# SECTION B – SOFTWARE AND SOFTWARE SUPPORT SERVICES

## 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. Software License

**2.1** Unless the Quotation specifies that the KCS Software is to be provided on a SaaS basis, the following license terms shall apply:

(a) in consideration of the Charges paid by the Customer to KCS in respect of the KCS Software license, KCS hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, license to use such KCS Software in object code form in accordance with the terms of the Contract either:

2.1.a.1 unless the Quotation specifies otherwise, on a perpetual basis (save as provided in Clause 12.3 of the Terms and Conditions); or

2.1.a.2 if specified in the Quotation, on a rented, licensed or subscription basis for a fixed term or in consideration of periodic payments ("Subscription License"), until the end of the period specified in the Quotation (or otherwise agreed in writing by the parties) or otherwise until the end of the period during which such periodic payments are made (unless terminated earlier in accordance with the terms of the Contract). After the expiry of the fixed term or the end of the period during which periodic payments are made, the Customer on payment to KCS in advance of the then current Charges and subject to termination in accordance with the provisions of the Contract, may renew the Subscription License on an annual basis (each such new annual period being an "Extended Annual Subscription License") unless terminated by either KCS or the Customer on not less than ninety (90) days' prior written notice to the other, such termination to take effect no earlier than the end of the fixed term or then current Extended Annual Subscription License Period (as applicable); and

(b) the Customer may make a reasonable number of back up copies of the KCS Software for the licensed use which must at all times remain under the secure control of the Customer or a hosting services provider authorized by KCS.

**2.2** Nothing in this Contract shall require KCS to license or continue to license any Software to which it does not have or ceases to have the relevant rights or would be in breach of any applicable law.

## 3. SaaS License

**3.1** Where the Quotation and/ or the Software Product Description specifies that the KCS Software is to be provided on a SaaS basis then in consideration of the periodic Charges paid by the Customer to KCS in respect of the SaaS Managed Service, KCS hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, license to access and use such KCS Software in accordance with the terms of the Contract until the end of the period specified in the Quotation or, where no such period is specified, for a period of three (3) years (unless terminated earlier in accordance with the terms of the Contract) ("Initial Term"). After the expiry of the Initial Term, the license shall (subject to termination in accordance with the provisions of the Contract) continue under 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 ninety five (95) days' prior written notice to the other, such termination to take effect no earlier than the end of the Initial Term or the current Extension Period (as applicable).

## 4. Delivery, Installation and Acceptance

**4.1** Unless the Quotation specifies that the KCS Software is to be provided on a SaaS basis, this Clause 4 shall apply.

**4.2** On or around the quoted delivery date(s), KCS shall deliver the Software to the Customer (either electronically or physically as agreed between the parties acting reasonably) to the agreed locations(s). Risk in any tangible media on which the Software is delivered shall pass to the Customer on delivery.

**4.3** If specified in the Quotation, KCS shall physically install the Software onto the agreed processing unit(s).

**4.4** Unless the parties have agreed an acceptance testing process prior to the Contract Date, the KCS Software shall be deemed to have been accepted by the Customer fourteen (14) days after:

(a) the date of installation by KCS, if KCS is specified to be responsible for installation in the Quotation; or

(b) the date of delivery, if KCS is not specified to be responsible for installation in the Quotation.

**4.5** The Additional Third Party Software shall be deemed to have been accepted by the Customer upon:

(a) the date of installation by KCS, if KCS is specified to be responsible for installation in the Quotation; or

(b) the date of delivery, if KCS is not specified to be responsible for installation in the Quotation.

## 5. Customer Obligations

**5.1** The Customer acknowledges and agrees that the Software (whether in object code form or source code form) and Materials constitute Confidential Information of KCS or its licensors.

**5.2** Subject to Clause 6.2, the Customer shall only use the Software for its own internal business purposes.

**5.3** The Customer shall:

(a) comply promptly with any reasonable instructions given by KCS from time to time in connection with the use and operation of the Software;

(b)   comply with all applicable export control laws and regulations in force from time to time with respect to the KCS Software and any technical data incorporated therein;

(c)   effect and maintain at all times adequate measures to safeguard the Software and related Materials from unauthorized access, use or copying by any third party;

(d)   notify KCS as soon as it becomes aware of any unauthorized use of the Software by any person;

(e)   ensure that each Authorized User shall keep a secure and confidential password for its use of the Software which shall be changed no less frequently than once a month;

(f)   maintain a written, up to date and accurate list of current Authorized Users and provide the same to KCS within five (5) Business Days of KCS' written request at any time; and

(g)   be responsible for all Authorized Users and ensure that no Authorized User does anything or fails to do anything that would cause the Customer to be in breach of the Contract.

5.4   The Customer shall not:

(a)   allow the KCS Core Software to be used at any one time by more than the maximum number of Users specified in the Quotation (or any other license count restriction specified in the Quotation including, for example, a limit on the number of "Branches" or "eCommerce Connections") which number the parties may increase by agreement in writing from time to time, provided that the applicable additional Charges are paid to KCS before such use;

(b)   allow the KCS Other Software to be used by more than the number of Authorized Users specified in the Quotation (or any other license count restriction specified in the Quotation) which number the parties may increase by agreement in writing from time to time, provided that the applicable additional Charges are paid to KCS before such use;

(c)   allow or suffer the user ID and password of an individual Authorized User to be used by any other person unless it has been reassigned in its entirety to another person, in which case the prior Authorized User shall no longer have any right to access or use the Software;

(d)   use the Software other than as specified herein without the prior written agreement of KCS and the Customer acknowledges that additional Charges may be payable on any agreed change of use;

(e)   sub-license, assign, hire, lease out or otherwise grant rights to any third parties in respect of the KCS Software except as may be authorized by KCS in accordance with Clause 6.3;

(f)   use (and the Customer is not licensed to use) the KCS Core Software (or any modifications thereto), Developments to the KCS Core Software and/or related Materials in the Automotive Market;

(g)   use the KCS Software to provide bureau services to third parties;

(h)   allow any third party to have access to or use of the Software via the internet or via any third party software or system or otherwise (whether directly or indirectly);

(i)   attempt to or allow any third parties to incorporate the KCS Software in any other program, copy, adapt, decompile, disassemble or reverse engineer the KCS Software (except to the extent permitted otherwise by Section 107 of the U.S. Copyright Act (17 U.S.C. §107) or Section 1201 of the Digital Millennium Copyright Act (17 U.S.C. §1201 et.seq.) for purposes of necessary interoperability;

(j)   attempt to or allow any third parties to develop, modify and/or maintain the KCS Software except as may be otherwise agreed in writing by the parties;

(k)   allow the Software to be linked to, combined with, corrupted by or in any way contaminated with, Open Source software; and

(l)   remove, tamper with or evade any technical measures which KCS may take to protect or monitor the use of the Software (and the Customer acknowledges that KCS may take any such measures).

# 6.   Software License - Additional Customer Obligations

6.1   Unless the Quotation specifies that the KCS Software is to be provided on SaaS basis, the following Customer rights and obligations set out in this Clause 6 shall apply in addition to those set out in Clause 5.

6.2   The Customer shall be entitled to use the KCS Software for the purposes of loading it into a processing unit(s) and/or transmitting it to a processing unit(s) for processing of the Customer Data provided that the Customer shall keep an accurate record of any and all such activity.

6.3   The Customer shall use the KCS Software on the processing unit(s) notified to KCS (including their location) and approved by KCS in writing from time to time or temporary replacement processing unit(s). This may, with the prior written consent of KCS and on such terms as KCS may direct, extend: (i) to processing units under the control of a third party for the purpose of hosting; and/or (ii) to remote connection with customers of the Customer, provided that all such third parties agree in writing to be bound by the relevant terms of the Contract.

6.4   The Customer shall not allow the KCS Software to become the subject of any charge, lien or encumbrance.

# 7.   SaaS License - Additional Customer Obligations

7.1   Where the Quotation specifies that the KCS Software is to be provided on a SaaS basis the following Customer rights and obligations set out in this Clause 7 shall apply in addition to those set out in Clause 5.

7.2   The Customer will:

(a)   generate and provide usernames and passwords to Authorized Users prior to such individuals first use of the KCS Software;

(b)     inform KCS when Authorized Users cease to be authorized to use the KCS Software so their usernames can be deleted from KCS' records; and

(c)     ensure that only Authorized Users access the KCS Software through the virtual portal provide by KCS.

7.3     The Customer shall ensure that no Authorized User shall be permitted access to the KCS Software until such time as he or she has accepted the Software as a Service (SaaS) usage policy issued by KCS from time to time.

7.4     The Customer shall not access, store, distribute or transmit any viruses or malicious code or any material that is unlawful or otherwise facilitates or enables another party to engage in illegal activity, harmful, threatening, obscene, offensive, harassing, explicit, discriminatory or would cause damage or injury to any person or property using the KCS Software.

## 8.     K8 Software and Oracle Software - Additional Customer Obligations

8.1     In respect of this clause 8 and the Customer's use of the Oracle Software only, the definition of Customer shall be extended to include Affiliates and other related parties ("Customer Affiliates") provided such Customer Affiliates (together with the Customer and KCS) have first entered into and remain a party to a valid Customer Affiliate End User License Agreement.

8.2     The Customer shall:

(a)     only use the Oracle Software solely in accordance with the scope of and in conjunction with the K8 Software supplied and only access the Oracle Software through such K8 Software;

(b)     only use the Oracle Software for the purposes of its own internal business operations;

(c)     use the K8 Software into which the Oracle Software is embedded on processing unit(s) under its control or, with the prior written consent of KCS, under the control of a third party for the purpose of hosting;

(d)     comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Oracle Software, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws;

(e)     comply promptly with any reasonable instructions given by KCS from time to time in connection with the use and operation of the K8 Software and/or the Oracle Software;

(f)     on termination of the relevant agreement between KCS and Oracle for any reason, discontinue use of the Oracle Software and return all copies of, including all back up copies, of the Oracle Software and other associated documentation and materials to KCS. Alternatively, the Customer may destroy all copies thereof and associated documentation and materials and certify the same in writing to KCS; and

(g)     have no right to any services from Oracle save as expressly provided by the Contract.

8.3     Only the Customer may use the Oracle Software except that:

(a)     the Customer may allow its agents and contractors (including outsourcers) to use the K8 Software into which the Oracle Software is embedded on the Customer's behalf for the Customer's internal business operations subject to the Contract Terms; and/or

(b)     where the K8 Software into which the Oracle Software is embedded includes programs that are specifically designed to facilitate interactions between the Customer and its customers and suppliers, the Customer may permit its customers and suppliers to use the K8 Software into which the Oracle Software is embedded in furtherance of such interactions subject to the Contract Terms,

but in each case the foregoing is subject to the Customer ensuring that all such agents, contractors, outsourcers, customers and suppliers comply with the Contract Terms and provided that the Customer shall remain liable for the acts and omissions of any and all such users as if they were its own.

8.4     The Customer shall not (and shall not permit any third party to):

(a)     transfer the Oracle Software except for temporary transfer in the event of computer malfunction if the K8 Software embeds the Oracle Software in a physical device;

(b)     assign, give, or transfer the K8 Software and/or the Oracle Software and/or any services provided in connection therewith or an interest in them to another individual or entity. Without prejudice to the foregoing, in the event that the Customer grants a security interest in the K8 Software and/or the Oracle Software and/or any services provided in connection therewith the person taking the benefit of such security shall have no right to use or transfer the K8 Software and/or the Oracle Software and/or any such services;

(c)     use the Oracle Software to provide bureau, timesharing, rental, subscription, hosting, outsourcing or other services;

(d)     remove or modify any Oracle Software markings or any notice of Oracle's or its licensors' proprietary rights;

(e)     make the Oracle Software available in any manner to any third party for use in the third party's business operations (except to the extent (if any) that the same may be permitted under this Contract);

(f)     reverse engineer (unless required by law for interoperability), disassemble or decompile the Oracle Software (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by Oracle Software);

(g)     copy or duplicate the Oracle Software except for a sufficient number of copies for the Customer's licensed use and one copy of each Oracle Software media and the Customer shall retain the same under its control;

(h)     publish any results of benchmark tests run on the Oracle Software;

(i)     develop or modify the K8 Software and/or the Oracle Software;

(j)     sub-license, hire or lease out, or grant rights to third parties with respect to the K8 Software and/or Oracle Software;

(k)     make use of any program API's supplied by Oracle to establish the transfer of data nor to directly access the Oracle Software database; or

(l)     incorporate the K8 Software and/or the Oracle Software in any other program or access the Oracle Software through any program other than the K8 Software.

**8.5** Neither the Customer nor any third party shall acquire any title to the Oracle Software. Oracle or its licensors shall retain all ownership and Intellectual Property Rights in and to the Oracle Software.

**8.6** The Customer agrees that:

(a)     Oracle shall not, to the fullest extent permitted by applicable law, be liable for (a) any damages, whether direct, indirect, incidental, special, punitive or consequential; and (b) any loss of profits, revenue, data or data use, arising from the use of the Oracle Software; and

(b)     Oracle shall not be required to perform any obligations or incur any liability not previously agreed between KCS and Oracle.

**8.7** KCS shall have the right to audit the Customer's use of all Software including the K8 Software and the Oracle Software either through its own deployed monitoring tools or otherwise and report the audit results to Oracle or other relevant third parties and the Customer shall provide reasonable assistance and access to information in the course of any such audit. KCS may assign the foregoing right to audit the Customer's use of the Oracle Software to Oracle and the Customer agrees that Oracle shall not be responsible for any of KCS' or the Customer's costs incurred in co-operating with the audit.

**8.8** KCS hereby notifies and informs the Customer that:

(a)     the Oracle Software is subject to a restricted license and can only be used in conjunction with the K8 Software supplied; and

(b)     some Oracle Software may include source code that Oracle may provide as part of its standard shipment of such Oracle Software, which source code shall be governed by the Contract Terms.

**8.9** Where any third party technology is appropriate or necessary for use with the Oracle Software in accordance with any K8 Software and/or Oracle Software documentation or as otherwise notified to the Customer by KCS, such technology shall be licensed to the Customer for use only with the K8 Software supplied and shall be licensed under the terms of the third party license agreement specified in the K8 Software and/or Oracle Software documentation or as otherwise notified to the Customer by KCS and not under the terms of the Contract.

**8.10** Notwithstanding any provision to the contrary, KCS may disclose the Contract and the details of the Customer's license to use the Oracle Software to Oracle.

**8.11** Other than as expressly provided otherwise under the Contract, it is not a term of the Contract (whether a condition, warranty or other term) that the use or operation of the Oracle Software will be uninterrupted or error-free.

## 9. Additional Third Party Software

**9.1** KCS shall provide the Additional Third Party Software to the Customer pursuant to the Third Party Terms, a copy of which the Customer acknowledges it will obtain (either from the licensor or from KCS on written request), read and understand prior to using any Additional Third Party Software. The Customer agrees to act in accordance with the Third Party Terms and any breach by the Customer of any Third Party Terms shall be a breach of this Contract.

**9.2** Use of any Open Source Software provided by KCS shall be subject to the terms and conditions of the specific license under which the relevant Open Source Software is distributed.

## 10. Support Services

**10.1** Subject to Clause 10.2, KCS shall provide to the Customer the level of Software Support Service specified in the Quotation in accordance with the provisions of this Section B, the relevant Service Level Agreement and any other applicable Contract Terms.

**10.2** In relation to Third Party Software/Database(s) and/or Additional Third Party Software over which KCS has no direct control, the Software Support Services shall be limited to an obligation on KCS to request (and use reasonable endeavours to chase) bug or error fixes from the relevant third party on behalf of the Customer. All Software Support Services in relation to Third Party Software/Database(s) and/or Additional Third Party Software may be limited by restrictions in the Third Party Terms.

**10.3** KCS shall provide the Software Support Services to the Customer (subject to termination in accordance with the provisions of the Contract) for the period specified in the Quotation or, where no such period is specified, for a period of three (3) years commencing on:

(a)     delivery of the Software to the Customer in accordance with the Contract (when KCS is not installing such Software); or

(b)     installation of the Software (when KCS is installing such Software),

("Initial Term"). After the expiry of the Initial Term, the supply of the Software Support Services shall (subject to termination in accordance with the provisions of the Contract) continue under 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 (1) month's prior written notice to the other, such termination to take effect no earlier than the end of the Initial Term or the current Extension Period (as applicable).

**10.4** The provision of all or part of the Software Support Services by KCS to the Customer shall automatically terminate on termination or expiry of the license to use the corresponding Software.

**10.5** The Software Support Services shall include the supply from time to time by KCS to the Customer of new Releases of the same Version in object code form together with related Materials, but shall not include the provision of new Versions which may be supplied by KCS to the Customer subject to the relevant additional Charges.

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**10.6** Charges for any new Version shall be agreed in writing before performance or supply by KCS, and shall be charged and invoiced to the Customer by KCS (and paid by the Customer) following acceptance by KCS of the Customer's written order for such new Version (as the case may be).

**10.7** The Customer shall pay all costs (on the basis of the KCS Rates) and expenses incurred by KCS in accordance with the terms of the Contract, for work carried out by KCS in connection with any fault which is not covered by this Section or the relevant Service Level Agreement.

**10.8** If the Customer desires to reinstate Software Support Services after a period of time without such Software Support Services and KCS agrees to provide the same (at KCS' sole discretion), then the Customer will be required to pay to KCS: (i) a one off fee (to be agreed between the parties), payable to KCS in advance; and (ii) the Charges for an initial term of three (3) years of the relevant Software Support Services (each year payable to KCS annually in advance).