

EVALUATION KIT SUPPLY AGREEMENT

This Evaluation Kit Supply Agreement (“**Agreement**”) is a legal agreement between you (either a single individual, or single legal entity) (“**Recipient**”) and Kigen (UK) Limited (“**Kigen**”) for the supply of Kit to Recipient pursuant to a Purchase Order issued in response to (i) a quotation from Kigen; or (ii) any other agreement between Recipient and Kigen (the “**Quotation**”). These terms govern Kigen’s supply and Recipient’s use of the Kit to the exclusion of any other terms that Recipient may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. In the event of any conflict between this Agreement and the Quotation, the terms of this Agreement shall take priority.

Any Quotation that Kigen provides at Recipient’s request shall not constitute an offer and shall be valid for the period stated on the Quotation (if any). Any Purchase Order for the Kit constitutes an offer by Recipient to receive the Kit in accordance with the terms of this Agreement. The Purchase Order shall only be deemed to be accepted when Kigen accepts a Purchase Order in writing (including via email) or Kigen provides you with the Kit.

Kigen may modify or update the terms of this Licence and will notify Recipient by posting a revised version on the Kigen website (<https://www.kigen.com/terms>), and/or by providing by other reasonable means. If Recipient does not agree to the terms of this Agreement, or any modifications or updates hereto, Kigen is unwilling to supply, or continue supplying, the Kit to Recipient and Recipient shall promptly return the Kit to Kigen.

1. Definitions

- 1.1 “**Fees**” means any fees payable by Recipient to Kigen for the provision of any support by Kigen in relation to the Kit pursuant to Clause 3.
- 1.2 “**Kit**” means the evaluation kit identified in the Quotation and any associated documentation and such additional Kit(s), which may be made available by Kigen from time to time to meet Recipient’s requirements.
- 1.3 “**Purchase Order**” means Recipient’s written order for the Kit, in response to Kigen’s Quotation.
- 1.4 “**Purpose**” means the use of the Kit at the Site for the purpose identified in the Quotation.
- 1.5 “**Site**” means Recipient’s principal place of business as identified in the Quotation, or other locations owned or controlled by the Recipient.
- 1.6 “**Subsidiary**” means any company the majority of whose voting shares is now or hereafter, owned or controlled, directly or indirectly, by Recipient. A company shall be a Subsidiary only for the period during which such control exists.

2. Kit Supply

- 2.1 Kigen hereby grants to Recipient the right to use the Kit solely for the Purpose.
- 2.2 Recipient undertakes that it shall; **(i)** retain possession of the Kit at all times; and **(ii)** only enable access to the Kit to its employees, its Subsidiaries employees or its sub-contractors, and provided that such employees, Subsidiaries employees and such sub-contractors have a need to use and access the Kit for the Purpose.
- 2.3 Recipient undertakes that it shall **NOT**: **(i)** use the Kit for any purpose other than the Purpose; **(ii)** provide access to the Kit to any third party; **(iii)** remove any copyright notice incorporated into the Kit to protect the intellectual property of Kigen or any third party; **(iv)** reverse engineer, decompile, or disassemble the Kit; or **(v)** use the Kit or any Kit associated software for generating and publishing benchmark data.
- 2.4 Recipient hereby agrees to keep Kigen indemnified against all and any direct loss, damages, costs and expenses (including the reasonable fees of lawyers and other professionals), suffered, incurred or sustained as a result of, or in relation to, any breach by Recipient of any of the provisions of this Agreement.
- 2.5 Recipient acquires no right, title or interest in the Kit or any intellectual property therein except as expressly provided for in this Agreement. In no event shall the rights granted in Clause 2 be construed as granting Recipient expressly or by implication, estoppel or otherwise, rights or licenses to any Kigen technology other than the Kit.
- 2.6 Any Kit associated software is delivered subject to the terms and conditions of its respective shrink-wrap or end user licence agreement (as applicable) and does not form part of the Kit. Where Kigen delivers the Kit with the Kigen operating system software (“**Kigen OS**”) or a software package encompassing the Kigen OS combined with the profile package and the dynamic data (“a **Blob**”), Recipient’s use of the Kigen OS and/or

Blob is subject to the terms of the End User Licence Agreement for Kigen SIM, eSIM and iSIM Operating Systems and tools at <https://www.kigen.com/terms>.

- 2.7 Restricted Use. Recipient agrees that it shall not use any of Kigen's confidential information other than pursuant to and in accordance with the exercise of any of the licenses granted under this Agreement. Without limiting the generality of the foregoing, Recipient shall not use Kigen's confidential information; (i) for determining if any features, functions or processes provided by the Kit or disclosed by the Kigen confidential information are covered by any patents or patent applications owned by Recipient; or (ii) for developing technology or products which avoid any of Kigen's intellectual property licensed hereunder; or (iii) as the basis for any patent application or as a reference for modifying existing patents or patent applications or creating any continuation, continuation in part, or extension of existing patents or patent applications or (iv) for generating data for publication or disclosure to third parties, which compares the performance or functionality of the Kit with any other products created by Recipient or a third party, without obtaining Kigen's prior written consent.
- 2.8 Shipping terms. Notwithstanding any other provision in the Agreement, and except as otherwise agreed with Kigen in writing, delivery of the Kit by Kigen to Recipient under this Agreement shall be in accordance with the Exworks Incoterms (2020).

Intercompany Matters

- 2.9 Any breach of this Agreement by a Subsidiary of Recipient shall entitle Kigen to terminate this Agreement in accordance with the provisions of Clause 4.2 as if Recipient were the party in breach. Any termination of this Agreement in accordance with the provisions of Clause 4.2 shall be effective in respect of Recipient and all Subsidiaries.

Any rights granted to any Subsidiary hereunder shall automatically terminate upon such Subsidiary ceasing to be a Subsidiary.

In the event that a Subsidiary is in breach of any of the terms of this Agreement, Recipient shall hold harmless and indemnify Kigen against all and any loss, liability, costs, damages, expenses (including the reasonable fees of lawyers and other professionals) suffered, as a result of or in connection with such breach.

3. Support

- 3.1 In the event Recipient requires support for the Kit from Kigen, Kigen and Recipient shall agree the scope and Fees in a separate quotation, and Recipient shall issue a purchase order (the "**Order**") to Kigen.
- 3.2 Kigen shall issue an invoice for the Fees upon receipt of the Order, and all invoices are payable within thirty (30) days of the invoice date.

4. Exclusion of Warranty and Limitation of Liability

- 4.1 The Kit is provided to Recipient "AS IS". Kigen makes no representations and gives no warranties express, implied or statutory, including, without limitation, the implied warranties of non-infringement, satisfactory quality or fitness for a particular purpose.
- 4.2 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHETHER SUCH DAMAGES ARE ALLEGED AS A RESULT OF TORTIOUS CONDUCT OR BREACH OF CONTRACT OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 4.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE MAXIMUM LIABILITY OF KIGEN TO RECIPIENT IN AGGREGATE FOR ALL CLAIMS MADE AGAINST KIGEN IN CONTRACT, TORT OR OTHERWISE UNDER OR IN CONNECTION WITH EACH DISCRETE KIT SHALL NOT EXCEED THE TOTAL FEES PAID TO KIGEN (IF ANY).
- 4.4 Nothing in this Clause 4 shall operate to exclude liability for: **(i)** death or personal injury resulting from either party's negligence; or **(ii)** fraud.

5. General

- 5.1 Recipient shall not assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of Kigen.
- 5.2 Failure or delay by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

- 5.3 This Agreement, including any Schedules, constitutes the entire agreement between the parties with respect to the subject matter hereof. No amendment to, or modification of, this Agreement shall be binding unless in writing and signed by a duly authorised representative of both parties.
- 5.4 The Kit provided under this Agreement may be subject to U.K., European Union, and U.S. export control and sanctions laws and regulations, including the U.S. Export Administration Regulations (“**EAR**”) (hereafter collectively referred to as “**Export Regulations**”). Recipient agrees to comply fully with all applicable Export Regulations. Recipient agrees that it shall not, either directly or indirectly, export in breach of the Export Regulations the Kit received under this Agreement, nor any direct products thereof: (i) to any country, company or person subject to export restrictions or sanctions under the applicable Export Regulations without required export authorization; or (ii) for any restricted end use, including, without limitation, nuclear, chemical, or biological weapons proliferation, which at the time of export requires an export license or other governmental approval, without first obtaining such license or approval and without prior written approval from Kigen.
- 5.5 Kigen and Recipient 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.
- 5.6 Except as expressly stated in this Agreement, the Contracts (Rights of Third Parties) Act 1999 and any legislation amending or replacing that Act shall not apply in relation to this Agreement and nothing in this Agreement shall confer on any third party the right to enforce any provision of this Agreement.
- 5.7 The validity, construction and performance of this Agreement shall be governed by English law.