**Saas and Services Terms and Conditions**

**1. SERVICES**

**1.1 Purpose.** This document sets forth the terms and conditions under which Varitec Controls and Service Solutions LLC (“**VCSS**”) agrees to provide hosted “software as a service” (“**Subscription Services**”) for the software application including but not limited Turntide, KMC Commander and Open+ Powered by Kode OS (“**Platform**”) to Customer, as further set forth on each proposal (“**Proposal**”), and, if applicable, all other implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, training, backup and recovery, and change management (“**Professional Services**”) related to Customer’s access to, and use of, such Subscription Services and Platform, subject to all specific inclusions and exclusions provided on the Proposal.

**1.2 The Services; Access and Use License.** Subject to these terms and conditions, during the subscription term (“**Term**”), VCSS shall use commercially reasonable efforts to provide Customer access to the Platform and Professional Services. During the Term, VCSS hereby grants Customer a non-exclusive, non-sublicensable, non-transferable, worldwide license to access and use the Platform, solely for internal business purposes as set forth herein.

**1.3 Subscription Services.** Each applicable Proposal shall specify and further describe the Subscription Services to be provided in accordance with the representations and warranties set forth herein, and shall identify the Platform, user limitations, fees, Term and other applicable terms and conditions.

**1.4. Professional Services.** Each applicable Proposal shall specify and further describe the Professional Services to be provided in accordance with the representations and warranties set forth herein, and may, but need not, include, the Professional Services offered, limitations, milestones, fees, Term and other applicable terms and conditions.

**1.5. Changes to Platform.** VCSS may, in its sole discretion, make any changes to the Platform that it deems necessary or useful to maintain or enhance the quality or delivery of VCSS products or services, competitive strength/market for VCSS products or services, Platform cost efficiency or performance, or to comply with applicable law.

**2. PLATFORM ACCESS**

**2.1 Administrative Users.** During the configuration and set-up process for the Platform, Customer will identify an administrative username and password for the Platform account.

**2.2 Authorized Users.** Customer may allow such number of Customer’s employees and/or independent contractors as is indicated on the Proposal to use the Platform on behalf of Customer (“**Authorized Users**”). Authorized User subscriptions are for designated Authorized Users and cannot be shared or used by more than one Authorized User, but may be reassigned to new Authorized Users replacing former Authorized Users who no longer require ongoing use of the Platform.

**2.3 Authorized User Conditions to Use.** As a condition to access and use the Platform, each Authorized User shall agree to abide by these terms and conditions and the Proposal. Customer shall immediately notify VCSS of any violation of the terms of any of the foregoing by any Authorized User upon becoming aware of such violation, and shall be liable for any breach of the foregoing by any Authorized User.

**2.4 Account Responsibility.** Customer will be responsible for all uses of any account that Customer has access to, whether or not Customer has authorized the particular use or user, and regardless of Customer’s knowledge of such use. Customer shall also be responsible for securing its account, passwords and files. VCSS is not responsible for any losses, damages, costs, expenses or claims that result from stolen or lost passwords.

**3. ADDITIONAL RESTRICTIONS AND RESPONSIBILITIES**

**3.1 Software Restrictions.** Customer will not, nor permit or encourage any third party to, directly or indirectly (1) reverse engineer, decompile, disassemble or otherwise attempt to discover or derive the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Platform or any software, documentation or data related to the Platform; (2) modify, translate, or create derivative works based on the Platform, (3) use the Platform for timesharing or service bureau purposes or other computer service to a third party; (4) modify, remove or obstruct any proprietary notices or labels; or (5) use the Platform in any manner to assist or take part in the development, marketing or sale of a product potentially competitive with the Platform. For the avoidance of doubt, the Platform, Subscription Services and Professional Services, including all user-visible aspects, are the Confidential Information of VCSS, and Customer will comply with Section 4 with respect thereto.

**3.2 Customer Compliance.** Customer shall use, and will ensure that all Authorized Users use, the Platform and Services in full compliance with these terms and conditions, the Proposal and all applicable laws and regulations. Customer represents and warrants that it has accessed and reviewed any terms of use or other policies relating to the Platform, understands the requirements thereof and agrees to comply therewith. VCSS may suspend Customer’s account and access to the Platform and performance of the Services at any time and without notice if VCSS believes that Customer is in violation of terms of use or other policies relating to the Platform. Although VCSS has no obligation to monitor Customer’s use of the Platform, VCSS may do so and may prohibit any use it believes may be, or alleged to be, in violation of the foregoing.

**3.3 Cooperation.** Customer shall provide all cooperation and assistance as VCSS may reasonably request to enable VCSS to exercise its rights and perform its obligations under these terms and conditions and Proposal, including providing VCSS with such access to Customer’s premises and its information technology infrastructure as is necessary for VCSS to perform the Services accordingly.

**3.4 Training and Education.** VCSS shall provide training and education to Customer as specified in the Proposal. Customer shall use commercially reasonable efforts to cause Authorized Users to be, at all times, educated and trained in the proper use and operation of the Platform, and to ensure the Platform is used in accordance with applicable manuals, instructions, specifications and documentation provided by VCSS from time to time.

**3.5 Customer Systems.** Unless the Proposal provides otherwise, Customer shall be responsible for obtaining and maintaining the functionality and security of any equipment and ancillary services needed to connect to, access or otherwise use the Platform, including but not limited to, modems, hardware, servers, software, operating systems, networking, webservers and the like.

**3.6 Restrictions on Export.** Customer may not remove or export from the United States or allow the export of re-export of the Platform or related software or services, or any direct product thereof in violation of any restrictions, laws or regulations of any United States or foreign agency or authority.

**3.7 DFARS.** The Platform, Services, and any documentation provided by VCSS are deemed to be “commercial computer software” and “commercial computer software documentation” pursuant to Defense Federal Acquisition Regulation Supplement, codified under Chapter 2 of Title 48, United states Code of Federal Regulations, Section 227.7202, and Federal Acquisition Regulation, codified in Title 48 of the United States Code of Federal Regulations, Section 12.12. Any use, modification, reproduction, release, performance, display, or disclosure of the Platform or documentation by the United States Government is governed solely by this document and related Proposal, and is prohibited except to the extent expressly permitted.

**4. CONFIDENTIALITY**

**4.1 Confidential Information.** Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing party**”) has been, and may be, exposed to or acquired business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as (“**Confidential Information**”). Confidential Information of VCSS includes non-public information regarding features, functionality and performance of the Platform. Confidential Information of Customer includes non-public data provided by Customer to VCSS to enable the provision of access to, and use of, the Services as well as all content, data and information recorded and stored by the Platform for Customer (“**Customer Data**”). The terms and condition stated herein, along with the Proposal, including all pricing and related metrics, are VCSS’ Confidential Information.

**4.2 Exclusions.** Confidential Information does not include any information that: (1) at the time of the disclosure, is generally available to the public or thereafter becomes generally available to the public through no act or omission of the Receiving Party; (2) is developed by the Receiving Party independently of and without use of or access to the Confidential Information; (c) is disclosed to the Receiving Party by a third-party who has a right to make such disclosure; (d) was already in the Receiving Party’s rightful possession prior to the time of receipt from the Disclosing Party, as evidenced by the Receiving Party’s written records; or (e) is required to be disclosed to a third party by applicable law or court actions.

**4.3 Obligation of Receiving Party.** The Receiving Party shall keep in the strictest confidence and not disclose Confidential Information or any part thereof to any third-party or to any person within its organization other than those who have a need to know, except as compelled by subpoena, court order, or as otherwise required by law, and shall not use Confidential Information or any of the information therein for any purpose without the Disclosing Party’s prior written approval. Should any person within the Receiving Party’s organization have a need to know, that individual will be required to abide by the terms and conditions of this Section. The Receiving Party will use the Confidential Information only as provided by the Disclosing Party in writing. The Receiving Party shall return to the Disclosing Party or destroy any and all records, notes, and other written, printed, or tangible materials, including all copies, excerpts and derivatives thereof, in its possession pertaining to Confidential Information immediately if the Disclosing Party requests so in writing.

**4.4 Equitable Relief.** The Receiving Party acknowledges and agrees that in the event it or any of its affiliates, employees, officers, owners, agents, consultants or representatives breaches any of the Receiving Party’s obligations set forth in this Section: (a) The Disclosing Party will suffer severe and irreparable injury: (b) The Disclosing Party’s remedy at law for damages will be inadequate; and (c) The Disclosing Party will be entitled to seek an injunction to restrain any threatened or continuing breach by the Receiving Party or its affiliates, employees, officers, owners, agents, consultants or representatives. In addition to such injunctive relief, the Disclosing Party will be entitled to any and all court-awarded damages, costs and expenses including, without limitation, reasonable attorneys’ fees, incurred in connection with the enforcement of this Section, in addition to any other rights and remedies it may have at law or in equity.

**5. PROPRIETARY RIGHTS**

**5.1 Ownership.**  Customer shall own all right, title and interest in and to the Customer Data. VCSS shall own and retain all right, title and interest in and to (1) the Platform, software and the Services and all improvements, enhancements or modifications thereto, (2) any software, applications, inventions or other technology developed in connection with the Services, and (3) all intellectual property and proprietary rights in and related to any of the foregoing (collectively, “**Services IP**”). To the extent Customer acquires any right, title or interest in any Services IP, Customer hereby assigns all of its right, title and interest in such Services IP to VCSS.

**5.2 Customer Data and Vendor Information License.** Customer hereby grants to VCSS a non-exclusive, transferable, sublicensable, worldwide and royalty-free license to use and otherwise exploit Customer Data to provide the Services to Customer hereunder and as necessary or useful to monitor and improve the Platform, software and the Services, both during and after the Term. For the avoidance of doubt, VCSS may use, reproduce and disclose Platform and Services-related information, data and material that is anonymized, de-identified, or otherwise rendered not reasonably associated or linked to Customer or any other identifiable individual person or entity for product improvement and other lawful purposes, all of which information, data and material will be owned by VCSS. It is Customer’s sole responsibility to back-up Customer Data during the Term, and Customer acknowledges that it will not have access to Customer Data through VCSS or any Platform following the expiration or termination of the Term.

**5.3 No Other Rights.** No rights or licenses are granted except expressly set forth herein.

**6. FEES AND PAYMENT**

**6.1. Fees.** Customer will pay VCSS the then-applicable fees described in the Proposal, in accordance with the terms set forth therein (“**Fees**”), including but not limited to, any fees incurred through Customer’s use of the Platform exceeding a services capacity parameter specified in the Proposal.

**6.2 Renewals.** Upon the end of the Term provided in the Proposal, Services will automatically renew for another year unless written request to cancel Services is provided pursuant to Section 7. VCSS reserves the right to increase the renewal price up to a maximum of 5% to account for market adjustments.

**6.3 Reimbursable Expenses.** In addition to the fees, if applicable, Customer shall reimburse VCSS for reasonable out-of-pocket expenses incurred by VCSS in connection with performing the Professional Services.

**6.4 Payment.** VCSS may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by VCSS thirty (30) days after the mailing date of the invoice (unless otherwise specified on the applicable Proposal). Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is greater, plus all expenses of collection. In addition to any other remedies available, VCSS may suspend Services in the event of payment delinquency.

**6.5 Payment Disputes.** If Customer believes that VCSS has billed Customer incorrectly, Customer must contact VCSS no later than thirty (30) days after the closing date on the first billing statement in which the believed error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to trishas@varitecsolutions.com.

**6.6 Taxes.** Customer shall pay all applicable taxes, if any, with regards to the Platform and Services.

**6.7 No Deductions or Setoffs.** All amounts payable to VCSS hereunder shall be paid by Customer to VCSS in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason except as may be required by applicable law.

**6.8 Subpoena Expenses.** If VCSS has to provide information in response to a subpoena related to Customer’s account, then VCSS may charge Customer for VCSS’ costs. Such charges may include fees for attorney and employee time spent retrieving records, preparing documents and participating in depositions or other legal process as well as other costs incurred in complying with such legal processes.

**7. TERM AND TERMINATION**

**7.1 Term.** Use of the Platform and related Services shall remain in effect until its termination as provided in the Proposal. The Term shall begin on the applicable services effective date and continue for the service term, as specified in the Proposal. Each Proposal shall renew for additional one (1) year periods, unless written notice of non-renewal is received by the other party at least sixty (60) days prior to the expiration of the then current term.

**7.2 Termination.** VCSS may terminate upon written notice to Customer if no Proposal is in effect. In addition to any other remedies it may have, either party may also terminate upon written notice if the other party fails to pay any amount when due or otherwise materially breaches its responsibilities and fails to cure such breach within thirty (30) days or as agreed upon by both parties after receipt of written notice of such breach from the non-breaching party. Notwithstanding the foregoing, if Customer is a state agency or a political subdivision of a state, or a federal agency or a political subdivision of the federal government, Customer may terminate at any time (1) for convenience upon ninety (90) days’ written notice to VCSS, or (2) if adequate funds to pay VCSS all fees owed hereunder are not appropriated to such Customer during the Term, unless otherwise authorized by law; provided, it is expressly agreed that Customer shall not activate this non-appropriation provision for its convenience, substation for another procurement system or solution, or to circumvent its requirements in any way.

**7.3 Effect of Termination.** Upon termination Customer shall immediately cease all use of, and all access to, the Subscription Services and VCSS shall immediately cease providing the Professional Services. If VCSS terminates pursuant to the second sentence of Section 7.2, or Customer terminates this pursuant to clause (1) of the last sentence of Section 7.2, all fees that would have become payable had each outstanding Statement of Service remained in effect until expiration of its current term will become immediately due and payable.

**7.4 Survival.** Sections 3.1, 4-6, 7.2, 7.4, and 9-17 shall survive any termination or expiration. All other rights and obligations shall be of no further force or effect.

**8. WARRANTY AND DISCLAIMER**

**8.1 Warranties.** VCSS represents and warrants that it will perform the Professional Services in a professional and workmanlike manner. Each party represents and warrants that it has the legal power to enter into the Proposal. Additionally, Customer warrants that (1) Customer owns or has a license to use and has obtained all consents and approvals necessary for the provision and use of all of the Customer Data that is placed on, transmitted via or recorded by the Platform and the Services; (2) the provision and use of Customer Data, the Platform and the Services does not and shall not violate any Customer’s privacy policy, terms-of-use or other agreement to which Customer is a party or any law or regulation to which Customer is subject to; and (iii) no Customer Data will include social security numbers or other government-issued identification numbers, financial account numbers, credit card or debit card numbers, credit report information or other personal financial information, health or medical information or other information that is subject to international, federal, state, or local laws or ordinances now or hereafter enacted regarding data protection or privacy, including, but not limited to, the

Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, the Fair Credit Reporting Act, the Children’s Online Privacy Protection Act and the Gramm-Leach-Bliley Act.

**8.2 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN OR IN A STATEMENT OF SERVICE, VCSS DOES NOT WARRANT THAT ACCESS TO THE PLATFORM, SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES VCSS MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. FURTHER, VCSS MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO SERVICES PROVIDED BY THIRD PARTY TECHNOLOGY SERVICE PROVIDERS RELATING TO OR SUPPORTING THE PLATFORM, INCLUDING HOSTING AND MAINTENANCE SERVICES, AND ANY CLAIM OF CUSTOMER ARISING FROM OR RELATING TO SUCH SERVICES SHALL, AS BETWEEN VCSS AND SUCH SERVICE PROVIDER, BE SOLELY AGAINST SUCH SERVICE PROVIDER. THE PLATFORM, SOFTWARE AND SERVICES ARE PROVIDED “AS IS,” AND VCSS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**9. INDEMNITY**

VCSS will defend Customer against any claim, suit, demand, or action made or brought against Customer by a third party alleging that the Services, or Customer’s use or access thereof, infringes any intellectual property rights of such third party, and will indemnify and hold harmless Customer from any damages, losses, liabilities, costs and fees (including reasonable attorney’s fees) finally awarded against Customer in connection with or in settlement of any such claim, suit, demand, or action. The foregoing obligations do not apply with respect to portions or components of the Platform or Service (1) not supplied by VCSS, (2) made in whole or in part in accordance with Customer specifications, (3) that are modified after delivery, or granting of access, by VCSS, (4) combined with other products, processes or materials where the alleged infringement relates to such combination, (5) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (6) where Customer’s use of the Services is not strictly in accordance with these terms and conditions. If, due to a claim of infringement, the Platform is held by a court of competent jurisdiction to be or is believed by VCSS to be infringing, VCSS may, at its option and expense (a) replace or modify the Platform to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Platform, or (c) if neither of the foregoing is commercially practicable, terminate the Proposal and Customer’s rights hereunder and provide Customer a refund of any prepaid, unused fees for the Platform. This Section states Customer’s sole and exclusive remedies for claims of infringement.

**10. LIMITATION OF LIABILITY**

IN NO EVENT SHALL (1) EITHER PARTY’S LIABILITY, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED IN THE AGGREGATE THE TOTAL FEES PAID OR OWED BY CUSTOMER AND VENDORS HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM (SUCH AMOUNT BEING INTENDED AS A CUMULATIVE CAP AND NOT PER INCIDENT), AND (2) EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, COVER, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS AND DISCLAIMERS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

**11. GOVERNING LAW AND DISPUTE RESOLUTION**

The Proposal and these terms and conditions will be construed in accordance with, and disputes governed by, the laws of the State of Arizona, without reference to its choice of law rules unless superseded by Federal statute. Neither any adoption of the Uniform Computer Information Transactions Act nor the U.N. Convention on the International Sale of Goods applies. Any dispute shall first be attempted to be resolved through good faith, direct, in person discussions between senior management level personnel with authority to settle the matter, who will record the date of first discussions. Senior executives shall make themselves reasonably available to resolve such disputes within ten (10) business days of written notice of the dispute. Completion of this step is a condition precedent before arbitration. If these direction discussions fail to resolve the dispute, the Parties may seek binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). Either party may send a notice to the other party of its intention to file a case with the AAA under this Section (“Arbitration Notice”). The arbitration will be conducted in Phoenix, Arizona by a single arbitrator knowledgeable in the commercial aspects of “software as a service” arrangements and intellectual property. The Parties shall act in good faith to agree on an arbitrator. If the Parties cannot mutually agree upon the arbitrator within thirty (30) days from the notice of arbitration, the Parties shall be required to obtain a list of proposed neutrals through the office of the AAA. The Parties shall then proceed with the selection of an arbitrator in accordance with AAA rules. The Parties shall afford each other informal discovery consistent with the Federal Rules of Civil Procedure, including the production of documents and the deposition of witnesses having knowledge of facts related to the Dispute. The award of the arbitrator shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. The arbitration award will be final and binding and may be enforced in any court of competent jurisdiction.

**12. SECURITY**

VCSS may, from time to time, host and/or maintain the Platform using a third-party technology service provider and Customer acknowledges that VCSS cannot offer any additional or modified procedures other than those put in place by such technology provider with respect to such technology service.

**13. PUBLICITY**

Customer agrees that VCSS may identify Customer as a customer and use Customer’s logo and trademark in VCSS’ promotional materials. Customer may request that VCSS stop doing so by submitting an email to jenniferd@varitecsolutions.com at any time. Customer acknowledges that it may take VCSS up to 30 days to process such request. Notwithstanding anything herein to the contrary, Customer acknowledges that VCSS may disclose the existence and terms and conditions of this document and the Proposal to its advisors, actual and potential sources of financing and to third parties for purposes of due diligence.

**14. NOTICES**

All notices, consents, and other communications between the parties under or regarding these terms and conditions or the Proposal must be in writing (which includes email and facsimile) and be addressed according to information provided on the Proposal. All notices, consents and other communications between the parties under a Proposal will be sent to the recipient’s address specified thereon. All communications will be deemed to have been received on the date actually received. Either party may change its address for notices by giving written notice of the new address to the other party in accordance with this Section.

**15. FORCE MAJEURE**

VCSS is not responsible no liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third party technology providers, riots, fires, earthquakes, floods, power blackout, strikes, weather conditions, pandemics, epidemics, supply chain issues, acts of hackers, internet service providers or any other third party or acts or omissions of Customer or any Authorized User.

**16. ASSIGNMENT**

Neither party may assign their rights or responsibilities to any third party without the prior written consent of the other, provided that no consent is required in connection with an assignment to an affiliate or in connection with any merger, reorganization, consolidation, sale of assets or similar transaction. VCSS may sublicense any or all of its obligations hereunder. For the avoidance of doubt, a third party technology provider that provides features or functionality in connect with the Platform shall not be deemed a sublicensee.

**17. GENERAL PROVISIONS**

If any provision is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Proposal and these terms and conditions will otherwise remain in full force and effect and enforceable. These terms and conditions, together with the Proposal entered into hereunder and all exhibits, annexes and addenda hereto and thereto is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of the Proposal. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment has been created, and neither party has authority of any kind to bind the other party in any respect whatsoever. In the event of a conflict between these terms and conditions and any Proposal, such Proposal shall prevail unless otherwise expressly indicated in these terms and conditions or such Proposal. The heading references herein are for convenience purposes only and shall not be deemed to limit or affect any of the provisions hereof. Unless otherwise indicated to the contrary herein by the context or use thereof: (1) the words “hereof,” “hereby,” “herein,” “hereto,” and “hereunder” and words of similar import shall refer to these terms and conditions as a whole and not to any particular Section or paragraph; (2) the words “include,” “includes” or “including” are deemed to be followed by the words “without limitation;” (3) references to a “Section” or “Exhibit” are references to a section of, or exhibit to these terms and conditions; and (4) derivative forms of defined terms will have correlative meanings.