

END USER LICENCE AGREEMENT FOR KIGEN SIM, eSIM and iSIM OPERATING SYSTEMS AND TOOLS

This End User Licence Agreement (“**Licence**”) is a legal agreement between you (either a single individual, or single legal entity) (“**You**”) and Kigen (UK) Limited (“**Kigen**”) for the use of the Deliverables supplied to You pursuant to a Purchase Order issued in response to (i) a quotation from Kigen; or (ii) any other agreement between You and Kigen (the “**Quotation**”). These terms govern Kigen’s supply and Your use of the Deliverables to the exclusion of any other terms that You 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 Licence and the Quotation, the terms of this Licence shall take priority.

Any Quotation that Kigen provides at Your request shall not constitute an offer and shall be valid for the period stated on the Quotation (if any). Any Purchase Order for the Deliverables constitutes an offer by You to licence the Deliverables in accordance with the terms of this Licence. 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 access to the Deliverables.

Kigen may modify or update the terms of this Licence and will notify You by posting a revised version on the Kigen website (<https://www.kigen.com/terms>), and/or by providing by other reasonable means. If You do not agree to the terms of this Licence, or any modifications or updates hereto, Kigen is unwilling to license, or continue licensing, the Deliverables to You and You may not install, use or copy the Deliverables, and You should promptly return the Deliverables to Kigen and ask for a refund of any licence fee paid (if any).

1. Definitions

- 1.1 “**Chipset**” means a chip of a make and model on which Kigen has indicated that the appropriate Subscriber Identity Module (SIM), embedded Subscriber Identity Module (eSIM) or integrated Subscriber Identity Module (iSIM) Operating System can be installed, which You have manufactured or procured;
- 1.2 “**Confidential Information**” means: (i) any information designated in writing by either party, by appropriate legend, as confidential, (ii) any information which if first disclosed orally is identified as confidential at the time of disclosure and is thereafter reduced to writing and sent to the other party within thirty (30) days after its oral disclosure and designated, by appropriate legend, as confidential, and (iii) any information that, given the nature of the information or circumstances surrounding its disclosure, a reasonable person knew or should have known to be confidential
- 1.3 “**Data Protection Legislation**” means all laws and regulations relating to the protection of personal data and privacy of individuals (all as amended, superseded or replaced from time to time), including without limitation the California Consumer Privacy Act, the UK GDPR, the general Data Protection Regulation (EU) 2016/679, the European Directive 2002/58/EC (as amended by Directive 2009/136/EC), including any legislative and/or regulatory amendments or successors thereto, and any applicable implementing local legislation within the EEA, any other laws and regulations of the European Union, their member states and of the United Kingdom.
- 1.4 “**Deliverables**” means any Operating System, Tools, or other software, firmware, and data accompanying this Licence and any printed, electronic or online documentation supplied with it, and any updates, patches and modifications Kigen may agree to make available under the terms of this Licence. Deliverables does not include Third Party Materials.
- 1.5 “**Fees**” means the fees payable by You for the Deliverables, as set out in the Quotation.
- 1.6 “**Licence Key**” means an electronic licence key issued to You (or to a Manufacturer on your behalf) by Kigen solely to enable the use of the Deliverables.
- 1.7 “**Licence Term**” means the licence term specified for each Tool, as specified in the sales order and delivery confirmation email.
- 1.8 “**Manufacturer**” means a manufacturer of SIM and eSIM cards, and/or eSIM MFF2 or iSIM chips.
- 1.9 “**Operating System**” means the SIM, eSIM and/or iSIM operating system software which Kigen makes available to you under this Licence.
- 1.10 “**Purchase Order**” means Your written order for the Deliverables, in response to the Kigen Quotation.

- 1.11 “**SIM**” encompasses all SIM, Removal User Identity Module (RUIM), Universal Subscriber Identity Module (USIM) and USIM LTE applications.
- 1.12 “**Subsidiary**” means, if You are a single legal entity, any company the majority of whose voting shares is now or hereafter owned or controlled, directly or indirectly, by You. A company shall be a Subsidiary only for the period during which such control exists.
- 1.13 “**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 You but that is subject to separate license terms either presented at the time of installation or otherwise provided with the Deliverables.
- 1.14 “**Tools**” means any software tools which Kigen provides to You for use in connection with the Deliverables and may include applets.

2. Licence Grants

- 2.1 Kigen hereby grants to You and Your Subsidiaries, subject to the terms and conditions of this Licence, a non-exclusive, non-transferable licence to:
 - (i) **OPERATING SYSTEM:** install and use one copy of the relevant Operating System on each appropriate Chipset for which You have purchased a Licence Key from Kigen.
 - (ii) **TOOLS:** install and use the Tools only during the relevant Licence Term solely for Your or Your Subsidiaries’ internal business purpose and only in conjunction with the Operating System.
 - (iii) **DOCUMENTATION:** use any documentation accompanying the Deliverables in support of the Operating System, and Tools permitted under Clauses 2.1(i) and (ii) and copies of such documentation as are reasonably necessary for its lawful use.
- 2.2 Subject to the provisions of Clause 8 (Confidentiality), if You or any of Your Subsidiaries are not a Manufacturer, You may sublicense the rights under Clause 2.1(i) to a Manufacturer, provided that: (a) You do not grant to the Manufacturer any license in respect of the Operating System for any other purpose; and (b) You ensure that the Manufacturer:
 - (i) complies with the terms of this Licence;
 - (ii) is contractually obligated to use the Operating System and Licence Keys only for Your benefit;
 - (iii) agrees to assign all its work product and any rights they create therein in the supply of such work to You; and
 - (iv) is subject to contractual obligations of confidentiality in respect of Confidential Information substantially similar to those in Clause 8.
- 2.3 Any breach of this Licence by Your Subsidiary or by a Manufacturer shall entitle Kigen to terminate this Licence in accordance with the provisions of Clause 12 as if You were the party in breach and You shall hold Kigen harmless from, and keep Kigen indemnified against, all and any loss, liability, costs, damages, expenses (including the fees of lawyers and other professionals), suffered, incurred or sustained as a result of or in relation to such breach. Any termination of this Licence in accordance with the provisions of Clause 12 shall be effective in respect of all Subsidiaries. Any rights granted to any Subsidiary hereunder shall automatically terminate upon such Subsidiary ceasing to be a Subsidiary.
- 2.4 You shall not modify the Deliverables. You shall not sub-licence any of the Deliverables (except as permitted by this Clause 2.4). You shall not distribute any of the Deliverables (other than copies of the Operating System which have been installed on a Chipset and activated with the Licence Key in accordance with Clause 2.1(i)).

- 2.5 Except as specifically licensed in accordance with Clause 2, You acquire no right, title or interest in any Kigen Confidential Information, the Deliverables, or any documentation accompanying the Deliverables. In no event shall the licenses granted in accordance with Clause 2 be construed as granting You, expressly or by implication, any right or licence to use any Kigen technology other than the Deliverables, and any documentation accompanying the Deliverables.

3. Restrictions on Use of the Deliverables

Oracle Licences

- 3.1 Where the Deliverables include Kigen's Java operating system and You have opted to purchase directly from Oracle the number of Java licences required for the proper operation of Kigen's Java Operating System, You acknowledge and agree that: (i) You are responsible for the reporting and payment of all such Oracle licence fees and shall indemnify Kigen for any liability Kigen incurs as a result of Your failure to pay such licence fee; and (ii) Kigen shall report to Oracle the number of Java OS licenses it delivers You.

Installation

- 3.2 You shall only install and use the Tools on computers, or virtual machines running on computers, which are owned by You (or which are in Your exclusive possession under an equipment finance arrangement) and which are either; (i) located at Your premises; or (ii) portable computers which shall remain in the possession and control of Your employees when outside such premises. You shall only use the Deliverables in the quantities and (in respect of Tools) for the Licence Term stated in the sales order and delivery confirmation email.

Copying

- 3.3 You shall not use or copy the Deliverables or Licence Keys except as expressly authorised in this Licence. You may make one additional copy of the delivered Deliverables media or image for backup or archival purposes.

Multiple Versions

- 3.4 You may be provided with more than one version of the Deliverables, each of which is compatible with a different Chipset. Each version may only be installed and used by You to the extent that You have valid Licence Keys from Kigen. To the extent that certain components of the Deliverables are identified for use on a specific Chipset, You are only licensed to use such components for use with the relevant Chipset or future compatible versions of such Chipset.

Benchmarking

- 3.5 This Licence does not prevent You from using the Deliverables for internal benchmarking purposes. However, You shall treat any and all benchmarking data relating to the Deliverables, and any other results of Your use or testing of the Deliverables which are indicative of its performance, efficacy, reliability or quality, as Confidential Information and You shall not disclose such information to any third party without the express written permission of Kigen.

Reverse Engineering

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

Restrictions on Transfer of Licensed Rights

- 3.7 The rights granted to You under this Licence may not be assigned, sublicensed or otherwise transferred by You to any third party without the prior written consent of Kigen. You shall not rent or lease the Deliverables. You shall not share the Deliverables with contractors or other third parties.

Copyright and Reservation of Rights

- 3.8 The Deliverables are owned by Kigen or its licensors and is protected by copyright and other intellectual property laws and international treaties. The Deliverables are licensed not sold. You acquire no rights to the Deliverables other than as expressly provided by this Licence. You 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 You or other permitted users.

4. Support and Maintenance

- 4.1 Kigen shall provide You with reasonable support and maintenance for the Operating System. Support will be provided on the version of the Operating System delivered for a period of 12 months from delivery. Please refer to the Technical Support area of <https://kigen.com/support/> for contact details for Kigen’s support service.
- 4.2 Support will be provided by email, telephone or other written format designated by Kigen, prioritised at Kigen’s discretion, and may not be used as a substitute for training or as additional engineering resource for Your projects.
- 4.3 If You are receiving the Operating System as an update, You obtain no rights to, and shall not, install or use the update, as applicable, unless You have first ceased all use of the version of the Deliverables that You are updating or upgrading, as applicable. Future releases of the Operating System might introduce backward incompatible changes. Please refer to product documentation for the changes in each release and for guidance about compatibility.
- 4.4 Maintenance will be provided in the form of updates and patch releases to the Operating System as and when they are made generally available from Kigen and it will only be applied to the most recent version of the Operating System. Kigen shall be under no obligation to provide such maintenance in respect of any modifications (where permitted) to the Operating System.

5. Terms of Supply

- 5.1 Your Purchase Order shall be deemed an offer by You for Kigen to supply, and You to licence, the requested Deliverables in accordance with the terms of this Licence. Your Purchase Order shall be deemed accepted when either Kigen accepts Your order in writing (including by email) or Kigen provides You with access to the requested Deliverables.

6. Fees, Payment and Taxes, and Shipping Terms

Fees and Payment

- 6.1 You shall pay the Fees and any other sums due to Kigen under the terms of a Quotation on or before the thirtieth (30th) day after the date of any invoice Kigen has sent You (“**Due Date**”). Kigen shall send any invoice for payment to the address set out in the Quotation, unless otherwise provided on a Purchase Order or in writing to Kigen, and You 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.
- 6.2 If any invoice is not paid by the Due Date (defined in Clause 6.1), 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

- 6.3 With the exception of income withholding tax, all sums stated under this Quotation do not include taxes. You agree to pay any tariffs, duties or taxes imposed or levied in accordance with relevant legislation in force at the relevant tax point. You agree that all taxes, duties, levies, VAT, or similar regulatory imposts (such as, but not limited to, Business Tax, Culture Construction Fee, Education Surcharges, Shanghai Urban Construction Tax, Guangzhou Flood Prevention Fund, custom duties etc.) which are required by law to be paid with respect to any sums payable under this Quotation are the sole responsibility of You and cannot be deducted from the amount due to Kigen.

Any income withholding tax which You are required by law to pay or withhold on behalf of Kigen with respect to any fees payable to Kigen under this Quotation, may be deducted at the withholding tax rate under the applicable tax treaty from such sums otherwise due, provided, that for any such deduction, You shall give to Kigen such assistance as may be necessary to enable or assist Kigen to claim exemption therefrom, or credit therefor, and shall provide to Kigen such certificates and other evidence of deduction and payment thereof within 30 days of payment.

Shipping Terms

- 6.4 Notwithstanding any other provision of the Licence, and except as otherwise agreed with Kigen in writing, delivery of any hardware by Kigen to You under this Licence shall be in accordance with the Exworks (EXW) Incoterms (2020).

7. Confidentiality

Restricted Disclosure

- 7.1 You acknowledge that (i) the Deliverables and Licence Keys; and (ii) any benchmarking data and related information mentioned in Clause 3.5, contain Confidential Information and You agree that You shall not use any such information other than in normal use of the Deliverables under the licences granted in this Licence

- 7.2 Except as expressly provided under this Licence, 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

- 7.3 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 this Licence, provided that such counsel, accountants or professional advisors are bound by confidentiality obligations at least as protective as those contained in this Licence; and
- (iv) disclosure to the receiving party's officers, employees, Subsidiaries, and Manufacturers on a need-to-know basis to further the purpose of this Licence, provided that such officers, employees, and Manufacturers are subject to the same terms and conditions of confidentiality as are set out in this Licence.

Excepted Information

- 7.4 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 this Licence; 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

- 7.5 Both parties shall comply with all applicable requirements of the Data Protection Legislation.

8. Warranties and Exclusion of Warranty
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- 8.1 Kigen warrants that the Operating System will perform substantially in accordance with the accompanying documentation (if any) for a period of 12 months from delivery. Kigen's total liability and Your exclusive remedy for breach of this warranty shall be limited to Kigen, at Kigen's option; (a) replacing the defective Operating System; (b) using reasonable efforts to correct material, documented, reproducible defects in the Operating System and delivering such corrected Operating System to You; or (c) refunding the price paid by You to Kigen for the defective Operating System. Any replacement Operating System will be warranted for the remainder of the original warranty period
- 8.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 8.1, 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.

9. Limitation of Liability

- 9.1 SUBJECT TO CLAUSE 9.3, IN NO EVENT SHALL KIGEN OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS) ARISING OUT OF THE USE OR INABILITY TO USE EITHER OR BOTH THE DELIVERABLES AND THE THIRD PARTY MATERIALS WHETHER BASED ON A CLAIM UNDER CONTRACT, TORT OR OTHERWISE, EVEN IF KIGEN OR ANY OF KIGEN'S LICENSORS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9.2 SUBJECT TO CLAUSES 9.1 AND 9.3, KIGEN'S AGGREGATE LIABILITY WITH RESPECT TO ANY CLAIM RELATING TO OR ARISING OUT OF THIS LICENCE, WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF; (I) TOTAL FEES PAID BY YOU TO KIGEN (IF ANY) FOR THIS LICENCE; and (II) US\$ 1,000. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THE LIMIT. T.
- 9.3 NOTHING IN THIS LICENCE SHALL OPERATE TO EXCLUDE LIABILITY FOR: (i) DEATH OR PERSONAL INJURY RESULTING FROM EITHER PARTY'S NEGLIGENCE; OR (ii) FRAUD OR FRAUDULENT MISREPRESENTATION.

10. Third Party Rights

- 10.1 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 this Licence. Information about such third party software accompanies the Third Party Materials.
- 10.2 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.
- 10.3 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.

11. Term and Termination

Licence Term

- 11.1 This Licence shall continue in force until terminated by You, by Kigen or by expiry (in the case of a time-limited licence, if referred to as such in the Quotation).

- 11.2 Without prejudice to any of Kigen’s other rights, if: (i) You are in breach of any of the terms and conditions of this Licence; or (ii) if You become bankrupt or insolvent, or compound or enter into a deed of arrangement with You creditors or if a receiving order is made against You or if (being a company) an order is made or a resolution is passed for Your winding-up (otherwise than for the purpose of amalgamation or reconstruction), or receiver or administrator is appointed over any of Your assets or undertakings or if circumstances arise which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court to make a winding-up order; or You take or suffer any similar or analogous action in consequences of debt, then Kigen may terminate this Licence immediately upon giving written notice to You.
- 11.3 You may terminate this Licence at any time upon giving written notice to Kigen.
- 11.4 Upon termination of this Licence by You or by Kigen, or upon expiry, You shall stop using the Deliverables and Confidential Information and destroy all copies of the Deliverables and Confidential Information in Your possession, together with all documentation and related materials, and provide written confirmation of such destruction to Kigen no later that thirty (30) days after termination or expiration.
- 11.5 The provisions of Clauses 6 to 12 shall survive termination or expiry of this Licence.

12. General

- 12.1 This Licence shall be governed by the laws of England and Wales.
- 12.2 Notwithstanding Clause 12.1, if you are located in the U.S., this Licence shall be governed by the laws of the State of California excluding its conflict of laws principles.
- 12.3 Except where Kigen agrees otherwise in: (i) a written contract signed by You and Kigen; or (ii) a written contract provided by Kigen and accepted by You, this is the only agreement between You and Kigen relating to the Deliverables, and it may only be modified by written agreement between You and Kigen.
- 12.4 Except as expressly agreed in writing, this Licence may not be modified by purchase orders, advertising or other representation by any person.
- 12.5 If any clause or sentence in this Licence is held by a court of law to be illegal or unenforceable the remaining provisions of this Licence shall not be affected thereby. The failure by Kigen to enforce any of the provisions of this Licence, unless waived in writing, shall not constitute a waiver of Kigen's rights to enforce such provision or any other provision of this Licence in the future.
- 12.6 At Kigen’s request, You agree to check Your computers for installations of the Deliverables, copies of Licence Keys, contents of any licence server log files, and any other information requested by Kigen relating to Deliverables installation, usage and Licence Key management, and to provide this information to Kigen. You agree that auditors nominated by Kigen may also perform such checking and reporting on behalf of Kigen by prior appointment during Your normal business hours on seven (7) days’ notice. Kigen shall bear the auditors’ costs for that audit unless it reveals unlicensed usage in which case You shall promptly reimburse Kigen for all reasonable costs and expenses, including professional fees, relating to such audit. Any information which is disclosed to Kigen or such auditors during checking or audit shall be treated as Your Confidential Information and shall only be used by Kigen for licence management, compliance and enforcement purposes.
- 12.7 The Deliverables provided under this Licence are 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 Kingdoms and other countries (“**Export Regulations**”) and agree that they shall not, either directly or indirectly, export in breach of Export Regulations, the Deliverables acquired under this Licence; (i) to any country, company or person or for any prohibited end use, which at the time of export requires an export licence or other governmental approval, without first obtaining such licence or approval; (ii) 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 (iii) to be used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.