



Crown
Commercial
Service

Core Terms - DPS

RM6124 Communications Marketplace DPS

1. Definitions used in the contract

Interpret this Contract using Joint Schedule 1 (Definitions).

2. How the contract works

- 2.1 The Agency is eligible for the award of Order Contracts during the DPS Contract Period.
- 2.2 CCS does not guarantee the Agency any exclusivity, quantity or value of work under the DPS Contract.
- 2.3 CCS has paid one penny to the Agency legally to form the DPS Contract. The Agency acknowledges this payment.
- 2.4 If the Client decides to buy Services under the DPS Contract it must use DPS Schedule 7 (Order Procedure) and must state its requirements using DPS Schedule 6 (Letter of Appointment Template and Order Schedules). If allowed by the Regulations, the Client can:

- (a) make changes to DPS Schedule 6 (Letter of Appointment Template and Order Schedules);
- (b) create new Order Schedules;
- (c) exclude optional template Order Schedules; and/or
- (d) use Special Terms in the Letter of Appointment to add or change terms.

2.5 Each Order Contract:

- (a) is a separate Contract from the DPS Contract;
- (b) is between an Agency and a Client;
- (c) includes Core Terms, Schedules and any other changes or items in the completed Letter of Appointment; and
- (d) survives the termination of the DPS Contract until its own End Date.

- 2.6 Where the Agency is approached by any Other Contracting Authority requesting Goods or Services or substantially similar goods or services, the Agency must tell them about this DPS Contract before accepting their order so that they are aware that they could place an order under this DPS Contract.

- 2.7 The Agency acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Agency.
- 2.8 The Agency will not be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

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- (a) verify the accuracy of the Due Diligence Information; or
 - (b) properly perform its own adequate checks.

- 2.9 CCS and the Client will not be liable for errors, omissions or misrepresentation of any information.

- 2.10 The Agency warrants and represents that all statements made and documents submitted as part of the procurement of Goods or Services are and remain true and accurate.

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- 2.11 An Order Contract can only be created using the electronic procedures described in the FTS Notice as required by the Regulations.
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- 2.12 An Agency can only receive Orders under the DPS Contract while it meets the basic access requirements for the DPS stated in the FTS Notice. CCS can audit whether an Agency meets the basic access requirements at any point during the DPS Contract Period.

3. What needs to be delivered

3.1 All deliverables

3.1.1 The Agency must provide Goods or Services:

- (a) that comply with the Specification, the DPS Tender Response and, in relation to an Order Contract, the Order Proposal (if there is one);
- (b) to a professional standard;
- (c) using reasonable skill and care;
- (d) using Good Industry Practice;
- (e) using its own policies, processes and internal quality control measures as long as they do not conflict with the Contract;
- (f) on the dates agreed; and
- (g) that comply with Law.

3.1.2 The Agency must provide any Goods which form part of the Order Contract with a warranty of at least 90 days from Delivery against all obvious defects.

3.2 Services clauses

- 3.2.1 The Agency must co-operate with the Client and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.
- 3.2.2 The Agency must at its own risk and expense provide all Agency Equipment required to Deliver the Services.
- 3.2.3 The Agency must allocate sufficient resources and appropriate expertise to each Contract.
- 3.2.4 The Agency must take all reasonable care to ensure performance does not disrupt the Client's operations, employees or other contractors.
- 3.2.5 The Agency must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.2.6 The Client is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

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- 3.2.7 Late Delivery of the Services will be a Default of an Order Contract.

3.3 Goods clauses

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- 3.3.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.
 - 3.3.2 All manufacturer warranties covering the Goods must be assignable to the Client on request and for free.
 - 3.3.3 The Agency transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

- 3.3.4 Risk in the Goods transfers to the Client on Delivery of the Goods, but remains with the Agency if the Client notices damage following Delivery and lets the Agency know within 3 Working Days of Delivery.
- 3.3.5 The Agency warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.3.6 The Agency must deliver the Goods on the date and to the specified location during the Client's working hours.
- 3.3.7 The Agency must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.3.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.3.9 The Agency must provide all tools, information and instructions the Client needs to make use of the Goods.
- 3.3.10 The Agency must indemnify the Client against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.3.11 The Client can cancel any order or part order of Goods which has not been Delivered. If the Client gives less than 14 days' notice then it will pay the Agency's reasonable and proven costs already incurred on the cancelled order as long as the Agency takes all reasonable steps to minimise these costs.
- 3.3.12 The Agency must at its own cost repair, replace, refund or substitute (at the Client's option and request) any Goods that the Client rejects because they do not conform with Clause 3. If the Agency does not do this it will pay the Client's costs including repair or re-supply by a third party.

4. Pricing and payments

- 4.1 In exchange for the Goods or Services, the Agency must invoice the Client for

the Charges in the Letter of Appointment or applicable Statement of Work.

4.2 CCS must invoice the Agency for the Management Charge and the Agency must pay it using the process in DPS Schedule 5 (Management Charges and Information).

4.3 The Agency must invoice the Client for the GCS Management Charge and pass it to CCS when the Agency pays the Management Charge.

4.4 All Charges and the Management Charge:

- (a) exclude VAT, which is payable on provision of a valid VAT invoice; and
- (b) include all costs connected with the Supply of Goods or Services.

4.5 The Client must pay the Agency the Charges within 30 days of receipt by the Client of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Letter of Appointment.

4.6 An Agency invoice is only valid if it:

- (a) includes all appropriate references including the Contract reference number and other details reasonably requested by the Client;
- (b) includes a detailed breakdown of Delivered Goods or Services and Milestone(s) (if any); and
- (c) does not include the Management Charge (the Agency must not charge the Client in any way for the Management Charge) but, for the avoidance of doubt, may include the GCS Management Charge where applicable..

4.7 The Client must accept and process for payment an undisputed Electronic Invoice received from the Agency.

- 4.8 The Client may retain or set-off payment of any amount owed to it by the Agency if notice and reasons are provided.
- 4.9 The Agency must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this does not happen, CCS or the Client can publish the details of the late payment or non-payment.
- 4.10 If CCS or the Client can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Agency to provide the Goods or Services, then CCS or the Client may require the Agency to use their supplier.
- 4.11 If CCS or the Client uses Clause 4.10 then the DPS Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.
- 4.12 The Agency has no right of set-off, counterclaim, discount or abatement unless they are ordered to do so by a court.

5. The client's obligations to the agency

- 5.1 If Agency Non-Performance arises from an Authority Cause:

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- (a) neither CCS or the Client can terminate a Contract under Clause 10.4.1;
 - (b) the Agency is entitled to reasonable and proven additional expenses and to relief from liability and Deduction under this Contract;
 - (c) the Agency is entitled to additional time needed to make the Delivery; and
 - (d) the Agency cannot suspend the ongoing supply of Goods or Services.

- 5.2 Clause 5.1 only applies if the Agency:

- (a) gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware;
- (b) demonstrates that the Agency Non-Performance would not have occurred but for the Authority Cause; and
- (c) mitigated the impact of the Authority Cause.

6. Record keeping and reporting

- 6.1 The Agency must attend Progress Meetings with the Client and provide Progress Reports when specified in the Letter of Appointment.
- 6.2 The Agency must keep and maintain full and accurate records and accounts on everything to do with the Contract:

- (a) during the Contract Period;
- (b) for 7 years after the End Date; and
- (c) in accordance with UK GDPR, including but not limited to the records and accounts stated in the definition of Audit in Joint Schedule 1.

- 6.3 The Relevant Authority or an Auditor under the CRTPA can Audit the Agency.
- 6.4 During an Audit, the Agency must:

- (a) allow the Relevant Authority or any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit; and
- (b) provide information to the Relevant Authority or to the Auditor and reasonable co-operation at their request.

- 6.5 Where the Audit of the Agency is carried out by an Auditor, the Auditor shall be entitled to share any information obtained during the Audit with the Relevant Authority.

- 6.6 If the Agency is not providing any of the Goods or Services, or is unable to provide them, it must immediately:

- (a) tell the Relevant Authority and give reasons;
- (b) propose corrective action; and
- (c) provide a deadline for completing the corrective action.

6.7 The Agency must provide CCS with a Self Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:

- (a) the methodology of the review;
- (b) the sampling techniques applied;
- (c) details of any issues; and
- (d) any remedial action taken.

6.8 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Agency's management team that is qualified in either a relevant audit or financial discipline.

6.9 If an Audit reveals that the Agency has underpaid an amount equal to or greater than 1% of the Management Charge due in respect of any Monthly reporting and accounting period relating to this DPS Contract and any Order Contracts, the Agency shall reimburse CCS its reasonable costs incurred in relation to the Audit.

6.10 If an Audit reveals:

- (a) that the Agency has underpaid an amount equal to or greater than 5% of the Management Charge due in respect of any Monthly reporting and accounting period relating to this DPS Contract and any Order Contracts, or
- (b) a material Default

6.11 CCS may terminate this DPS Contract. The Agency shall also reimburse CCS its reasonable costs incurred in relation to the Audit.

6.12 The Parties agree that they will bear their own respective costs and expenses incurred during any Audit, save as specified in Clause 6.10.

6.13 CCS may from time to time undertake (or procure the undertaking of) a "Client

Satisfaction Survey”, to assess the level of satisfaction among some or all Clients with the Goods or Services. This may include:

- (a) the way in which the Goods or Services are provided, performed and delivered;
- (b) the quality, efficiency and effectiveness of the supply of the Goods or Services;
- (c) Agency compliance with this DPS Contract and any Order Contracts; and
- (d) any other assessment CCS deems appropriate for monitoring Client satisfaction.

6.14 CCS and the Clients may use the results of any Client Satisfaction Survey to make decisions in relation to this DPS Contract and any Order Contracts.

6.15 When the Agency enters into or extends an Order Contract with a Client, a signed copy of the Order Contract must be provided to CCS within 14 days.

7. Supplier staff

7.1 The Supplier Staff involved in the performance of each Contract must:

- (a) be appropriately trained and qualified;
- (b) be vetted using Good Industry Practice and the Security Policy; and
- (c) comply with all conduct requirements when on the Client's Premises.

7.2 Where a Client decides one of the Supplier's Staff is not suitable to work on a Contract, the Agency must replace them with a suitably qualified alternative.

7.3 If requested, the Agency must replace any person whose acts or omissions have caused the Agency to breach Clause 27.

7.4 The Agency must provide a list of Supplier Staff needing to access the Client's Premises and say why access is required.

7.5 The Agency indemnifies CCS and the Client against all claims brought by any person employed by the Agency caused by an act or omission of the Agency or any Supplier Staff.

8. Rights and protection

8.1 The Agency warrants and represents that:

- (a) it has full capacity and authority to enter into and to perform each Contract;
- (b) each Contract is executed by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each Contract;
- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
- (f) it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;
- (g) it is not impacted by an Insolvency Event;
- (h) it will comply with each Order Contract; and
- (i) as at the date they are delivered, the Goods or Services of an Order Contract may be used for the purposes set out in the Order Contract and comply with all Advertising Regulations.

8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Agency provides Goods or Services under the Contract.

8.3 The Agency indemnifies both CCS and every Client against each of the following:

- (a) wilful misconduct of the Agency, Subcontractor and Supplier Staff that impacts the Contract; and
- (b) non-payment by the Agency of any Tax or National Insurance.

8.4 All claims indemnified under this Contract must use Clause 26.

- 8.5 The description of any provision of this Contract as a warranty does not prevent CCS or a Client from exercising any termination right that it may have for breach of that clause by the Agency.
- 8.6 If the Agency becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify CCS and every Client.
- 8.7 All third party warranties and indemnities covering the Goods or Services must be assigned for the Client's benefit by the Agency.

9. Intellectual Property Rights (IPRs)

- 9.1 Each Party keeps ownership of its own Existing IPRs. The Agency gives the Client a non-exclusive, royalty-free, irrevocable, transferable licence to use, change and sub-license the Agency's Existing IPR as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Statement of Work to enable it to both:

- (a) receive and use the Deliverables; and
- (b) make use of the deliverables provided by a Replacement Agency.

- 9.2 Subject to the provisions of clause 9.8, any New IPR created under a Contract is owned by the Client. The Client gives the Agency a non-exclusive licence to use any Client Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 9.3 Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.
- 9.5 If there is an IPR Claim, the Agency indemnifies CCS and each Client against

all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Agency must at its own expense and the Client's sole option, either:

- (a) obtain for CCS and the Client the rights in Clause 9.1 and 9.2 without infringing any Third Party IPR; or
- (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Goods or Services.

9.7 In spite of any other provisions of a Contract and for the avoidance of doubt, award of a Contract by the Client and placement of any contract task under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 or Section 12 of the Registered Designs Act 1949. The Agency acknowledges that any authorisation by the Client under its statutory powers must be expressly provided in writing, with reference to the acts authorised and the specific IPR involved.

9.8 The Agency warrants that it owns, or has obtained, valid licences for all IPR that are necessary to perform its obligations under this Framework Agreement and the Call-Off Contract, other than any IPR provided to it by CCS or the Client. The Agency shall maintain these licences in full during the Contract Period of this Framework Contract and the Call-Off Contract, save for any Third Party IPR in respect of which the Agency will maintain licences so the Client can use these Third Party IPR for the purposes set out in the Statement of Work. The Agency will notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party IPR.

9.9 Unless expressly prohibited in an Order Contract, the Agency will be able during and after the Contract Period to use any Goods or Services which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches and in its showreel. Any other use by the Agency shall be subject to the Client's prior Approval.

9.10 During the Contract Period, if the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this Clause 9, the Agency will retain ownership of all IPR in any materials forming part of the pitch process. If the Agency is successful in such pitch and the Parties agree that such materials will be used in an Order Contract the Agency will assign all such IPR to the Client.

9.11 The Agency is not liable in connection with a Call-Off Contract for:

9.11.1 any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf after the Agency has handed them over;

9.11.2 any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables which arises due to the acts or omissions of the Client;

9.11.3 the Deliverables infringing a third party's IPR where the Agency had previously notified the Client of a specific risk that the Deliverables infringed third party IPR and the Agency had obtained the prior approval of the Authorised Client Approver to use such Deliverables notwithstanding such notified risk; and/or

9.11.4 the incorporation of Client Existing IPR into the Deliverables provided that the Agency has incorporated and used such Client Existing IPR in accordance with any instructions given by the Client from time to time.

9.12 Any marketing materials produced by the Agency in relation to this DPS Contract must comply in all respects with the Branding Guidance.

9.13 To the extent permitted by Law, the Agency shall ensure that all Moral Rights relating to Agency IPR are waived. Where it is not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the relevant materials.

9.14 The Agency will use its reasonable endeavours to ensure that all Moral Rights relating to Third Party IPR are waived. Where it is not lawfully possible to waive Moral Rights, the Agency will work with the owner or creator of the Third Party IPR to procure that Moral Rights are not asserted in respect of the relevant materials). If the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any such materials, the Agency will notify the Client and will obtain the Client's Approval prior to incorporating such materials into the Goods or Services.

10. Ending the contract or any subcontract

10.1 Contract Period

10.1.1 The Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.1.2 The Relevant Authority can extend the Contract for the Extension Period by giving the Agency no less than 3 Months' written notice before the Contract expires.

10.2 Ending the contract without a reason

10.2.1 CCS has the right to terminate the DPS Contract at any time without reason by giving the Agency at least 30 days' notice.

10.2.2 Each Client has the right to terminate their Order Contract at any time without reason by giving the Agency not less than 90 days' written notice.

10.3 Rectification plan process

10.3.1 If there is a Default, the Relevant Authority may, without limiting its other rights, request that the Agency provide a Rectification Plan.

10.3.2 When the Relevant Authority receives a requested Rectification Plan it can either:

- (a) reject the Rectification Plan or revised Rectification Plan, giving reasons; or
- (b) accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Agency must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

10.3.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- (a) must give reasonable grounds for its decision; and
- (b) may request that the Agency provides a revised Rectification Plan within 5 Working Days.

10.3.4 If the Relevant Authority rejects any Rectification Plan, including any revised Rectification Plan, the Relevant Authority does not have to request a revised Rectification Plan before exercising its right to terminate its Contract under Clause 10.4.3(a).

10.4 When CCS or the client can end a contract

10.4.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Agency:

- (a) there is an Agency Insolvency Event;
- (b) there is a Default that is not corrected in line with an accepted Rectification Plan;
- (c) the Agency does not provide a Rectification Plan within 10 days of the request;
- (d) there is any material Default of the Contract;
- (e) there is any material Default of any Joint Controller Agreement relating to any Contract;
- (f) there is a Default of Clauses 2.10, 9, 14, 15, 27, 32 or DPS Schedule 9 (Cyber Essentials) (where applicable) relating to any Contract;
- (g) there is a consistent repeated failure to meet the Key Performance Indicators in DPS Schedule 4 (DPS Management);
- (h) there is a Change of Control of the Agency which is not pre-approved by the Relevant Authority in writing;
- (i) if the Relevant Authority discovers that the Agency was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the Contract was awarded; or
- (j) the Agency or its Affiliates embarrass or bring CCS or the Client into disrepute or diminish the public trust in them.

10.4.2 CCS may terminate the DPS Contract if a Client terminates a Order Contract for any of the reasons listed in Clause 10.4.1.

10.4.3 If any of the following non-fault based events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Agency:

- (a) the Relevant Authority rejects a Rectification Plan;
- (b) there is a Variation which cannot be agreed using Clause 24 (Changing the

- contract) or resolved using Clause 34 (Resolving disputes);
- (c) if there is a declaration of ineffectiveness in respect of any Variation; or
- (d) the events in 73 (1) (a) of the Regulations happen.

10.5 When the agency can end the contract

The Agency can issue a Reminder Notice if the Client does not pay an undisputed invoice on time. The Agency can terminate a Order Contract if the Client fails to pay an undisputed invoiced sum due and worth over 10% of the annual Contract Value within 30 days of the date of the Reminder Notice.

10.6 What happens if the contract ends

10.6.1 Where a Party terminates a Contract under any of Clauses 10.2.1, 10.2.2, 10.4.1, 10.4.2, 10.4.3, 10.5 or 20.2 or a Contract expires all of the following apply:

- (a) The Client's payment obligations under the terminated Contract stop immediately.
- (b) Accumulated rights of the Parties are not affected.
- (c) The Agency must promptly repay to the Client any and all Charges the Client has paid in advance in respect of Goods or Services not provided by the Agency as at the End Date.
- (d) The Agency must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) The Agency must promptly return any of CCS or the Client's property provided under the terminated Contract.
- (f) The Agency must, at no cost to CCS or the Client, co-operate fully in the handover and re-procurement (including to a Replacement Agency).

10.6.2 In addition to the consequences of termination listed in Clause 10.6.1, where the Relevant Authority terminates a Contract under Clause 10.4.1 the Agency is also responsible for the Relevant Authority's reasonable costs of procuring

Replacement Goods or Services for the rest of the Contract Period.

10.6.3 In addition to the consequences of termination listed in Clause 10.6.1, if either the Relevant Authority terminates a Contract under Clause 10.2.1 or 10.2.2 or an Agency terminates an Order Contract under Clause 10.5:

- (a) the Client must promptly pay all outstanding Charges incurred to the Agency; and
- (b) the Client must pay the Agency reasonable committed and unavoidable Losses as long as the Agency provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Agency if the Contract had not been terminated.

10.6.4 In addition to the consequences of termination listed in Clause 10.6.1, where a Party terminates under Clause 20.2 each Party must cover its own Losses.

10.6.5 The following Clauses survive the termination or expiry of each Contract: 3.2.10, 4.2, 6, 7.5, 9, 11, 12.2, 14, 15, 16, 17, 18, 31.3, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

10.7 Partially ending and suspending the contract

10.7.1 Where CCS has the right to terminate the DPS Contract it can suspend the

Agency's ability to accept Orders (for any period) and the Agency cannot enter into any new Order Contracts during this period. If this happens, the Agency must still meet its obligations under any existing Order Contracts that have already been signed.

10.7.2 Where CCS has the right to terminate a DPS Contract it is entitled to terminate all or part of it.

10.7.3 Where the Client has the right to terminate an Order Contract it can terminate or suspend (for any period), all or part of it (including without limitation individual Statements of Work). If the Client suspends a Contract it can provide the Goods or Services itself or buy them from a third party.

10.7.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.7.5 The Parties must agree any necessary Variation required by Clause 10.7 using the Variation Procedure, but the Agency may not either:

- (a) reject the Variation; or
- (b) increase the Charges, except where the right to partial termination is under Clause 10.2.

10.7.6 The Client can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.7.

10.8 When subcontracts can be ended

At the Client's request, the Agency must terminate any Subcontracts in any of the following events:

- (a) there is a Change of Control of a Subcontractor which is not pre-approved by the Relevant Authority in writing;
- (b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4; or
- (c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or

diminishes the public trust in the Relevant Authority.

11. How much you can be held responsible for

11.1 Each Party's total aggregate liability in each Contract Year under this DPS Contract (whether in tort, contract or otherwise) is no more than £100,000.

11.2 Each Party's total aggregate liability in each Contract Year under each Order Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified in the Order Letter of Appointment.

11.3 No Party is liable to the other for:

- (a) any indirect Losses; or
- (b) Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:

- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
- (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
- (c) any liability that cannot be excluded or limited by Law;
- (d) its obligation to pay the required Management Charge, GCS Management Charge or Default Management Charge.

11.5 In spite of Clauses 11.1 and 11.2, the Agency does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3(b), 9.5, 31.3 or Order Schedule 2 (Staff Transfer) of a Contract.

11.6 In spite of Clauses 11.1, 11.2 but subject to Clauses 11.3 and 11.4, the Agency's aggregate liability in each and any Contract Year under each Contract under Clause 14.8 shall in no event exceed the Data Protection Liability Cap.

11.7 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

11.8 When calculating the Agency's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:

- (a) Deductions; and
- (b) any items specified in Clauses 11.5 or 11.6.

11.9 If more than one Agency is party to a Contract, each Agency Party is jointly and severally liable for their obligations under that Contract.

12. Obeying the law

12.1 The Agency must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 To the extent that it arises as a result of a Default by the Agency, the Agency indemnifies the Relevant Authority against any fine or penalty incurred by the Relevant Authority pursuant to Law and any costs incurred by the Relevant Authority in defending any proceedings which result in such fine or penalty.

12.3 The Agency must appoint a Compliance Officer who must be responsible for ensuring that the Agency complies with Law, Clause 12.1 and Clauses 27 to 32.

12.4 The Parties acknowledge that they have a responsibility to comply with all relevant Advertising Regulations and will co-operate with each other to ensure satisfaction of the requirements of any applicable Advertising Regulations.

12.5 Where the Agency or its Subcontractors perform the Contract outside the United Kingdom they shall do so in accordance with the Law and the local laws

applicable to their activity in the relevant country, including without limitation the Modern Slavery Act 2015.

13. Insurance

The Agency must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Letter of Appointment.

14. Data protection

- 14.1 The Agency must process Personal Data and ensure that Agency Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).
- 14.2 The Agency must not remove any ownership or security notices in or relating to the Government Data.
- 14.3 The Agency must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Client copies every 6 Months.
- 14.4 The Agency must ensure that any Agency system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.
- 14.5 If at any time the Agency suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Agency must notify the Relevant Authority and immediately suggest remedial action.
- 14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

- (a) tell the Agency to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Agency finds out about the issue, whichever is earlier; and/or
- (b) restore the Government Data itself or using a third party.

- 14.7 The Agency must pay each Party's reasonable costs of complying with Clause 14.6 unless CCS or the Client is at fault.

- 14.8 The Agency:

- (a) must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request;
- (b) must have documented processes to guarantee prompt availability of Government Data if the Agency stops trading;
- (c) must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- (d) securely erase all Government Data and any copies it holds when asked to do so by CCS or the Client unless required by Law to retain it; and
- (e) indemnifies CCS and each Client against any and all Losses incurred if the Agency breaches Clause 14 and any Data Protection Legislation.

15. What you must keep confidential

15.1 Each Party must:

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- (a) keep all Confidential Information it receives confidential and secure;
 - (b) except as expressly set out in the Contract at Clauses 15.2 to 15.4 or elsewhere in the Contract, not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent; and
 - (c) immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

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- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if, to the extent not prohibited by Law, the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - (b) if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
 - (c) if the information was given to it by a third party without obligation of confidentiality;
 - (d) if the information was in the public domain at the time of the disclosure;
 - (e) if the information was independently developed without access to the Disclosing Party's Confidential Information;

- (f) on a confidential basis, to its auditors;
- (g) on a confidential basis, to its professional advisers on a need-to-know basis; or
- (h) to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

15.3 In spite of Clause 15.1, the Agency may disclose Confidential Information on a confidential basis to Agency Staff on a need-to-know basis to allow the Agency to meet its obligations under the Contract. The Agency Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 In spite of Clause 15.1, CCS or the Client may disclose Confidential Information in any of the following cases:

- (a) on a confidential basis to the employees, agents, consultants and contractors of CCS or the Client;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that CCS or the Client transfers or proposes to transfer all or any part of its business to;
- (c) if CCS or the Client (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
- (d) where requested by Parliament; or
- (e) under Clauses 4.7 and 16.

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Agency must not share any information with the media, make any media announcement or publicise the Contracts or any part of them including a Brief or any other pre-Contract material or discussions in any way including industry award competitions, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

15.8 Nothing in this Clause shall prevent a Recipient Party from using any techniques, ideas or Know-How which the Recipient Party has gained during the performance of this DPS Contract in the course of its normal business, as

long as this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of IPR.

16. When you can share information

- 16.1 The Agency must tell the Relevant Authority within 48 hours if it receives a Request For Information.
- 16.2 Within five (5) Working Days of the Client's request the Agency must give CCS and each Client full co-operation and information needed so the Client can:

- (a) publish the Transparency Information;
- (b) comply with any Freedom of Information Act (FOIA) request; and/or
- (c) comply with any Environmental Information Regulations (EIR) request.

- 16.3 The Relevant Authority may talk to the Agency to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision in its absolute discretion.

17. Invalid parts of the contract

If any part of a Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it is valid or enforceable.

18. No other terms apply

The provisions incorporated into each Contract are the entire agreement between the Parties. The Contract replaces all previous statements, agreements and any course of dealings made between the Parties, whether written or oral, in relation to its subject matter. No other provisions apply.

19. Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist

independently from CRTPA.

20. Circumstances beyond your control

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- (a) provides a Force Majeure Notice to the other Party; and
- (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

20.2 Either Party can partially or fully terminate the affected Contract if the provision of the Goods or Services is materially affected by a Force Majeure Event which lasts for 90 days continuously.

21. Relationships created by the contract

No Contract creates a partnership, joint venture or employment relationship. The Agency must represent themselves accordingly and ensure others do so.

22. Giving up contract rights

A partial or full waiver or relaxation of the terms of a Contract is only valid if it is stated to be a waiver in writing to the other Party.

23. Transferring responsibilities

23.1 The Agency cannot assign, novate or transfer a Contract or any part of a Contract without the Relevant Authority's written consent.

23.2 The Relevant Authority can assign, novate or transfer its Contract or any part of it to any Central Government Body, public or private sector body which performs the functions of the Relevant Authority.

23.3 When CCS or the Client uses its rights under Clause 23.2 the Agency must enter into a novation agreement in the form that CCS or the Client specifies.

23.4 The Agency can terminate a Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Agency remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If CCS or the Client asks the Agency for details about Subcontractors, the Agency must provide details of Subcontractors at all levels of the supply chain including:

- (a) their name;
- (b) the scope of their appointment; and
- (c) the duration of their appointment.

24. Changing the contract

24.1 Either Party can request a Variation which is only effective if agreed in writing and signed by both Parties.

24.2 The Agency must provide an Impact Assessment either:

- (a) with the Variation Form, where the Agency requests the Variation; or
- (b) within the time limits included in a Variation Form requested by CCS or the Client.

24.3 If the Variation cannot be agreed or resolved by the Parties, CCS or the Client can either:

- (a) agree that the Contract continues without the Variation; or
- (b) terminate the affected Contract, unless in the case of an Order Contract, the Agency has already provided part or all of the provision of the Goods or Services, or where the Agency can show evidence of substantial work being carried out to provide them; or
- (c) refer the Dispute to be resolved using Clause 34 (Resolving Disputes).

- 24.4 CCS and the Client are not required to accept a Variation request made by the Agency.
- 24.5 If there is a General Change in Law, the Agency must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 24.6 If there is a Specific Change in Law or one is likely to happen during the Contract Period the Agency must give CCS and the Client notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Goods or Services, DPS Prices or a Contract and provide evidence:

- (a) that the Agency has kept costs as low as possible, including in Subcontractor costs; and
- (b) of how it has affected the Agency's costs.

- 24.7 Any change in the DPS Prices or relief from the Agency's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.
- 24.8 The Agency will disclose to the Client any commission, discount or rebate earned by the Agency arising in respect of third party costs directly related to Order Contracts. The Client will receive the full benefit of such commission, discount or rebate and the Charges shall be varied accordingly.
- 24.9 For 101(5) of the Regulations, if the Court declares any Variation ineffective, the Parties agree that their mutual rights and obligations will be regulated by the terms of the Contract as they existed immediately prior to that Variation and as if the Parties had never entered into that Variation.

25. How to communicate about the contract

- 25.1 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they are delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.
- 25.2 Notices to CCS must be sent to the CCS Authorised Representative's address or email address indicated on the Platform.

25.3 Notices to the Client must be sent to the Client Authorised Representative's address or email address in the Letter of Appointment.

25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

26. Dealing with claims

26.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- (a) allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
- (b) give the Indemnifier reasonable assistance with the claim if requested.

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that does not damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- (a) the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; or

- (b) the amount the Indemnifier paid the Beneficiary for the Claim.

27. Preventing fraud, bribery and corruption

27.1 The Agency must not during any Contract Period:

- (a) commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2); or
- (b) do or allow anything which would cause CCS or the Client, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

27.2 The Agency must during the Contract Period:

- (a) create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
- (b) keep full records to show it has complied with its obligations under Clause 27 and give copies to CCS or the Client on request; and
- (c) if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

27.3 The Agency must immediately notify CCS and the Client if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- (a) been investigated or prosecuted for an alleged Prohibited Act;
- (b) been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
- (c) received a request or demand for any undue financial or other advantage of any kind related to a Contract; or

- (d) suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.

27.4 If the Agency notifies CCS or the Client as required by Clause 27.3, the Agency must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Agency gives under Clause 27.3 it must specify the:

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- (a) Prohibited Act;
 - (b) identity of the Party who it thinks has committed the Prohibited Act; and
 - (c) action it has decided to take.

28. Equality, diversity and human rights

28.1 The Agency must follow all applicable equality Law when they perform their obligations under the Contract, including:

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- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - (b) any other requirements and instructions which CCS or the Client reasonably imposes related to equality Law.

28.2 The Agency must take all necessary steps, and inform CCS or the Client of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a Contract.

29. Health and safety

29.1 The Agency must perform its obligations meeting the requirements of:

- (a) all applicable Law regarding health and safety; and
- (b) the Client's current health and safety policy while at the Client's Premises, as provided to the Agency.

29.2 The Agency and the Client must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the Client Premises that relate to the performance of a Contract.

30. Environment

30.1 When working on Site the Agency must perform its obligations under the Client's current Environmental Policy, which the Client must provide.

30.2 The Agency must ensure that Supplier Staff are aware of the Client's Environmental Policy.

31. Tax

31.1 The Agency must not breach any Tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. CCS and the Client cannot terminate a Contract where the Agency has not paid a minor Tax or social security contribution.

31.2 Where the Charges payable under a Contract with the Client are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Agency must notify CCS and the Client of it within 5 Working Days including:

- (a) the steps that the Agency is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
- (b) other information relating to the Occasion of Tax Non-Compliance that CCS and the Client may reasonably need.

31.3 Where the Agency or any Agency Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under an Order Contract, the Agency must both:

- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
- (b) indemnify the Client against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Goods or Services by the Agency or any of the Agency Staff.

31.4 If any of the Agency Staff are Workers who receive payment relating to the Goods or Services, then the Agency must ensure that its contract with the Worker contains the following requirements:

- (a) the Client may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Client can specify the information the Worker must provide and the deadline for responding;
- (b) the Worker's contract may be terminated at the Client's request if the Worker fails to provide the information requested by the Client within the time specified by the Client;
- (c) the Worker's contract may be terminated at the Client's request if the Worker provides information which the Client considers is not good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements; and
- (d) the Client may supply any information they receive from the Worker to HMRC for revenue collection and management.

32. Conflict of interest

- 32.1 The Agency must take action to ensure that neither the Agency nor the Agency Staff are placed in the position of an actual or potential Conflict of Interest.
- 32.2 The Agency must promptly notify and provide details to CCS and each Client if a Conflict of Interest happens or is expected to happen.
- 32.3 CCS and each Client can terminate its Contract immediately by giving notice in writing to the Agency or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

33. Reporting a breach of the contract

- 33.1 As soon as it is aware of it the Agency and Agency Staff must report to CCS or the Client any actual or suspected breach of:

- (a) Law;
- (b) Clause 12.1; or
- (c) Clauses 27 to 32.

- 33.2 The Agency must not retaliate against any of the Agency Staff who in good faith reports a breach listed in Clause 33.1 to the Client or a Prescribed Person.

34. Resolving disputes

- 34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.
- 34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not

resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- (a) determine the Dispute;
- (b) grant interim remedies; and/or
- (c) grant any other provisional or protective relief.

34.4 The Agency agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Agency has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Agency cannot suspend the performance of a Contract during any Dispute.

35. Which law applies

This Contract and any Disputes arising out of, or connected to it, are governed by English law.

36. Agency doing work for others

36.1 Adverse public perception could have a detrimental impact on the Client's desired outcomes for an Order Contract. To minimise this risk, the Agency must not, without the Client's written consent, provide services to a third party during the Contract Period of any Order Contract where the provision of such services

(in the reasonable opinion of the Client):

- (a) has the potential to adversely affect the Client's desired outcome of the Order Contract or diminish the trust that the public places in the Client; or
- (b) is likely to cause embarrassment to the Client or bring the Client into disrepute or may result in a conflict of interest for the Client.

- 36.2 The only exception to this is if the Agency provides services to an existing client, which the Client had been informed about before entering into the relevant Order Contract.
- 36.3 If the Agency becomes aware of a breach, or potential breach, of its obligations under Clause 36.1, the Agency must notify the Client immediately, providing full details of the nature of the breach and the likely impact on the Order Contract.
- 36.4 If the Agency breaches Clause 36.1, the Client may terminate the relevant Order Contract or any Statement of Work under it with immediate effect in accordance with Clause 10.4.1.
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