

## KIGEN RSP SANDBOX EVALUATION LICENCE TERMS

These Kigen RSP Sandbox Evaluation Licence terms ("**General Terms**") are between Customer and the Kigen legal entity set forth in the Terms of Sale ("**Kigen**") and take effect as of the last date of signature of the Terms of Sale ("**Effective Date**"). In the event of a conflict, inconsistency or difference between documents that make up the Agreement, the documents will control in the following order: the Terms of Sale, and these General Terms.

Kigen may modify or update these General Terms and will notify Customer by posting a revised version of the General Terms on the Kigen website, and/or by providing by other reasonable means. If Customer does not agree to the updated terms then (a) the General Terms originally accepted by Customer will continue to apply to Services Customer has purchased as of the date of the update for the remainder of the then-current Services Term, and (b) the updated or modified terms will apply to any new purchases or renewals of Services made after the publication date of the updated terms.

### 1. Definitions

- 1.1 "**Affiliate**" means an entity that owns or controls, is owned or controlled by, or is under common control or ownership with a party, where "control" is the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 1.2 "**Agreement**" means the terms of (a) the Terms of Sale and (b) these General Terms.
- 1.3 "**Authorized Services**" means any and all of the following services performed by any Authorized User for Customer solely for or in connection with Customer's use of the Deliverables, Third-Party Materials or other confidential information of Kigen for the Permitted Use in accordance with the Agreement and the Permitted Use: the delivery, installation, configuration, integration, storage, deployment, operation, testing, analysis, evaluation of the Deliverables, or training of Authorized Users concerning the Deliverables.
- 1.4 "**Authorized User**" means one of Customer's officers, directors or employees authorized to use the Deliverables solely for Customer's benefit in accordance with the terms and conditions of the Agreement.
- 1.5 "**Confidential Information**" means: (i) Deliverables, and derivatives thereof and any trade secrets relating to the Deliverables; (ii) any information designated in writing by either party, by appropriate legend, as confidential; (iii) any information which if first disclosed orally, is identified as confidential at the time of disclosure and is thereafter reduced to writing for confirmation and sent to the other party within thirty (30) days after its oral disclosure and designated, by appropriate legend, as confidential; and (iv) any information that is disclosed where the totality of the circumstances of such disclosure would compel a reasonable person to conclude that the disclosure was made with the intention that the information would be treated as confidential.
- 1.6 "**Content**" means software (including machine images), data, text, audio, video, images, applications, or other content or documents.
- 1.7 "**Data Protection Legislation**" means the General Data Protection Regulation (EU) 2016/679 ("GDPR"), the Data Protection Act 2018, Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, in each case, as amended, revised or replaced from time to time, and all applicable national implementing legislation and guidelines, or any applicable analogous legislation in any jurisdiction, in each case, as amended, revised or replaced from time to time.
- 1.8 "**Deliverables**" means any software, firmware, tools and data accompanying this Agreement, any printed, electronic or online documentation supplied with it, any eUICCs and any updates, patches and modifications Kigen may agree to make available to Customer under the terms of the Agreement in relation to the RSM Sandbox, as more fully set out in the Terms of Sale. Deliverables does not include Third Party Materials.
- 1.9 "**eSIM Cards**" means Consumer or M2M eUICC with the eSIM functionality as specified by the GSMA.

- 1.10 **“Evaluation Fee”** means the fee charged by Kigen for the Deliverables and, where applicable, invoiced by Kigen in accordance with Clause 6 of these General Terms and the Terms of Sale.
- 1.11 **“Evaluation Period”** means the period of time, as set out on the Terms of Sale, from the date on which Kigen provides Customer with access to the requested Deliverables.
- 1.12 **“Input”** means all suggestions, comments, feedback, ideas, or know-how (whether in oral or written form) provided by Company to Kigen under the Agreement.
- 1.13 **“Login Credentials”** means any passwords, authentication keys or security credentials to access the Deliverables via the Web Portal.
- 1.14 **“Permitted Use”** means the testing, demonstration, trial and other evaluative (but not any developmental or productive) use of the Deliverables, including, but not limited to, the assessment of the Deliverables’ compatibility with Customer’s information technology infrastructure, including, but not limited to, the computers, software, databases, database management and other electronic systems and networks on or with which the Deliverables are licensed for use pursuant to the Agreement.
- 1.15 **“Privacy Policy”** means the data use and privacy policy currently referenced at <https://kigen.com/company/policies/privacy-policy/>, as it may be updated by Kigen from time to time.
- 1.16 **“Terms of Sale”** means an order form executed by both parties setting out: (a) Deliverables to be provided; (b) Evaluation Period; (c) Evaluation Fees; and (d) any other terms for use of the RSM Sandbox Subscription Manager that the parties have agreed upon, including any variations to these General Terms.
- 1.17 **“Third Party Materials”** means software, and any printed, electronic or online documentation supplied with it, owned or developed by third parties, including but not limited to open source software, freeware and commercial software that Kigen provides to Customer but that is subject to separate licence terms either presented at the time of installation or otherwise provided with the Deliverables.
- 1.18 **“Web Portal”** means the website provided by Kigen and notified to Customer to access the Deliverables in accordance with the terms of the Agreement. Use of the Web Portal by Customer shall be in accordance with (i) Kigen’s Terms and Conditions of Use at <https://kigen.com/company/policies/terms-and-conditions/> and (ii) Kigen’s cookie policy currently referenced at <https://kigen.com/company/policies/cookie-policy/>, as both may be updated by Kigen from time to time.

<b>2. Licence Grant from Kigen to Customer</b>
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- 2.1 In consideration of Customer’s payment of the Evaluation Fee and subject to the terms and conditions of the Agreement, Kigen hereby grants Customer a nonexclusive, non-transferable, non-sublicensable license to use the Deliverables and other materials as Kigen may deliver or make available to Customer solely for the Permitted Use during the Evaluation Period including, but not limited to, the right to:
  - (i) run one (1) seat of the RSM Sandbox with one (1) set of Login Credentials for use by the Authorized User(s);
  - (ii) perform the Authorized Services; and
  - (iii) prepare and use one (1) seat of the RSM Sandbox for the Permitted Use, including, without limitation, for purposes of (a) software, hardware or system testing or evaluation; (b) operation with other software or systems; (iii) hardware or system maintenance or repair; and (d) data backup.

<b>3. Licence Grant from Customer to Kigen</b>
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- 3.1 Customer may, at its discretion, deliver any Input to Kigen.
- 3.2 Except as expressly agreed to the contrary in writing by both parties, Customer hereby grant to Kigen and Kigen’s Affiliates under Customer and Customer’s Affiliates’ (as applicable) intellectual property a perpetual, irrevocable, royalty free, non-exclusive, worldwide licence to: (i) use, copy, modify, and create derivative works

of the Input as part of any or all of the Deliverables and any other Kigen product(s); (ii) sell, supply or otherwise distribute the whole or any part of the Input (and derivative works thereof) as part of any or all of the Deliverables and any other Kigen product(s); and (iii) sublicense to third parties the foregoing rights, including the right to sublicense to further third parties. No right is granted by Customer to Kigen or Kigen Affiliates to sublicense Customer's and Customer's Affiliates' (as applicable) intellectual property except to the extent that it is provided to Kigen and Kigen Affiliates as Input and is embodied in any or all of Deliverables and/or any other Kigen product(s).

- 3.3 Except as expressly licensed to Kigen in this Clause 3, Customer retains all right, title and interest in and to the Input provided by Customer under this Agreement.
- 3.4 Customer shall not knowingly give to Kigen any Input Customer have reason to believe is subject to any patent, copyright or other intellectual property claim or right of any third party.
- 3.5 For the avoidance of doubt, Kigen shall be free to use, copy, disclose or otherwise distribute any Input as part of any or all of the Deliverables and any other Kigen product(s) to any third party or pursuant to any of the licences granted in this Clause without obligation or restriction of any kind.

<b>4. Restrictions on Use of the Deliverables</b>
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**Installation**

- 4.1 Customer shall only install and use the Deliverables on computers, or virtual machines running on computers, which are owned by Customer (or which are in Customer's exclusive possession under an equipment finance arrangement) and which are either; (i) located at Customer's premises; or (ii) portable computers which shall remain in the possession and control of the Authorized Users when outside such premises. Customer shall only use the Deliverables for the Evaluation Period.

**Copying**

- 4.2 Customer shall not use or copy the Deliverables or Login Credentials except as expressly authorised in the Agreement. Customer may make one additional copy of the delivered Deliverables for backup or archival purposes.

**Benchmarking**

- 4.3 The terms of the Agreement do not prevent Customer from using the Deliverables for internal benchmarking purposes. However, Customer shall treat any and all benchmarking data relating to the Deliverables, and any other results of Customer's use or testing of the Deliverables which are indicative of its performance, efficacy, reliability or quality, as Confidential Information and Customer shall not disclose such information to any third party without the express written permission of Kigen.

**Reverse Engineering**

- 4.4 Except to the extent that such activity is permitted by applicable law, Customer shall not reverse engineer, decompile or disassemble any of the Deliverables. If the Deliverables were provided to Customer in Europe Customer shall not reverse engineer, decompile or disassemble any of the Deliverables for the purposes of error correction. Customer shall not work around any technical restrictions in the Deliverables.

**Copyright and Reservation of Rights**

- 4.5 The Deliverables are owned by Kigen or its licensors and are protected by copyright and other intellectual property laws and international treaties. The Deliverables are licensed not sold. Customer acquires no rights to the Deliverables other than as expressly provided by the Agreement. Customer shall not remove from the Deliverables any copyright notice or other notice and shall ensure that any such notice is reproduced in any copies of the whole or any part of the Deliverables made by Customer or other Authorized Users.

**Customer Content**

- 4.6 Customer or Customer's licensors own all right, title and interest in and to Customer Content. Customer hereby consent to Kigen's use of Customer Content to provide, improve and manage the Deliverables in accordance with this Agreement and applicable law. Kigen may disclose Customer Content to provide the Deliverables to Customer or comply with any request of a governmental or regulatory body (including subpoenas or court orders).

<b>5. Support and Maintenance</b>
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- 5.1 The Agreement does not include any maintenance, support or other services. However, Kigen shall provide training in relation to the RSM Sandbox upon request from Customer, at Kigen's standard daily rate as notified to Customer from time to time.
- 5.2 Customer is solely responsible for taking appropriate measures to back up Customer's system and data and all other necessary measures to prevent any file or data loss during the Evaluation Period.

<b>6. Access to Deliverables</b>
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- 6.1 Customer may access the Deliverables through the Web Portal in accordance with the terms of the Agreement.
- 6.2 Customer understands and acknowledges that Kigen will use reasonable efforts to maintain the Web Portal and prevent interruptions to Customer's access to the Deliverables via the Web Portal, although there will be times when the Web Portal may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance by Kigen or third party providers or because of other reasons outside of Kigen's control. Kigen shall use reasonable endeavours to notify Customer of any interruptions to the Web Portal service during the Evaluation Period. In accordance with Clause 9, Kigen does not warrant that the Web Portal will be uninterrupted or error free.
- 6.3 To the extent that Kigen provides Customer with Login Credentials, Customer shall require that all Authorized Users keep Login Credentials strictly confidential and do not share such information with any unauthorized person. Customer is solely responsible for authorizing and controlling access to the Deliverables, maintaining the confidentiality of Login Credentials, and for any use and activities that occur under such Login Credentials. Customer will contact Kigen immediately if Customer believe an unauthorized third party may be using Customer's Login Credentials or if Customer's Login Credentials are lost or stolen.
- 6.4 Kigen may change or restrict any of the Deliverables (in whole or in part) or change or remove certain features or functionality of the Deliverables from time to time at its sole discretion. Kigen may change, discontinue or restrict any APIs for the Deliverables from time to time but may continue supporting the previous version of any API changed, discontinued, or restricted at our sole discretion .

<b>7. Confidentiality</b>
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**Restricted Disclosure**

- 7.1 Except as expressly provided under the Agreement, each party shall maintain in confidence the Confidential Information disclosed by the other party and apply security measures no less stringent than the measures that such party applies to its own like information, but not less than a reasonable degree of care, to prevent unauthorised disclosure and use of the Confidential Information. The period of confidentiality shall be indefinite with respect to each party's Confidential Information.

**Permitted Disclosures**

- 7.2 Either party may disclose Confidential Information received from the other party in the following circumstances:
  - (i) disclosure to third parties to the extent that the Confidential Information is required to be disclosed pursuant to a court order or as otherwise required by law, provided that the party required to make the disclosure promptly notifies the other party upon learning of such requirement and has given the other party a reasonable opportunity to contest or limit the scope of such required disclosure (including but not limited to making an application for a protective order);
  - (ii) disclosure to nominated third parties under written authority from the original discloser of the Confidential Information;
  - (iii) disclosure to the receiving party's legal counsel, accountants or professional advisors to the extent necessary for them to advise upon the interpretation or enforcement of the Agreement, provided that

such counsel, accountants or professional advisors are bound by confidentiality obligations at least as protective as those contained in these General Terms; and

- (iv) disclosure to the receiving party's officers, employees, Affiliates, agents or contractors on a need-to-know basis to further the purpose of the Agreement, provided that such officers, employees, Affiliates, agents or contractors are subject to the same terms and conditions of confidentiality as are set out in these General Terms.

#### **Excepted Information**

7.3 The provisions of this Clause 7 shall not apply to information which:

- (i) is known to and has been reduced to tangible form by the receiving party prior to its receipt, provided that such information is not already subject to any obligations of confidentiality; or
- (ii) is in the public domain at the time of receipt or later becomes part of the public domain without breach of the confidentiality obligations in the; or
- (iii) is received from a third party without any breach of any obligation of confidentiality in respect of such information provided that such information is not subject to any continuing obligations of confidentiality; or
- (iv) is independently developed without use of or reference to the other party's Confidential Information.

#### **Data Protection**

7.4 Customer and Kigen shall comply with all applicable requirements of the Data Protection Legislation.

7.5 Without limiting Clause 10 (Limitation of Liability) or Customer's obligations under Clause 4.6 (Customer Content), Kigen will implement reasonable and appropriate measures designed to help Customer secure Customer Content against accidental or unlawful loss, access or disclosure.

7.6 Customer hereby consents to the storage and transfer of Customer Content in accordance with the Privacy Policy. Kigen will not access or use Customer Content except as necessary to maintain or provide the Deliverables, or as necessary to comply with the law or a binding order of a governmental body. Kigen will not disclose Customer Content to any government or third party except in each case as necessary to comply with the law or a binding order of a governmental body. Unless it would violate the law or a binding order of a governmental body, Kigen will give Customer notice of any legal requirement or order referred to in this Clause 7. Kigen will only use Customer Content in accordance with the Privacy Policy, and Customer consents to such usage.

### **8. Fees, Payment and Taxes, and Shipping Terms**

#### **Fees and Payment**

8.1 Customer shall pay the Evaluation Fee and any other sums due to Kigen under the Terms of Sale on or before the thirtieth (30<sup>th</sup>) day after the date of the invoice Kigen has sent Customer ("**Due Date**"). Kigen shall send any invoice for payment to the address set out in the Terms of Sale, unless otherwise provided in writing to Kigen, and Customer shall provide Kigen with at least ten (10) working days' notice of any change to such address. All fees are non-refundable and non-transferable.

8.2 If any invoice is not paid by the Due Date (defined in Clause 8.1), then (without prejudice to Kigen's other rights and remedies), in addition to the invoice amount, Kigen reserves the right to charge interest on such sum on a day to day basis from the Due Date to the date of payment at the rate of, the lesser of one percent (1%) per month and the maximum amount permitted by law.

#### **Taxes**

8.3 All sums stated under the Agreement do not include taxes. All applicable taxes shall be payable by Customer in accordance with relevant legislation in force at the relevant tax point, including value added taxes, sales and use taxes or other similar taxes. Customer shall pay all amounts due under the Terms of Sale in full without any deduction or withholding. Without limiting the foregoing, in the event that payment of any sums due to Kigen under the Terms of Sale become subject to any deduction or withholding in respect of or on

account of tax, Customer shall pay to Kigen such additional sum as may be required in order that the net amount actually received and retained by Kigen under the Terms of Sale (after such deduction or withholding has been made) shall be equal to the full amount that would have been received and retained by Kigen had no such deduction or withholding been required to be made.

**Shipping Terms**

- 8.4 Notwithstanding any other provision of the Agreement, and except as otherwise agreed with Kigen in writing, delivery of all hardware by Kigen to Customer under the Agreement, including eSIM cards, shall be in accordance with the Exworks (EXW) Incoterms (2020).

**9. Warranties and Exclusion of Warranty**

- 9.1 Kigen warrants that, subject to the final paragraph of Clause 6, the Deliverables will perform substantially in accordance with the accompanying documentation (if any) for the Evaluation Period. Kigen's total liability and Customer's exclusive remedy for breach of this warranty shall be limited to Kigen, at Kigen's option; (a) replacing the defective Deliverable(s); (b) using reasonable efforts to correct material, documented, reproducible defects in the Deliverable(s) and delivering such corrected Deliverable(s) to Customer; or (c) refunding the Evaluation Fee paid by Customer to Kigen for the Deliverables. Any replacement Deliverables will be warranted for the remainder of the original Evaluation Period.
- 9.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 9.1, THE DELIVERABLES ARE PROVIDED AS IS, AND KIGEN AND ANY THIRD PARTY LICENSOR MAKES NO WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE UNDER THE AGREEMENT.

**10. Limitation of Liability**

- 10.1 SUBJECT TO CLAUSE 10.3, NEITHER PARTY SHALL BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT AND THE THIRD PARTY MATERIALS WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE FOR ANY LOSS OF PROFIT, BUSINESS, REVENUE, ANTICIPATED SAVINGS, GOODWILL, LOSS OR CORRUPTION OF DATA OR INFORMATION, OR PURE ECONOMIC LOSS, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF KIGEN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.2 SUBJECT TO CLAUSES 10.1 AND 10.3, KIGEN'S AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM RELATING TO OR ARISING OUT OF THE AGREEMENT, WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE, SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO KIGEN UNDER THE AGREEMENT.
- 10.3 NOTHING IN THE AGREEMENT SHALL OPERATE TO EXCLUDE LIABILITY FOR: (i) DEATH OR PERSONAL INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE; OR (ii) FRAUD OR FRAUDULENT MISREPRESENTATION.

**11. Third Party Materials**

- 11.1 The Third Party Materials may contain third party software. Such third party software is subject to the terms and conditions of the applicable third party software licence(s) and is not covered under the terms of the Agreement. Information about such third party software accompanies the Third Party Materials.
- 11.2 KIGEN HEREBY DISCLAIMS ANY AND ALL WARRANTIES EXPRESS OR IMPLIED FROM ANY THIRD PARTIES REGARDING ANY THIRD PARTY MATERIALS INCLUDED IN THE DELIVERABLES, ANY THIRD PARTY MATERIALS FROM WHICH THE DELIVERABLES ARE DERIVED (COLLECTIVELY "OTHER CODE"), AND THE USE OF ANY OR ALL THE OTHER CODE IN CONNECTION WITH THE DELIVERABLES, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

- 11.3 NO THIRD PARTY LICENSORS OF OTHER CODE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER MADE UNDER CONTRACT, TORT OR OTHERWISE, ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OTHER CODE OR THE EXERCISE OF ANY RIGHTS GRANTED UNDER EITHER OR BOTH THIS LICENCE AND THE LEGAL TERMS APPLICABLE TO ANY THIRD PARTY MATERIALS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. Term and Termination**

### **Agreement Term**

- 12.1 The Agreement shall continue in force for the Evaluation Period until expiration or earlier termination in accordance with Clause 12.2 below.
- 12.2 Without prejudice to any other right or remedy which may be available to either party, either party shall be entitled summarily to immediately terminate the Agreement by giving written notice to the other party if:
- (i) the other party has committed a material breach of any of its obligations hereunder which is not capable of remedy; or
  - (ii) the other party has committed a material breach of any of its obligations hereunder which is capable of remedy but which has not been remedied within a period of forty-five (45) days following receipt of written notice to do so; or
  - (iii) any circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order; or
  - (iv) the other party makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to an administration order; or
  - (v) the other party has an order made against it, or passes a resolution, for its winding-up (except for the purposes of amalgamation or reconstruction) or has a receiver or similar officer appointed over all or substantially all of its property or assets.

## **13. Effect of Expiry and Termination**

- 13.1 Upon termination or expiry of the Agreement:
- (i) Subject to Clause 13.2, all Customer's rights immediately terminate and Customer (and Customer's Authorized Users) shall stop using the Deliverables and Confidential Information;
  - (ii) Customer remains responsible for all fees Customer has incurred up to the date of termination or expiry, and any outstanding fees, whether or not such fees have become due at the date of termination or expiry;
  - (iii) Customer will immediately return or, if instructed by Kigen, destroy all Kigen Confidential Information; and
  - (iv) Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 13.2 The provisions of Clauses 3, 7,8, 9,10, 11, 12, 13 and 14 shall survive termination or expiry of the Agreement.

<b>14. General</b>
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**Notices**

- 14.1 All notices which are required to be given hereunder shall be in writing (which may include electronic mail) and shall be sent to the corporate office of the recipient or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 14.1. Any such notice may be delivered personally, by commercial overnight courier or facsimile transmission which shall be followed by a hard copy and shall be deemed to have been served if by hand when delivered, if by commercial overnight courier 48 hours after deposit with such courier and if by facsimile transmission when dispatched. Copies of notices to Kigen shall also be sent to legal@kigen.com.

**Assignment**

- 14.2 The rights granted to Customer under the Agreement may not be assigned, sublicensed or otherwise transferred by Customer to any third party without the prior written consent of Kigen. An assignment shall be deemed to include, without limitation: (i) any transaction or series of transactions whereby a third party acquires, directly or indirectly, the power to control Customer's management and policies, whether through the acquisition of voting securities, by contract or otherwise; or (ii) the sale of more than fifty percent (50%) of Customer's assets whether in a single transaction or series of transactions. Customer shall not rent or lease the Deliverables or share the Deliverables with contractors or other third parties.

**Independent Parties**

- 14.3 Kigen and Customer are independent parties. Neither company nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have the authority to bind the other party by contract or otherwise to any obligation. Neither party will represent to the contrary, either expressly, implicitly, by appearance or otherwise.

- 14.4 Except as expressly stated in the Agreement, the Contracts (Rights of Third Parties) Act 1999 and any legislation amending or replacing that Act shall not apply in relation to the Agreement or any agreement, arrangement, understanding, liability or obligation arising under or in connection with the Agreement and nothing in the Agreement shall confer on any third party the right to enforce any provision of this Licence.

**Waiver**

- 14.5 Failure by either party to enforce any provision of the Agreement shall not be deemed a waiver of the right to enforce, in the future, that or any other provision of the Agreement.

**Variation**

- 14.6 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

**Force Majeure**

- 14.7 Neither party shall be liable for any failure or delay in its performance under the Agreement due to causes, including, but not limited to, acts of God, acts of civil or military authority, fires, epidemics, floods, earthquakes, riots, wars, sabotage, third party industrial disputes and government actions, which are beyond its reasonable control; provided that the delayed party: (i) gives the other party written notice of such cause promptly, and in any event within fourteen (14) days of discovery thereof; and (ii) uses its reasonable efforts to correct such failure or delay in its performance. The delayed party's time for performance or cure under this Clause 10.7 shall be extended for a period equal to the duration of the cause.

**Entire Agreement**

- 14.8 The Agreement, including any appendices, schedules or supplements, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter. No amendment to or modification of the Agreement shall be binding unless in writing and signed by a duly authorized representative of both parties. Nothing contained in any purchase order shall modify or add any terms and conditions to the Agreement.

**Severance**

- 14.9 The provisions contained in each clause and sub-clause of these General Terms shall be enforceable independently of each of the others and if a provision of the Agreement is, or becomes, illegal, invalid or

deemed unenforceable by any court or administrative body of competent jurisdiction it shall not affect the legality, validity or enforceability of any other provisions of the Agreement. If any of these provisions is so held to be illegal, invalid or unenforceable but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification as may be necessary to make it legal, valid or enforceable.

**Export Laws**

- 14.10 The material provided by either party under the Agreement is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. The parties agree to comply fully with all export laws and regulations of the United States, the European Union and the United Kingdom ("Export Laws") to assure that neither the material provided by either party, nor any direct products thereof are: (i) exported, directly or indirectly, in violation of Export Laws, either to any countries that are subject to U.S export restrictions or to any end user who has been prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government; or (ii) intended to be used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

**Governing Law**

- 14.11 The validity, construction and performance of the Agreement shall be governed by the laws of England and Wales. The Contracts (Rights of Third Parties) Act 1999 and any legislation amending or replacing that Act shall not apply in relation to the Agreement or any agreement, arrangement, understanding, liability or obligation arising under or in connection with the Agreement and nothing in the Agreement shall confer on any third party the right to enforce any provision of the Agreement.
- 14.12 Notwithstanding Clause 14.11, if Customer's address is in the U.S., the validity, construction and performance of the Agreement shall be governed by the laws of the State of California excluding its conflict of laws principles.