Society for Computers & Law (SCL) Al Group

EU AI Act Contractual Clauses



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Introduction

The development and use of AI will increase significantly over the next few years, as will regulatory frameworks such as the European Union's Artificial Intelligence Act - Regulation (EU) 1689/2024 (the "EU AI Act") - which will govern such development/use.

Al technologies, and associated regulatory requirements, will increasingly become relevant in a contractual context.

The SCL AI Group has created this document with the support of specialist contributors from the SCL membership. It supplements the inaugural AI Contractual Clauses project from the SCL AI Group (published in October 2023) with the aim of providing high-level guidance around the impact of the EU AI Act on contracts. This document sets out sample clauses that will hopefully enable contractual parties to consider potential contractual provisions to indicate compliance with, and assign responsibilities under, the EU AI Act, together with drafting notes to provide further information.

These clauses are for illustrative and educational purposes only, and are not tailored to any specific AI use cases. The clauses are intended to provide guidance on the types of issues that may be helpful to address in contracts relating to AI systems subject to the EU AI Act; they are not intended to, and do not constitute, legal advice, nor guarantee that by including the clauses contained herein, the parties will be compliant with the EU AI Act. It is recommended that you obtain independent legal advice. This document is not to be relied upon. None of the SCL (including its members), the contributors to this document or anyone else connected with this project assumes any responsibility or liability for this document or the use of its content and/or clauses.

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Approach and Assumptions

The drafting of the clauses assumes two commercial parties (the "Parties"), contracting under English law.

The clauses in this document have been prepared on the assumption that the "provider" (generally "Party A" as the clauses are drafted) under the EU AI Act will be a party to the contract. There may be scenarios where this is not the case (for example, in systems integration contracts), in which case the clauses would need to be adapted to address, for example: (i) that Party A will likely be passing through what the third party provider of the AI system has provided, or committed, to Party A and Party A will therefore not likely be willing to take on primary contractual responsibility for the obligations of the provider under the EU AI Act or to extend its contractual responsibility beyond what the third party provider has committed to; or (ii) that it might in fact be that the "deployer" as defined under the EU AI Act (generally "Party B" as the clauses are drafted) that has licensed the AI system which Party

A will be integrating and so Party B will be passing through to Party A any terms which are required for Party B to comply with the licence for the AI system.

Please note that the clauses contained in this document do not comprise a complete precedent contract. It is assumed that the Parties will have their own broader contractual framework. Any clauses focused on the EU AI Act will need to be specifically considered by the Parties within the context of that framework.

Given this is a fast-moving area and it remains to be seen how the market and authorities will respond to the EU AI Act and what supporting material will involve (for example, the general purpose AI ("GPAI") Model Codes of Practice to be published in 2025), the SCL AI Group intends to revisit and develop these clauses periodically.

Terms in **bold** (in the drafting column) indicate that a definition in the relevant contract would be helpful (potentially by reference to how the term is defined in the EU AI Act). Wording in square brackets indicates either optional wording, or wording to be inserted by the Parties when drafting the wider contractual framework.

All references to legislation are a reference to the EU AI Act, unless otherwise stated. This document reflects the status of the EU AI Act (including any supporting guidance etc.) as at 11 October 2024.

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A. Scoping Clauses

Area	Contractual Impact	Possible Drafting	Notes
1. Al Solution	The EU AI Act applies to AI	1.1 [Party A warrants and represents	General note regarding these clauses:
	systems. Parties may wish to	that] OR [The Parties agree that]:	We expect in many cases the provider
Art 2	clarify that their contract either		(generally Party A) will be better placed to
Art 3(1)	involves an AI system and is	1.1.1 The AI Solution is an "AI system"	make many of the assessments required
	therefore prima facie subject to	as defined in the EU AI Act and is	by the EU AI Act and in these clauses (e.g.
	the EU AI Act or that they consider	therefore subject in principle to	regarding nature of the AI system,
	that the technology doesn't	the relevant provisions of the EU	whether it is GPAI, whether it can or will
	constitute an AI system under the	Al Act.	be used for high risk purposes, etc.) and
	EU AI Act.		may need to demonstrate its rationale
		<u>OR</u>	and/or disclose its assessments to its
			customers (and potentially obtain their
		1.1.1 The AI Solution is not an "AI	agreement to the conclusions, so there is
		system" as defined in the EU AI	a meeting of minds).
		Act and is therefore not subject to	
		the EU AI Act , and neither Party	Neither Party should agree upon the
		shall suggest otherwise to any	categorisation of the AI Solution (in this
		third party.	clause or those that follow) without
			proper due diligence.
		Definitions	
			If the Parties agree that the technology is
		"AI Solution" means the technology	an AI system for the purposes of the EU AI
		described in [Appendix].	Act, then they will need to deal with the
			impact of this in their contract. The
		"EU AI Act" means the European Union's	Parties will need to define the technology
		Artificial Intelligence Act - Regulation (EU)	(i.e. the AI Solution) by reference to e.g. a
		2024/1689.	specification or equivalent document.

Area	Contractual Impact	Possible Drafting	Notes
			Where there is technical documentation associated with the AI Solution (e.g. where that might be mandated by the EU AI Act), it could be helpful to refer to that documentation as part of the definition / scope of the technology. If the Parties agree that the technology is not an AI system for the purposes of the EU AI Act, then:
			This will not prevent a competent regulator from nevertheless treating that technology as an Al system under the EU AI Act, which will have regulatory implications for one or both of the Parties.
			 In light of this, the Parties may wish to make provisions in their contract for what would happen in these circumstances (see section 14).
			 In any event, the Parties may wish to include more detail around their external-facing communications on this point and if/how they should each respond

Area	Contractual Impact	Possik	ole Drafting	Notes
				to a regulator in relation to this question (e.g. collaborating on an appropriate response).
				Note that the technology being supplied may not be an AI system in and of itself but a wider solution which incorporates one or more AI systems, or a SaaS-type arrangement. The drafting would need to be tailored to deal with the particular arrangement.
				It is also worth considering whether any future versions of the AI system and/or if any future use cases might impact these assessments, and if it is appropriate to include obligations on the Parties to notify the other in such circumstances and/or include in the agreement, change control provisions to enable the Parties to agree any necessary re-assessment(s), as suggested in section 10 below.
2. General Purpose Al Model (with or without Systemic	The EU AI Act also applies to GPAI models, as defined under the EU AI Act (each a "GPAI Model"). The	1.2	[Party A warrants and represents that] OR [The Parties agree that]:	Whether or not the technology constitutes a GPAI Model may be a difficult question and is likely to be one for
Risk)	Parties may wish to clarify that their contract involves a GPAI Model (possibly as distinct from an	1.2.1	the AI Solution is or involves a GPAI Model [with] OR without] systemic risk and is therefore	which the provider (generally Party A) will have given considerable thought.
Art 2 Art 3(63)	Al system or as distinct from		subject [in principle] to the	

Area	Contractual Impact	Possible Drafting	Notes
Area	another model) and is therefore prima facie subject to the EU AI Act or that they consider that the technology doesn't constitute a GPAI Model under the EU AI Act. Furthermore, they may wish to clarify that the model either is or isn't a GPAI Model with systemic risk.	relevant provisions of the EU AI Act. OR 1.2.1 the AI Solution does not involve a GPAI Model (whether with or without systemic risk) and is therefore not subject to the relevant provisions of EU AI Act, and [subject to any legal compulsion to do so] neither Party shall suggest otherwise to any third party. Definition "GPAI Model" means a "general-purpose AI model" as defined in the EU AI Act.	This is therefore likely to be something that Party A alone will need to determine (rather than it being something for the Parties to agree) and, again, in any event, Party A's view and/or any contractual agreement will not prevent a competent regulator from determining the status of that technology as a GPAI Model under the EU AI Act. Whether or not a GPAI Model has systemic risk is subject to a specific regime under the EU AI Act and the contract is likely to have even less of an impact on this point. Where, however, the provider of the GPAI Model has determined that it does not have systemic risk, it is likely to be keen to ensure that the Parties do not suggest otherwise, so this is something that may need to be fleshed out. An issue might arise in relation to downstream fine-tuning or modification of a GPAI Model and whether e.g. the
			downstream fine-tuning or modification

Area	Contractual Impact	Possible Drafting	Notes
			provider of that new GPAI Model). That said, GPAI Models are defined under Art 3(63) by their inherent capabilities not their actual usage (or fine tuning), so the downstream usage is unlikely to affect the upstream obligation on the GPAI Model provider. Indeed, the definition in Art 3(63) states an AI system may involve a GPAI Model "regardless of the way the model is placed on the market". Nevertheless, the Parties may wish to consider including drafting to govern such a scenario (e.g. to prevent downstream fine-tuning or to allocate responsibility for compliance with the EU AI Act to the downstream customer where it might be deemed to have created a new GPAI Model).
3. Classification of GPAI Models as GPAI Models with Systemic Risk	Downstream entities may seek more granular assurances that the GPAI Model is not trained with compute >10 ²⁵ floating point operations (FLOPs) (to avoid high	If the AI Solution is or involves a GPAI Model:1.3 Party A further represents and warrants that at the date of this	Under the EU AI Act as published, a GPAI Model will be presumed to have high impact capabilities when the cumulative amount of compute used for its training is greater than 10 ²⁵ FLOPs. This is generally
Art 51(1)-(2)	impact presumption).	Agreement, the relevant GPAI Model does not have high impact capabilities according to Art 51(1) of the EU AI Act] OR [the cumulative amount of compute used for the training of the	not a straightforward calculation. Note that the European Commission may change this threshold in future. Therefore,

Are	ea	Contractual Impact	Possible Drafting	Notes
			relevant GPAI Model] is not greater than 10 ²⁵ floating point operations].	, , , , , , , , , , , , , , , , , , ,
4.	Information Regarding Classification	Downstream entities (e.g. Party B and subsequent reseller(s)) may want assurances that the classifications are correct and Party A has properly investigated this and has reasonable grounds for such decision (with possible indemnity if the European Commission disagrees with Party A's designation, albeit it is not easy to see where loss would be).	1.4 Party A will, within [insert] days of the execution of this Agreement and thereafter upon Party B's request: (a) inform Party B of the reasonable grounds for classifications [under clauses [1.1], [1.2] and [1.3]]; and (b) provide Party B with the information that Party B may need in order to evaluate such classification, including detail of the computation used for training of a GPAI Model.	This is no substitute for proper, pre- contract due diligences. If there has been a misrepresentation or classification error, then Party B may want the right to terminate/renegotiate.
Art	Provider of AI Solution : 2 : 3(3)	The EU AI Act imposes different obligations across the AI supply chain e.g. the "provider" (Party A) of an AI system (typically the developer of that system) will be subject to different (more burdensome) obligations than the "deployer" (Party B) (typically the customer). The Parties may therefore wish to clarify their position in the supply chain,	1.5 The Parties agree that Party A is the "provider" of the Al Solution for the purposes of the EU Al Act and subject to the corresponding obligations under the EU Al Act.	Whilst the Parties' contractual agreement is unlikely to impact a regulator's view of whether or not a particular organisation is the "provider" of the relevant AI system (generally Party A), it might give the Parties (particularly the customer) reassurances that Party A acknowledges its position under the EU AI Act. It may be more helpful for the Parties to agree that Party A will comply/has

Area	Contractual Impact	Possik	ole Drafting	Notes
	particularly to identify which Party is the "provider" (Party A).			complied with its "provider" obligations under the EU AI Act (see below).
				There may be instances where both Parties contribute to the development of the AI system (codeveloped AI). In this case, the Parties will need to consider how the provider role and obligations apply to this scenario under the EU AI Act. This should be reflected in the relevant clause.
6. Deemed Provider	As noted above, providers are	1.6	Party B will deploy the Al Solution	Again, the Parties' contractual agreement
	subject to more burdensome		in its own name (rather than in the	will not in and of itself determine the
Art 2	obligations under the EU AI Act than deployers, particularly for		name of Party A) and it shall accordingly be the "provider" of	application of the EU AI Act in terms of identifying the provider (Party
Art 3(3)	high-risk AI systems (" HRAIS ").		the AI Solution in place of Party A	A)/deployer (Party B).
Art 25(1)	mgn risk vii systems (Thirds).		for the purposes of the EU AI Act .	ry, acproyer (rarry b).
	The EU AI Act contains provisions which can "deem" a deployer the provider of a HRAIS (replacing the original HRAIS provider) if the	1.6	Party A acknowledges that Party B	However, this could be a particularly helpful point to capture in a contract because, if, for example, in the first scenario Party B doesn't deploy the Al
	deployer: (a) puts their name or trademark on the HRAIS, (b) makes		will not:	system in its own name, resulting in Party A being treated as the provider of the Al
	a substantial modification to a HRAIS, or (c) uses a non-HRAIS as a HRAIS.	1.6.1	put its name or trademark on the Al Solution ;	. ,
		1.6.2		entitling Party A to recover losses it may
	The Parties may therefore wish to		to the Al Solution, including	have suffered by virtue of having being so
	make clear whether any of these circumstances are intended to		(without limitation) a change that materially alters its intended	treated (but consider potential issues

Area	Contractual Impact	Possible Drafting	Notes
	apply, to give certainty about their respective roles under the EU AI Act.	purpose, design, or performance; and/or	regarding recoverability of losses – particularly arising from regulatory fines).
		1.6.3 use the AI Solution for a high-risk purpose for the purposes of the EU AI Act .	section B below. The Parties should consider the drafting
			at clause [2.5] relating to trademarks when including this clause.
7. Extra-territoriality Art 2(1)	The EU AI Act has extraterritorial effect. It applies to: • providers who place on the market or put into service AI systems or GPAI Models in the EU, whether or not they are established in the EU;	 1.7 The Parties agree that neither of them shall make available or use (or permit the making available or use of) the Al Solution in the EU. 1.8 Party B agrees that it shall not use (or permit the use of) the output produced by the Al Solution in the EU. 	needed when: • Party B is not located/established in the EU and does not use the AI output in EU; and • Party A does not place the AI Solution on the market/puts it
	 deployers of AI systems who are located within the EU; and providers and deployers of AI systems that are located outside the EU, but whose output (e.g. content, recommendations, 		This drafting is intended to give protection (particularly to Party A) in case the Parties act in a way which brings the AI system into scope of the EU AI Act. If, for example, Party B makes the AI system available in the EU (e.g. by licensing it) or uses the AI system (or even just its output) in the EU, then Party A may have a breach of contract claim against

Area	Contractual Impact	Possible Drafting	Notes
	analysis and decisions) is used in the EU.		Party B, especially if Party A suffers losses (e.g. a regulatory fine) due to this.
	Organisations located or conducting business outside of the EU may wish to ensure that their AI system does not fall within the scope of the EU AI Act and, to that end, they may wish to include appropriate provisions		Party A may wish to bolster its protection by including an indemnity (but consider potential issues regarding recoverability of losses from Party B generally, and particularly any arising from regulatory fines).
	in any contracts relating to their AI systems.		Both Parties may wish to extend the protection in these provisions by requiring each of them to ensure that e.g. affiliates, also do not make available or use the Al system (or its outputs) in the EU.
			The Parties may also wish to consider obligations around applying technical controls to prevent unintended scope creep of the AI Solution, to prevent these issues arising at a technical level (to the extent possible).
8. Exemptions Art 2(3) Art 2(6)	The EU AI Act contains two key exemptions where its obligations do not apply. These exemptions cover the use of AI systems that are strictly limited to:	1.9 The Parties agree that the intended purpose of the Al Solution is solely for military, defence, or national security use.	The EU AI Act does not define "military, defence or national security" or "scientific research and development", although some explanatory content is included in Recitals (24) and (25). The Parties may therefore wish to include additional detail

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	 military, defence or national security purposes; or 	1.10 Party B agrees that it shall use the Al Solution solely for military, defence, or national security use.	although this may not necessarily align with the view of an EU AI Act regulator. As with the territoriality provisions above,
	• scientific research and development. Parties who are developing / using AI systems for these specific purposes and who are comfortable (e.g. from a commercial perspective) in limiting the use of the AI system to these purposes are likely to want to include contractual provisions ensuring this.	1.11 The Parties agree that the Al Solution will be jointly developed and/or used for the sole purpose of scientific research and development, and neither Party shall commercialise or suggest that the Al Solution is commercially available without the prior written consent of the other Party.	the Parties may wish to bolster the protection here by adding e.g. an indemnity and/or an obligation to ensure that affiliates etc. are also subject to these restrictions.
9. Free and Open- source Art 2(12)	The EU AI Act does not apply to AI systems released under a free and open-source licence, unless that AI system is used as a prohibited AI system (as set out under Art 5 of the EU AI Act), HRAIS or an AI system to which the transparency obligations in Art 50 of the EU AI Act apply.	agree that the AI Solution is provided on a free and opensource basis.	status of the licence under which the Al system is supplied will not be determinative of the regulatory position under the EU AI Act. However, it is likely to provide a helpful basis to support any argument that a particular AI system is provided under a free and open-source licence.
	The EU AI Act clarifies that "free" in this context means that the AI system should not be provided in	<u>OR</u>	This drafting relates principally to the main exemption for free and open-source licensed AI systems under Art 2(12) of the

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	exchange for a monetary fee or an equivalent value e.g. the use of personal data (other than in limited circumstances). The provider of an AI system which is intended to be free and opensource (within the meaning of the EU AI Act) may wish to clarify e.g. in its T&Cs or any particular contract with a counterparty, that the AI system is intended to be made available on this basis. It may also be prudent to contractually require the deployer not to use the AI system in such a way which might call into question the legitimacy of the free and open-source licence e.g. as a HRAIS.	The Parties might prefer to record that they do not consider that EU AI Act Article is applicable: 1.14 The Parties acknowledge and agree that the AI Solution is not provided on a free and opensource basis and EU AI Act Art 2.12 does not apply.	,
10. Changes	The EU AI Act expressly contemplates changes to the regulatory status of an AI system e.g. through concepts such as "substantial modification" (see Art 3(23)) and the change of an intended purpose from non-high-	that this Agreement is entered into based on the status of the Al Solution as represented by the Parties' statements in this clause [including without limitation [XX]].	The Parties should ensure that any controls/restrictions on the AI Solution or its usage apply to all factors relevant to the Parties (including in the Instructions of Use and/or any obligations/restrictions applicable to GPAI Model). Note that the provider (Party A)/deployer (Party B) may

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	risk to high-risk (see e.g. Art 25(1)(c)). Furthermore, changes to the AI system (e.g. technical changes or upgrades) could also impact the regulatory status of an AI system or GPAI Model under the EU AI Act. Parties may therefore wish to engage a degree of control over any such changes through their contract, particularly where the counterparty may be able to affect this regulatory status (whether intentionally or not) by making changes to the AI system.	 1.16 Party A will promptly inform Party B if, during the term of the Agreement and for the purposes of the EU AI Act, the AI Solution becomes or involves a change in classification or status from that provided in clauses [insert as applicable above]. 1.17 No Party shall make any change to the AI Solution and/or any change to the use of the AI Solution that would affect or alter such status of the AI Solution under the EU AI Act, except by the express agreement of the Parties as agreed in writing [pursuant to the Change Control Procedures]. Definition "Change Control Procedures" means the procedures agreed in [Appendix]. 	this drafting will prevent these versions/updates changing the status of the AI Solution (e.g. to HRAIS under the EU AI Act), unless the Parties expressly agree otherwise. The Parties may wish to consider provisions around other changes to the AI system i.e. which don't affect or alter the status of the AI system, including under the EU AI Act e.g. a notification obligation on the part of Party A.
11. Change in Classification of GPAI Models to Include Systemic Risk	Party B should be informed of any change to the classification of the technology , but downstream entities may seek more granular assurances where a GPAI Model	 If the AI Solution is a GPAI Model (but not a GPAI Model with systemic risk): 1.18 If the AI Solution meets the requirements to be classified as a GPAI Model with systemic risk 	Commission if their GPAI Model meets the threshold to be classified as a "GPAI

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Art 51(3)	becomes a GPAI Model with systemic risk.	during the term of this Agreement , Party A will inform Party B within [14] days after [becoming aware that] the requirement is met.	, ,

B. Use / Purpose Clauses

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12. Intended Purpose	Given the EU AI Act's approach to risk categorisation and the obligations placed on providers, deployers and users of AI systems, it is important that both Parties are clear on the intended purpose of the AI system and that this is documented in the contract to support the Parties' classification of whether an AI system is or is not high risk.	 2.1 The Parties acknowledge that AI Solution is made available Party A to Party B for the purpose of [insert intended case(s)] and that Party B man use the AI Solution for any purpose without the prior work consent of Party A. 2.2 To the extent that Party authorised to make available to Solution to any third parties and in accordance with the fand conditions of this Agreem Party B represents and warrant Party A that it shall ensure the of the AI Solution by such parties conforms to the purpo out in clause [2.1]. 	le by sole controlled, including any downstream use, and that Art 5 of the EU AI Act (prohibited AI practices) is considered whenever licensing or sub-licensing the AI Solution. Consider listing out prohibited uses explicitly to align with Art 5 and/or deeming any use outside of the purpose defined in clause [2.1] as misuse and material breach. Note that any AI systems classified as high-risk under the EU AI Act are subject to the majority of the obligations under the EU AI Act, so it is in the Parties' interest to accurately identify and agree the category of AI system, especially if it is not deemed high risk (in which case less prescriptive obligations apply under the EU AI Act), notwithstanding that this may not influence or align with a regulator's classification.
13. Prohibited AI	Given the EU AI Act specifies AI systems which are prohibited in the EU, it might be worth including	2.3 Party B shall not use, or facilitate allow others to use, the AI Sol	

Area	Contractual Impact	Possible Drafting	Notes
	appropriate clauses to ensure the	for practices prohibited under the	Al Solution is used, which the Parties
	contract makes it clear that the AI	EU AI Act [or Party A's Policies].	should consider and address.
	Solution cannot and should not be	D (* 11)	
	used for any of the uses prohibited under the EU AI Act.	Definition	In particular, larger suppliers will likely have their own acceptable use or
		"Policies" means the policies of Party A which are listed in [Appendix] [as may be revised from time to time/in the stated versions, with any material revisions being subject to the Change Control Procedures].	seen how these will interact with the Instructions for Use. While it is not unusual for contracts to provide
			would need to be defined. Given the potential impact of prohibited use, Party A is likely to seek to include breach of clause [2.3] as a Suspension and Termination Event. See further at section D below.
14. High-risk Al	Although the EU AI Act places	2.4 The Parties agree that the Al	A HRAIS can be captured under either
	numerous obligations on both	Solution is not intended to be	, , , , , , , , , , , , , , , , , , , ,
Art 6	Parties for HRAIS, Party A, in	deployed as a HRAIS .	legislation (including, but not limited to,
Art 26	particular, will want to ensure that		machinery, medical devices, vehicles,
Annex I	the intended use of the AI Solution		systems and equipment), or Annex III,
Annex III			which pertains to other matters of public

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	does not cause it to be deemed a	2.5	Party B shall not use the Al Solution	interest (including, but not limited to,
	HRAIS.		for any purpose that may cause the	biometrics, education, and law
			Al Solution to be deemed a HRAIS.	enforcement).
	Providers will want to ensure that			
	their non-HRAIS is not used for a	2.6	If Party B causes the Al Solution to	If an Annex III high-risk use is intended,
	high-risk use set out in Annex I or		be deemed a HRAIS , Party B shall be	then the AI system must be used more
	Annex III.		the provider of the AI Solution.	restrictively to not be deemed a HRAIS.
				This includes: performing a narrow task;
	If the Parties intend for the	2.7	If a Regulatory Classification Event	improving the result of previously
	deployer to use the AI Solution for		occurs, to the extent permitted	performed human activity; not being used
	an Annex III high-risk use, then the		under the EU AI Act:	to replace human decision-making
	deployer must comply with the			without human review; performing a
	requirements under Art 6(3) to	2.7.1	the Party that first identifies the	preparatory task for an Annex III related
	ensure the AI system is not		Regulatory Classification Event	assessment. The AI system must not
	deemed a HRAIS.		occurrence shall promptly notify	profile natural persons.
			the other Party of the occurrence	
	The requirements of Art 6(3) have		of such event, and the Parties shall	Where the AI Solution is not a HRAIS the
	been listed out in general form		promptly discuss the impact of the	deployer then using it as a HRAIS will
	here but the provider would		event in accordance with the	cause the deployer to be the deemed
	benefit from tailoring these to		Change Control Procedure; and	provider under Art 25(1)(c) of the EU AI
	limit the deployer to the actual			Act.
	ground(s) relied on and specifying	2.7.2	5 .	
	the compliant intended use(s).		of implementing any changes that	If the AI Solution is a HRAIS from the
			result from the Regulatory	outset, both Parties will be subject to
	Where the AI system is a HRAIS,		Classification Event shall be borne	further obligations. The Parties will want
	the deployer must comply with		by [Party A/B].	further explicit drafting to clarify who is
	their Art 26 obligations to use and			the provider for a HRAIS and whether the
	monitor the AI system in	<u>OR</u> [r	note: clause numbering resets]	provider needs to co-operate with the
	accordance with the Art 13			deployer-deemed-provider to discharge

SCL AI Group – EU AI Act Contractual Clauses

Area	Contractual Impact	Possible Drafting	Notes
	instructions for use from the "provider".	Where an Annex III high-risk use is intended but the AI system is not a HRAIS:	their obligations. If the provider has specified that the AI Solution should not be made into a HRAIS, they will not be
		2.4 The Parties agree that the Al Solution shall be used for [insert use], which falls under Annex III of	obligated to hand over necessary documentation to the deemed-provider.
		the EU AI Act .	Where the deployer is not a provider, the deployer must ensure they use the HRAIS
		on the basis that Party B shall not use the AI Solution in a way that poses a significant risk of harm to the health, safety or fundamental rights of natural persons.	in accordance with the instructions for use for the HRAIS (Art 26(1)) and assign suitably qualified, capable and supported
		2.6 Party B shall only use the AI Solution for [insert use] which falls into the following exemption under Art 6(3) of the EU AI Act:	
		2.6.1 [perform a narrow procedural task;]	
		2.6.2 [improve the result of a previously completed human activity;]	

Area	Contractual Impact	Possible Drafting	Notes
		2.6.3 [detect decision-making patterns or deviations from prior decision-making patterns;] [or]	
		2.6.4 [perform a preparatory task to an assessment relevant for the purposes of the Annex III use specified in clause [2.4] above[.][;]	
		AND/OR	
		2.6.5 perform any other tasks, provided that Party B complies, at all times, with clause [2.5].	
		2.7 Party B shall not use the Al Solution to:	
		2.7.1 replace or influence the previously completed human assessment, without proper human review; or	
		2.7.2 perform profiling of natural persons.	
		2.8 If Party B causes the AI Solution to be deemed a HRAIS, or is otherwise deemed to be a provider	

Area	Contractual Impact	Possible Drafting	Notes
		by a regulatory authority, Party B shall be the provider of the Al Solution.	
		OR [note: clause numbering resets]	
		Where the AI system is a HRAIS and Party A remains the provider:	
		2.4 The Parties acknowledge that the AI Solution is a HRAIS, and that, Party A shall be the Provider of the AI Solution.	
		2.5 Party B will not:	
		2.5.1 put its name or trademark on the Al Solution, except as expressly permitted under this Agreement;	
		2.5.2 make a Substantial Modification to the Al Solution that maintains the high-risk nature of the Al Solution as defined in the EU Al Act.	
		2.6 Where the AI Solution is intended to be used as a safety component for a product covered by Annex I	

Area	Contractual Impact	Possible Drafting	Notes
		Section A legislation, Party B shall not:	
		2.6.1 place the AI Solution on the market with the product under Party B's name or trademark;	
		2.6.2 put the Al Solution into service under Party B's name or trademark after the product has been placed on the market.	
		OR [note: clause numbering resets]	
		Where the AI Solution is a HRAIS, and Party B shall be the provider:	
		2.4 The Parties acknowledge that the Al Solution is a HRAIS, and that Party B shall be the Provider of the Al Solution.	
		2.5 Party B shall, and Party A shall cooperate by providing necessary information and other reasonable assistance to enable Party B to, fulfil the obligations of a Provider of a HRAIS under the EU AI Act .	

Area	Contractual Impact	Possible Drafting	Notes
		Definitions "HRAIS" means a high-risk AI system for	
		the purposes of the EU AI Act .	
		"Regulatory Classification Event" means any change in, or introduction of, any law,	
		regulation, delegated act, official guidance or code of practice by any governmental or regulatory authority	
		(including the AI Office) that affects the classification, compliance requirements	
		or legal status of the AI Solution including, without limitation, changes to	
		the list of HRAIS in Annex III to the EU AI Act .	
15. Misuse	Providers of HRAIS are obliged to produce risk management	2.6 Party A shall provide Party B with instructions for use which conform	"conditions of misuse" which appears to
Art 9 Art 13	systems and provide instructions of use.	to Art 13 of the EU AI Act (the " Instructions for Use "). Without limitation, these Instructions for	, 5
	Parties may seek to: address potential misuse in their contracts with reference to these	Use shall specifically: (i) identify any known or reasonably foreseeable conditions of misuse; and (ii)	to identify "reasonable steps to prevent any misuse", although that may be implicit in the requirement (at Art
	obligations; and their respective responsibilities in relation to its	provide information to enable Party B to use the Al Solution	·
	prevention.	appropriately. [Such Instructions of Use shall specifically identify	

Area	Contractual Impact	Possible Drafting	Notes
		reasonable steps which Party B ma take to prevent any misuse].	potential gap and to make the wider contractual scheme more workable.
		2.7 Party A shall design, develop and document, operate and monitor the Al Solution over its entire lifecycle to mitigate the risk of known and reasonably foreseeable conditions of misuse. This shall include (but not be limited) to the matters in [Appendix].	r circumstance where the consequent e "reasonable steps" in the Instructions of f Use are more onerous than appropriate. e This is at the expense of certainty as to what Party B needs to do.
		2.8 Party B shall [exercise reasonabl care and skill to] comply with th Instructions for Use.	A to identify misuse, which – in turn –
			See further at clauses [3.8] and [3.10]
		2.9 [Party A's inclusion of a "reasonabl step" in the Instructions of Use in not determinative of it being such step. However, its inclusion (together with any communication between the Parties about it) will be a factor in considering reasonable care and skill.]	below in relation to Instructions for Use. below in relation to Instructions for Use.
		2.10 Without limiting any othe defences which may be available Party B shall not be liable for an non-compliance under clause [2.8]	y

Area	Contractual Impact	Possible Drafting	Notes
		to the extent that the non- compliance is caused (or	
		contributed to) by Party A's failure	
		to comply with Art 13 of the EU Al	
		Act [and clauses [2.6], [3.8] and	
		[3.10] in respect of the content of	
		the Instructions of Use] (and	
		nothing in this clause shall transfer	
		risk or responsibility for the same).	
16. Serious Incidents	Under the EU AI Act, Party A is	2.11 A "Serious Incident" means an	Although the EU AI Act's "serious
	required to report "serious	[actual or reasonably suspected]	incidents" regime is confined to HRAIS,
Art 73	incidents" in relation to a HRAIS.	incident or malfunctioning of the AI	Parties may still wish to adopt it in their
		Solution that directly or indirectly	agreements but this may have a
	Party A may want redress the	leads to any of the following:	significant time or cost impact.
	balance contractually, by obliging		TI 16 6 //
	Party B: to avoid "serious	2.11.1 the death of a person, or serious	
	incidents"; to report on them between the Parties; and to	harm to a person's health;	EU AI Act does not extend to cover "reasonably suspected" incidents.
	cooperate in their investigation	2.11.2 a serious and irreversible	"reasonably suspected" incidents. However, depending on the use case, this
	and corrective actions.	disruption of the management or	
	and corrective detrons.	operation of critical	greater sensitivity may be attractive.
	Party B may also want prompt	infrastructure;	The drafting in clause [2.13] presumes
	receipt of any reports under Art	,	that Party B has a limited, primarily
	73.	2.11.3 the infringement of obligations	supportive, role in mitigating Serious
		under EU law intended to protect	Incidents. Consequently, Party B should
	Given "serious incidents" are	fundamental rights; or	not be held liable for Serious Incidents
	broadly defined under the EU AI		where it has exercised reasonable care
	Act, the Parties also may wish to	2.11.4 serious harm to property or the	and skill, or where Party A is at fault.
	tailor it to their use case.	environment.	Parties to consider the specific nature of

Area	Contractual Impact	Possible Drafting	Notes
		2.12 The Parties agree that Serious Incidents shall include (but not be limited to): [list matters specific to the use case].	Party A relies on Party B in performance of
		2.13 Party B shall take reasonable steps to mitigate the risk of Serious Incidents. However, without limiting any other defences which may be available, Party B shall not be liable for any Serious Incident:	within the Agreement that address when Party A may be entitled to relief from liability so as to ensure appropriate allocation of responsibilities and liabilities
		2.13.1 unless it is caused by the negligence of Party B or a failure to exercise reasonable care and skill in the performance of its obligations under this Agreement; and	
		2.13.2 to the extent that the Serious Incident is caused (or [contributed/primarily attributable] to) by Party A's failure to comply with the EU AI Act or this Agreement, including (but not limited to) deficiencies in the Instructions for Use and Risk Management System (and	

Area	Contractual Impact	Possible Drafting	Notes
		nothing in clauses [2.13, 2.14 or	
		2.15] shall transfer risk or	
		responsibility for the same).	
		2.14 If either Party: (a) establishes a	
	1	causal link between the Al Solution	
	1	and a Serious Incident ; or (b) the	
	1	reasonable likelihood of such a link;	
	1	then it shall notify the other Party	
	1	of the Serious Incident as soon as	
		possible.	
		2.15 In the event of a notification under	
	1	clause [2.14], the Parties shall	
	1	cooperate in the performance of	
	1	necessary investigations, reporting	
	1	and corrective actions in relation to	
	1	the Serious Incident and the AI	
		Solution.	
		2.16 Party A, where it acts as a Provider	
	1	of the AI Solution , shall promptly	
		provide Party B with copies of any	
		reports to market surveillance	
		authorities under Art 73 of the EU	
		Al Act in connection with Party B's	
		(actual or potential) use or misuse	
		of the Al Solution .	

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Area	Contractual Impact	Possible Drafting	Notes
		obligations on the GPAI Provider set out in clause [2.17] shall not apply in respect of any GPAI Model released by the GPAI Provider under a free and open-source licence that allows for the access, usage, modification, and distribution of that GPAI Model, and whose parameters, including the weights, the information on the GPAI Model architecture, and the information on the GPAI Model usage, are made publicly available. 2.19 The Downstream Provider shall comply with the terms of the licence and acceptable usage policies referred to in the GPAI Model Transparency Information. Definitions "GPAI Model Transparency Information" means the information and documentation referred to in Annex XII of the EU AI Act as such Annex may be amended from time to time.	review.

Area	Contractual Impact	Possible Drafting	Notes
		"GPAI Provider" means the provider of	
		the GPAI Model that the Downstream	
		Provider intends to integrate into an AI	
		Solution.	
		" Downstream Provide r" means the	
		provider of an AI Solution that intends to	
		integrate the GPAI Provider's GPAI	
		Model into the provider's Al Solution.	
18. Systemic Risk	The additional obligations from	For GPAI Models without systemic risk	
	the EU AI Act on GPAI Models with	only:	as being specific to a GPAI Model's
Art 3	systemic risk are placed solely on		potential broad-reaching impact on the
Art 51	Party A.	2.20 Party B shall not use, fine-tune,	EU market or on matters of public
Art 55		train, or otherwise develop the AI	interest.
	Thus, where a GPAI Model without	Solution in such a way that the AI	
	systemic risk is being provided,	Solution may be at risk of being	A GPAI Model will be classified as having
	Party A must ensure Party B does	considered as having high impact	systemic risk if it meets the requirements
	not cause the GPAI Model to be	capabilities as defined in the EU AI	in Art 51(1), i.e. having high impact
	designated as posing a systemic	Act.	capabilities objectively, or deemed to
	risk.		have such capabilities or equivalent
		2.21 Party B's use of the Al Solution shall	impact based on a decision of the
	Party A must ensure that the GPAI	be limited to no more than 10,000	European Commission, judged against the
	is not used or developed in any	registered business users in the EU,	Annex XIII criteria, pertaining to the size,
	way that would meet the	unless agreed otherwise in writing.	complexity and reach of the GPAI Model.
	threshold for having high impact		
	capabilities (objectively by	2.22 Party B shall not train the AI	High impact capabilities are defined
	benchmarking or more	Solution using a computation of	
	subjectively by decision by the	greater than 10 ²⁵ FLOPs, or such	current capabilities of the most advanced
	European Commission).	other degree of training	GPAI Models. This is a high, general bar

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Area	Contractual Impact	Possible Drafting	Notes	
	Specifically, GPAI Models will be assumed to have systemic risk where trained using more than 10^{25} FLOPs of computation, which must be explicitly forbidden in the contract.	computation that exceeds the presumption in Art 51(2) of the EU AI Act , as amended from time to time. If the AI Solution is a GPAI Model with systemic risk:	but Party B will want to push the capabilities of the GPAI Model being contracted for. However, there is the fixed limit on training computation under Art 51(2) to provide some reassurance on the limits of what Party B can be permitted to do.	
	Under Annex XIII, the GPAI Model will be deemed to have a high impact on the internal market if it is available to more than 10,000 registered business users. This will not be the only factor in a decision but is the only threshold that can be contracted for to mitigate the risk of a decision by the European Commission.	2.23 Party A represents and warrants that it has complied and will comply with the requirements set out in Art 55 of the EU AI Act and will provide confirmation of such compliance upon request from Party B.		
	More bespoke drafting may be necessary to curtail Party B use or experimentation with the GPAI Model to ensure that the threshold is not met, especially if a novel use or capability could arise which would more easily meet the threshold, but this will need to be considered on a case-by-case basis.			

Area	Contractual Impact	Possible Drafting	Notes
	If the AI Solution is a GPAI Model with systemic risk, downstream entities will also want assurances that Party A has complied with obligations for GPAI Models with systemic risk in Art 55.		

C. Compliance Clauses

Area	Contractual Impact	Possi	ible Drafting	Notes
19. Al Literacy	Providers (Party A) and deployers (Party B) are required to take	3.1	Party A warrants that all appropriate and necessary	The obligation on Party A could be included within a more general obligation
Chapter 1	measures to ensure to their "best		measures have been taken to	to ensure that Party A's personnel have all
Art 4	extent" that all staff and other		ensure, to its best extent, that all	necessary professional skill and expertise
	persons dealing with the Al		its [staff and other persons]	to provide the AI Solution.
	Solution are well-educated about		involved in the creation,	
	it. The obligation includes taking		development and provision of the	
	into account their technical		Al Solution have a sufficient level	
	knowledge, experience,		of AI literacy in accordance with	
	education and training and the		the requirements of Art 4 of the EU	
	context the AI Solution is to be		Al Act.	
	used in and considering the			
	persons or groups of persons on	3.2	Party B shall take all appropriate	
	whom the AI Solution is to be		and necessary measures to ensure,	
	used.		to its best extent, that all its [staff	
			and other persons] involved in the	
	Parties are therefore likely to seek		deployment and use of the AI	
	assurances that the Art 4		Solution have a sufficient level of	
	obligations have been/will be		Al literacy in accordance with the	
	complied with.		requirements of Art 4 of the EU AI	
			Act.	
High-risk AI – Provider's	s (Party A's) Obligations			
20. Risk Management	Deployers (Party B) of HRAIS are	3.3	Party A warrants that:	The EU AI Act (Art 9) requires HRAIS to
System	likely to seek assurances from			have a risk management system
-	providers that Party A's	3.3.1	it has established, implemented	throughout the life-cycle of the Al
Chapter III, Section 2	obligations under Art 9 have all		and documented a risk	Solution. The Parties may want to

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Area	Contractual Impact	Possible Drafting	Notes
Art 9	been, and will continue to be, met.	management system meeting the requirements of Art 9 EU AI Act (the "Risk Management System"); and	consider who is responsible for managing this, although it's most likely to be established, implemented and documented by Party A, potentially with some support from Party B to maintain it.
		3.3.2 it shall maintain and keep the Risk Management System under regular systematic review and updated at all times throughout the entire lifecycle of the Al Solution.	We have included some alternative drafting which envisages Party B being responsible for compliance with Art 9, in case this is relevant. Where an Al system could have a negative impact on persons under the age of 18 or
		OR [note: clause numbering resets]	vulnerable groups Party B may require additional contractual assurance that
		 3.3 Party A shall provide to Party B all information and assistance reasonably required for Party B to establish, implement and document a risk management system meeting the requirements of Art 9 of the EU AI Act (the "Risk Management System"). 3.4 Party A warrants that before delivery of the AI Solution it has tested the AI Solution to: 	Party A has taken this into consideration in the Risk Management System. The Parties may want to consider appropriate contractual remedies to address the presumption of conformity in Art 40(1) for HRAISs and GPAI Models. This might include Party A being obliged to provide evidence that it has conformed to standards, and/or Party B agreeing to do the same to avoid further risk of non-conformity.
		tested the Al Solution to:	conformity for Party A.

Area	Contractual Impact	Possible Drafting	Notes
		3.4.1 identify the most appropriate and targeted risk management measures; and	
		3.4.2 ensure that the AI Solution performs consistently for its intended purpose and complies with the requirements of Chapter III, Section 2 of the EU AI Act.	
21. Data and Data Governance	Party B is likely to seek assurances from Party A that Party A has complied with all its obligations	-	In addition to warranties as to compliance with Art 10 requirements, and to the extent this is not included in the
Chapter III, Section 2 Art 10	under Art 10 to develop the AI Solution using high-quality data sets for training, validation and testing.	3.5 Party A warrants that the AI Solution has been [shall be] developed on the basis of training, validation and testing data sets which meet the requirements of Art 10 of the EU AI Act.	information relating to the system, Party B may wish to consider requirements for Party A to supply information and further assurances as to the nature and provenance of the data sets used for training/testing of the system.
		3.6 Party A warrants that:3.6.1 it shall process special categories of personal data only to the	Consider whether there is a likelihood of processing special categories of personal data. This will also need to be addressed in the related data processing agreement.
		extent strictly necessary for the purpose of ensuring bias detection and correction in relation to the Al Solution in accordance with the	Where the AI Solution has been developed without use of techniques involving the training of AI models, Art 10 paragraphs 2 to 5 apply only to the testing data sets.

Area	Contractual Impact	Possible Drafting	Notes
		requirements of Art 10 of the EU AI Act , paragraph (2), points (f) and (g);	
		3.6.2 it shall ensure appropriate safeguards for the fundamental rights and freedoms of natural persons and in addition to the provisions set out in Regulations (EU) 2016/679 and (EU) 2018/1725 and Directive (EU) 2016/680 it shall ensure that all of the conditions set out in Art 10 paragraph 5 are be met in order for such processing to occur.	
		OR [note: clause numbering resets]	
		Where the AI Solution does not make use of techniques involving the training of the AI Solution with data:	
		3.5 Party A warrants that it has complied with all of the requirements of Art 10 of the EU Al Act in relation to the testing data sets.	
22. Technical Documentation	Party B is likely to seek assurances from Party A that Party A has	•	Consider an additional obligation on Party A to make technical documentation

Area	Contractual Impact	Possible Drafting	Notes
Chapter III, Section 2 Art 11	complied with all of its obligations under Art 11 and will continue to be met during the term of the agreement.	relating to technical documentation in accordance with Art 11 of the EU AI Act and that it shall keep the technical documentation up to date at all times. [Upon Party B's request, Party A shall make copies of all technical documentation available to Party B].	available to Party B. The interaction with broader confidentiality obligations should also be considered.
23. Record Keeping Chapter III, Section 2 Art 12	In order to ensure accountability and safety in the development of HRAIS, Party B is likely to seek assurances from Party A that Party A has complied with all of its obligations under Art 12 in relation to automatically logging events and that this requirement will continue to be met during the term of the agreement so that Al Solution's actions can be traced back.	•	If the log information is not readily accessible to Party B via the AI Solution, Party B may also wish to include specific obligations on Party A to make logs available to Party B.
24. Transparency and Provision of Information to Deployers Chapter III, Section 2 Art 13	Party B is likely to seek assurances from Party A that Party A has complied with all of its obligations under Art 13 and will continue to do so during the term of the agreement.	 3.8.1 the Al Solution has been and will continue to be designed and developed in such a way as to ensure that the operation of the Al Solution is sufficiently transparent to enable Party B to 	In relation to the Instructions for Use, see also the misuse clauses above (section 15).

Area	Contractual Impact	Possible Drafting	Notes
		interpret the AI Solution 's output and use it appropriately;	
		3.8.2 it shall ensure an appropriate type and degree of transparency with a view to achieving compliance with the relevant obligations of both Party A and Party B set out in Section 3 of the EU AI Act throughout the lifetime of the AI Solution;	
		3.8.3 it shall provide to Party B instructions for use of the AI Solution which shall include all of the information required by Art 13 of the EU AI Act (the "Instructions for Use");	
		3.8.4 the Instructions for Use shall be made available in an appropriate digital format or otherwise that include concise, complete, correct and clear information that is relevant, accessible and comprehensible to Party B; and	
		3.8.5 it shall keep the Instructions for Use under review and fully	

Area	Contractual Impact	Possible Drafting	Notes
		updated throughout the lifetime of the AI Solution .	
25. Human Oversight	Party B is likely to seek assurances from Party A that Party A has	3.9 Party A warrants that:	The specific nature of human oversight measures will need to match the risks and
Chapter III, Section 2 Art 14	complied with all of its obligations under Art 14 and that it will continue to do so during the term of the agreement.	 3.9.1 the AI Solution has been and will continue to be designed and developed in such a way, including with appropriate human-machine interface tools, that it can be effectively overseen by natural persons during the period in which the AI Solution is in use; 3.9.2 the oversight measures and tools shall meet the requirements of Art 14 of the EU AI Act [and the AI Solution Requirements Specification]. 	context of the AI Solution's use. These measures could be built into the AI Solution by Party A or implemented by Party B. Where a bespoke AI Solution is being developed, the Parties will need to set out the details of the oversight measures in the AI Solution requirements specification. Note that additional requirements apply in the case of high-risk systems referenced in para 1(a) of Annex III (remote biometric identification systems not including AI systems intended to be used for biometric verification the sole purpose of which is to confirm that a specific natural person is the person he or she claims to be). The additional requirement is that no action or decision is taken by Party B on the basis of the identification resulting from the system unless that identification has been separately verified and confirmed by at least two natural persons with the necessary competence, training and authority (Art 14 paragraph 5).

SCL AI Group – EU AI Act Contractual Clauses

Area	Contractual Impact	Possible Drafting	Notes
26. Accuracy, Robustness and	Party B is likely to seek assurances from Party A that Party A has	3.10 Party A warrants that:	The European Commission will, in cooperation with relevant stakeholders
Cybersecurity	complied with all of its obligations under Art 15 and that it will	3.10.1 the AI Solution has been and will continue to be designed and	and organisations, encourage the development of benchmarks and
Chapter III, Section 2 Art 15	continue to do so during the term of the agreement.	developed in such a way that the Al Solution shall meet all of the requirements of Art 15 of the EU Al Act throughout its lifecycle;	measurement methodologies. Where benchmarks and measurement methodologies have been developed, the Parties may wish to refer to them specifically.
		3.10.2 the levels of accuracy and the relevant accuracy metrics are declared in the accompanying Instructions of Use;	Party B may wish to consider what its appropriate remedies should be if the levels of accuracy and relevant accuracy are not met.
		3.10.3 it shall implement and maintain the measures set out in [the Back-up Schedule] throughout the lifecycle of the Al Solution; and	Consider whether it is appropriate to include details of technical redundancy, back-up plans or fail-safe plans. Similarly consider whether it is appropriate to
		3.10.4 it shall implement and maintain the measures set out in [Cybersecurity Schedule] throughout the lifecycle of the Al Solution.	include details of cybersecurity measures.
27. Obligations of Providers of HRAIS	Party B is likely to seek assurances from Party A that Party A has complied with all of its obligations	complied and shall continue to comply with all of its obligations	Consider whether it is appropriate/necessary to describe in detail any of Party A's obligations.
Chapter III, Section 3 Art 16	under Art 16.	set out in Art 16 of the EU AI Act [including, without limitation, the	

Area	Contractual Impact	Possible Drafting	Notes
		specific elements set out in [Clause/Schedule Party A's Obligations].	
28. Quality Management System, Record Keeping and Automatically Generated Logs	Party B is likely to seek assurances from Party A that Party A has complied with all of its obligations under Arts 17, Art 18 and Art 19.	3.12 Party A warrants that it has complied with and shall continue to comply with the requirements of Arts 17, 18 and 19 of the EU Al Act throughout the lifecycle of the Al Solution.	
Chapter III, Section 3 Arts 17, 18 and 19			
29. Corrective Actions and Duty of Information	Party B is likely to seek assurances from Party A that Party A has complied with all of its obligations under Art 20.	3.13 Party A warrants that where it considers or has reason to consider that the Al Solution is not in conformity with the EU Al Act it	Party B may also wish to include a specific additional obligation on Party A to investigate any concerns raised by Party B that the AI Solution is not in conformity
Chapter III, Section 3 Art 20		shall comply with the requirements of Art 20 of the EU AI Act . Without limitation to the foregoing, Party A shall immediately inform Party B accordingly.	with the regulations and to take corrective action. Art 20 requires Party B to "take the necessary corrective actions to bring that system into conformity, to withdraw it, to disable it, or to recall it, as appropriate." The Parties will need to consider, in the context of AI Solution, its purpose and the circumstances, the various specific remedies which should be available to Party B in these circumstances.

Area	Contractual Impact	Possi	ible Drafting	Notes
30. Conformity Assessment, Certificates and Registration Chapter III, Section 5 Arts 43, 44 and 49	Party B is likely to seek assurances from Party A that Party A has complied with all of its obligations under Chapter III, Section 5 Arts 43, 44 and 49.	3.14	Party A warrants that it has complied with and shall continue to comply with the requirements of Arts 43, 44 and 49 of the EU AI Act throughout the lifecycle of the AI Solution.	
[OPTIONAL SHORT FOR	M]: High-risk AI – Provider's (Party	A's) O	bligations	
31. Obligations of Providers (Party A) for HRAIS – short form Chapter III, Section 3 Arts 9-21 & Chapter III, Section 5	An optional short-form version of the above clauses under which Party A warrants compliance with the EU AI Act.	3.15	Party A represents and warrants that it and the AI Solution shall at all times comply with all obligations set out in the EU AI Act applicable to Party A.	Parties may wish to use this short-form clause if it is required or considered more practical.
Arts 43, 44 and 49	- (David Black Obligation			
High-risk AI – Deployer' 32. Obligations of	s (Party B's) Obligations Providers (Party A) of HRAIS are	2 16	Party B warrants that it has	Consider whether it is
Deployers (Party B) of HRAIS Chapter III, Section 3 Art 26	likely to seek assurances from Party B that Party B has complied with all of its obligations under Art 26.	3.10	complied with all of its obligations set out in Art 26 of the EU Al Act [including, without limitation, the specific elements set out in [Appendix - Party B's Obligations]].	appropriate/necessary to describe in detail any of Party B's obligations.
33. Post-market Monitoring	Party A is required to establish and document a post-market monitoring system in a manner	3.17	Party B shall co-operate with Party A including by allowing Party A to systematically collect, document	Party B may wish to consider including specific provisions which require Party A to keep such data in confidence and

Area	Contractual Impact	Possi	ble Drafting	Notes
Chapter IX	which is proportionate to the		and analyse relevant data to allow	securely and to use it only for the purpose
Section 1	nature of the AI technologies and		Party A to meet its obligations	of post-market monitoring.
Art 72	the risks of the AI system.		under Art 72 of the EU AI Act	
			relating to the continuous	
	Party A may require Party B to co-		compliance of the Al Solution with	
	operate as regards compliance		the requirements of Chapter III of	
	with the post-market monitoring,		the EU AI Act .	
	including the provision of data			
	throughout the lifetime of the Al			
	system.			
[OPTIONAL SHORT FOR	M]: High-risk AI – Deployer's (Part	y B's) (Obligations	
34. Obligations of	An optional short-form version of	3.18	Party B represents and warrants	Parties may wish to use this short-form
Deployers (Party	the above clauses under which		that it shall at all times comply with	clause if it is required or considered more
B) for HRAIS –	Party B warrants compliance with		all obligations set out in the EU AI	practical.
short form	the EU AI Act.		Act applicable to Party B, including	
			without limitation in relation to its	
Chapter III, Section 3			use of the AI Solution .	
Art 26 & Chapter IX				
Section 1				
Art 72				
35. Fundamental	Where Party B has to carry out a	3.19	If Party B is required to carry out a	Consider whether a FRIA might be
Rights Impact	Fundamental Rights Impact		FRIA under the EU AI Act, Party A	confidential and/or specific to the context
Assessments	Assessment (" FRIA "), this clause		shall, where requested by Party B,	in which the AI Solution is deployed/used,
	enables Party B to require Party A		make available to Party B any	and if it's not possible to provide it, the
Art 27(2)	to make a FRIA previously carried		previous or existing FRIAs carried	Parties should consider alternative
	out by Party A available to the		out by Party A in relation to the AI	obligations such as an obligation for Party
	Party B.		Solution to enable Party B to	A to carry out a new FRIA specific to the

Area	Contractual Impact	Possible Drafting	Notes
		assess whether it can rely on such previous or existing FRIA .	use case(s) for which it will make the AI Solution available to Party B.
		Definition	
		"FRIA" means a fundamental rights	
		impact assessment pursuant to Art 27 of	
		the EU AI Act.	
36. Transparency Obligations	Where the AI Solution interacts with individuals directly or	General clauses:	The Parties should consider whether it is appropriate or necessary to use these
Obligations	creates synthetic content, certain	3.20 Party A represents and warrants	transparency clauses, depending on the
Art 50	transparency obligations will	that has complied with its	functionality and intended use of the AI
	apply to Party A and/or Party B.	transparency obligations set out in	Solution. The Parties may wish to use the
	The Parties may wish to seek	Art 50 of the EU AI Act applicable to Party A.	general clauses or the specific clauses as appropriate.
	assurances that the transparency	to Party A.	ирргорпите.
	requirements for the AI Solution	3.21 Party B represents and warrants	Where the AI Solution interacts with
	have been met.	that has complied with its	individuals directly, Party A may wish to
		transparency obligations set out in	rely on the "unless this is obvious" caveat.
		Art 50 of the EU AI Act applicable	
		to Party B.	
		Specific clauses:	
		3.22 AI systems interacting with	
		<u>humans.</u> Party A represents and warrants that it has designed and	
		developed the Al Solution so that	
		individuals are informed that they	

Area	Contractual Impact	Possible Drafting	Notes
		are interacting with AI Solution [unless it is obvious taking into account the circumstances and context of use,] [as required by Art 50(1) of the EU AI Act].	
		3.23 <u>Generative AI system.</u> Party A represents and warrants that the outputs of the AI Solution are marked in a machine-readable format and detectable as artificially generated or manipulated [as required by Art 50(2) of the EU AI Act].	
		3.24 Relevant emotion recognition system or a biometric categorisation system. Party B represents and warrants that where the AI Solution is a relevant emotion recognition system or a biometric categorisation system the AI Solution informs individuals exposed to the AI Solution of the operation of the system [as required by Art 50(3) of the EU AI Act].	

Area	Contractual Impact	Possible Drafting	Notes
		3.25 Al system generating deep	
		fakes/content published to inform	
		the public on matters of public	
		<u>interest.</u> Party B represents and	
		warrants that where the AI	
		Solution generates or manipulates	
		content, Party B discloses that the	
		content has been artificially	
		generated or manipulated [as	
		required by Art 50(4) of the EU AI	
		Act].	
37. Procedure		If the AI Solution is or involves a GPAI	This may be covered by a general
		Model:	compliance with law, but it might also be
Art 52			worth considering obligations around
		3.26 Party A represents and warrants	notification and disclosure if Art 52 is
		that it has followed the procedure	triggered, and any necessary
		set out in Art 52 of the EU AI Act .	recall/remedies if Party A has to require
			Party B to stop using the AI Solution for
20.5			future non-compliance.
38. Breach	Consider contractual provisions	3.27 In the event that Party A becomes	The Parties should consider whether an
	dealing with scenario in which	aware that the AI Solution has	indemnity in favour of Party B is
Art 82	Party A has been found in breach	been found to present a risk as	appropriate, or other forms of contractual
	or if ordered to make changes to	defined under Art 82(1) of the EU	redress for Party B if it can't continue to
	AI systems/take other steps.	Al Act, Party A will inform Party B	use the AI Solution due to non-
		without unreasonable delay, and	compliance.
		such notification will include	
		information on the nature of the	
		Art 79 evaluation and the	
		measures which are to be, or have	

Area	Contractual Impact	Possible Drafting	Notes
		been taken, in order to address the	
		identified risks.	
39. Complaints	Party A/Party B may want	3.28 In the event that a Party becomes	
	protection before the other files a	aware that the AI Solution is the	
Art 85	complaint under Art 85 e.g. prior	subject of a complaint filed under	
	notification, opportunity to	Art 85 of the EU Al Act (an "Art 85	
	remediate, cooperation in any	Complaint "), such Party will inform	
	subsequent investigation etc.	the other Party of the nature of the	
		Art 85 Complaint [and provide	
		reasonable assistance in any	
		subsequent investigation.]	
		3.29 Prior to either Party filing an Art 85	
		Complaint in respect of the AI	
		Solution , the Parties will [follow	
		the dispute resolution procedures	
		set out in [reference to dispute	
		resolution clause if applicable]].	
40. Third Party	Party A should agree by written	3.30 The Parties each warrant and	Although the EU AI Act refers to a provider
Suppliers to	agreement with its supplier (other	represent that they have obtained	requiring such assistance, we consider
Providers	than a supplier under a free and	(and will continue to obtain)	this should be extended to deployers who
	open-source licence who is not	written agreement with suppliers	engage third parties (in addition to the
Art 25(4)	providing a GPAI Model) whose	of components, processes or	provider) to provide other tools,
Recital 88	components or processes are	services that are incorporated into	processes, components and services in
	incorporated in Party A's AI	or used for the development of the	relation to the AI system.
	system the level and type of	Al Solution (each a "Supplier")	Backel 00 of the FU Al Act was ideal to be
	assistance required to enable	that:	Recital 88 of the EU AI Act provides insight
	provider to comply with the EU AI		into what type of services are relevant,
	Act and other applicable laws.		including model training, model

Area	Contractual Impact	Possible Drafting	Notes
		3.30.1 The Supplier acknowledges that the relevant services are being provided by it in relation to Al Solution regulated under the EU	retraining, model testing and evaluation, integration into software, or other aspects of model development.
		Al Act].	This does not apply to suppliers providing such items under a free and open-source
		3.30.2 The Supplier shall provide the relevant contracting Party with all	licence unless it is a GPAI Model.
		information, capabilities, technical access and other	Note the EU AI Act states that the AI Office may (so not a mandatory requirement)
		assistance in accordance with Best Industry Practice which is reasonably required by the	develop and recommend voluntary model terms covering this area.
		relevant contracting Party to enable it to fully comply with the	
		EU AI Act . Such assistance shall exclude the sharing of	
		Intellectual Property Rights owned by or licensed to the	
		Supplier which are not otherwise licensed to the relevant	
		contracting Party under this Agreement .	
41. IPR Infringement Indemnity	GPAI Models and AI systems may give rise to IPR infringement		This is an optional and short-form clause where the contract does not contain a
machinity	claims against Party A and Party B, for which protection should be	indemnified on demand against all Losses of whatsoever nature	suitable IPR infringement indemnity whose scope covers the relevant scenario.
	sought in the agreement.	arising out of or in connection with any claim that the receipt or use of	The reference to AI Solution should cover

Area	Contractual Impact	Possible Drafting	Notes
		the AI Solution or its outputs as	scenarios involving both GPAI Models and
		permitted by this Agreement ,	AI systems.
		infringes the Intellectual Property	
		Rights of a third party.	Larger service providers may include non-
			negotiable conditions (e.g. strict notice
		3.32 Party B shall indemnify and keep	requirements) that apply before a Party
		Party A fully and effectively	can rely on an indemnity. The indemnity
		indemnified on demand against all	may therefore need to be tailored
		Losses of whatsoever nature	depending on the nature/bargaining
		arising out of or in connection with	power of the Parties, the AI Solution as
		any claim that the AI Solution or its	well as other factors.
		outputs infringes the Intellectual	
		Property Rights of a third party to	"Losses" and "Intellectual Property
		the extent that such claim arises as	Rights" will need to be defined in the
		a result of the use of the AI	agreement to reflect the negotiated risk
		Solution or its outputs by Party B in	allocation.
		a manner not permitted under this	
		Agreement or the AI Solution's	
		specifications.	

D. Termination and Suspension Events

Area	Contractual Impact	Possible Drafting	Notes
42. Suspension	Non-compliance with the EU AI Act	4.1 If [Party A reasonably determines	The Parties will want to consider how the
Events	may be so serious as to justify	that] a Party A Suspension Event has	clauses interact with their termination
	suspension or termination.	arisen, Party A may, on provision of	, ,
		written notice to Party B [in	,
		accordance with clause [XX]]	
		immediately suspend Party B's (and/or any of its end users') access	•
		to or use of any portion or all of the	attention by the Furties.
		Al Solution.	Suspension and termination events (e.g.
			prohibited use, misrepresented
		4.2 If [Party B reasonably determines	classifications) will need to be defined in
		that] a Party B Suspension Event has	the contract and might include, e.g.
			prohibited use. They may be intensively
		written notice to Party A [in	
		accordance with clause [XX]]	
		immediately suspend [insert relevant obligations].	It is assumed that the Parties' contract
		obligations].	will contain a clause governing the
		Definitions	service of notices which may be cross
			referred to in this clause.
		"Party A Suspension Event" means	
		material breach by Party B of clauses [list].	
		"Party B Suspension Event" means	
		material breach by Party A of clauses [list].	

Area	Contractual Impact	Possible Drafting	Notes
43. Termination Events		4.3 In the event that a Party A Suspension Event: (i) has not been remedied [to Party A's reasonable satisfaction] within 30 days of the notice provided pursuant to clause [4.1]; or (ii) is incapable of remedy, Party A shall be entitled, on provision of written notice [in accordance with clause [XX]] to Party B, to terminate this Agreement with immediate effect.	See notes above.
		4.4 In the event that a Party B Suspension Event: (i) has not been remedied [to Party B's reasonable satisfaction] within 30 days of the notice provided pursuant to clause [4.2]; or (ii) is incapable of remedy, Party B shall be entitled, on provision of written notice [in accordance with clause [XX]] to Party A, to terminate this Agreement with immediate effect.	