

## Terms and Conditions

### 1 The Services

- 1.1 KCS sources and supplies Subcontractors to perform Assignments for Clients as required by that Client's Work Specification ("the Services").
- 1.2 In providing the Services under this Agreement, KCS acts at all material times as an employment business pursuant to the Conduct of Employment Agencies and Employment Business Regulations 2003.
- 1.3 The Services are provided to the Client on the Terms and Conditions set out in this Agreement, which will be deemed to be accepted when the Client provides a written request to KCS to supply a Subcontractor for any Assignment; and they prevail over any other terms put forward by the Client at any time.

### 2 Definitions

- 2.1 In these Terms and Conditions:

**Affiliate**

means, in relation to a Party, any person that Controls, is Controlled by, or is under common Control with that Party;

**KCS**

King Logistic Services Limited, a company registered in England and Wales under company number 14947059, and whose registered office is BNJC, 29-31 New Church Road, Hove, East Sussex, BN3 4AD;

**Agency Worker**

means an individual (who is also a Subcontractor) in relation to whom the conditions set out in section 44(1)(a), (b) and (c) of ITEPA 2003 are met;

**Agreement**

means the agreement containing these Terms and Conditions;

**Assignment**

means the period during which a Subcontractor performs services or carries out work for or on behalf of the Client, beginning when the Subcontractor first reports to the Client to take up duties (or, if earlier, the commencement of such work or services by the Subcontractor) and ending on the cessation by the Subcontractor of all such work or services;

<b>AWR 2010</b>	means KCS Workers Regulations 2010;
<b>Break Period</b>	has the meaning given in clause 5.8.2;
<b>Claims</b>	has the meaning given in clause 12.8;
<b>Client</b>	means any person, firm or company who approaches KCS with a view to placing an order with KCS for the introduction or supply of a Subcontractor;
<b>Commencement Date</b>	<i>means the date upon which the Client first requests the Services;</i>
<b>Conduct Regulations 2003</b>	means the Conduct of Employment Agencies and Employment Businesses Regulations 2003; and
<b>Control</b>	means, in relation to a Party, direct or indirect beneficial ownership of more than 50% of the share capital, stock or other participating interest carrying the right to vote or to distribution of profits of that Party, as the case may be;
<b>Engage(s) (or Engagement or Engaged)</b>	means the employment or engagement, whether under a contract of service or contract for services, and whether on a permanent or temporary basis, of a Subcontractor by or on behalf of the Client;
<b>Fee(s)</b>	the fees payable by the Client to KCS resulting from the introduction of one or more Subcontractor(s) at the rates notified to the Client from time to time (and in respect of which KCS reserves the right to vary on written notice from time to time)
<b>HMRC</b>	means His Majesty's Revenue & Customs
<b>IR35 rules</b>	means the off-payroll working rules contained in the Chapters 8 and 10 of Part 2 of ITEPA 2003 as amended from time to time
<b>ITEPA 2003</b>	Income Tax (Earnings and Pensions) Act 2003

<b>Losses</b>	has the meaning given in clause 12.8;
<b>NICs</b>	means National Insurance contributions;
<b>Other Party</b>	has the meaning given in clause 13.2;
<b>Parties</b>	means KCS and the Client, and 'Party' will mean either one of them;
<b>Personal Data</b>	<p>means any information relating to a living individual who can be identified, directly or indirectly, in particular by reference to:</p> <p>an identifier such as a name, an identification number, location data or an online identifier, or</p> <p>one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual;</p>
<b>PSC</b>	means any intermediary to which the provisions of Chapters 8 and/or 10 of Part 2 of ITEPA 2003 apply;
<b>Receiving Party</b>	has the meaning given in clause 10;
<b>The Services</b>	means the supply to the Client by KCS of Subcontractors for Assignments of which the Client has notified KCS;
<b>Relevant Period</b>	has the meaning given in clause 5.8;
<b>SDS</b>	means a Status Determination Statement made under Chapter 10 of Part 2 of ITEPA 2003;
<b>Subcontractor</b>	means a subcontractor of KCS (or of any other Subcontractor) from time to time but not a PSC;
<b>Supplying Party</b>	has the meaning given in clause 10; and
<b>Subcontractor</b>	means a person supplied by KCS to the Client to work temporarily for the Client, under the Client's direction and supervision, who is not an employee of the Client but who either has: (1) a contract of employment with

KCS; or (2) is an Agency Worker for ITEPA 2003 purposes and has an agreement with KCS to perform work or services personally; or (3) a worker who supplies their services through a company such as a PSC or other legal entity;

**Vulnerable Person**

means any person who by reason of age, infirmity, or any other circumstances is in need of care or attention;

**Work Specification**

means the job description together with any particular skills, experience, qualifications or authorisations required of the Subcontractor to perform a particular Assignment.

**3 KCS's obligations**

- 3.1 KCS will search for suitable candidates to be placed with the Client as Subcontractors for an Assignment in accordance with the Client's Work Specification. The Client acknowledges that it may not always be possible for KCS to find and propose a suitable candidate for each Assignment.
- 3.2 KCS will provide the Client with the following information before any Subcontractor commences an Assignment. In doing so, KCS may reasonably rely on the information provided to it by the Subcontractor. Where (for reasons of speed) this information may be provided to the Client orally, it will still be provided in writing within a further three days:
  - 3.2.1 the Subcontractor's identity;
  - 3.2.2 that the Subcontractor has the necessary or required experience, training, qualifications and authorisation, including any authorisation required by law or a professional body, to work on the Assignment (and including, where relevant, appropriate and expressly requested by the Client, information provided by a Disclosure and Barring Service criminal records check);
  - 3.2.3 whether the Subcontractor is employed by KCS under a contract of employment, or a contract for services (including whether through a PSC or otherwise);
  - 3.2.4 that the Subcontractor is willing to work on the Assignment; and
  - 3.2.5 the hourly rate of pay for the Subcontractor and KCS's Fees.
- 3.3 Where a Work Specification requires a Subcontractor to drive motor vehicles, KCS will enquire whether the Subcontractor is the holder of an appropriate current licence to drive the specified vehicle and provide that information to the Client.
- 3.4 Where the Subcontractor is required by law or any professional body to have any qualifications or authorisations to work on an Assignment, or that Assignment entails caring for or attending

one or more persons under the age of 18 or any Vulnerable Person, KCS will take reasonably practicable steps to obtain and supply the Client with:

- 3.4.1 copies of any relevant qualifications or authorisations of the Subcontractor; and
  - 3.4.2 two references from persons not related to the Subcontractor who have agreed that the references they provide may be disclosed to the Client; and
  - 3.4.3 confirmation that the Subcontractor is not unsuitable for the Assignment; or
  - 3.4.4 where KCS has been unable to supply all this information, despite reasonable steps to do so, it will provide the Client with details of the steps it has taken to comply with these obligations.
- 3.5 KCS will keep full and accurate records of the Services including how it has complied with all its obligations under clauses 3, 4 and 5, and will make these available to the Client on request, during the term of this Agreement and for a period of six years thereafter.

#### **4 Tax status and payments to Subcontractors**

- 4.1 KCS will pay each Subcontractor the wages and reimbursement of expenses to which the Subcontractor is entitled by reason of carrying out work for the Client.
- 4.2 Without prejudice to clause 4.3, KCS will ensure all payments to Subcontractors are made as employment income and deductions (and accounts to HMRC) are made for income tax and NICs and any other deductions required to be made through PAYE from all payments made to Subcontractors.
- 4.3 Notwithstanding clause 4.2, KCS will defer to the Client (with evidence) in circumstances where it reasonably believes that the Subcontractor is not subject to (or to a right of) supervision, direction, or control by any person. It will be for the Client to make (then, or independently at any time) its own assessment of the tax status of any Assignment and provide KCS with an SDS and a reasonable explanation, including whether or not the provision of the Services for any particular Assignment results in it being a 'client' or not for the purposes of any of Chapters 7, 8 and 10 of Part 2 of ITEPA 2003. The Client will exercise all reasonable care in making its determination. Where so instructed in writing by the Client, KCS will not deduct PAYE income tax and NICs from payments to the Subcontractor.

#### **5 Fees, time-recording and payment**

- 5.1 The Client will pay to KCS for the supply of the Subcontractor as set out in **Error! Reference source not found.** and including:
  - 5.1.1 the hourly Fees in respect of each Subcontractor for all hours worked by that Subcontractor; and
  - 5.1.2 such travel and other expenses as have been agreed by the Parties in advance

- 5.2 The Subcontractor will record all the time worked on an Assignment in a timesheet and will make this available for inspection by the Client and KCS. The Client agrees to sign the Subcontractor's timesheet at the end of every week or when requested to do so, in a timely manner and without delay, as proof of the time worked. A failure to sign on the part of the Client will not negate the Client's liability to pay the Fees. Any disagreements over the accuracy of time recording must be discussed with the Subcontractor and brought to the attention of KCS immediately but within 24 hours in any event. The Client may not decline to sign a time sheet on the grounds that it is dissatisfied with the Subcontractor's work. In cases of unsatisfactory work, the Client must apply the provisions of clause 9.
- 5.3 KCS will invoice the Client monthly in arrears. The payment of the Fees, travel and other expenses and commission will be made by the Client to KCS within *14* days of the date of KCS's invoice in respect of amounts specified in the invoice. Timing of payment is of the essence.
- 5.4 If the Client cancels an Assignment after requesting KCS to supply a Subcontractor but before the Subcontractor has started work, KCS reserves the right to charge the Client half of the hourly Fee as if the Assignment had taken place.
- 5.5 Subject to clause 5.7, if the Client Engages any Subcontractor directly, or indirectly (other than through KCS), the Client will:
  - 5.5.1 immediately notify the Engagement to KCS; and
  - 5.5.2 pay to KCS an introduction fee calculated in accordance with KCS's rates for such fees in force at the time of the Engagement, or
- 5.6 Subject to clause 5.7, if the Client effectively introduces (whether directly or indirectly) any Subcontractor to any third party, including any Affiliate of the Client, and that introduction results in the employment or engagement, whether under a contract of service or contract for services, and whether on a permanent or temporary basis, of the Subcontractor by that third party, the Client will:
  - 5.6.1 immediately notify KCS of the engagement, including the start date, the role, and pay rates; and
  - 5.6.2 pay to KCS an introduction fee calculated in accordance with KCS's rates for such fees in force at the time of the Engagement.
- 5.7 Clauses 5.5 and 5.6 will not apply if the Subcontractor is Engaged by the Client, or begins working for the Client pursuant to being supplied by another employment business/agency, or is employed or Engaged by the third party, after the end of the Relevant Period.
- 5.8 In clause 5.7, 'Relevant Period' means whichever of the following periods that ends later:
  - 5.8.1 the period of eight weeks commencing on the day after the day on which the Subcontractor last worked for the Client; or

- 5.8.2 the period of 14 weeks commencing on the first day on which the Subcontractor, having been supplied by KCS, worked for the Client. In determining the first day, no account will be taken of any supply that occurred prior to a Break Period. A 'Break Period' is a period, which lasts for more than 42 days, during which that Subcontractor did not work for the Client pursuant to being supplied by KCS.
- 5.9 All amounts stated are exclusive of VAT and any other applicable taxes, which will if applicable be charged in addition at the rate in force at the time the Client is required to make payment.
- 5.10 In the event that the Client fails to pay the amount payable under clause 5.5, it shall be liable for KCS's costs and fees to recover such losses on an indemnity basis.
- 5.11 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in these Terms and Conditions, then KCS will be entitled:
  - 5.11.1 to charge interest (both before and after any judgment) on the outstanding amount at the rate of 8% a year above the base lending rate of the Barclays Bank PLC, accruing daily;
  - 5.11.2 to require the Client to pay, in advance, for any The Services, or any part of the Services, which have not yet been performed;
  - 5.11.3 not to perform any further The Services, or any part of the Services; and
  - 5.11.4 to withdraw without notice any Subcontractor(s) currently Engaged by the Client.

## **6 The Client's obligations and acknowledgments**

- 6.1 The Client will provide KCS with a Work Specification for each Assignment setting out the skills and experience required of the Subcontractor and the information which KCS is obliged by law to provide to the Subcontractor. This includes (but is not limited) to:
  - 6.1.1 the identity of the Client and, if applicable, the nature of the Client's business;
  - 6.1.2 the date on which the Client requires a Subcontractor to commence work and the duration, or likely duration, of the work;
  - 6.1.3 the position which the Client seeks to fill, including the type of work a Subcontractor in that position would be required to do;
  - 6.1.4 the location at which and the hours during which the Subcontractor would be required to work;
  - 6.1.5 the skills needed, including any special skills;
  - 6.1.6 the experience, training, qualifications and any authorisation which the Client considers are necessary, or which are required by law, or by any professional body, for a Subcontractor to possess in order to work on the Assignment;

- 6.1.7 any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
  - 6.1.8 any expenses payable by or to the Subcontractor;
  - 6.1.9 the minimum rate of remuneration and any other benefits which the Client would offer to a person in the position which it seeks to fill, and the intervals at which the person would be paid;
  - 6.1.10 where applicable, the length of notice which a Subcontractor in such a position would be required to give, and entitled to receive, to terminate the employment with the Client; and
  - 6.1.11 all information necessary for compliance with AWR 2010 as set out in clause 7.2.
- 6.2 The Client warrants that it will:
- 6.2.1 comply with all obligations, duties and regulations, whether statutory or otherwise including those relating to the place, nature or system of work, in any way arising from or directly or indirectly connected with the services rendered by a Subcontractor;
  - 6.2.2 assist KCS in complying with KCS's duties under the Working Time Regulations 1998 by supplying any relevant information about the Assignment requested by KCS; and
  - 6.2.3 do nothing to cause KCS to be in breach of its obligations under the Working Time Regulations 1998, and where the services of a Subcontractor are required or may be required for more than 48 hours in any week, notify KCS of this requirement before the commencement of that week.
- 6.3 The Client agrees that (unless expressly agreed otherwise in writing between the Parties) each Subcontractor will be treated as if they are the employee of the Client throughout the duration of the Assignment and undertakes to exercise all appropriate supervision, direction and control over the manner, time and place in which each Subcontractor carries out their work for the Client.
- 6.4 The Client acknowledges that each Subcontractor supplied to the Client for purposes which include the driving of vehicles is supplied to the Client on the Client's express warranty and undertaking that the Client is the holder of a valid operator's licence where this is required and will:
- 6.4.1 take all necessary steps to ensure that each Subcontractor complies with all applicable road transport legislation;
  - 6.4.2 take all steps that may be required by law in relation to the insurance, maintenance and safety of vehicles, and in particular:
    - (a) satisfy itself that the vehicles are roadworthy and properly maintained, and
    - (b) in no circumstances require the Subcontractor to check such matters; and

- 6.4.3 control the driving duties of each Subcontractor, their journeys and hours of work and comply with all statutory duties in relation to the Subcontractor's driving duties and to driving licences, tachographs and logbooks.
- 6.5 The Client acknowledges and agrees that:
  - 6.5.1 Subcontractors supplied by KCS are engaged under contracts for services and are not the employees of KCS;
  - 6.5.2 unless expressly agreed otherwise by the Parties, Subcontractors supplied by KCS are deemed to be under the supervision, direction and control of the Client from the time when they report to the Client to take up their duties until their Assignment ends;
  - 6.5.3 the Client is responsible for all acts, errors and omissions, whether wilful, negligent or otherwise, as if the Subcontractor was the Client's employee;
  - 6.5.4 the Client will in all respects comply with all statutes, byelaws and other legal requirements and codes of practice to which the Client is ordinarily subject in respect of its own staff, including the Working Time Regulations 1998 and the Health and Safety at Work Act 1974;
  - 6.5.5 the Client will provide adequate employer's and public liability insurance cover for the Subcontractor during all Assignments;
  - 6.5.6 if the Client reasonably considers the Subcontractor to be unsatisfactory, it will make a complaint to KCS by telephone and confirm it in writing within one day of the finding, but will not have the right to withhold from KCS payment of any Fee due.
- 6.6 The Client will:
  - 6.6.1 verify to KCS at the beginning of the Assignment that the Subcontractor is suitable for the purposes for which the Subcontractor is required and that they have the capability to carry out the duties required, including the operation of any machinery or vehicles;
  - 6.6.2 be responsible for obtaining any certificate of sponsorship or permit needed to enable the Subcontractor to work in the United Kingdom and for ensuring that the Subcontractor satisfies any medical requirements or other qualifications that may be appropriate or required by law;
  - 6.6.3 inform KCS immediately if it becomes aware of any circumstances which would render any Assignment detrimental to the interests of the Subcontractor or the Client.

## 7 **Compliance with AWR 2010**

- 7.1 The Client and KCS will both comply with all the requirements of AWR 2010, and where relevant, will ensure that any Subcontractor or Affiliate will also comply.
- 7.2 Before the start of each Assignment (regardless of whether that Assignment is to last for more or for less than 12 weeks) the Client will confirm to KCS, in writing, the relevant terms and

conditions relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave (as defined in Regulation 6 of AWR 2010) of any employees (or workers) working for and under the supervision and direction of the Client and engaged in the same or broadly similar work as that for which the Subcontractor is required in respect of that Assignment having regard, if relevant, to whether they have a similar level of qualification and skills.

7.3 The Client agrees that it will:

- 7.3.1 comply, within *seven* days, to any written request to provide KCS with the information specified in Regulation 14(3)(a) of AWR 2010, in particular: a) the number of Subcontractors that it is currently supplying to the Client; b) the parts of the Client's undertaking in which those Subcontractors are working; and c) the type of work those Subcontractors are carrying out;
- 7.3.2 not allow any Subcontractor to undertake any work other than that which has been specified in the corresponding Work Specification;
- 7.3.3 insofar as it lies within the Client's power to do so, ensure that the Subcontractor receives any rights in relation to basic working and employment conditions to which they are entitled under Regulation 5 of AWR 2010;
- 7.3.4 ensure that, unless less favourable treatment is justified on objective grounds, the Subcontractor is treated no less favourably than a comparable worker in relation to the collective facilities and amenities provided by the Client (as these terms are defined in AWR 2010);
- 7.3.5 ensure that during the Assignment the Subcontractor is informed of any relevant vacant posts with the Client to give the Subcontractor the same opportunity as a comparable worker to find permanent employment with the Client;
- 7.3.6 do nothing to cause KCS to be in breach of its obligations under AWR 2010.

**8 Diversity, equality and inclusion**

- 8.1 KCS actively promotes equality of opportunity for all, and seeks to prevent unlawful discrimination or harassment because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation (**protected characteristics**).
- 8.2 KCS is an equal opportunities employer and is committed to selecting Subcontractors according to skills and experience and does not select or exclude any person based on any protected characteristic.
- 8.3 The Client agrees that it will at all times treat all Subcontractors with due respect and dignity and in particular must take all steps within its control to avoid any unlawful discriminatory treatment of each of them.

- 8.4 The Client will not request KCS to discriminate against, de-select, disadvantage, or in any way favour any person based on a protected characteristic unless it can be reasonably seen to be a genuine occupational requirement for that Assignment.

## **9 Termination of an Assignment**

- 9.1 The Client or KCS or the Subcontractor may terminate an Assignment by providing one weeks' written notice.
- 9.2 The Client undertakes to properly supervise the Subcontractor to ensure that the Subcontractor works to the standards that the Client expects. If the Client reasonably considers that the services of the Subcontractor are unsatisfactory, the Client will notify KCS as set out in clause 6.5.6, and may request that KCS then terminate the Assignment and instruct the Subcontractor to leave the Assignment immediately.
- 9.3 KCS will notify the Client without delay on the same day or in any event on the very next business day if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Subcontractor supplied to the Client is unsuitable for the Assignment, and will terminate the Assignment immediately. In such circumstances KCS will pay for the time already worked by the Subcontractor
- 9.4 KCS will instruct each Subcontractor to deliver to the Client, on the termination of an Assignment or at any time during it, all documents, equipment, passwords, keys, papers, materials and other property (including any copies) belonging to or relating to the business of the Client which may be in the Subcontractor's possession.
- 9.5 If the Client breaches any of these Terms and Conditions, KCS may withdraw, without notice, any Subcontractors supplied without incurring any liability to the Client.

## **10 Confidentiality**

- 10.1 Each Party (**Receiving Party**) will keep the confidential information of the other Party (**Supplying Party**) confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party will only use the confidential information of the Supplying Party for the purpose of and for performing the Receiving Party's obligations under this Agreement. The Receiving Party will inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 10.1, and ensure that the Receiving Party's officers, employees and agents meet the obligations.
- 10.2 The obligations of clause 10.1 will not apply to any information which:
- 10.2.1 was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- 10.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
- 10.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;

- 10.2.4 was developed by the Receiving Party, or on its behalf by a third party who had no direct access to, or use or knowledge of the confidential information supplied by the Supplying Party; or
- 10.2.5 is required to be disclosed by order of a court of competent jurisdiction.

- 10.3 The obligations set out in this clause will survive termination of this Agreement for a period of 2 years.

## **11 Data protection**

- 11.1 The parties will comply with their respective obligations under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 and/or other applicable data protection legislation.

## **12 Warranties, liability and indemnities**

- 12.1 While KCS will make reasonable efforts to ensure reasonable standards of skills, integrity and reliability in Subcontractors and to comply with the Work Specification, the Client accepts and agrees that KCS gives no warranty as to the suitability of any Subcontractor for any Assignment.

- 12.2 KCS confirms that, in supplying any Subcontractor to the Client, it is not aware of anything which will cause any detriment to the interests of that Subcontractor or the Client if the Subcontractor fulfils the Assignment.

- 12.3 Each Party undertakes, warrants and represents that it will comply with the Modern Slavery Act 2015 (**MSA 2015**): and neither Party nor any of its officers, employees, agents, Affiliates or Subcontractors has committed an offence under MSA 2015 or is aware of any circumstances for itself or within its supply chain that could give rise to an investigation relating to an alleged MSA 2015 offence or prosecution. Any breach of this clause by the Client will be deemed a material breach of this Agreement and will entitle KCS to terminate the Agreement and demand full payment under it.

- 12.4 Each Party warrants that, in connection with the performance of this Agreement, it will not make or receive any bribe (which term will be construed in accordance with the Bribery Act 2010) or other improper payment or advantage or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere. Any breach of this clause by the Client will be deemed a material breach of this Agreement that is not remediable and will entitle KCS to immediately terminate this Agreement and demand full payment under it.

- 12.5 Neither KCS nor any of its staff will be liable to the Client for any loss, injury, damage, expense or delay incurred or suffered by the Client arising directly or indirectly from or in any way connected with the introduction or supply of a Subcontractor to the Client or with any failure by KCS to introduce or supply a Subcontractor for all or part of any period booked by the Client (except that in the latter case the Client may be entitled to a reduction or cancellation of the Fee payable), unless such loss, damage, costs or expenses are the direct result of the negligent acts

or omissions of KCS. In particular, but without limitation, KCS will not be liable for any loss, injury, damage, expense or delay arising from, or in any way connected with:

- 12.5.1 any failure of the Subcontractor to meet the Client's requirements for all or any of the purposes for which the Subcontractor is required by the Client; or
- 12.5.2 any act or omission of a Subcontractor, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise;
- 12.5.3 any loss, injury, damage, expense or delay suffered by a Subcontractor.
- 12.6 Except in the case of death or personal injury caused by KCS's negligence, the liability of KCS under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever will not exceed the Fee(s) paid or due to be paid by the Client to KCS under this Agreement. KCS will not be liable for any matter not reported to it within 24 hours of its occurrence. The provisions of this clause 12.6 will not apply to clause 12.8.
- 12.7 Neither Party will be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause 12.7 will not apply to clause 12.8.
- 12.8 The Client will indemnify and hold harmless KCS from and against all Claims and Losses arising from loss, damage, liability, injury to KCS, its employees and third parties, by reason of or arising out of:
  - 12.8.1 any loss, injury, expense or delay suffered or incurred by a Subcontractor, however caused; and/or
  - 12.8.2 any loss, injury, damage, expense or delay suffered or incurred by anyone arising directly or indirectly from or in any way connected with the acts and omissions of a Subcontractor, whether wilful, negligent, fraudulent, dishonest, reckless or otherwise; and
  - 12.8.3 any loss, injury or delay suffered or incurred by KCS as a result of any act or omission of the Client

that arises directly or indirectly out of or is in any way connected with the relevant Assignment, any information supplied by the Client to KCS or the Client's breach of these Terms and Conditions. 'Claims' will mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' will mean all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

- 12.9 Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.

### **13 Termination of this Agreement**

- 13.1 This Agreement will continue indefinitely until terminated by either party giving the other 90 days' notice. Nothing in this Agreement provides exclusivity to either Party in the provision of The Services. Nothing in this Agreement obliges the Client to provide any request for The Services to KCS, or for KCS to fulfil any request to supply Subcontractors for any particular Assignment.
- 13.2 Either Party may terminate this Agreement, at any time, on written notice (that will take effect as specified in the notice) to the other Party (**Other Party**):
  - 13.2.1 if the Other Party is in material breach of its obligations under this Agreement which is not remediable; or
  - 13.2.2 if the Other Party passes a resolution for its winding up or for the appointment of an administrator, a liquidator or administrator is appointed or a winding up order is made in relation to the Other Party (other than in circumstances of a solvent amalgamation or reconstruction), a receiver or administrative receiver is appointed in relation to the Other Party or its assets, the Other Party has a freezing order made against it or becomes insolvent, or becomes subject to a moratorium or a company voluntary arrangement under the Insolvency Act 1986 or a restructuring plan under Part 26A of the Companies Act 2006 or the Other Party makes any arrangement or composition with or for the benefit of its creditors or takes or suffers any similar or analogous action in consequence of debt, or one Party reasonably believes that the Other Party will not be able to pay its debts when they fall due.
- 13.3 On termination of this Agreement, the Client will pay for all The Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by KCS for the performance of the Services prior to the date of termination.

### **14 General**

#### **14.1 Force majeure**

Neither Party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

#### **14.2 Amendments**

No amendment or variation of this Agreement will be valid unless confirmed as agreed, in writing, by an authorised signatory of each Party.

#### **14.3 Assignment**

Neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party, save where a Party transfers all of its business and the assignee undertakes in writing to the other

Party to be bound by the obligations of the assignor under this Agreement.

#### **14.4 Entire Agreement**

This Agreement contains the whole agreement between the Parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

#### **14.5 Waiver**

No failure or delay by KCS in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

#### **14.6 Agency, partnership, etc**

This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

#### **14.7 Severance**

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

#### **14.8 Announcements**

No Party will issue or make any public announcement or disclose any information regarding this Agreement without the prior approval of the Other Party, unless disclosing such information is necessary to comply with any applicable law or the regulations of a recognised stock exchange.

#### **14.9 Interpretation**

In this Agreement unless the context otherwise requires:

- 14.9.1 words importing any gender include every gender;
- 14.9.2 words importing the singular number include the plural number and vice versa;
- 14.9.3 words importing persons include firms, companies and corporations and vice versa;
- 14.9.4 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 14.9.5 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 14.9.6 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 14.9.7 the headings to the clauses and paragraphs of, and schedules to, this Agreement are not to affect the interpretation;

- 14.9.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 14.9.9 where the word 'including' is used in this Agreement, it will be understood as meaning 'including without limitation'.

**15      Applicable law and jurisdiction**

- 15.1 The validity, construction and performance of this Agreement is governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**16      Third parties**

- 16.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

**17      Right to Vary these Terms and Conditions**

- 17.1 KS reserves the right to vary these Terms and Conditions without prior notice or approval of the Client