KIGEN HOSTED RSP SERVER TERMS OF SERVICE

1.	Definitions

For the purposes of these Kigen Hosted RSP Server Terms of Service, the initially capitalised words are ascribed the following meanings:

1.1 "**Account**" means Customer's Kigen Server account.

1.2 "**Account Data**" means information that Customer provides to Kigen in connection with the creation or administration of Customer's Account, for example names, usernames, phone numbers, and email addresses associated with Customer's Account.

1.3 "**Affiliate**" means, with respect to Customer, an entity that controls, is directly or indirectly controlled by or is under common control with Customer, where "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of the relevant entity (but only as long as such entity meets these requirements).

1.4 "**Agreement**" means the Terms of Sale together with the applicable versions of Kigen Hosted RSP Server Terms of Service, Kigen Data Processing Addendum, Kigen Hosted RSP Server Service Support Program.

1.5 "**API**" means application programming interface.

1.6 **"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. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) Account Data; (b) Device Data; (c) Device Specific Data; (d) Login Credentials; and (e) Terms of Sale.

1.7 **"Customer"** means the entity identified as such in the Terms of Sale.

1.8 **"Customer Application"** means an application developed or used by Customer or its Affiliates, and which utilizes the Service. Customer Applications are provided by Customer, and not by Kigen.

1.9 **"Customer End Users"** means the individuals or entities Customer permits to either or both: (i) access or use the Device Data; and (ii) access or use the Service under Customer's Account.

1.10 **"Device Data"** means any data coming off a device that Customer or Customer End Users provide to Kigen via the Service. Device Data does not include Account Data, Device Specific Data or Feedback.

1.11 **"Device Specific Data"** means any data about a device that Kigen captures from providing the Service to Customer, such as a device ID.

1.12 **"Documentation"** means the developer guides, getting started guides, user guides, quick reference guides and other technical and operations manuals and specifications for the Service. The Documentation may be updated by Kigen from time to time.

1.13 **"Effective Date"** means, with respect to the Terms of Sale, the latest date on which the Terms of Sale are signed by both parties.

1.14 **"Feedback"** means all suggestions, comments, feedback, ideas, or know-how (whether in oral or written form) relating to the Service and any other software that relates to the Service and that Customer provides to Kigen.

1.15 **"Fees"** means the fees payable by Customer to Kigen for the Service and any Service Support (if applicable), as set out in the Terms of Sale, and any applicable taxes in accordance with Clause 6.2.

1.16 **"Intellectual Property"** means: (i) patents, inventions, designs, copyright and related rights, database rights, trade marks and related goodwill, trade names (whether registered or unregistered), and rights to apply for registration; (ii) knowhow and Confidential Information; (iii) rights in domain names; (iv) applications, extensions and renewals in relation to any such rights; and (v) all other rights of a similar nature or having an equivalent effect anywhere in the world which currently exist or are recognised in the future.

1.17 "**Kigen**" means the Kigen legal entity set forth in the Terms of Sale.

1.18 **"Kigen Data Processing Addendum"** means the Kigen data processing addendum which sets out the terms and conditions for how Kigen processes Personal Data under the Agreement.

1.19 **"Kigen Hosted Server Service Support Program"** means the technical operational support Service program, including service levels, which applies to the supply of M2M/CONS/IOT Service under the Terms of Sale.

1.20 "**Kigen Server**" means the Kigen OTA server and/or the respective Kigen Hosted RSP (M2M/CONS/IOT) server, as applicable.

1.21 **"Kigen Server APIs"** means the APIs that enable Customer's Application to use the Service.

1.22 **"Kigen Server Portal"** means the website interface for accessing the Service as notified by Kigen from time to time.

1.23 "**Kigen Site**" means https://www.kigen.com/terms, including without limitation all sub-domains thereof, and any successor or related site designated by Kigen.

1.24 **"Login Credentials"** mean any passwords, authentication keys or security credentials, API keys and certificates that are used by the Customer to enable Customer's access to the Service.

1.25 **"Personal Data"** means any information relating to an identified or identifiable natural person, and which Kigen has received from Customer or Customer End Users under the Agreement.

1.26 "**Quarter**" means each calendar quarter ending on 31st March, 30th June, 30th September and 31st December of each year.

1.27 **"Security Measures"** means the measures set out in the Kigen Data Processing Addendum, Schedule 1 (Security Measures).

1.28 **"Service"** means the Kigen Hosted RSP Server service, M2M, Consumer and/or IOT, as applicable, to be provided by Kigen to Customer under the Agreement which enables the on-boarding, connection, updates and lifecycle management of different types of connected devices deployed over the cloud, and Service Support.

1.29 "**Service Support**" means technical operational support provided by Kigen to Customer in accordance with the Kigen Hosted RSP Server Service Support Program.

1.30 **"Subscription Term"** means the time period during which Kigen agrees to make the Service available to Customer as specified in the Terms of Sale, unless or until suspended or terminated in accordance with the Agreement.

1.31 **"Terms of Sale"** means an order form executed by both parties setting out: (a) Service Subscription Term; (b) Fees; and (c) any other terms for using the Service that the parties have agreed upon.

1.32 **"Website Terms of Use"** means the terms of use for Kigen websites https://kigen.com/company/policies/terms/ which may be updated from time to time.

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The latest versions of the Kigen Hosted RSP Server Terms of Service, the Kigen Processing Addendum, the Kigen Hosted RSP Server Service Support Program are published by Kigen on the Kigen Site and may be updated by Kigen from time to time.

2.	Provision of the Service

2.1 The Agreement applies to the provision of the Service as detailed in the Terms of Sale. Upon signature by the parties, the Terms of Sale incorporate the versions of the Kigen Hosted RSP Server Terms of Service, Kigen Data Processing Addendum, and Kigen Hosted RSP Server Service Support Program identified in the Terms of Sale.

Provision of Service

2.2 Once the Terms of Sale have been fully executed by the parties, Kigen will enable Customer to access the Kigen Server Portal using Login Credentials or Kigen Server APIs as necessary. Thereafter Customer will be able to access and use the Service via the applicable Login Credentials or Kigen Server APIs during the Subscription Term. Kigen shall use reasonable efforts to perform the Service in accordance with the service levels in the Kigen Hosted RSP Server Service Support Program. If Kigen fails to meet the service levels, Customer's sole and exclusive remedy is a service credit as set out in the Kigen Hosted RSP Server Service Support Program.

Customer's Account

2.3 Customer will designate one or more individuals within its organization in the Terms of Sale (or as otherwise agreed between the parties) to be the point of contact with Kigen for the management and support of the Service, and who will be responsible for establishing and managing Customer's use of the Service.

Changes to the Service and Documentation

2.4 Kigen may update the Service and Documentation as it determines necessary to keep up to date with technology developments relevant to the Service and security practices or to add new features and Kigen shall notify Customer in accordance with Clause 2.6. Kigen will use reasonable efforts to limit the frequency of any such changes affecting the operation of the Service.

Changes to Kigen Server APIs

2.5 Kigen may change, discontinue or restrict Kigen Server APIs for the Service from time to time. Kigen will use commercially reasonable efforts to continue supporting the previous version of such Kigen Server APIs for twelve (12) months after the change or discontinuation has been notified to Customer in accordance with Clause 2.6, except if doing so: (a) would pose a security issue or infringe a third party's Intellectual Property rights, (b) is economically or technically burdensome, or (c) would cause Kigen to violate the law.

Notification of changes to the Service, Kigen Server APIs and Documentation

2.6 Kigen will post notice of all changes to the Service, Kigen Server APIs, and Documentation on the Kigen Server Portal, and for any changes that Kigen thinks are material, Kigen will use reasonable efforts to notify the designated contact in Customer's Account by email. Except for emergency changes required to protect the Service, customers or third parties, all changes will take effect within thirty (30) days from the date Kigen posts the notices of such changes on the Kigen Server Portal. Customers' continued use of the Service is deemed to be acceptance of such changes. Customer acknowledges and agrees that it is Customer's responsibility to check the Kigen Server Portal periodically for any relevant notice of changes.

3.	Data Protection

3.1 Kigen collects data that can be categorized as Account Data, Device Data and Device Specific Data, and each of these categories may contain both Personal Data and non-Personal Data.

3.2 Customer will ensure that Customer's and Customer End Users' use of Device Data, Device Specific Data, and the Service, does not violate any of the Website Terms of Use or any applicable law or regulation. For the avoidance of doubt, as between the Customer and Kigen, the Customer is solely responsible for compliance with any applicable law and regulation related to the manner in which Customer or Customer's End User uses the Service, including without limitation the storage, transfer and processing of Device Data and Device Specific Data, and the location(s) where such processing occurs.

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3.3   Customer shall not use, and shall not allow its End Users to use the Service to process special categories of Personal Data (as that term is defined in the General Data Protection Regulation), including personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person), data concerning health or data concerning a natural person's sex life or sexual orientation.

3.4   Customer agrees that Kigen may access, process and use Personal Data for the purpose of this Agreement and Customer warrants that it has obtained all valid consent for such access, processing and use by Kigen.

Use of Device Specific Data
3.6   Notwithstanding Clause 13 (Confidential Information), Kigen may retain and use Device Specific Data for internal analytical purposes including to: (i) improve the Service; or (ii) to develop new products and services.

Kigen may make information derived from its analysis of Device Specific Data publicly available, provided that the publicized information does not include any Device Specific Data that has not been anonymized by aggregation or other methods. For the purposes of the Agreement, aggregated and anonymized Device Specific Data means Device Specific Data that: (i) has been aggregated with other data; and (ii) does not contain information that identifies Customer or Customer's End Users or data subjects. For the sake of clarity, aggregated and anonymized Device Specific Data is not Customer Confidential Information.

4.	**Customer Responsibilities**

Customer Account
4.1   Customer is responsible for all activities that occur under Customer's Account (whether by Customer, Customer End Users or otherwise) and for maintaining the security of the Login Credentials. The Login Credentials generated by the Service are for Customer's internal use only and Customer will not sell, transfer, or sub-licence them to any other entity or person, except that Customer may disclose Customer's Login Credentials to Customer's subcontractors performing work on Customer's behalf. If Customer becomes aware of any unauthorized use of its Account or Login Credentials, Customer will notify Kigen as promptly as possible. Except solely to the extent caused by Kigen's failure to implement and maintain the Security Measures, Kigen is not responsible for unauthorized access to Customer's Account.

Customer End Users
4.2   Customer is responsible for Customer End Users' use of Device Data and the Service. Customer will ensure that all Customer End Users comply with Customer's obligations under the Agreement and that the terms of Customer's agreement with each Customer End User is consistent with the Agreement. If Customer becomes aware of any breach of Customer's obligations under the Agreement caused by a Customer End User, Customer will immediately suspend access to the Device Data and Service by such Customer End User. Customer is responsible for acts and omissions of its Customer End Users relating to the Agreement as though they were Customer's own.

Customer Security
4.3   Customer is responsible for properly configuring, implementing and using the Service and otherwise taking appropriate action to secure and protect Device Data in a manner that will provide appropriate security and protection, which might include the use of encryption technology to protect Device Data from unauthorized access. Except with respect to Kigen's express obligations set out in Appendix 1 (Security Measures) of the Kigen Data Processing Addendum, Customer is solely responsible for any damage or losses caused by unauthorized destruction, deletion, corruption, loss, interception, access to or alteration of Device Data, Device Specific Data and Account Data by unauthorized persons.

Customer Applications, device software and devices
4.4   Customer is solely responsible for the development, implementation, operation, support and maintenance and security of the following used in conjunction with the Service: (a) each Customer Application; (b) the software used on each Customer device; and (c) each Customer device.

Customer's network
4.5   Customer is solely responsible for procuring and maintaining its network connections and telecommunication links from its systems to Kigen's or third-party data centers. Kigen disclaims all liability and responsibility in respect of any problems, conditions, delays, delivery failures and all other loss or

damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

5.	Intellectual Property; Use of Software; Feedback; Third Party Cloud Service

Intellectual Property

5.1 Except as expressly set forth in the Agreement, the Agreement does not grant either party any rights, implied or otherwise, to the other's Intellectual Property. As between the parties, Customer owns all the Intellectual Property in Device Data, and Kigen and its licensors owns all the Intellectual Property in the Device Specific Data, the Service, the Kigen Server and the Documentation.

Software for use on or with devices

5.2 Kigen will make available certain software in connection with the Service. This software will be licensed to Customer under a separate licence agreement, which will either be an open-source licence or proprietary licence. If the software does not include its own licence terms, Customer may use the software during relevant Subscription Terms in or with Customer's devices for use with the Service.

Restrictions

5.3 Customer shall not, except to the extent applicable law prohibits such restrictions: (i) reproduce, modify, or prepare derivative works of any of the Service or Documentation; (ii) distribute or display any of Service or Documentation other than to Customer End Users; or (iii) share, rent or lease the Service. The Customer shall use all reasonable endeavors to prevent unauthorized access to, or use of, the Service, and, in the event of such unauthorized access or use, shall promptly notify Kigen. Customer is responsible for ensuring that Customer End Users comply with this Clause 5.3.

Customer Feedback

5.4 If Customer provides any Feedback to Kigen or its Subsidiaries Kigen may use that information without obligation to Customer, and Customer hereby irrevocably assigns to Kigen all right, title, and interest in that Feedback. Customer shall do all such things including signing all documents or other instruments necessary to confirm or vest in Kigen the rights hereby assigned.

Third Party Cloud Services

5.5 Customer acknowledges that Customer may, upon Customer's exit to a third party cloud service providing SM-DP/SM-SR and SM-DP+ solutions, transfer Device Data and Device Specific Data via the Service to a third-party cloud provider for the use of such third party's cloud Service and that Customer does so entirely at its own risk. Kigen makes no representation or warranty of any kind in respect of any third-party's cloud Service and shall have no liability whatsoever for the Device Data or Device Specific Data while it is being transmitted from the Service to the third party's cloud.

5.6 If Kigen reasonably believes the Service might infringe a third party's Intellectual Property, then Kigen may, at its sole option and expense: (a) procure the right for Customer to continue using the Service; (b) modify the Service to make them non-infringing without materially reducing their functionality; or (c) replace the Service with a non-infringing, functionally equivalent alternative. If Kigen determines the above is not commercially reasonable, then Kigen may suspend or terminate Customer's use of the impacted Service.

Prohibited Uses

5.7 Customer shall not, and shall use all reasonable efforts to ensure its customers shall not, use the Service for any unlawful, unauthorized, or prohibited purpose. Without limiting the generality of the foregoing, the Customer expressly agrees not to use the Service in any manner that:

(a) decompiles, disassembles, decodes, reverse engineers, analyses, or otherwise attempts to discover the source code, object code, structure, design, or algorithms of the Service;
(b) violates any applicable laws, regulations, or third-party rights;
(c) enables or supports any activity intended to circumvent, defeat or bypass any technical or security protection mechanisms embedded within such Service, gain unauthorized access to mobile networks, or compromise the integrity, confidentiality, or availability of telecommunications infrastructure;
(d) facilitates or involves the unauthorized access to, tampering with, or hacking of SIM, eSIM and/or iSIM profiles or any related systems;

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(e) uses any part of the Service to create a derivative product, or to test vulnerabilities, outside of a formal and authorised process agreed upon in writing by Kigen; or

(f) supports or promotes any malicious, fraudulent, or deceptive practices.

Any such prohibited use shall constitute a material breach of this Agreement and may result in immediate termination of the Agreement without notice, in addition to any other remedies available at law or in equity. Furthermore, Customer shall indemnify and hold harmless Kigen for all losses, liability, or reputational damage incurred, including costs related to investigation, containment and legal actions.

Customer shall notify Kigen immediately it becomes aware of any actual or suspected breach of this clause 5.7.

6.	Fees and Payment Terms

Invoicing and payment terms

6.1 Customer will pay Kigen the Fees in accordance with the Agreement as shown on Kigen's Quarterly invoice to Customer based on Customer's usage of the Service for each Quarter.

6.2 Customer shall pay all Fees in the currency specified in the invoice within thirty (30) days after the invoice date. All amounts payable under the Agreement are non-refundable and shall be made without setoff or counterclaim, and without any deduction or withholding. Kigen may charge Customer interest at the lesser of the rate of 1% per month and the maximum amount permitted by law on all late payments.

Taxes

6.3 With the exception of income withholding tax, all sums stated under this Agreement do not include taxes. Customer agrees to pay any tariffs, duties or taxes imposed or levied in accordance with relevant legislation in force at the relevant tax point. Customer agrees 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 Agreement are the sole responsibility of Customer and cannot be deducted from the amount due to Kigen.

Any income withholding tax which Customer is required by law to pay or withhold on behalf of Kigen with respect to any fees payable to Kigen under this Agreement, may be deducted at the withholding tax rate under the applicable tax treaty from such sums otherwise due, provided, that for any such deduction, Customer 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..

7.	Temporary Suspension

7.1 Kigen may suspend Customer's or any Customer End User's ability to access or use any portion or all of the Service, if Kigen determines:

a. Customer or a Customer End User's use of the Service: (i) poses a security or reputational risk to Kigen, the Kigen Server Portal, the Service or any third party, (ii) could adversely impact Kigen's systems, the Kigen Server Portal, the Service or the systems or data of a third-party cloud provider or any other Kigen customer, (iii) could subject any entity within the Kigen Group or any third party to liability, or (iv) could be fraudulent;

b. Customer is, or any Customer End User is, in breach of the Agreement; or

c. Customer has ceased to operate in the ordinary course of business, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

7.2 Kigen will endeavor to provide as much notice as is reasonably practicable in the circumstances and revoke any suspension as soon as practicable after the circumstances causing the suspension are resolved.

Effect of Suspension

7.3   If Kigen suspends Customer's right to access or use any portion of or all of the Service pursuant to Clause 7.1:

    a. Customer will remain responsible for all Fees Customer incurs during the period of suspension; and

    b. Customer will not be entitled to any service credits under the Kigen Hosted RSP Server Service Support Program, for any period of suspension.

8.	Service Support

8.1   Subject to payment of the Service Support Fees as set out in the Terms of Sale, Kigen shall, during the Subscription Term, provide Service Support to Customer.

9.	Term; Termination; Expiry

Term of this Agreement

9.1   The Agreement will commence on the Effective Date and will continue in effect until terminated in accordance with Clause 9.3 or 9.4 below.

Subscription term and renewal

9.2   Kigen will provide the Service to Customer for the Subscription Term. Upon expiration of any Subscription Term, the parties may renew the relevant Service for successive periods of at least one (1) year each (each, a "**Renewal Term**") at such rates as may be mutually agreed in writing between the parties. Each Renewal Term shall be governed by the terms of this Agreement.

Termination by Either Party

9.3   Without prejudice to any other right or remedy which may be available to it, either party shall be entitled to terminate immediately the Agreement by giving written notice to the other, if the other party:

    a. has committed a material breach of any of its obligations under the Agreement which is not capable of remedy; or

    b. has committed a material breach of any of its obligations under the Agreement 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

    c. 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

    d. makes any voluntary arrangement with its creditors for the general settlement of its debts or becomes subject to an administration order; or

    e. 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.

Termination by Kigen

9.4   Kigen may terminate the Agreement immediately upon notice to Customer in order to comply with applicable law.

9.5   **Termination by Customer**

Customer may terminate this Agreement in accordance with Clause 11 of the Kigen Data Processing Addendum.

9.6   **Effect of Termination/Expiry**

Upon termination or expiry of the Agreement:

    a. Subject to Clause 9.7, all Customer's (and Customer End Users') rights immediately terminate;

    b. 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;

    c. Customer will immediately return or, if instructed by Kigen, destroy all Kigen Confidential Information in Customer's possession; and

    d. 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.

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9.7 Clauses 1 (Definitions), 3.5 (Use of Device Specific Data), 5.4 (Customer Feedback), 6 (Fees and Payment Terms), 9.5 (Effect of Termination/Expiry), 11 (Limitation of Liability), 12 (Indemnity), 13 (Confidential Information), and 15 (Miscellaneous) shall all survive termination of the Agreement.

10.	Warranties

10.1 Customer represents and warrants that it will comply with all laws, rules, and regulations applicable to its use of the Service.

10.2 Kigen warrants that the Service will perform substantially in accordance with the Documentation and as described on the Kigen Server Site. If Customer identifies a non-conformance with this warranty, informs Kigen in accordance with the Kigen Hosted RSP Server Service Support Program and Kigen can verify such non-conformance, Kigen will use reasonable efforts to correct any non-conformance promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of this Clause 10.2 and shall not apply to the extent that any non-conformance is caused by use of the Service contrary to Kigen's instructions, or modifications or alteration of the Service by any third party other than Kigen.

10.3 Notwithstanding the above, Kigen: (i) does not warrant that Customer's use of the Service will be uninterrupted or error-free; or (ii) that the Service will meet Customer's requirements; or (iii) that the Device Data will be secure or not otherwise lost or damaged. Kigen is not responsible for any delays, delivery failures, or any other damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Service may be subject to limitations, delays or other problems inherent in the use of such communications facilities. As stated in Clause 2.2, the only remedy for breach of the service levels in the Kigen Hosted RSP Server Service Support Program is the service credits set out in the Kigen Hosted RSP Server Service Support Program.

10.4 Except as set out above, 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 the Agreement and the Service are provided to the Customer on an "as is" basis.

11.	Limitations of Liability

11.1 SUBJECT TO CLAUSE 11.3, KIGEN SHALL NOT BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT 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.

11.2 SUBJECT TO CLAUSES 11.1 AND 11.3, KIGEN'S AGGREGATE LIABILITY UNDER AND/OR IN CONNECTION WITH THE AGREEMENT, WHETHER IN TORT, CONTRACT, STATUTE, MISREPRESENTATION, RESTITUTION OR OTHERWISE, SHALL NOT EXCEED THE TOTAL FEES PAID TO KIGEN UNDER THE AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST RELEVANT CLAIM.

11.3 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 FRADULENT MISREPRESENTATION.

12.	Indemnity

12.1 Customer shall defend and indemnify Kigen and the Kigen Group against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Device Data, Device Specific Data or devices as used in connection with the Service and Customer's use of third party cloud services in conjunction with the Service.

13.	Confidential Information

Protection

13.1 Except as expressly provided by Clauses 13.2 and 13.3, 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 similar information, but not less than a reasonable degree of care, to prevent unauthorized disclosure and use of the Confidential Information.

Permitted disclosures

13.2 Each party may disclose Confidential Information to its Affiliates and service providers solely for the purpose of providing services under the Agreement. Each party will be liable for any breach of its obligations under Clause 13 that is caused by an act, error or omission of any such Affiliate or service provider.

13.3 Either party may disclose Confidential Information received from the other party in the following circumstances:

a. 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 (unless restricted by law) 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);
b. disclosure to nominated third parties under written authority from the original discloser of the Confidential Information; and
c. 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.

Excepted information

13.4 Except with respect to Personal Data, the provisions of this Clause 13 shall not apply to information which:

a. 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
b. 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 Agreement; or
c. 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
d. was independently developed without use of or reference to the other party's Confidential Information.

14.	Marketing

14.1 Customer agrees that it shall not make any public communication, statement, announcement or press release with respect to the Agreement and/or Customer's use of the Service without Kigen's prior written approval.

14.2 Kigen may disclose that Customer is a customer of the Service and include Customer's name, trade mark and/or brand in a list of Kigen's customers, online or in promotional materials. For this purpose, only, Customer will provide Kigen with its logo and trade mark guidelines and Kigen will comply with any such guidelines.

14.3 Other than as stated above in this Clause 14, neither the Customer nor Kigen shall use the name, crest, logo, trade mark or registered image of the other or the other's group companies in promotional material or in connection with the use or provision of the Service without the prior written consent of the other party.

15.	Miscellaneous

Assignment and other dealings

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15.1   Save as provided below under this Clause 15.1, neither party shall assign or otherwise transfer the Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other party.

Kigen may assign any or all of its rights and obligations under the Agreement to any Affiliate. In the event of an assignment pursuant to this clause, Kigen will notify the Customer in writing.

Force Majeure

15.2   Neither party will be liable for any delay or failure to perform any obligation under the Agreement where the delay or failure results from any cause beyond either party's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

Independent Contractors

15.3   Kigen and Customer are independent contractors, and neither party is an agent of the other for any purpose or has the authority to bind the other.

No Third-Party Beneficiaries

15.4   The UK 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.

U.S. Government Rights

15.5   The Service provided under this Agreement consists solely of commercial items. Customer shall be responsible for ensuring that any access granted to the Service to the US Government is in accordance with the terms of this Agreement and is provided with the rights and restrictions described elsewhere herein.

Export Compliance

15.6   The material provided by either party under this 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 and other countries ("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.

Notice

15.7   **To Customer**. Kigen may provide any notice to Customer under the Agreement by: (i) posting a notice on the Kigen Server Portal; or (ii) sending a message to the email address then associated with Customer's Account. Notices Kigen provide by posting on the Kigen Server Portal will be effective upon posting and notices Kigen provides by email will be effective when Kigen sends the email. It is Customer's responsibility to keep its email address up to date.

To Kigen. To give Kigen notice under the Agreement, Customer must contact Kigen by email at legal@Kigen.com, or a different email address as Kigen may notify the Customer from time to time pursuant to this Clause 15.7.

Language. All communications and notices to be made or given pursuant to the Agreement must be in the English language.

No Waivers

15.8   Failure or delay by either party to enforce any provision of the Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

Severability

V6.0

15.9 The provisions contained in each section and sub-section of the Agreement 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.

Governing Law

15.10 The validity, construction and performance of the Agreement (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Customer may bring a claim against Kigen only in the courts of England and Wales. Kigen may bring a claim against Customer in any court that has jurisdiction over Customer. Kigen reserves its rights to obtain injunctive relief in respect of infringement of its Intellectual Property or misuse and/or disclosure of its Confidential Information or Software from any competent court, in any relevant jurisdiction.

15.11 Notwithstanding Clause 15.10, if Customer's address 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.

Anti-Bribery

15.12 Customer agrees to comply with the following:
   (i) all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including the UK Bribery Act 2010 (the "**Act**") and any legislation amendment or replacing such Act;
   (ii) never to receive, offer to receive, or authorise the receipt, directly or indirectly, of anything of value (such as money, goods or a service) from a third party including any government official to obtain any improper advantage;
   (iii) never to give, offer, or authorise the offer, directly or indirectly, of anything of value (such as money (including facilitation payments), goods or a service) to a third party including any government official, to obtain any improper advantage; and
   (iv) never to seek or accept a gift, entertainment or personal favour which might reasonably be believed to have a significant influence on the outcome of, or improper advantage in respect of, business transactions.

Entire Agreement

15.13 The Agreement sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into the Agreement, neither party has relied on, and neither party will have any right of remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in the Agreement.

Conflicting Terms

15.14 If there is a conflict between the documents that make up the Agreement, the documents will control in the following order: the Terms of Sale, the Kigen Data Processing Addendum, these Kigen Hosted RSP Server Terms of Service, and the Kigen Hosted RSP Server Service Support Program.

V6.0