

SECTION D - PROFESSIONAL SERVICES

1. Definitions

- 1.1 Unless otherwise defined in this Section D, terms used in this Section shall have the meaning given to them in Schedule 1 (Definitions and Interpretation) of the Terms and Conditions.

2. Professional Services

- 2.1 In relation to all Professional Services, including Development Services, Consultancy, where the Customer does not use any, or a material balance of the Professional Services it has ordered within twelve (12) months of the Contract Date then KCS reserves the right to either:

- (a) cancel the order and invoice the Customer at the KCS Rates for work performed prior to such cancellation less any Charges already invoiced; or
- (b) invoice the Customer for the unused balance of the order at the KCS Rates.

3. Development Services

- 3.1 Unless the relevant Specification is attached to or referenced in the Quotation, the parties shall agree in writing a Specification for each Development in accordance with the process set out below which shall include the manner in which the Development Services will be provided, the timetable, the applicable acceptance test (if any) and the payment schedule for the Development:

- (a) if required by KCS, KCS and the Customer will hold a workshop or meeting where the parties will consider the gaps between the Customer's Business Requirements for a functional area and the existing functionality of the KCS Software after which KCS will circulate a "**V1 Specification**" which will be a summary of the output of such workshop. The parties acknowledge that a single workshop may give rise to more than one Development, each of which will have a corresponding V1 Specification;
- (b) the "**V2 Specification**" subsequently circulated by KCS will include a definition of how the KCS Software works in the relevant functional area, what changes are to be made to the KCS Software on completion of the Development and an estimate of the number of days of Development Services required to produce the Development;
- (c) the "**V3 Specification**" subsequently circulated by KCS to the Customer for the Customer's review will include additional technical details and a refined estimate of the number of days of Development Services required to produce the Development; and
- (d) if the Customer approves the V3 Specification, the V3 Specification shall become a "**V4 Specification**". The Customer shall ensure that the V3 Specification meets the Customer's corresponding Business Requirements prior to giving KCS such approval. For the avoidance of doubt, the Customer shall pay KCS for any time KCS spends producing a V3 Specification on the basis of the KCS Rates even if the Customer does not approve the V3 Specification.

- 3.2 Where the Customer has approved a V3 Specification in accordance with Clause 3.1(d) so that it becomes a V4 Specification, KCS shall use reasonable endeavours to develop the Development in accordance with the corresponding V4 Specification.

- 3.3 If KCS identifies any errors in any Specification arising out of or relating to the Business Requirements, KCS may suspend the Development Services until the Customer has corrected such errors.

- 3.4 In respect of testing and acceptance of the Development, the following provisions in Clauses 3.5 to 3.12 shall apply.

- 3.5 The parties, acting reasonably, shall agree an acceptance testing process for each Development either before the Contract Date or in the Specification for such Development. The Customer shall carry out an acceptance test during the acceptance test period as is reasonably required to test whether the Development complies with the V4 Specification for such Development.

- 3.6 The acceptance test period shall be a period of time which ends on the earlier of acceptance in accordance with Clause 3.12 or fourteen (14) days following:

- (a) the date of installation of the Development by KCS, if KCS is specified to be responsible for installation in the Quotation; or
- (b) the date of delivery of the Development, if KCS is not specified to be responsible for installation in the Quotation.

- 3.7 The Customer will not withhold acceptance of the Development on any grounds other than its failure to materially comply with the V4 Specification. Minor errors or faults that do not prevent use of the Development materially in accordance with its V4 Specification shall not be grounds for the Customer to: (i) refuse to accept the Development; or (ii) fail to complete the acceptance testing. KCS shall use its reasonable endeavours to correct such minor errors and faults in the next Release of the Development.

- 3.8 If, during the acceptance test, the Development is found to contain errors hampering the satisfactory completion of such test, the Customer will inform KCS in writing detailing the errors (including the details and results of any acceptance tests carried out) before the end of the acceptance test period set out in Clause 3.6.

- 3.9 Where KCS considers in its reasonable opinion that any acceptance test or any information provided by the Customer pursuant to Clause 3.8 is not suitable for the purpose of establishing whether the Development complies with the V4 Specification, KCS may request such reasonable amendments or additions to the acceptance test and information provided by the Customer pursuant to Clause 3.8 and the Customer shall implement such request (which may include the re-running of acceptance tests including in the presence of KCS Personnel) and provide the relevant outputs to KCS as soon as reasonably practicable following request by KCS.

- 3.10 KCS may provide temporary solutions in order to enable the satisfactory completion of the acceptance test (but in any case KCS shall continue to use its reasonable endeavours to provide a permanent solution).

- 3.11 If the acceptance test has not been satisfactorily completed after the third attempt either party shall have the right to terminate the provision of the Development with immediate effect by giving notice in writing to the other and the Customer shall, in full and final satisfaction of such termination, be entitled to a refund of the Charges it has paid in respect of the Development as at the date of termination.

- 3.12 The Customer shall be deemed to have accepted the Development:

- (a) if the Customer has not informed KCS of any errors in accordance with Clause 3.8 on expiry of the relevant acceptance test period as set out in Clause 3.6;

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- (b) on the day following satisfactory completion of the acceptance test;
- (c) if the Customer has informed KCS of any errors in accordance with Clause 3.8, fourteen (14) days after the time when the errors detailed therein have been corrected, notwithstanding any such minor errors or faults in accordance with Clause 3.7; or
- (d) if (and at the time) the Customer commences any operational use of the Development.

3.13 In respect of the delivery and installation of the Development, the provisions of Clause 4 of Section B (Software) shall apply.

3.14 In respect of the use of and the ownership of the Intellectual Property Rights in any Development, the License Terms, Clause 7 (Intellectual Property Rights) of the Terms and Conditions together with all other applicable Contract Terms shall apply. For the avoidance of doubt, all Intellectual Property Rights in and to any Developments are owned by KCS.

4. Data Conversion Services

4.1 KCS shall use reasonable endeavours to provide Data Conversion Services in accordance with the Contract Terms.

4.2 The Customer is responsible for making arrangements with its existing software supplier(s) and meeting any charges imposed by them in relation to the conversion of the Customer's data.

4.3 The Customer hereby undertakes, warrants and represents to KCS that:

- (a) it has provided KCS, in writing, with all relevant details in relation to the data to be converted, including but not limited to, its nature, content and format; and
- (b) the data to be converted, and the media on which it is delivered, are free from viruses and other malicious code.

4.4 KCS reserves the right to refuse to carry out or stop carrying out the Data Conversion Services, if in its sole discretion the data supplied or to be supplied is not in a fit state to be converted for use with the relevant Software or otherwise the Customer's supply of such data to KCS breaches or is reasonably likely to breach any term of this Contract. In that event, KCS will notify the Customer and the Customer shall make suitable alternative arrangements for entry of the data into the Software.

4.5 KCS shall use reasonable endeavours to ensure the accurate conversion of any Customer data, but gives no warranties as to the completeness or accuracy of such conversion. The Customer agrees that KCS shall not be liable for any error or omission with respect to the Customer's data during the conversion process.

4.6 The Customer shall:

- (a) keep a copy of all of the Customer's data to be converted;
- (b) check the accuracy and completeness of the Customer's data both before and after the conversion process; and

- (c) promptly give KCS notice in writing of any inaccuracies or omissions in the converted data in sufficient detail and with sufficient supporting information to enable KCS to correct such inaccuracies within a reasonable period of time.

4.7 The Customer shall be deemed to have accepted the successful completion of the Data Conversion Services either:

- (a) where the Customer has on the expiry of a period of ten (10) Business Days beginning on the date of completion of the conversion process not provided KCS with written notice in accordance with Clause 4.6(c), ten (10) Business Days following completion of the conversion process; or
- (b) where the Customer has on the expiry of a period of ten (10) Business Days beginning on the date of completion of the conversion process provided KCS with written notice in accordance with Clause 4.6(c), ten (10) Business Days following KCS' correction of any such inaccuracies.

5. Consultancy Services

5.1 KCS shall use reasonable endeavours to provide the Consultancy Services in accordance with the Contract Terms or as otherwise agreed in writing by the parties from time to time.

5.2 If the parties agree that the Consultancy Services are to be provided in stages, KCS may postpone the start of any subsequent stage of the Consultancy Services until the Customer has approved the results of the preceding stage in writing.

5.3 After receiving notification from KCS of the completion of the Consultancy Services, the Customer shall promptly give KCS notice in writing of any incompleteness or inaccuracies in such Consultancy Services with sufficient supporting information to enable KCS to correct such issues within a reasonable period of time.

5.4 The Customer shall be deemed to have accepted the successful completion of the Consultancy Services, either:

- (a) where the Customer has not given any notice to KCS in accordance with Clause 5.3, on the expiry of a period of ten (10) days beginning on the date of KCS's notification to the Customer in accordance with Clause 5.3; or
- (b) where the Customer has given notice to KCS within ten (10) days of receiving notification from KCS in accordance with Clause 5.3, on the expiry of a period of ten (10) days following KCS notifying the Customer that it has corrected any incompleteness or inaccuracies.

5.5 The Customer acknowledges that the Quotation contains a reasonable estimate of the number of days required to complete the Consultancy Services but that the Consultancy Services will be payable on the basis of the KCS Rates for the actual time spent by KCS performing the Consultancy Services (except where the Quotation indicates that a statement of work is required in which case the statement of work will confirm the number of days for the Consultancy Services).