

Third Party Product Terms – OpenECX

1. General Description:

- 1.1 These Third Party Product Terms detail the provision by KCS to Customer of the Supplier's automated order, invoice and reconciliation processing software ("OpenECX 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 OpenECX 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 OpenECX Software or otherwise provided to the Supplier as part of the Customer's use of the OpenECX Software.
- 1.4.2 "**Incident**" means any Vulnerability, Virus or security incident which:
- (a) May affect the OpenECX Software or the Services
 - (b) May affect the Supplier's network and information systems, such that it could potentially affect the Customer or the OpenECX Software or the Services; or
 - (c) is reported by the Customer.
- 1.4.3 "**Reseller**" shall mean KCS.
- 1.4.4 "**Services**" means the Services provided by the Supplier to the Customer including providing the OpenECX Platform and/or Software and any applicable OpenECX Support.
- 1.4.5 "**Supplier**" OpenECX Limited, a company incorporated and registered in England and Wales with company number 08036689, and whose registered office is at Blackfriars House, Parsonage, Manchester, M3 2JA.
- 1.4.6 "**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.
- 1.4.7 "**Terms**" mean these Third Party Product Terms.
- 1.4.8 "**Subscriptions**" means the 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).

- 1.4.9 "**Virus**" means anything 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.
- 1.4.10 "**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.
- 1.5 KCS may make changes to these Terms:
- 1.5.1 at any time following an update in the terms and/or requirements of the Supplier;
- 1.5.2 at any time following a change in law and/or regulation relating to the use or provision of the Services;
- 1.5.3 on not less than 30 days' prior notice;
- and the latest version of these Terms shall be apply.
- 1.6 The latest version of these Terms are available at <https://www.kerridgecs.com/page/site/documentation>

2. Licence and access:

- 2.1 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, the Customer is granted with a non-exclusive and non-transferable right to use the Services for its own business purposes and subject to any restrictions set out herein or any relevant order form.
- 2.2 The Services are deployed on a software as a service basis through the public cloud. A Subscription does not give the End User any right to a copy of the underlying software to install on its own systems or servers.
- 2.3 The Supplier will provide the Services to satisfy the number of Subscriptions purchased by the Customer.
- 2.4 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).
- 2.5 To the extent that the Customer acquires any Intellectual Property Rights in the Software the Customer will, on the

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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 2.5 at its own cost.

2.6 The Supplier will provide the Customer with access credentials to access and use the Services. For the avoidance of doubt employees and other authorised users shall only have access to access credentials issued specifically for their use, and access credentials must not be shared between individuals and/or authorised users except where expressly permitted in writing by the Supplier.

2.7 The Customer shall in no circumstances allow or permit any party other than an authorised user to access the Services using its subscription. Authorised users shall be permitted access only to the extent that they are using the Services for the Customer's business purposes.

2.8 The Supplier shall be entitled to suspend, and where appropriate terminate, access to and use by a Customer of the Services (or any part thereof) without notice or to take such reasonable action as it may in its discretion think appropriate if:

2.8.1 not doing so would prejudice the security, integrity or operability of the Services (or any part thereof), cause harm to another end user or other third party or give rise to a claim against the Supplier;

2.8.2 the Customer or its authorised users have transmitted, uploaded or downloaded content which contravenes restrictions set out in the Acceptable Use Policy or the Customer has not entered into or is otherwise in breach of an applicable End User Licence Agreement and/or these Terms.

2.9 Once the delivery of the Services are deemed to be complete by the Supplier is shall carry out such tests as it considers appropriate on the Services. Where appropriate the Customer shall be invited to participate in such testing and the shall provide such assistance as may be necessary and/or reasonable upon the request of the Supplier.

2.10 Where in the Supplier's opinion such testing indicates that the Services are compliant with the Customer's specifications the Customer shall be granted access to the Services.

2.11 Where the testing indicates that the Services are not compliant with the Customer's specification, the Supplier shall revise the Services and carry out further testing in accordance with clause 2.9. The Supplier shall continue

to follow the process set out in clauses 2.9 to 2.11 until the Services is compliant with the Customer's specification.

2.12 Any defects or amendments raised by the Customer after the date from which the first Production transaction(s) is/are processed by the Services will be handled under the normal support process described in the customer handbook as published from time to time, a copy of which is available on request.

3 Customer's Obligations:

3.1 The Customer:

(a) shall use the Services only in accordance with the provisions of these Terms and the Supplier's Acceptable Use Policy available at <https://openecx.com/acceptable-use-policy> ;

(b) shall be fully responsible for any acts or omissions of any employees or any other party accessing the Services using the Customer's access credentials, as if such acts or omissions were the acts or omissions of the Customer;

(c) shall immediately notify the Supplier if it believes or suspects either that its access credentials may have been compromised;

(d) agrees to comply with any applicable data protection legislation;

(e) agrees to provide on reasonable request any information or documentation relevant to the services and the reasonable co-operation of its employees and consultants in respect of matters relating to the services;

(f) agrees that all rights set out in these Terms are for the benefit of both Klipboard and of the Supplier and that the Supplier may directly enforce any such rights as a third party beneficiary;

(g) agrees that the Supplier may publish end user case studies describing its delivery of the Services to Customer and the benefits that Customer has achieved by using the Services on prior written consent of the Customer. This may include working with the Supplier in the preparation of these case studies, including providing testimonials, making available representatives to participate in audio or video interviews and providing any information which the Supplier may reasonably request to assist it in preparing the case study;

(h) authorises the Supplier to engage sub-processors from time to time provided that the Supplier will notify the Customer of any intended changes concerning the addition or replacement of sub-processors and will impose upon any sub-processor (and ensure any sub-processor's

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compliance with) the terms of this clause 3.1(h) as if the processing being carried out by the sub-processor was being carried out by the Supplier (and the Supplier will be liable for the acts and omissions of its sub-processors as if they were the Supplier's own acts and omissions).

3.2 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.

3.3 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.

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

3.5 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.

4 Supplier's Obligations:

4.1 The Supplier:

- (a) agrees to configure the Services to conform to the specification setting out the basic functionality and features of the Services required by the Customer as set out in the relevant statement of word/order form;

- (b) shall use reasonable commercial endeavours to commence and progress the delivery of the Services in a timely manner and in accordance with the timescales set out in the Statement of Work (but for the avoidance of doubt any such timescales are estimates only and are subject to change depending on the progress of the project).

4.2 The Supplier warrants that:

- (a) the functionality of the Services will substantively conform to the user documentation and the agreed specification setting out the basic functionality and features of the Services required by the Customer, as set out in the relevant Statement of Work (or, where appropriate and following an update or upgrade, such revised specification as applicable);
- (b) it will use reasonable endeavours to ensure that the Services are available for the use of all Customer's authorised users during working hours in accordance with the customer handbook;
- (c) all Services will be provided with reasonable skill and care and in accordance with all applicable legislation from time to time in force; and
- (d) it will be responsible for any of its employees who are involved in the provision the Services.

4.3 The Supplier does not warrant that:

- (a) the Customer's use of the Services will be uninterrupted or error-free but shall use its reasonable endeavours to remedy any material error reported by the Customer as soon as reasonably and commercially practicable;
- (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.

4.4 The Customer is purchasing its subscription to the Services from the Reseller and not from the Supplier and, save as where otherwise provided in these Terms, the Supplier does not offer any direct warranties or representations to Customer. In the event that Customer experiences any issues with the Services it shall raise such issues with the Reseller and, to the maximum extent permitted by law, Customer hereby agrees to waive all direct rights, claims and remedies against the Supplier, whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise.

5 Charges and Payment:

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

5.2 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.

6 Intellectual Property Rights Indemnity:

6.1 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;
- (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.

6.2 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.

6.3 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.

7 Limitation of Liability:

7.1 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.

7.2 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.

7.3 Subject to clauses 7.1 and 7.2:

- (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.

8 Suspension and Termination:

8.1 KCS may suspend and/or terminate the Customer's use or access to the Services:

- (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,

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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 Services 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 General:

10.1 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.

10.2 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.