Third Party Product Terms – Vigo

1. General Description:

1.1 These Third Party Product Terms detail the provision by KCS to Customer of the Supplier's transport management software, warehouse management software and mobile workforce applications ("Vigo Software").

1.2 Third Party Products are provided by third party suppliers and the provisions in these Third Party Product Terms reflect or flow down the terms and basis on which the Vigo Software is provided to KCS.

1.3 Capitalised terms used in these Third Party Product Terms but not defined in herein are defined within the KCS Section A Terms and Conditions.

1.4 In these Terms, unless the context otherwise requires, the following expressions shall have the following meanings:

1.4.1 "**Customer Data**" means the data inputted by the Customer (including its affiliates, employees and directors) into the Vigo Software or otherwise provided to the Supplier as part of the Customer's use of the Vigo Software.

1.4.2 "**Incident**" means any Vulnerability, Virus or security incident which:
   (a) May affect the Vigo Software or the Services
   (b) May affect the Supplier's network and information systems, such that it could potentially affect the Customer or the Vigo Software or the Services; or
   (c) is reported by the Customer.

1.4.3 "**Services**" means the Services provided by the Supplier to the Customer including providing the Vigo Software and any applicable Vigo Support

1.4.4 "**Supplier**" means Vigo Software Limited a company registered in England and Wales under registration number 03532903 and with its registered address at Charnham Park, Herongate, Hungerford, RG17 0YU.

1.4.5 "**Support Services**" means the relates support services (if any) provided by the Supplier to the Customer to assist the Customer with any technical and advisory support in connection with the Customer's use of the Vigo Software.

1.4.6 "**Terms**" mean these Third Party Product Terms.

1.4.7 "**User Subscriptions**" means the individual user subscriptions purchased by the Customer from time to time to enable the Customer's employees, directors, contractors or consultants to access and use the Services in accordance with these Third Party Product Terms (as confirmed by the Supplier in writing).

1.4.8 "**Virus**" means any thing or devices (including any software, code, file or programme) which may: prevent, impair, or otherwise adversely affect the operation of any computer software, hardware or network.

1.4.9 "**Vulnerability**" means a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, result in a negative impact to confidentiality, integrity or availability.

2 Provision of the Vigo Software:

2.1 The Vigo Software provides the features set out at https://vigosoftware.com/ subject to regional availability.

2.2 KCS may make changes to these Terms:

2.2.1 at any time following an update in the terms and/or requirements of the Supplier;

2.2.2 at any time following a change in law and/or regulation relating to the use or provision of the Vigo Software; ;

2.2.3 on not less than 30 days' prior notice;

and the latest version of these Terms shall be apply.

2.3 The latest version of these Terms are available at https://www.kerridgecs.com/page/site/documentation

3 Rights to use the Vigo Software:

3.1 Subject to these Terms and on condition of the payment of all Charges, and solely in the manner and to the extent permitted by and provided for in the Customer's Contract, KCS hereby grants to the Customer a non-exclusive and non-transferable right to use the Services.

3.2 The Supplier will provide the Services to satisfy the number of User Subscriptions purchased by the Customer.

3.3 Excepts for the right to use the Services as expressly granted in herein, these Terms do not grant the Customer any Intellectual property Rights in respect of the Services and all Intellectual Property Rights in the Services shall vest in , and remain vested in, the Supplier (or its licensors, if applicable).

3.4 To the extent that the Customer acquires any Intellectual Property Rights in the Software the Customer will, on the Supplier's written demand,

assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to the Supplier. The Customer shall execute all such documents and do such things as the Supplier may consider necessary to give effect to this clause 3.4 at its own cost.

4 Supplier's Obligations:

4.1 The Supplier shall provide the Services with reasonable skill and care.

4.2 The Supplier does not warrant that:

(a) the Customer's use of the Services will be uninterrupted or error-free;
(b) the Services will meet the Customer's requirements;
(c) the Services will be free from Vulnerabilities or Viruses;
(d) the Services will comply with the Customer's cybersecurity requirements.

5 Customer's Obligations:

5.1 Customer will:
(a) co-operate with the Supplier and provide all necessary information to allow the Supplier to provide the Services;
(b) ensure that any users who have access to the Software comply with the terms of this Agreement;
(c) use the Services in accordance with the terms and conditions of this Agreement;
(d) keep secure all login information for the use of the Services;
(e) allow the Supplier to audit the use of the Services where the Supplier provides the Customer with reasonable prior written notice;
(f) ensure that the Customer's network and systems comply with all relevant specifications provided by the Supplier in relation to use of the Services;
(g) be responsible for obtaining, maintaining and securing its own internet connection.

5.2 Customer will not:

(a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documents (as applicable) in any form or media or by any means;
(b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form for all or any part of the Software;

(c) access all or any part of the Services in order to build a product or service which competes with the Services;
(d) grant any sublicences to any other party to use the Services;
(e) attempt to obtain, or assist third parties in obtaining, access to the Services;
(f) access, store, distribute or transmit Viruses or any harmful or illegal material during the course of its use of the Services; or
(g) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.

5.3 The Customer shall use all reasonable efforts to prevent any unauthorised access to the Services. Upon discovering any unauthorised access, the Customer must immediately notify the Supplier.

5.4 The Customer shall notify the Supplier immediately of any Incidents.

5.5 The Customer acknowledges that any delay caused by the Customer failing to fulfil any of its obligations under this Agreement may mean that the Supplier needs to adjust any agreed timescales and could lead to an increase in the Fees.

6 Charges and Payment:

6.1 KCS Shall invoice the Customer monthly in arrears for the Charges under the relevant Contract.

6.2 Customer is responsible for checking all invoices and Charges in relation to its use of the Vigo Software. Any disputes solely relating to the Charges for the Vigo Software must be raised within seven (7) days of date of invoice from KCS, and with sufficient information to allow KCS to raise any elated dispute with the Supplier. Nothing in this clause 6.2 shall entitle the Customer to withhold payment of any invoices. Customer must act reasonably and in good faith in relation to any Vigo Software disputes of Charge queries.

7 Intellectual Property Rights Indemnity:

7.1 The Supplier shall indemnify the Customer against all damages, liabilities, costs, expenses and losses suffered or incurred by the Customer arising from any claim by a third party that the use of the Services by the Customer infringes the Intellectual Property Rights of that third party, provided that:

(a) the Supplier is given prompt notice of such claim;

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(b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

(c) the Supplier is given sole authority to defend or settle the claim.

7.2 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Customer. The Supplier shall have no liability if the alleged infringement is based on:

(a) a modification of the Services by anyone other than the Supplier; or

(b) the Customer's use of the Services in a manner contrary to the instructions given by the Supplier; or

(c) the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

7.3 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability for infringement of any intellectual Property Right.

8   Limitation of Liability:

8.1 Except as expressly and specifically provided in these Terms:

(a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use;

(b) the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;

(c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

(d) the Services are provided to the Customer on an "as is" basis.

8.2 Nothing in these Terms excludes the liability of the Supplier for:

(a) death or personal injury causes by the Supplier's negligence; or

(b) fraud or fraudulent misrepresentation.

8.3 Subject to clauses 8.1 and 8.2:

(a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

(b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid during the 12 months immediately preceding the date on which the claim arose.

9   Suspension and Termination:

9.1 KCS may suspend and/or terminate the Vigo Software or Customer's use or access to the Vigo Software:

(a) Immediately without notice or instruction or at the request of the Supplier;

(b) Immediately without notice in the event of a suspected breach of or where required by any acceptable use policy, applicable laws or regulations or the requirements of a supplier;

(c) Immediately without notice if KCS or a supplier determines, in its sole discretion, that Customer's continued use of the Vigo Software damages the brand or reputation of KCS or Supplier; or

(d) immediately without notice in the event of a material breach of these Terms by Customer.

10.   Data Processing:

10.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

10.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or

damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

10.3 The Supplier shall, in providing the Software, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at www.vigosoftware.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

10.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller (or Responsible Party in South Africa and references to Controller shall be construed as references to Responsible Party where appropriate) and the Supplier shall be a data processor and in any such case:

(a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to provide the Vigo Software and the Supplier's other obligations under this agreement;

(b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;

(c) the Customer shall ensure that the relevant third parties have been informed of, and where required have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

(d) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and

(e) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

10.5 The Supplier may also use statistical data relating to the Customer's use of the Vigo Software in aggregate with similar data from other users provided that the identity of any individual customer cannot be derived from such use.

10.6 If Customer wishes to enable third-party applications for use in conjunction with the Service, Customer authorises the Supplier to allow the providers of those third- party applications to access the Customer Data as required for the interoperation of such third-party applications with the Service. The Supplier shall not be responsible for any disclosure, modification or deletion of the Customer's Data resulting from any such access by any such third-party application providers. Under no circumstances will the Supplier be or become liable for any loss or damage suffered by any such party and the End User hereby indemnifies the Supplier from and against any claim that may be made by a third party.

10.7 Customer acknowledges that the Supplier is reliant on Customer for directions as to the extent to which the Supplier is entitled to use and process the personal data. Consequently, Customer shall indemnify and keep indemnified the Supplier and its permitted assign for: (i) any claim brought by a data subject, any person, or a supervisory authority against the Supplier (and any damages, fines, awards, expenses, liabilities, and/or losses suffered or incurred by the Supplier) arising from any action or omission by the Supplier or its sub-contractor, to the extent that such action or omission resulted from Customer's instructions except to the extent that same has arisen out of non-compliance by the Supplier or its sub-contractors with their obligations under applicable Data Protection Legislation; and (ii) any damages, fines, awards, expenses, liabilities, and/or losses suffered or incurred by the Supplier (and/or its permitted assigns) arising as a result of a breach by Customer of Customer obligations under applicable Data Protection Legislation

10.8 Customer warrants and represents that Customer has obtained and/or have in place, all necessary consents, approvals and/or valid legal basis for the lawful transfer of personal data to the Supplier for the purposes of these Terms and the provision of services by the Supplier and KCS.

11 Customer Indemnity:

Customer agrees to defend, indemnify, and hold harmless the Supplier from and against any claims, demands, damages, losses, liabilities, awards and/or expenses suffered and/or incurred or agreed

to be paid out by the Supplier arising out of or in connection with Customer's use or the use by Customer's End Users of the Vigo Software in breach of these terms and/or any Content posted, uploaded, distributed, transmitted or disseminated by Customer or Customer's End Users.

12 General:

12.1 Relationship of the parties:

The Customer and the Supplier are independent businesses and not partners, principal; and agent, or employer and employee or in any other relationship of trust to each other.

12.2 Assignment and other dealings:

The Customer shall not assign, subcontract or encumber any right or obligation under these Terms, in whole or in part, without the Supplier's prior written consent or except as expressly permitted in these Terms.

13 Route Optimiser Auto Planning:

13.1 All provisions contained in this clause 13 relate exclusively to the Supplier's Route Optimiser Auto Planning module ("Route Optimiser").

13.2 These provisions do not apply to any other Services provided under this Agreement unless expressly stated otherwise.

13.3 Definitions:

(a) **"Vehicle"** means one planned vehicle on a given day.

(b) "**Vehicle Overage Day**" means one additional vehicle planned in excess of the Subscribed Vehicles on a single day.

(c) **"Overage Charge"** means any Excess Vehicle Days, charged in accordance with this Schedule.

(d) **"Agreed Subscription Rate"** means the per Vehicle monthly subscription fee as agreed between the Parties in the Order Form or Commercial Proposal and subject to variation in accordance with the Master Agreement.

(e) **"Agreed Overage Rate"** means the per day overage fee as agreed between the Parties in the Order Form or Commercial Proposal and subject to variation in accordance with the Master Agreement.

(f) "**Subscribed Vehicles**" means the minimum number of Vehicles that the Customer commits to

pay for during the Term, regardless of actual usage.

(g) "**Term"** means the minimum contract period for which the Customer commits to Route Optimiser Auto Planning, as further defined in Clause 13.4.

13.4 Fees & Billing:

(a) The Customer shall pay the Agreed Subscription Rate for the number of Subscribed Vehicles for the full Term, billed monthly in arrears.

(b) Where usage exceeds the Subscribed Vehicles, the Customer shall be charged for Additional Vehicle Overage Days. The number of Additional Vehicle Overage Days shall be calculated as the cumulative number of Vehicle Overage Days for the month multiplied by the Agreed Overage Rate.

(c) The Supplier may vary the Agreed Subscription Rate and/or the Agreed Overage Rate following the anniversary of the Commencement Date by providing not less than 30 days' prior written notice to the Customer.

13.5 Term:

(a) Route Optimiser shall commence on the Commencement Date specified in the Order Form or Commercial Proposal for Route Optimiser.

(b) The Initial Term for Route Optimiser shall align with the Initial Term of the Master Transport Management Software Agreement ("Master TMS Agreement");

(c) Upon expiry of the Initial Term, the Route Optimiser Term shall renew automatically in accordance with the renewal profile set out in Clause 4 of the Master TMS Agreement (i.e. successive one (1) year renewal periods unless terminated in writing by either party in accordance with that clause);

(d) Any renewal, termination, or non-renewal of the Master TMS Agreement shall automatically apply to Route Optimiser, unless expressly agreed otherwise in writing by the parties.

13.6 Subscribed Vehicles Commitment:

(a) The Customer may utilise fewer vehicles than the Subscribed Vehicles but shall remain liable for payment of the full Subscribed Vehicles for the Term;

(b) Requests to reduce the number of Subscribed Vehicles during the Term will not reduce the Customer's payment obligations unless agreed in writing by both Parties;

(c) Additional Subscribed Vehicles may be added during the Term by agreement, in which case the

Agreed Subscription Rate will apply pro rata for the remainder of the Term.

13.7 Vehicle Flexibility:

(a) Vehicles are not tied to specific registrations per month, but are calculated on a per-day basis;
(b) Usage is based on the number of vehicles planned per day.

13.8 Multiple Re-Runs:

(a) Planning for each Vehicle permits multiple re-runs per day, without additional charge.

14 Notifications:

14.1 All the provisions contained in this clause 14 relate exclusively to notification functionality within the Services. The provisions do not apply to any other elements of the Services unless expressly stated otherwise.

14.2 The Third Party Product Terms – SMS available at https://www.kerridgecs.com/page/site/documentation#access shall apply to the provision of SMS services.

14.3 SMS Fair Usage Policy:

(a) Our service includes an allocation of SMS messages intended for standard business use;
(b) Excessive sending of SMS messages, such as bulk distributions or messages to unusually large numbers of recipients, falls outside our fair usage guidelines;
(c) Where usage appears significantly above standard levels, we reserve the right to:
(i) contact the Customer to review usage;
(ii) cap further use; or
(iii) apply additional charges upon prior notice.
(d) If the Customer requires higher SMS volumes, tailored packages are available on request.

15 Hardware Purchases:

15.1 This clause 15 applies exclusively to the purchase of hardware, equipment or devices ("Hardware") supplied by the Supplier to the Customer.

15.2 Hardware is supplied separately from the Services and is subject to the terms of this Clause 18 in addition to the other provisions of this Agreement.

15.3 Orders and Payment:

(a) All Hardware orders must be confirmed in writing by the Customer and accepted by the Supplier;
(b) New Customers: Hardware will not be ordered from the Supplier's vendors or released for delivery until the Supplier has received payment in full for the Hardware;
(c) Existing Customers: Hardware may be ordered against an invoice. Payment for such Hardware shall be due within fourteen (14) days of the invoice date;
(d) The Supplier reserves the right, at its discretion, to require advance payment for any Hardware order irrespective of the Customer's account status.

15.4 Delivery:

(a) Delivery dates provided by the Supplier are estimates only. Time for delivery shall not be of the essence;
(b) The Supplier shall not be liable for any delay in delivery caused by events beyond its reasonable control or by the Customer's failure to provide adequate instructions or information.

15.5 Risk and Title:

(a) Risk in the Hardware shall pass to the Customer on delivery;
(b) Title to the Hardware shall not pass to the Customer until the Supplier has received payment in full:
(i) for the Hardware; and
(ii) for all other sums due or payable by the Customer to the Supplier under these Terms or any other agreement.
(c) Until title passes, the Customer shall:
(i) hold the Hardware on a fiduciary basis as the Supplier's bailee;
(ii) store the Hardware separately from its own goods and those of third parties so that it remains readily identifiable as the Supplier's property;
(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Hardware; and
(iv) maintain the Hardware in satisfactory condition and keep it insured on the Supplier's behalf for its full price.
(d) If before title passes the Customer becomes subject to any insolvency event or fails to pay the Supplier in accordance with this Agreement, then, without limiting any other right or remedy, the Supplier may:
(i) terminate the Customer's right to use the Hardware immediately by written notice; and

    (ii) require the Customer to deliver up all Hardware which has not been paid for in full, or if the Customer fails to do so promptly, enter any premises of the Customer or a third party where the Hardware is stored to recover it.

(e) Warranty:

    (i) The Supplier warrants that the Hardware will conform in all material respects with the specification provided by the Supplier (or the original manufacturer, where applicable) on delivery.

    (j) The Supplier does not provide any warranty in respect of the Hardware beyond the manufacturer's warranty, if any. The Customer's sole remedy in respect of defective. Hardware shall be the repair or replacement of such Hardware in accordance with the manufacturer's warranty terms.