

# SECTION E – HARDWARE AND HARDWARE SUPPORT SERVICES

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## 1. Definitions

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

## 2. Delivery of Hardware

- 2.1 The Customer will pay KCS for delivery (as specified by KCS whether in the Quotation or otherwise) and in consideration of such delivery Charges, KCS will deliver the Hardware to the Customer at the location specified by the Customer, in which case delivery of the Hardware shall be completed on the delivery of the Hardware to that location. KCS will inform the Customer of the estimated time of delivery. The Customer is responsible for making arrangements to receive and unload the Hardware.
- 2.2 Alternatively, if specified in the Quotation or as agreed between the parties in writing, the Customer shall collect the Hardware from KCS' warehouse or at the point of collection otherwise specified in the Quotation. In this case, delivery of the Hardware shall be completed when KCS notifies the Customer that the Hardware is available for collection. If the Customer fails to take delivery of the Hardware within one (1) week of KCS notifying the Customer that the Hardware is ready for collection, then, except where such failure or delay is caused by KCS' failure to comply with its obligations under the Contract, KCS shall store the Hardware for a reasonable period of time and charge the Customer for all related costs and expenses (including insurance).
- 2.3 Unless KCS specifically requests the return of any packaging materials (in which case the Customer shall return such packaging materials to KCS as soon as reasonably practicable), the Customer will dispose of all packaging and containers delivered with the Hardware in accordance with the any applicable waste disposal laws and regulations. The Customer hereby indemnifies and shall keep KCS indemnified against any claims arising from any failure by it to observe such laws and regulations.

## 3. Installation of Hardware

- 3.1 If specified in the Quotation, KCS will install or arrange for the installation of the Hardware at the Installation Site.
- 3.2 The Customer shall make the Installation Site available for the installation of the Hardware, will provide KCS with full and safe access to the Installation Site during KCS' Normal Working Hours and shall ensure that the Installation Site is suitably equipped for the installation of the Hardware with all necessary cabling and other equipment and ancillary services such as power, climate control and telecommunications, prior to the estimated date of installation.
- 3.3 Precise locations at the Installation Site for installation of the Hardware shall be agreed by the parties prior to the commencement of the installation and the Customer shall verify the same on the completion of the installation. The Customer acknowledges and agrees that any changes to the precise locations of installation of the Hardware following the completion of the installation cannot be made without the Customer incurring additional Charges.
- 3.4 The Customer acknowledges and agrees that the Charges in respect of installation of the Hardware at the Installation Site are based on the installation being uninterrupted and the Installation Site being open during KCS' Normal Working Hours. KCS reserves the right to charge additional Charges for the work required to complete the installation on the basis of the KCS Rates should KCS Personnel, through no fault of KCS, be delayed or have to leave the Installation Site and return at a later date.

- 3.5 If the Hardware is to be connected to telecommunications services or if any relevant Software involves the use of telecommunications services, which have not been provided by or are not supported by KCS, the Customer shall be responsible for selecting and procuring the appropriate service(s) in a timely manner. Where KCS installs Hardware that is capable of making a dial up connection, it is the responsibility of the Customer to ensure that any existing hardware or software is not configured in a way that would induce the connection to be dialled unnecessarily. When any Hardware with a dial up capability is installed, KCS recommends that the Customer monitors its network usage and costs to ensure that they are in line with the Customer's expectations.

- 3.6 The Customer shall, at its own expense, ensure the relevant premises have suitable environmental and operational conditions for the satisfactory installation and operation of the Hardware, including all necessary telecommunications facilities.

## 4. Acceptance of Hardware

- 4.1 The Customer shall be responsible for ensuring that each delivery from KCS is in accordance with the Quotation and undamaged. If any item is missing or damaged, the Customer shall notify KCS in writing within:
- (a) twenty four (24) hours of Delivery in the case of missing items or damage that is apparent on visual inspection; or
  - (b) following Delivery, within a reasonable time of a latent defect becoming apparent.
- 4.2 The Hardware shall be deemed to have been accepted by the Customer if the Customer fails to give notice in accordance with Clause 4.1 and KCS may hold the Customer responsible for any such loss or damage.
- 4.3 If the Customer notifies KCS in accordance with Clause 4.1 and none of the circumstances listed in Clause 8.4 of the Terms and Conditions apply then the Customer may require KCS to repair or replace the defective or missing Hardware or repay any amounts paid for such Hardware. The terms of the Contract shall apply to any repaired or replacement Hardware supplied by KCS.

## 5. Risk and Title

- 5.1 Risk in the Hardware shall pass to the Customer upon Delivery.
- 5.2 Title to the Hardware shall not pass to the Customer until receipt by KCS of all the Charges in connection with the purchase and installation of the Hardware.
- 5.3 The Customer shall store the Hardware separately from its other goods so that it is identifiable as KCS's property, not remove or obscure any identifying mark or packaging and maintain the Hardware in satisfactory condition until title has passed to the Customer.
- 5.4 If the Customer becomes subject to an event in Clause 11.2(b) of the Terms and Conditions before title passes to KCS then, without prejudice to any of its other rights and remedies, KCS may require the Customer to return the Hardware to KCS and, if the Customer does not return it promptly, KCS may peaceably enter the Customer's premises where the Hardware is stored, with or without legal process, to recover it.

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### 6. Hardware Support Services

- 6.1 KCS shall provide to the Customer the Hardware Support Service in order to maintain the Supported Hardware in accordance with this Section E, any Additional Applicable Terms and any other applicable Contract Terms.
- 6.2 KCS shall provide the Hardware Support Services to the Customer (subject to earlier termination in accordance with the terms of the Contract) for the period specified in the Quotation or, where no such period is so specified, for a period of three (3) years commencing on the date of acceptance of the Hardware pursuant to this Section (the "Initial Term"). After the expiry of the Initial Term, the supply of the Hardware Support Services shall (subject to earlier termination in accordance with the terms of the Contract) continue under the terms of the Contract on an annual basis (each such annual period being an "Extension Period"), until terminated by either KCS or the Customer on not less than one month's prior written notice to the other, such termination to take effect no earlier than the end of the Initial Period or the current Extension Period (as the case may be).
- 6.3 The Customer is licensed to run diagnostic routines and support utilities in respect of the Supported Hardware only on behalf of KCS. KCS shall be entitled to require the return to KCS of all such diagnostic routines and support utilities at any time, failing which KCS may peaceably enter the relevant premises, with or without legal process, and take possession of them (and until such time, the Customer shall be solely responsible for their safe-keeping).
- 6.4 In performing the Hardware Support Services, KCS shall be entitled to remove or replace any part or component of the Supported Hardware, which may be found to be faulty, or in need of investigation.
- 6.5 All spare parts and/or replacements provided by KCS to the Customer shall be part of the Supported Hardware and the property of the Customer or the owner of the relevant Supported Hardware (if different from the Customer). Risk in and title to all spare parts and/or replacements shall pass to the Customer or the owner of the relevant Supported Hardware (if different from the Customer) upon its installation by KCS pursuant to Clause 3.
- 6.6 All parts and components removed from the Supported Hardware by KCS pursuant to Clause 6.4 shall no longer constitute part of the Supported Hardware and will be the property of KCS. Risk in and title to all such parts and components shall pass to KCS upon their removal pursuant to Clause 6.4.
- 6.7 If, at KCS' sole discretion, any part of the Supported Hardware cannot be adequately or economically repaired at the Customer Premises due to excessive wear and tear or deterioration, KCS will provide the Customer with an estimate of the relevant reconditioning costs, such costs to be paid by the Customer if it chooses to have the Supported Hardware reconditioned.
- 6.8 If the Customer chooses not to have the Supported Hardware reconditioned, KCS may terminate the provision of the Hardware Support Services for such Supported Hardware with immediate effect.