, the Contractor warrants that the measures described in article 2.2 have already been taken.

Explanation:

Article 2 regards the data used in the development of an Algorithmic System. The quality of the data used in the development of an Algorithmic System may have great impact on the quality of the Algorithmic System as such. For that reason, article 2 sets requirements for the quality of the data.

Article 2 distinguishes between the situation where the Contractor develops an Algorithmic System on the basis of data provided by NAME OF ORGANIZATION to the Contractor (article 2.1) and the situation where the Contractor develops the Algorithmic System on the basis of data obtained otherwise (article 2.2). The rationale behind this is that, if the Contractor receives the data from NAME OF ORGANIZATION, it may be held responsible for analysing, structuring and editing the data, but not for the collection of the data. After all, in such event, NAME OF ORGANIZATION will have done that, so that it is only reasonable that NAME OF ORGANIZATION itself is responsible.

Article 2 first of all requires the Contractor to have (collected), analysed, structured and/or edited the data used in the development of the Algorithmic System *according to a motivated approach*. This way, NAME OF ORGANIZATION intends to realise that, in the (collection), analysis, structuring and editing of data, an approach is used that is based on scientific standards and other standards existing in actual practice, to the extent possible.

One of the purposes of the requirement that the (collection), analysis, structuring and editing of data must take place according to *a motivated approach* is to ensure high-quality data. The quality of the data used may be crucial to the performance of an Algorithmic System. Where data are collected, they may contain socially constructed distortion, inaccuracies, errors and mistakes.[[7]](#footnote-8) The measures to be taken by the Contractor should focus on avoiding that.

Another purpose of the requirement that the (collection), analysis, structuring and editing of data must take place according to a motivated approach is to avoid bias in the data to the extent possible. What constitutes as bias will have to be assessed for each individual case. Bias will in any event be deemed to exist if using the data leads, or may lead, to a form of discrimination that is prohibited pursuant to applicable laws and regulations, including Article 14 of the European Convention on Human Rights.

The data sets used (both for training and for the performance of work) may contain inadvertent historical distortion, incompleteness or poor governance models. If that distortion is maintained, inadvertent direct or indirect prejudice and discrimination against certain groups or certain individuals may occur, which could reinforce prejudice and marginalisation in the use of the Algorithmic System.[[8]](#footnote-9) Any demonstrable and discriminatory distortion should be identified and, where possible, removed by the Contractor as soon as possible.

Article 2 further requires the Contractor to have (collected), analysed, structured and/or edited the data used in the development of the Algorithmic System *in a manner that is in compliance with applicable laws and regulations*. Laws and regulations include the General Data Protection Regulation.

Article 2.1 and article 2.2 are based on the situation where an Algorithmic System is developed for NAME OF ORGANIZATION. The Standard Clauses may, however, also apply in the situation where an already existing Algorithmic System is provided to NAME OF ORGANIZATION. In such event, the Contractor warrants in article 2.3 that the measures described in article 2.2 have already been taken.

1. Rights to the data
   1. All rights relating to the data to be provided by NAME OF ORGANIZATION to the Contractor under the Agreement will accrue to NAME OF ORGANIZATION. The Contractor will not be entitled to use such data for any purpose other than the performance of the Agreement. On demand of NAME OF ORGANIZATION, the Contractor will destroy such data and/or hand over the data to NAME OF ORGANIZATION.
   2. All rights relating to the data to be created or collected in the course of performance of the Agreement will accrue to NAME OF ORGANIZATION. Unless the Parties agree otherwise, the Contractor will not be entitled to use such data for any purpose other than the performance of the Agreement. On demand of NAME OF ORGANIZATION, the Contractor will destroy such data and/or hand over the data to NAME OF ORGANIZATION.
   3. The data referred to in Articles 3.1 and 3.2 will be handed over in a common file format to be designated by NAME OF ORGANIZATION. If, in order to convert the data to the file format desired by NAME OF ORGANIZATION, the Contractor must perform additional work, NAME OF ORGANIZATION will pay the Contractor a reasonable fee in that respect. In no event can a dispute about the amount of the fee to be paid by NAME OF ORGANIZATION to the Contractor give rise to suspension by the Contractor of its obligations under these terms and conditions.
   4. On demand of NAME OF ORGANIZATION, the Contractor will provide evidence of destruction of the data.

Explanation:

Article 3 regards the rights to the data. It is important for the Parties to make clear arrangements in that respect.

It is important to establish that it is not possible to own data in a property-law sense, for the property-law ownership right is limited to corporeal objects which can be subject to human control. Data will often not be subject to intellectual property rights either, for the development of data will not often have involved creative choices, so that data are often not subject to copyright. Under certain circumstances, a database containing data may be subject to a database right. The database right, however, offers protection only against re-use of the entire database or of a substantial part thereof, not against re-use of individual data.

For that reason, it is important to make contractual arrangements as to the rights and obligations relating to data that are exchanged. This is provided for in article 3, by making arrangements as to the use of the data, surrender of the data, and destruction of the data. Article 3 does not make any different arrangements on confidentiality, as it is assumed that generic confidentiality conditions will have been included elsewhere in the Agreement or in the general terms and conditions of which the Standard Clauses form part. If not, it would be advisable still to do so.

Article 3 distinguishes between the situation where NAME OF ORGANIZATION provides data to the Contractor (article 3.1) and the situation where the data are collected or created in the context of the Agreement (article 3.2). In both situations, the basic principle is that the rights to the data accrue exclusively to NAME OF ORGANIZATION. The difference between article 3.1 and article 3.2 is that article 3.2 expressly includes the possibility to derogate from that article. The reason is that it is conceivable that situations may occur where, given the nature of the arrangements made and the confidentiality of the data collected, it is reasonable and permissible for the Contractor to use the data collected for its own purposes as well.

In such event, for example the following text could be included in the Agreement:

"In derogation from article 3.2 of the Standard Clauses, the Parties agree that all rights in the data to be created or collected in the course of performance of the Agreement will accrue to the Contractor and NAME OF ORGANIZATION. This means that both the Contractor and NAME OF ORGANIZATION may freely use the data, including for purposes other than the performance of the Agreement. If and to the extent that NAME OF ORGANIZATION itself does not have a copy of the data at its disposal, the Contractor will provide the data to NAME OF ORGANIZATION on the latter's demand. Article 3.3 of the Standard Clauses will apply *mutatis mutandis*."

1. Quality of the Algorithmic System
   1. The Contractor represents that the Algorithmic System has been developed and will perform in a way that is in compliance with laws and regulations.
   2. The Contractor represents that the Algorithmic System has been developed according to a motivated approach.
   3. The Contractor represents that the Algorithmic System will perform accurately and correctly.
   4. The Contractor represents that the Algorithmic System is suitable for the Intended Use.

Explanation:

While article 2 regards the quality of the data used in the development of the Algorithmic System, article 4 regards the quality of the Algorithmic System itself. In some situations, where an Algorithmic System is used, the quality of the Algorithmic System will be closely related to the quality of the data used in the development thereof. In such situations, article 2 and article 4 will have to be applied in their mutual coherence and may overlap.

Article 4.1 provides that the Algorithmic System has been developed and will perform in a way *that is in compliance with laws and regulations*. What laws and regulations are applicable will have to be assessed for each individual case. The processing of personal data will be subject to the GDPR. In such event, it may, for instance, follow from article 4.1 that anonymisation technologies have been properly used, and that the Algorithmic System is in compliance with the rules on automated decision-making.

Article 4.2 provides that the Algorithmic System has been developed *according to a motivated approach*. NAME OF ORGANIZATION thus intends to realise that, just as for the use of the data, for the other aspects of the development and application of the Algorithmic System a motivated approach is used as well, which is based, to the extent possible, on scientific standards and other standards existing in actual practice.

With article 4.3, NAME OF ORGANIZATION intends to set a specific quality requirement for the Algorithmic System: the Algorithmic System may not show any defects and must provide the output that the Algorithmic System is supposed to provide. This means, *inter alia*, that the Algorithmic System must have the ability to make proper considerations, for example by properly categorising information, or in respect of its ability to make proper predictions, recommendations or decisions on the basis of data or models.[[9]](#footnote-10) This also means that the Algorithmic System must be safe and reliable. The application must be technically robust, and the Contractor must ensure that the Algorithmic System does not leave any room for malicious use.[[10]](#footnote-11)

Article 4.4 provides that the Algorithmic System is suitable for the *Intended Use*. As explained in respect of the definition of the term "Intended Use", this refers to the suitability for solving one or more problems defined prior to the use of the Algorithmic System.

1. Transparency of the Algorithmic System
   1. On demand of NAME OF ORGANIZATION, the Contractor will provide NAME OF ORGANIZATION with Procedural Transparency. NAME OF ORGANIZATION will be entitled to share the information provided by the Contractor in that context with third parties and to disclose it. On demand of NAME OF ORGANIZATION, the Contractor will complete a register for Algorithmic Systems to be designated by NAME OF ORGANIZATION.
   2. On demand of NAME OF ORGANIZATION, the Contractor will provide NAME OF ORGANIZATION with Technical Transparency in order to enable NAME OF ORGANIZATION to carry out an audit as referred to in article 8. NAME OF ORGANIZATION will only request and use such information if and to the extent necessary for purposes of article 8. NAME OF ORGANIZATION will, pursuant to article 5.2, keep business-confidential information provided to it confidential and destroy it after an audit as referred to in article 8, unless a legal obligation on the part of NAME OF ORGANIZATION opposes confidentiality or destruction or NAME OF ORGANIZATION needs the information in the context of a dispute with the Contractor or a third party.
   3. For purposes of article 5.2, the Contractor may choose not to issue the source code of the Algorithmic System to NAME OF ORGANIZATION, but to an independent third party to be designated and engaged by NAME OF ORGANIZATION who will perform the audit referred to in article 8 on behalf of NAME OF ORGANIZATION. Any additional costs incurred as a result will be payable by the Contractor. NAME OF ORGANIZATION may require that the Contractor pay an advance in connection with the costs of the independent third party.
   4. NAME OF ORGANIZATION should at all times be able to explain the operation of the Algorithmic System (Explainability). The Contractor will be under the obligation to lend its full cooperation in making the Algorithmic System Explainable and to provide NAME OF ORGANIZATION with all such information as may be required in that respect. NAME OF ORGANIZATION will be entitled to share the information provided by the Contractor in that context with third parties and to disclose it.
   5. During the term of the Agreement, the demands described in this article will constitute obligations to realise those demands and, unless the Parties agree otherwise, no additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the performance of such obligations. After expiry of the term of the Agreement, the demands described in this article will constitute an obligationto perform to the best of the Parties’ ability and an additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the services to be provided by the Contractor in that respect.

5.6 In all situations where the information provided on the basis of the various paragraphs of this article overlaps, NAME OF ORGANIZATION will be free to choose the regime that is most favourable to it.

Explanation:

Article 5 of the Standard Clauses distinguishes between Procedural Transparency, Technical Transparency, and Explainability. See the definitions and the explanation to the definitions for a further explanation of the interpretation of these terms.

With the introduction of Procedural Transparency, a category of transparency has been established, which makes it possible to disclose relevant information on the Algorithmic System without disproportionally prejudicing the interests of the Contractor.

Article 5.1 provides that the Contractor will provide Procedural Transparency on demand of NAME OF ORGANIZATION. This means that the Contractor must at all times ensure that the information that comes under the scope of the definition of Procedural Transparency will be documented by the Contractor, so that the Contractor can share that information with NAME OF ORGANIZATION on the latter's request.

Unlike the information that is shared in the context of the provision of Technical Transparency, NAME OF ORGANIZATION is free to disclose the information provided in the context of the provision of Procedural Transparency and share it with third parties. The rationale behind this is that the information provided in the context of the provision of Technical Transparency will often only contain a limited amount of proprietary business information, and that information is essential to NAME OF ORGANIZATION in order to be able to provide accountability and general information to CITIZENS in respect of the use of an Algorithmic System.

NAME OF ORGANIZATION is free to decide how it discloses the information that is provided in the context of the provision of Procedural Transparency. It would be conceivable that NAME OF ORGANIZATION develops a register, which will be made available online, in which register CITIZENS can find certain information for each Algorithmic System. If NAME OF ORGANIZATION so requests, the Contractor will complete such a register.

Article 5.2 provides that the Contractor will provide Technical Transparency on demand of NAME OF ORGANIZATION. While Procedural Transparency is intended to make it possible for NAME OF ORGANIZATION to provide information and, thus, to render account for the use of an Algorithmic System, article 5.2 intends to enable NAME OF ORGANIZATION, in an audit, to verify whether the Contractor has complied with its obligations under the Standard Clauses. For that reason, article 5.2 is linked to article 8.

As in many situations the information provided in the context of the provision of Technical Transparency will be proprietary business information, article 5.2 imposes on NAME OF ORGANIZATION the obligation to keep such information secret and to destroy it after completion of the audit. This obligation is limited, to the extent that there is no obligation to keep information confidential or to destroy it if a statutory duty imposed on NAME OF ORGANIZATION opposes confidentiality or destruction, or if NAME OF ORGANIZATION requires the information in the context of a dispute with a Contractor or a third party.

In order to protect the interests of the Contractor further, article 5.3 provides that the Contractor may opt not to provide the source code of the Algorithmic System to NAME OF ORGANIZATION but to an independent third party who will carry out the audit on behalf of NAME OF ORGANIZATION and, in that context, will analyse the source code of the Algorithmic System. If the Contractor wishes to exercise this right, any additional costs incurred as a result will be payable by the Contractor.

Article 5.4 regards making the Algorithmic System Explainable. Article 5.4 focuses on enabling NAME OF ORGANIZATION to render account to an individual or to a group of individuals in respect of the Decisions made about them. Article 5.4 provides that NAME OF ORGANIZATION must at all times be able to explain the operation of the Algorithmic System, and that the Contractor is under the obligation to lend its full cooperation in making the Algorithmic System Explainable and to provide NAME OF ORGANIZATION with all such information as may be necessary to that end. NAME OF ORGANIZATION will be entitled to share the information provided by the Contractor in that context with third parties and to disclose it.

Article 5.4 sets a lower limit: NAME OF ORGANIZATION must at all times have free disposal of at least the information required by NAME OF ORGANIZATION to make an Algorithmic System Explainable.

The obligation to make the operation of an Algorithmic System Explainable is partly based on several decisions of the Dutch Administrative Jurisdiction Division of the Council of State.[[11]](#footnote-12) Those decisions show that, if an administrative body makes an administrative decision using an Algorithmic System, that administrative body must be able to explain how an Algorithmic System has arrived at a particular result. Furthermore, the administrative body must offer the other party the opportunity to assess the operation of the Algorithmic System, so that realistic legal protection can be offered to the other party. This is a good practice, which NAME OF ORGANIZATION wants to adopt. Furthermore, t]he pending EU Regulation calls for Explainability, in particular in article 14, paragraph 3 and 4c, stating that there needs to be human oversight which should “be able to correctly interpret the high-risk AI system’s output, taking into account in particular the characteristics of the system and the interpretation tools and methods available”.[[12]](#footnote-13) By requiring the Contractor to lend its cooperation in making the Algorithmic System Explainable, NAME OF ORGANIZATION intends to comply with those obligations.

It is likely that, in many situations, the information provided in the context of the provision of Procedural Transparency, the provision of Technical Transparency, and making an Algorithmic System Explainable, will overlap. Therefore, article 5.6 provides that, in that case, NAME OF ORGANIZATION may at all times choose the regime that is most favourable to it. This intends, *inter alia*, to avoid that the Contractor can rely on article 5.2 or article 5.3 to prevent NAME OF ORGANIZATION from making an Algorithmic System Explainable.

If, therefore, certain information both comes under the scope of the term Technical Transparency and is needed to make an Algorithmic System Explainable, NAME OF ORGANIZATION will be free to disclose the relevant information and share it with third parties.

1. Risk management strategy in the development of the Algorithmic System
   1. In the development of the Algorithmic System, the Contractor will pursue a common and up-to-date risk management strategy that is appropriate for the nature of the Algorithmic System. For purposes of application of such risk management strategy, the Contractor will identify the main risks that may occur when NAME OF ORGANIZATION uses the Algorithmic System and take measures to make the identified risks manageable. When identifying the risks, the Contractor will, where relevant, in any event pay attention to the risk of non-compliance with one or more of the obligations referred to in article 2 and article 4, risks related to discrimination, the possibility for NAME OF ORGANIZATION to control the Algorithmic System and data protection.
   2. The Contractor will implement and document the risk management strategy described in article 6.1 in such a way that the audit referred to in article 8 can verify whether the Contractor has performed the obligation described in article 6.1.
   3. If and to the extent that the Contractor has developed the Algorithmic System prior to conclusion of the Agreement, the Contractor warrants that the measures described in article 6.1 and/or article 6.2 have already been taken. The Contractor will produce evidence thereof on demand of NAME OF ORGANIZATION.

Explanation:

For NAME OF ORGANIZATION, it is important that any risks that could manifest themselves when using the Algorithmic System are identified during the development of the Algorithmic System, and that measures are taken to mitigate the identified risks. Article 6 imposes on the Contractor the obligation to carry out such a risk management strategy.

The risk management strategy must be customary and up-to-date. In many situations, the COSO framework could serve as a starting point.[[13]](#footnote-14) This framework describes a general approach to risk management. In addition, several models have been, or are being, developed that prescribe how the specific risks should be handled when developing an Algorithmic System.

The Ethics Guidelines for Trustworthy AI of the High-Level Expert Group on Artificial Intelligence set up by the European Commission contain a (draft) check list containing questions that developers of Algorithmic Systems could ask themselves as part of a risk management strategy.

The risk management strategy to be pursued must be appropriate to the nature of the Algorithmic System. This means that an Algorithmic System that is to be used in a situation where the violation of the rights of CITIZENS may potentially be greater, will have to be subjected to a more intensive risk management strategy than an Algorithmic System that is to be used in a situation where this is not the case.

If the use of the Algorithmic System might lead to human rights violations, this will also have to be a subject of the risk management strategy.

In December 2019, under the auspices of the Council of Europe, a draft recommendation was published on the impacts of Algorithmic Systems on human rights. This document recommends that governments and companies using Algorithmic Systems carry out a human rights impact assessment. The (draft) check list for reliable AI by the High-Level Expert Group on Artificial Intelligence referred to above pays a great deal of attention to prevention of human rights violations.

Article 6 is linked to the definition of Procedural Transparency and also features in article 8. As a result, the outcome of a risk management strategy carried out will have to be made available to NAME OF ORGANIZATION by way of a request to provide Procedural Transparency. Moreover, NAME OF ORGANIZATION will be able to assess, in an audit, whether a risk management strategy has been properly carried out. For that reason, article 6.2 provides that the performance of a risk management strategy will have to be documented.

Article 6 is based on the assumption that the Algorithmic System is developed on the instructions of NAME OF ORGANIZATION. To the extent that a different type of agreement is concerned, article 6.3 provides that, if and to the extent that the Contractor has already independently developed the Algorithmic System prior to conclusion of the Agreement, the Contractor warrants that a risk management strategy has already been carried out.

1. Management of the Algorithmic System
   1. If the Contractor offers the Algorithmic System by way or as part of a service or provides management and maintenance services in respect of the Algorithmic System, the Contractor warrants that the Algorithmic System and the related documentation will continue to comply with the conditions set out in article 4 throughout the term of the Agreement.
   2. If the Contractor offers the Algorithmic System by way or as part of a service or provides management and maintenance services in respect of the Algorithmic System, the services to be provided by the Contractor will include continuous monitoring by the Contractor, throughout the term of the Agreement, whether the risks referred to in article 6.1 are still up to date and whether the measures referred to in article 6.1 are effective. If not, the Contractor will take additional measures.
   3. As part of the obligation referred to in article 7.2, the Contractor will provide information if new risks become known or if the measures referred to in article 6.1 prove to be ineffective.

Explanation:

Article 7 regards the situation where the Contractor offers the Algorithmic System in the form, or as part, of a service or administers and maintains the Algorithmic System.

Article 7 provides that, for as long as the contractual relationship between the Contractor and NAME OF ORGANIZATION continues, the Contractor must ensure that the Algorithmic System continues to meet the quality requirements of article 4. Furthermore, the Contractor must, as part of its services, continue to monitor whether the risks referred to in article 6.1 are still up to date and whether the measures referred to in article 6.1 are effective. If not, the Contractor will be required to take additional measures.

This safeguards that, for as long as the contractual relationship between the Contractor and NAME OF ORGANIZATION continues, carrying out the risk management strategy will continue to be the Contractor's responsibility.

As indicated above, under the auspices of the Council of Europe, a draft recommendation has been published on the impacts of Algorithmic Systems on human rights.[[14]](#footnote-15) The document describes that, when using Algorithmic Systems that will, or may, lead to human rights violations, there must be "ongoing review".

Relevant in this respect is the fact that article 7 does not apply if the Contractor only develops an Algorithmic System on the instructions of NAME OF ORGANIZATION after which the contractual relationship between NAME OF ORGANIZATION and the Contractor ends. In such event, NAME OF ORGANIZATION itself will have to provide for the continuous review of the Algorithmic System. With the possibility to obtain Procedural Transparency and Technical Transparency and to make an Algorithmic System Explainable, these Standard Clauses may, to a certain extent, provide for the necessary information. Such information will, however, not be sufficient in all situations. It is up to NAME OF ORGANIZATION to make additional arrangements where necessary.

1. Audit or other type of inspection
   1. The Contractor will at all times be under the obligation to lend its cooperation in an audit or other type of inspection to be carried out by or on behalf of NAME OF ORGANIZATION to assess whether the Contractor complies with the conditions set in the Agreement. Such cooperation will include providing Technical Transparency, providing Procedural Transparency, providing an insight into the risk management strategy implemented, making Contractor staff available for conducting interviews and providing access to the locations of the Contractor.
   2. NAME OF ORGANIZATION will prepare, or cause the preparation of, a report in which the conclusions of the audit will be recorded. In the report, NAME OF ORGANIZATION will record the extent to which the Contractor complies with the obligations under the Agreement. If NAME OF ORGANIZATION establishes that the Contractor does not comply with the obligations under this article, the Contractor will be under the obligation to remedy the defects identified by NAME OF ORGANIZATION within the reasonable term set by NAME OF ORGANIZATION in the report. If the Contractor fails to remedy the defects identified by NAME OF ORGANIZATION within the term for remedying such defects set in the report, the Contractor will be in default by operation of law.
   3. NAME OF ORGANIZATION will be entitled to publish the conclusions of the report referred to in article 8.2. In the event of conflict between article 5.2 and article 8.3, article 8.3 will prevail.
   4. NAME OF ORGANIZATION will be entitled to perform, or cause the performance of, an audit once per calendar year.
   5. NAME OF ORGANIZATION may decide to have all or part of the audit performed by an independent auditor.
   6. The costs of the auditor to be engaged by NAME OF ORGANIZATION, if any, will be payable by NAME OF ORGANIZATION. NAME OF ORGANIZATION will pay the Contractor a reasonable fee for any costs to be incurred by the Contractor in the context of the audit for activities other than the provision of Technical Transparency or Procedural Transparency. In no event can a dispute about the amount of such fee give rise to suspension by the Contractor of its obligations under these terms and conditions. No such fee will be due by NAME OF ORGANIZATION if the audit reveals that the Contractor is failing or has failed to comply with essential parts of these Standard Clauses.

Explanation:

Article 8 contains an audit clause intended to enable NAME OF ORGANIZATION to verify whether the Contractor is in compliance with the Standard Clauses. Article 8.1 requires the Contractor to lend its cooperation in this respect.

The findings of an audit will at all times be recorded in a report. If NAME OF ORGANIZATION establishes that the Contractor does not comply with the obligations under this article, the Contractor will be under the obligation to remedy the defects identified by NAME OF ORGANIZATION within the reasonable term set by NAME OF ORGANIZATION in the report. If the Contractor fails to remedy the defects identified by NAME OF ORGANIZATION within the term for remedying such defects set in the report, the Contractor will be in default by operation of law.

NAME OF ORGANIZATION will be entitled to disclose the findings of the report, for example in order to add such information to the information included in a register. This may entail that NAME OF ORGANIZATION will also disclose information that was provided in the context of the provision of Technical Transparency. In order to avoid that, in such event, the Contractor may try to prevent that disclosure by relying on article 5.2, article 8.3 provides that, in such event, article 8.3 will prevail, so that the Contractor can never prevent the findings in the report from being disclosed.

1. Costs

Unless agreed otherwise between the Parties or expressly provided otherwise in these terms and conditions, no additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the work ensuing from these terms and conditions.

Explanation:

Except as expressly otherwise provided, no additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the work ensuing from the Standard Clauses. If the Parties wish to agree otherwise, they will have to record their derogating arrangements in the Agreement.

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| Standard Clauses for Procurement of Trustworthy Algorithmic SystemsDefinitions  1. **Algorithmic Systems**   Software that automatically makes predictions, makes decisions and/or gives advice by using data analysis, statistics and/or self-learning logic.  **B. Intended Use**  Solving the problem or problems defined by NAME OF ORGANIZATION prior to using the Algorithmic System.  **C. Decisions**  Decisions of NAME OF ORGANIZATION that are of an administrative, private-law and/or factual nature and that directly or indirectly affect one or more CITIZENS of NAME OF ORGANIZATION, visitors to NAME OF ORGANIZATION or companies or other institutions established in NAME OF ORGANIZATION to a significant extent.  **D. Agreement**  The present agreement of which these terms and conditions form an integral part.  **E. Procedural Transparency**  The provision of information on the purpose of the Algorithmic System and the process followed in the development and application of the Algorithmic System and the data used in that context, which should in any event be deemed to include the provision of an understanding of the choices and assumptions made, the categories of data used in the development of the Algorithmic System, the way in which human intervention is provided for in the Algorithmic System, the method used to identify risks, the risks identified, and the measures taken to mitigate the risks, as well as the parties that were involved in the development of the Algorithmic System and their roles.  **F. Technical Transparency**  The provision of information enabling NAME OF ORGANIZATION to understand the technical operation of the Algorithmic System, which may in any event be deemed to include the disclosure of the source code of the Algorithmic System, the technical specifications used in developing the Algorithmic System, the data used in developing the Algorithmic System, technical information on how the data used in developing the Algorithmic 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 Algorithmic System.  **G. Explainable/Explainability**  Being able to explain on an individual level why an Algorithmic System leads to a particular decision or outcome. Unless the Parties expressly agree otherwise, this will in any event include a clear indication of the key factors that have led an Algorithmic System to a particular result and the changes to the input that must be made in order to arrive at a different result. Making an Algorithmic System Explainable includes the provision of all the technical and other information required in order, in objection proceedings, appeal proceedings or other legal proceedings, to explain how a Decision has come about and to offer the other party and any other interested parties the opportunity to assess the way in which a Decision has come about, so as to offer the other party realistic legal protection. |

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| **Contractual Terms and Conditions**   1. Applicability    1. These terms and conditions will apply if the Contractor provides NAME OF ORGANIZATION with an Algorithmic System to be used by NAME OF ORGANIZATION when making or preparing Decisions or in the context of enforcement or fraud investigations.    2. These terms and conditions will also apply if the Contractor provides NAME OF ORGANIZATION with an Algorithmic System to be used to make or prepare decisions on Municipality staff.    3. These terms and conditions will apply regardless of whether Contractor provides the Algorithmic System to NAME OF ORGANIZATION by way of a product, as part of a service or as part of a development agreement.    4. If the Algorithmic System forms part of one or more software products that are jointly provided to NAME OF ORGANIZATION by the Contractor, such software products will jointly constitute the Algorithmic System to which these terms and conditions apply, unless agreed otherwise between the Parties. 2. Data quality    1. If and to the extent that the Algorithmic System is developed on the basis of data provided by NAME OF ORGANIZATION to the Contractor, the Contractor will take the measures that may reasonably be expected of it to ensure that the data used in the development of the Algorithmic System will be analysed, structured and/or edited:       1. according to a motivated approach, the purpose of which includes, without limitation, the avoidance of socially constructed distortion, inaccuracies, errors, mistakes, and undesired prejudice ("bias") in such data to the extent possible;       2. in a manner that is in compliance with applicable laws and regulations.    2. If and to the extent that the Algorithmic System is developed on the basis of data not provided by NAME OF ORGANIZATION to the Contractor, the Contractor will ensure that the data used in the development of the Algorithmic System will be collected, analysed, structured and/or edited:       1. according to a motivated approach, the purpose of which includes, without limitation, the avoidance of socially constructed distortion, inaccuracies, errors, mistakes, and undesired prejudice ("bias") in such data to the extent possible;       2. in a manner that is in compliance with applicable laws and regulations.    3. If and to the extent that the Contractor has developed the Algorithmic System prior to conclusion of the Agreement, the Contractor warrants that the measures described in article 2.2 have already been taken. 3. Rights to the data    1. All rights relating to the data to be provided by NAME OF ORGANIZATION to the Contractor under the Agreement will accrue to NAME OF ORGANIZATION. The Contractor will not be entitled to use such data for any purpose other than the performance of the Agreement. On demand of NAME OF ORGANIZATION, the Contractor will destroy such data and/or hand over the data to NAME OF ORGANIZATION.    2. All rights relating to the data to be created or collected in the course of performance of the Agreement will accrue to NAME OF ORGANIZATION. Unless the Parties agree otherwise, the Contractor will not be entitled to use such data for any purpose other than the performance of the Agreement. On demand of NAME OF ORGANIZATION, the Contractor will destroy such data and/or hand over the data to NAME OF ORGANIZATION.    3. The data referred to in Articles 3.1 and 3.2 will be handed over in a common file format to be designated by NAME OF ORGANIZATION. If, in order to convert the data to the file format desired by NAME OF ORGANIZATION, the Contractor must perform additional work, NAME OF ORGANIZATION will pay the Contractor a reasonable fee in that respect. In no event can a dispute about the amount of the fee to be paid by NAME OF ORGANIZATION to the Contractor give rise to suspension by the Contractor of its obligations under these terms and conditions.    4. On demand of NAME OF ORGANIZATION, the Contractor will provide evidence of destruction of the data. 4. Quality of the Algorithmic System    1. The Contractor represents that the Algorithmic System has been developed and will perform in a way that is in compliance with laws and regulations.    2. The Contractor represents that the Algorithmic System has been developed according to a motivated approach.    3. The Contractor represents that the Algorithmic System will perform accurately and correctly.    4. The Contractor represents that the Algorithmic System is suitable for the Intended Use. 5. Transparency about the Algorithmic System    1. On demand of NAME OF ORGANIZATION, the Contractor will provide NAME OF ORGANIZATION with Procedural Transparency. NAME OF ORGANIZATION will be entitled to share the information provided by the Contractor in that context with third parties and to disclose it. On demand of NAME OF ORGANIZATION, the Contractor will complete a register for Algorithmic Systems to be designated by NAME OF ORGANIZATION.    2. On demand of NAME OF ORGANIZATION, the Contractor will provide NAME OF ORGANIZATION with Technical Transparency in    3. order to enable NAME OF ORGANIZATION to carry out an audit as referred to in article 8. NAME OF ORGANIZATION will only request and use such information if and to the extent necessary for purposes of article 8. NAME OF ORGANIZATION will, pursuant to article 5.2, keep business-confidential information provided to it confidential and destroy it after an audit as referred to in article 8, unless a legal obligation on the part of NAME OF ORGANIZATION opposes confidentiality or destruction or NAME OF ORGANIZATION needs the information in the context of a dispute with the Contractor or a third party.    4. For purposes of article 5.2, the Contractor may choose not to issue the source code of the Algorithmic System to NAME OF ORGANIZATION, but to an independent third party to be designated and engaged by NAME OF ORGANIZATION who will perform the audit referred to in article 8 on behalf of NAME OF ORGANIZATION. Any additional costs incurred as a result will be payable by the Contractor. NAME OF ORGANIZATION may require that the Contractor pay an advance in connection with the costs of the independent third party.    5. NAME OF ORGANIZATION should at all times be able to explain the operation of the Algorithmic System (Explainability). The Contractor will be under the obligation to lend its full cooperation in making the Algorithmic System Explainable and to provide NAME OF ORGANIZATION with all such information as may be required in that respect. NAME OF ORGANIZATION will be entitled to share the information provided by the Contractor in that context with third parties and to disclose it.    6. During the term of the Agreement, the demands described in this article will constitute obligations to realise those demands and, unless the Parties agree otherwise, no additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the performance of such obligations. After expiry of the term of   the Agreement, the demands described in this article will constitute an obligationto perform to the best of the Parties’   * 1. ability and an additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the services to be provided by the Contractor in that respect.   5.8. In all situations where the information provided on the basis of the various paragraphs of this article overlaps, NAME OF ORGANIZATION will be free to choose the regime that is most favourable to it.     1. Risk management strategy in the development of the Algorithmic System    1. In the development of the Algorithmic System, the Contractor will pursue a common and up-to-date risk management strategy that is appropriate for the nature of the Algorithmic System. For purposes of application of such risk management strategy, the Contractor will identify the main risks that may occur when NAME OF ORGANIZATION uses the Algorithmic System and take measures to make the identified risks manageable. When identifying the risks, the Contractor will, where relevant, in any event pay attention to the risk of non-compliance with one or more of the obligations referred to in article 2 and article 4, risks related to discrimination, the possibility for NAME OF ORGANIZATION to control the Algorithmic System and data protection.    2. The Contractor will implement and document the risk management strategy described in article 6.1 in such a way that the audit referred to in article 8 can verify whether the Contractor has performed the obligation described in article 6.1.    3. If and to the extent that the Contractor has developed the Algorithmic System prior to conclusion of the Agreement, the Contractor warrants that the measures described in article 6.1 and/or article 6.2 have already been taken. The Contractor will produce evidence thereof on demand of NAME OF ORGANIZATION. 2. Management of the Algorithmic System    1. If the Contractor offers the Algorithmic System by way or as part of a service or provides management and maintenance services in respect of the Algorithmic System, the Contractor warrants that the Algorithmic System and the related documentation will continue to comply with the conditions set out in article 4 throughout the term of the Agreement.    2. If the Contractor offers the Algorithmic System by way or as part of a service or provides management and maintenance services in respect of the Algorithmic System, the services to be provided by the Contractor will include continuous monitoring by the Contractor, throughout the term of the Agreement, whether the risks referred to in article 6.1 are still up to date and whether the measures referred to in article 6.1 are effective. If not, the Contractor will take additional measures.    3. As part of the obligation referred to in article 7.2, the Contractor will provide information if new risks become known or if the measures referred to in article 6.1 prove to be ineffective. 3. Audit or other type of inspection    1. The Contractor will at all times be under the obligation to lend its cooperation in an audit or other type of inspection to be carried out by or on behalf of NAME OF ORGANIZATION to assess whether the Contractor complies with the conditions set in the Agreement. Such cooperation will include providing Technical Transparency, providing Procedural Transparency, providing an insight into the risk management strategy implemented, making    2. Contractor staff available for conducting interviews and providing access to the locations of the Contractor.    3. NAME OF ORGANIZATION will prepare, or cause the preparation of, a report in which the conclusions of the audit will be recorded. In the report, NAME OF ORGANIZATION will record the extent to which the Contractor complies with the obligations under the Agreement. If NAME OF ORGANIZATION establishes that the Contractor does not comply with the obligations under this article, the Contractor will be under the obligation to remedy the defects identified by NAME OF ORGANIZATION within the reasonable term set by NAME OF ORGANIZATION in the report. If the Contractor fails to remedy the defects identified by NAME OF ORGANIZATION within the term for remedying such defects set in the report, the Contractor will be in default by operation of law.    4. NAME OF ORGANIZATION will be entitled to publish the conclusions of the report referred to in article 8.2. In the event of conflict between article 5.2 and article 8.3, article 8.3 will prevail.    5. NAME OF ORGANIZATION will be entitled to perform, or cause the performance of, an audit once per calendar year.    6. NAME OF ORGANIZATION may decide to have all or part of the audit performed by an independent auditor.    7. The costs of the auditor to be engaged by NAME OF ORGANIZATION, if any, will be payable by NAME OF ORGANIZATION. NAME OF ORGANIZATION will pay the Contractor a reasonable fee for any costs to be incurred by the Contractor in the context of the audit for activities other than the provision of Technical Transparency or Procedural Transparency. In no event can a dispute about the amount of such fee give rise to suspension by the Contractor of its obligations under these terms and conditions. No such fee will be due by NAME OF ORGANIZATION if the audit reveals that the Contractor has failed, or has failed fully, to comply with these conditions in material respects. 4. Costs   Unless agreed otherwise between the Parties or expressly provided otherwise in these terms and conditions, no additional fee will be due by NAME OF ORGANIZATION to the Contractor in consideration of the work ensuing from these terms and conditions. |

1. Proposal for a Regulation laying down harmonised rules on artificial intelligence, European Commission, available at: https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-laying-down-harmonised-rules-artificial-intelligence-artificial-intelligence. [↑](#footnote-ref-2)
2. Addressing the impacts of Algorithms on Human Rights, Draft Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, available at: https://rm.coe.int/draft-recommendation-of-the-committee-of-ministers-to-states-on-the-hu/168095eecf. [↑](#footnote-ref-3)
3. Ethics Guidelines for Trustworthy Artificial Intelligence, EU High-Level Expert Group on AI, available at: https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai. [↑](#footnote-ref-4)
4. Addressing the impacts of Algorithms on Human Rights, Draft Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, available at: https://rm.coe.int/draft-recommendation-of-the-committee-of-ministers-to-states-on-the-hu/168095eecf. [↑](#footnote-ref-5)
5. Proposal for a Regulation laying down harmonised rules on artificial intelligence, European Commission, p. 39, available at: https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-laying-down-harmonised-rules-artificial-intelligence-artificial-intelligence. [↑](#footnote-ref-6)
6. Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp251rev.01). [↑](#footnote-ref-7)
7. Ethics Guidelines for Trustworthy Artificial Intelligence, EU High-Level Expert Group on AI, p. 21, available at: https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai. [↑](#footnote-ref-8)
8. Ethics Guidelines for Trustworthy Artificial Intelligence, EU High-Level Expert Group on AI, p. 22, available at: https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai. [↑](#footnote-ref-9)
9. Ethics Guidelines for Trustworthy Artificial Intelligence, EU High-Level Expert Group on AI, p. 21, available at: https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai. [↑](#footnote-ref-10)
10. Ethics Guidelines for Trustworthy Artificial Intelligence, EU High-Level Expert Group on AI, p. 15, available at: https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai. [↑](#footnote-ref-11)
11. See, *inter alia*: ABRvS 17 May 2017, ECLI:NL:RVS:2017:1259 and ABRvS 18 July 2018, ECLI:NL:RVS:2018:2454. [↑](#footnote-ref-12)
12. Proposal for a Regulation laying down harmonised rules on artificial intelligence, European Commission, p. 51, available at: https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-laying-down-harmonised-rules-artificial-intelligence-artificial-intelligence. [↑](#footnote-ref-13)
13. See https://www.coso.org/Pages/erm-integratedframework.aspx. [↑](#footnote-ref-14)
14. Addressing the impacts of Algorithms on Human Rights, Draft Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, available at: <https://rm.coe.int/draft-recommendation-of-the-committee-of-ministers-to-states-on-the-hu/168095eecf>. [↑](#footnote-ref-15)