

KIGEN PROFESSIONAL SERVICES TERMS

These Kigen professional services 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 signing 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, the Statement of Work (if applicable) 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, (b) these General Terms and (c) Statements of Works (if applicable) executed by Kigen and Customer.
1.3 " Change Order " means a document signed by both parties recording any changes to any Statement of Work from time to time that have been mutually agreed by the parties.
1.4 " Confidential Information " means: (i) the Kigen Deliverables, and derivatives thereof and any trade secrets relating to the Kigen 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.
1.5 " Customer " means the person or entity which is identified in the Terms of Sale or Statement of Work and is a party to the Agreement.
1.6 " Customer Materials " means any data, information, software or other materials Customer provides to Kigen under the Agreement.
1.7 " 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.
1.8 " Feedback " means all suggestions, comments, feedback, ideas, or know-how (whether in oral or written form) relating to the Services, Kigen Deliverables and associated Kigen technology (if any).
1.9 " Fees " means the fees payable by Customer to Kigen for the Services, as set out in the Terms of Sale.
1.10 " Intellectual Property " means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for

passing off, rights in designs, rights in computer software and semiconductor topographies, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 1.11 **"Kigen Deliverables"** means any deliverables or other materials delivered to Customer under the Agreement.
- 1.12 **"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.
- 1.13 **"Schedule"** means the forecast dates for the performance of the Services and delivery of the Kigen Deliverables, as set out in the respective Statement of Work.
- 1.14 **"Services"** means the services to be performed by Kigen as set out in the Terms of Sale and/or Statement of Work (if applicable).
- 1.15 **"Services Term"** means the period during which Kigen will perform the Services as identified in the Terms of Sale or Statement of Work.
- 1.16 **"Statement of Work"** means a detailed plan, agreed in accordance with Clause 2.2 and attached to the Terms of Sale describing the Services to be provided by Kigen, the timetable for their performance and any other related matters.
- 1.17 **"Supplier"** means a third party that provides services to Kigen in order for Kigen to offer Services to its customers.
- 1.18 **"Terms of Sale"** means an order form executed by both parties setting out (a) the Service(s) to be provided; (b) the Services Term; (c) Fees; and (d) any other terms for using the Service(s) that the parties have agreed upon, including any variations to these General Terms.

2.	Services
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Order process

- 2.1 The Agreement applies to the provision of Services purchased by Customer. Customer may order Services by either or both:

- (i) signing the Terms of Sale with Kigen; or
- (ii) contacting Kigen requesting a detailed Statement of Work in accordance with Clause 2.2.

Statements of Work

- 2.2 Each Statement of Work shall be agreed in the following manner:

- (i) Customer shall ask Kigen to provide certain services by providing Kigen with as much information as Kigen reasonably requests to prepare a draft Statement of Work; and
- (ii) Following receipt of the information requested from Customer, Kigen shall, as soon as reasonably practicable either:

- (a) inform Customer that it declines to provide the requested services; or
- (b) provide Customer with a draft Statement of Work.

- 2.3 If Kigen provides the Customer with a draft Statement of Work pursuant to Clause 2.2 (ii)(b), Kigen and Customer shall discuss and agree such Statement of Work and, when agreed by both parties, such Statement of Work shall be attached to the Terms of Sale, which shall be signed by the parties.
- 2.4 Once a Statement of Work has been agreed and signed in accordance with Clause 2.3, no amendment shall be made to it except in accordance with the change control provisions set out in the Statement of Work or Clause 10.6 (Variation).

Provision of Services

- 2.5 Subject to payment of the Fees, Kigen will use reasonable endeavours to provide Services to Customer as set out in the Terms of Sale (including the Statement of Work (as applicable)), during the Services Term.
- 2.6 Kigen shall use reasonable endeavours to meet any performance dates specified in the Terms of Sale but any such dates shall be estimates only and time for performance by Kigen shall not be of the essence of the Agreement.

Feedback

- 2.7 Customer may be asked to provide Feedback but has no obligation to do so. If Customer chooses to do so, Customer hereby grants to Kigen and its Affiliates, under all of Customer's and its Affiliates' (as applicable) Intellectual Property, a perpetual, worldwide, non-exclusive, irrevocable, royalty free, fully paid up licence to use the Feedback for any purpose, including incorporating the Feedback into, or using the Feedback to develop and improve the Services or any Kigen technology associated with the Services.

Reservation of Rights

- 2.8 Except as expressly licensed, Customer acquires no right, title or interest in any Kigen Deliverables, Kigen technology or any Intellectual Property therein. All right, title and interest in the Kigen Deliverables including any Intellectual Property embodied therein shall vest in and be owned by Kigen or its licensors. No Intellectual Property rights will transfer under the Agreement from Kigen to Customer.

Licence to Kigen Deliverables

- 2.9 Unless otherwise specified in the Terms of Sale, Kigen hereby grants Customer a non-exclusive, worldwide, non-transferable, royalty-free licence under Kigen's or its licensors' Intellectual Property to use and copy the Kigen Deliverables for the sole purpose of enjoying the benefit of the Services.
- 2.10 In no event shall the licenses granted under Clause 2.9 of these General Terms be construed as granting to Customer, expressly or by implication, estoppel or otherwise, a licence to use any Kigen technology other than the Kigen Deliverables.

Project Change

- 2.11 Either party may request an amendment to a Statement of Work by Change Order.
- 2.12 The Customer may request a Change Order by submitting a request for a Change Order ("**Change Order Request**") to Kigen. A Change Order Request may be oral or in writing and shall not require any formality. Any request from the Customer which Kigen reasonably believes will affect the terms of a Statement of Work may be deemed by Kigen to be a Change Order Request. Kigen shall review any Change Order Request in good faith and report to Customer in writing in the form of a draft Change Order; (i) whether such change is technically feasible and, if technically feasible; (ii) the reasonable impact on the Schedule and any other schedules for the delivery of Customer Materials; and (iii) any necessary revision to the Services, Kigen Deliverables, Customer Materials and Fees, as appropriate. Kigen shall be under no obligation to accept the terms of any Change Order Request and Customer shall be under no obligation to accept the terms of any draft Change Order. If the terms of a Change Order Request are agreed by Kigen and the terms of a respective draft Change Order are agreed by the Customer, the draft Change Order shall be signed by both parties. The Customer shall bear all costs and expenses associated with any variation requested by the Customer to any Statement of Work, including the cost of any feasibility study connected with the analysis of such variation. Kigen shall be entitled to continue performing the Services in accordance with the relevant Statement of Work until the parties have agreed the terms of any Change Order.
- 2.13 Kigen may request a Change Order by submitting a draft Change Order to the Customer. Within ten (10) working days of receiving a draft Change Order from Kigen, the Customer shall review the draft Change Order in good faith and report to Kigen in writing whether the terms of such draft Change Order are acceptable. The Customer shall be under no obligation to accept the terms of any draft Change Order. If the terms of a draft Change Order are accepted by the Customer, the draft Change Order shall be signed by both parties. If no report on the draft Change Order is received by Kigen from the Customer within ten (10) working days of receipt of the Change Order by the Customer then Kigen may deem the terms of such draft Change Order to have been agreed by the Customer.

- 2.14 Any Change Order shall be attached to the Statement of Work. After execution of a Change Order by both parties the amendments detailed therein shall be incorporated into the Statement of Work and shall form part of the Agreement.

Prohibited Uses

- 2.15 Customer shall not, and shall use all reasonable efforts to ensure its customers shall not, use the Kigen Deliverables for any unlawful, unauthorized, or prohibited purpose. Without limiting the generality of the foregoing, the Customer expressly agrees not to use the Kigen Deliverables 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 Kigen Deliverables;
 - (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 Kigen Deliverables, 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;
 - (e) uses any part of the Kigen Deliverables 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 2.15.

3. Customer Obligations

Customer Materials

- 3.1 If Customer provides Customer Materials in connection with Kigen providing the Services, Customer agrees that, subject to Clause 4 (Confidentiality), Kigen, its Subsidiaries, and Suppliers may use Customer Materials to provide the Services to Customer. Customer agrees that Kigen's use of the Customer Materials does not require any additional consents or licences, will be in compliance with applicable laws, and will not violate any intellectual property, privacy or other right of any third party. As between Kigen and Customer, Customer retains all other rights in and to Customer Materials.
- 3.2 Customer shall:
- (i) provide Kigen with all necessary accurate information, support and co-operation that may be reasonably required to enable Kigen to perform the Services;
 - (ii) provide for Kigen, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to Customer's premises, office, data and other facilities as reasonably required by Kigen including any such access as is specified in the Terms of Sale or Statement of Work; and
 - (iii) comply with any additional responsibilities of the Customer (including providing any Customer Materials) as set out in the Terms of Sale.
- 3.3 If Kigen's performance of its obligations under the Agreement is prevented or delayed by any act or omission of Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, Kigen shall be allowed an extension of time to perform its obligations equal to the delay caused by Customer.
- 3.4 If Kigen's cost of providing the Services to Customer is increased as a result of a failure by the Customer; (i) to deliver Customer Materials to Kigen in accordance with the agreed timeframe; or (ii) to provide Kigen with all necessary, accurate information, support and co-operation that may be reasonably required to enable Kigen to provide the Services for, and delivery of the Kigen Deliverables to the Customer in accordance with the respective Schedule, then the Customer shall pay such increased costs reasonably incurred on a time

and materials basis at Kigen's then prevailing consulting rate. Such increased costs reasonably incurred may include the cost of time during which Kigen resources are under-utilised as a direct result of the Customer's failure. Any such change in the cost of providing the Services to the Customer shall be managed by a Change Order in accordance with Clause 10.6, except that provided the terms of the Change Order are reasonable, the Customer shall have no right to reject such Change Order.

4. Confidentiality

Restricted Disclosure

- 4.1 Except as expressly provided under these General Terms, 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

- 4.2 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 this 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, Subsidiaries, agents or contractors, or Affiliates of Kigen, on a need-to-know basis to further the purpose of the Agreement, provided that such officers, employees, Subsidiaries, agents or contractors, or Affiliates of Kigen, are subject to the same terms and conditions of confidentiality as are set out in these General Terms.

Excepted Information

- 4.3 The provisions of this Clause 4 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 Agreement; 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.

- 4.4 Feedback shall not be treated as confidential information by Kigen and Kigen shall be free to use, copy, disclose or otherwise distribute any Feedback to any third party or pursuant to any of the licences granted in Clause 2.8 without obligation or restriction of any kind.

Data Protection

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

- 4.6 Without limiting Clause 7 (Limitation of Liability) or Customer's obligations under Clause 3 (Customer Obligations), Kigen will implement reasonable and appropriate measures designed to help Customer secure Customer Materials against accidental or unlawful loss, access or disclosure.
- 4.7 Customer hereby consents to the storage and transfer of Customer Materials in accordance with the Privacy Policy. Kigen will not access or use Customer Materials except as necessary to maintain or provide the Kigen Deliverables, perform the Services or as necessary to comply with the law or a binding order of a governmental body. Kigen will not disclose Customer Materials 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 4.7. Kigen will only use Customer Materials in accordance with the Privacy Policy, and Customer consents to such usage.

5. Fees, Payment and Taxes

Fees and Payment

- 5.1 Customer shall pay all Fees due to Kigen under the terms of the Agreement on or before the thirtieth (30th) 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.
- 5.2 If any invoice is not paid by the Due Date (defined in Clause 5.1), 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

- 5.3 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.

6. Warranties and Exclusion of Warranty

- 6.1 Kigen warrants that the Services will be performed in a professional and workmanlike manner by qualified personnel.
- 6.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS EXPRESSLY PROVIDED IN CLAUSE 6.1, THE SERVICES, KIGEN DELIVERABLES AND KIGEN CONFIDENTIAL INFORMATION ARE PROVIDED AS IS, AND KIGEN 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.

7. Limitation of Liability

- 7.1 SUBJECT TO CLAUSE 7.3, NEITHER PARTY SHALL 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.
- 7.2 SUBJECT TO CLAUSES 7.1 AND 7.3, 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 TO KIGEN WITH RESPECT TO THE PARTICULAR SERVICE GIVING RISE TO LIABILITY UNDER THE APPLICABLE TERMS OF SALE OR STATEMENT OF WORK DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST RELEVANT CLAIM.
- 7.3 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.
- 7.4 The provisions of this Clause 7 allocate the risks under the Agreement between Kigen and Customer and Kigen's pricing reflects this allocation of risk and the limitation of liability specified herein.

8. Term and Termination

Services Term

- 8.1 Unless otherwise agreed in writing, the Services shall continue for the duration of the Services Term unless terminated earlier in accordance with Clause 8.2 below.
- 8.2 Without prejudice to any other right or remedy which may be available to either party, either party shall be entitled summarily to 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.

9. Effect of Expiry and Termination
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- 9.1 Upon termination or expiry of the Agreement:
- (i) Subject to Clause 9.2, all Customer's rights immediately terminate;
 - (ii) Customer remains responsible for all Fees Customer has incurred up to the date of termination or expiry, and any outstanding Fees (including any cancellation Fees specified in the relevant Terms of Sale), 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 or Kigen equipment in Customer's possession;
 - (iv) Kigen shall return any of the Customer Materials not used up in the provision of the Services; and
 - (v) 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.
- 9.2 The provisions of Clauses 1 (Definitions), 2.7 (Feedback), 4 (Confidentiality), 5 (Fees), 7 (Limitation of Liability), 8 (Term and Termination), 9 (Effect of Expiry/Termination) and 10 (General) shall survive termination or expiry of the Agreement.

10.	General
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- Notices**
- 10.1 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 10.1. 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 by email to legal@kigen.com.
- Assignment**
- 10.2 Save as provided below under Clause 10.3, 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.
- 10.3 Kigen may assign any or all 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.
- Independent Parties**
- 10.4 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.
- Waiver**
- 10.5 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**
- 10.6 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).
- Force Majeure**
- 10.7 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

- 10.8 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

- 10.9 The provisions contained in each clause and sub-clause of these General Terms Agreement shall be enforceable independently of each of the others and if a provision of this 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 these General Terms. 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

- 10.10 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 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. Customer will provide Kigen with all applicable export classification information (including ECCNs) for Customer Materials before delivering the Customer Materials to Kigen.

Governing Law

- 10.11 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 this 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 Agreement.
- 10.12 Notwithstanding Clause 10.11, 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.