

SECTION F – KCS AI TOOLS

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 Section A Terms and Conditions.

1.2 For the purposes of this Section:

"**AI Laws**" means all applicable laws, statutes, regulations and codes in force from time to time applicable to the development, provision or use of artificial intelligence, including without limitation the EU AI Act.

"**AI Model**" means an algorithmic model or program that provides inferences, correlations or predictions and/or generates output from input data it receives using a variety of architectures, including without limitation neural networks, deep learning, transformers, Bayesian networks, decision trees and support vector machines.

"**AI Output**" means any content, recommendations, predictions, analysis, or other results generated by the KCS AI Tools.

"**AI System**" means a machine-based system utilising an AI Model that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

"**Documentation**" means the documentation further described in Clause 4.

"**EU AI Act**" means Regulation (EU) 2024/1689 on artificial intelligence (as amended or replaced from time to time) and any implementing or delegated acts adopted thereunder.

"**Intended Purpose**" means the use of the KCS AI Tools in accordance with the Documentation, any Product Description, and KCS's instructions or guidance (whether provided in writing or through the user interface).

"**KCS AI Tools**" means the client instantiation of AI Systems, and AI Models (including Third Party AI) owned and/or licensed by KCS, and made available to the Customer by KCS as part of the Services and in connection with its use of the Software.

"**Model Drift**" means the degradation in the performance or accuracy of KCS AI Tools over time due to changes in data patterns, external conditions, or other factors outside of KCS's control.

"**Third Party AI**" means any third party AI System or AI Model.

"**Training Data**" means data used to develop, train, refine, fine-tune or improve the underlying AI Models incorporated in the KCS AI Tools (excluding Customer Data unless expressly permitted under clause 6).

2. Licence and Intended Purpose

2.1 Subject to the terms of this Contract, KCS grants the Customer a non-exclusive, non-transferable licence to use the KCS AI Tools solely for the Intended Purpose and in accordance with the terms of this Contract.

2.2 The Customer shall use the KCS AI Tools only in accordance with the Intended Purpose.

3. Restricted Use

3.1 The Customer shall not, and shall ensure that its Authorised Users do not, use the KCS AI Tools:

- (a) for any purpose or use which is prohibited under the AI Laws, or is otherwise illegal or prohibited by applicable laws;
- (b) to generate content that is unlawful, harmful, threatening, abusive, harassing, defamatory, or otherwise objectionable or offensive;
- (c) to impersonate any person or misrepresent the Customer's affiliation with any person or entity;
- (d) to create any deep-fake content;
- (e) in any manner that could cause KCS to be classified as a "provider" of a high-risk AI system under the EU AI Act where KCS would not otherwise be so classified;
- (f) to create any AI system or other material that performs, replicates, or utilises the same or substantially similar functions as the KCS AI Tools;
- (g) to exfiltrate or seed any AI model;
- (h) attempt to gain unauthorised access to any part of the KCS AI Tools;
- (i) in a manner which could overload the servers or networks supporting or connected to the KCS AI Tools, including through excessive usage that exceeds normal usage levels; or any form of a distributed denial-of-service attack (DDoS); or
- (j) in any high-stakes decision-making context (including medical diagnosis, legal judgments, employment decisions, creditworthiness assessments, or law enforcement) without appropriate human oversight and independent verification.

3.2 The Customer shall not:

- (a) rebrand, white-label, or otherwise market the KCS AI Tools as the Customer's own product or service;
- (b) make substantial modifications to the KCS AI Tools or their deployment context that would alter their risk classification or intended purpose;
- (c) reverse engineer, decompile, or attempt to derive the source code, algorithms, or training methodologies of the KCS AI Tools except as expressly permitted by applicable law; or
- (d) input any data, information or attempt the generation of AI Outputs which:
 - (i) contain viruses, corrupted files which may damage the operation of the KCS AI Tools or Software; or
 - (ii) are defamatory, harassing, abusive or harmful.

3.3 The Customer acknowledges and agrees that the KCS AI Tools have not been designed or marketed for use which is prohibited under AI Laws, and no act or omission of KCS in connection with this Contract shall be construed or deemed to be express or implied approval of any such use.

3.4 The Customer acknowledges that it has conducted its own due diligence regarding the suitability of the KCS AI Tools for its intended use case and business requirements.

4. **Transparency and Documentation**

4.1 KCS shall maintain documentation regarding the KCS AI Tools, which may include information about their functionality, intended purpose, limitations, and appropriate use conditions. Such documentation shall be made available to the Customer through the Documentation or upon reasonable written request.

4.2 KCS shall provide reasonable transparency regarding the KCS AI Tools to enable the Customer to comply with its obligations under AI Laws, provided that KCS shall not be required to disclose proprietary information including (without limitation) detailed model architecture, source code, training datasets, or other trade secrets.

5. **Compliance**

5.1 Each party shall comply with its respective obligations under the AI Laws in connection with its use or provision of the KCS AI Tools.

5.2 The Customer shall indemnify and hold harmless KCS from and against any claims, losses, damages, costs, or expenses (including reasonable legal fees) arising from:

- (a) the Customer's breach of its obligations under the AI Laws;
- (b) the Customer's use of the KCS AI Tools outside the Intended Purpose or in breach of this Contract (including for the avoidance of doubt breach of clause 3, above); or
- (c) the Customer's use of or reliance upon AI Outputs in any manner, including any third-party claims regarding the accuracy, legality, or IP rights in such outputs.

6. **Customer Data and AI Training**

6.1 As between the parties, the Customer retains all ownership rights in Customer Data, including any data inputted into the KCS AI Tools ("AI Inputs") and the AI Outputs generated by the KCS AI Tools.

6.2 Except where specified in the relevant Documentation, KCS shall not use Customer Data (including AI Inputs or AI Outputs) to train, develop, or improve the KCS AI Tools or any other AI models, except:

- (a) where such use is necessary to provide the Services to the Customer during the term of this Contract;
- (b) in aggregated and anonymised form such that the data cannot reasonably be re-identified with the Customer or any individual; or
- (c) with the Customer's prior written consent for a specified purpose.

7. **Performance, Accuracy, and Model Drift**

7.1 The Customer acknowledges and agrees that:

- (a) the KCS AI Tools are probabilistic in nature and may produce outputs that are "edge cases" (within the bounds of probability), inaccurate, incomplete, biased, or otherwise unsuitable for the Customer's purposes;
- (b) AI Models are trained on dataset corpora as at a particular cutoff date which may induce hallucinations if prompted for answers outside such corpora; and
- (c) its use of the KCS AI Tools is at its own risk and it should not use or rely upon any AI Outputs without human moderation.

7.2 The Customer acknowledges that:

- (a) that KCS AI Tools may generate similar or identical outputs for different users and that KCS cannot grant exclusive rights in any AI Output; and
- (b) Model Drift may occur, causing the performance and accuracy of KCS AI Tools to degrade over time.

7.3 The Customer shall indemnify KCS against any third-party claims alleging that any AI Output (or the Customer's use thereof) infringes intellectual property rights, defames any person, or violates any law. KCS shall use its reasonable endeavours to, to the extent possible, pass down to the Customer the benefit of any copyright guarantee, indemnity or commitment from its Third Party AI provider(s).

8. **Human Oversight and AI Literacy**

8.1 The Customer undertakes to make all reasonable efforts to provide appropriate AI literacy training to its staff and users prior to making use of any KCS AI Tools, and on a continuing basis thereafter, which shall at a minimum include reference to the acknowledgement at clause 7.1 above.

8.2 The Customer shall implement and maintain appropriate human oversight measures and AI model lifecycle management processes for use of the KCS AI Tools, including ensuring that Authorised Users:

- (a) understand the capabilities and limitations of the KCS AI Tools;
- (b) can properly interpret and validate AI Outputs;
- (c) have the authority and ability to override or disregard, AI Outputs by human intervention where appropriate; and
- (d) can monitor the KCS AI Tools for anomalies, errors, or performance degradation.

8.3 The Customer is solely responsible for any decisions made or actions taken based on AI Outputs, including reviewing, validating, and editing such outputs before use. The Customer acknowledges its responsibility to implement appropriate human oversight measures and to validate AI Outputs before relying on them for any material business decision or action.

8.4 Customer is solely responsible for all acts and omissions of its Authorised Users in connection with the use of the KCS AI Tools, including any input, prompts, instructions, data, content or materials submitted to the KCS AI Tools and any use of resulting AI Outputs. The Customer shall ensure that its Authorised Users comply with the terms of this Section F. Customer is responsible for all acts and omissions of Authorised Users.

9. **Monitoring and Corrective Action**

9.1 KCS may monitor the Customer's use of the KCS AI Tools to ensure compliance with this Contract, improve the Software and Services, and detect potential security or compliance issues.

9.2 If KCS reasonably believes that:

- (a) the Customer's use of the KCS AI Tools breaches this Contract or applicable law;
- (b) the Customer's use causes or may cause KCS to be classified as a provider of a high-risk AI system under AI Laws; or
- (c) continued provision of the KCS AI Tools poses material legal, regulatory, or reputational risk to KCS,

then KCS may (in its sole discretion and without liability) suspend, modify, or withdraw access to the KCS AI Tools (in whole or in part) until the issue is resolved to KCS's reasonable satisfaction, or terminate access to the KCS AI Tools (in whole or in part), provided that KCS shall: (i) provide the Customer

with as much advance written notice as reasonably practicable; and (ii) work in good faith with the Customer to identify alternative solutions where reasonably possible.

9.3 Termination or suspension of KCS AI Tools under this clause 9 shall not affect any other rights or remedies available to the Customer, nor shall it terminate this Contract unless the KCS AI Tools constitute the entire scope of the Services.

9.4 KCS shall not be liable for any losses, costs, or damages arising from any termination, suspension, modification, or withdrawal of KCS AI Tools under clause 9.2, except where caused by KCS's breach of this Contract.

10. **Serious Incidents and Reporting**

10.1 If the Customer becomes aware of any serious incident (as defined under AI Laws) involving the KCS AI Tools, the Customer shall immediately notify KCS in writing with full details of the incident.

10.2 The Customer shall report serious incidents first to KCS (or, if KCS is not the provider, to the relevant provider identified by KCS). The Customer shall only report serious incidents directly to regulatory authorities if KCS or the relevant provider cannot be reached within the timeframe required by AI Laws.

10.3 The parties shall cooperate in good faith to investigate serious incidents and implement appropriate corrective measures.

10.4 Each party shall comply with its respective serious incident reporting obligations under AI laws and other applicable laws.

11. **Third-Party AI Components**

11.1 The Customer acknowledges that the KCS AI Tools may incorporate or rely upon Third Party AI (including large language models, machine learning APIs, or cloud AI services).

11.2 The Customer's use of KCS AI Tools may be subject to additional third-party terms and acceptable use policies. The Customer shall comply with all such third-party terms, and KCS may suspend access to KCS AI Tools if continued provision would cause KCS to breach such third-party terms.

11.3 KCS shall not be liable for any defects, errors, non-performance, unavailability or suspension of Third Party AI, including where such unavailability or suspension arises as a result of a Force Majeure Event.

12. **Modifications to KCS AI Tools**

12.1 KCS reserves the right to modify, update, enhance, or discontinue KCS AI Tools (in whole or in part) at any time, provided that KCS shall use reasonable endeavours to:

(a) maintain substantially similar functionality where reasonably practicable; and

(b) provide the Customer with reasonable advance notice of material changes that adversely affect the Customer's use of the KCS AI Tools.

12.2 Where KCS makes material changes to the KCS AI Tools that could reasonably impact the Customer's compliance obligations under the AI Laws, KCS shall notify the Customer and (where reasonably requested) provide updated documentation regarding such changes.

13. **Warranties and Disclaimers**

13.1 KCS warrants that:

(a) it has the necessary rights and licences to provide the KCS AI Tools as part of the Software and Services;

(b) the KCS AI Tools shall perform materially in accordance with the Documentation when used in accordance with the Intended Purpose.

13.2 Except as expressly set out in clause 13.1, KCS makes no warranties regarding the KCS AI Tools, and all implied warranties (including warranties of merchantability, fitness for

a particular purpose, and non-infringement) are excluded to the fullest extent permitted by law.

13.3 In particular, KCS does not warrant, represent or guarantee:

(a) that AI Outputs will be

(i) original, and/or will not infringe third-party intellectual property rights;

(ii) accurate, complete, reliable, current, error-free;

(iii) will be fit for any particular purpose; and/or

(iv) free from bias or harmful content.

(b) that the KCS AI Tools:

(i) will maintain any particular level of performance or accuracy over the term of this Contract;

(ii) will be error-free, uninterrupted, or free from vulnerabilities;

(iii) will comply with any particular standard, framework, or certification; or

(iv) will meet any regulatory requirements applicable to the Customer's specific use case; or

(c) any specific performance levels, accuracy rates, or outcomes from the use of KCS AI Tools except as expressly set out in the applicable Service Level Agreement.

14. **Interpretation**

14.1 In the event of any conflict between this Section F and any other provision of this Contract, this Section F shall prevail to the extent of the conflict, but only in relation to the KCS AI Tools.