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- b. nCipher shall have, in addition to any other remedies available to it, the right to seek equitable remedies including injunctive relief in respect of Licensee's breach of its obligations under this EULA.

#### 4) CERTIFICATION AND AUDIT

- a. Upon nCipher's written request, Licensee shall conduct a review of use of the Software and certify to nCipher in a written instrument signed by an authorized representative of Licensee that it is in full compliance with this Agreement and, in particular, that it is not using more licenses that have been purchased. In the event of non-compliance, Licensee shall immediately remedy such noncompliance and provide nCipher with written notice thereof. Licensee shall provide nCipher with all access and assistance as nCipher reasonably requests to further evaluate and remedy such noncompliance.
- b. During the Term, nCipher may audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that: (i) any such audit shall be conducted on not less than fifteen (15) days' prior notice to Licensee; and (ii) no more than one audit may be conducted in any twelve(12)-month period except for good cause shown. nCipher also may, in its sole discretion, audit Licensee's systems within twelve (12) months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with nCipher's personnel or agents conducting such audits and provide all reasonable access to records and information reasonably requested by nCipher. nCipher may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.
- c. If the audit or any of the measures taken or implemented under this Section 4, determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:
- (i) Licensee shall, within thirty (30) days following the date of such determination by nCipher, pay to nCipher the retroactive License Fees for such excess use at the then-current rates for such licenses.
  - (ii) If the use exceeds the use permitted by this Agreement by more than ten percent (10%), Licensee shall pay nCipher's reasonable costs incurred in conducting the audit.
  - (iii) If the use exceeds the use permitted by this Agreement by more than twenty percent (20%), nCipher shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.
- d. nCipher's remedies set forth in this Section 4 are cumulative and are in addition to, and not in lieu of, all other remedies the nCipher may have at law or in equity.
- e. Licensee must provide notice to nCipher of the number of copies of the Software the Licensee has made upon nCipher's written request, no more frequently than annually.

#### 5) LICENSE FEES

All License Fees and payment terms shall be as set forth in the applicable Order Acknowledgment.

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- b. This EULA shall not be considered to be a sale of any Intellectual Property Rights or other proprietary interests embodied in the Products or Product component thereof (or any copy, derivative work, upgrade, Update, improvement or modification thereof), and nothing herein shall be deemed to establish or imply that the license granted is a conveyance of any underlying Intellectual Property Rights to the Products.
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## 8) CONFIDENTIALITY

- a. Receiving Party agrees not to use, disseminate, or in any way disclose any Confidential Information of Disclosing Party to any person, firm or business, except to the extent necessary for the performance of Receiving Party's obligations hereunder, and for any other purpose Disclosing Party may hereafter authorize in writing.
- b. Receiving Party agrees to treat all Confidential Information of Disclosing Party with the same degree of care as Receiving Party accords to Receiving Party's own Confidential Information, but in no case less than reasonable care.
- c. Receiving Party agrees to disclose Confidential Information only to those Receiving Party's employees and independent contractors who need to know such information, and Receiving Party certifies that Receiving Party's employees and/or independent contractors have previously agreed in writing, to be bound by substantially similar terms and conditions to those contained herein. Receiving Party shall give immediate notice to Disclosing Party of any unauthorized use or disclosure of Disclosing Party's Confidential Information. Receiving Party will take all reasonable measures to ensure that no unauthorized person shall have access to the Confidential Information and that all authorized parties having access refrain from making any unauthorized disclosure in violation of this

Agreement. Receiving Party agrees to assist Disclosing Party in remedying any such unauthorized use or disclosure by Receiving Party or any of its employees or independent contractors of Disclosing Party's Confidential Information. Receiving Party shall comply with all applicable federal and state laws, rules and regulations protecting the Confidential Information and privacy rights of the Disclosing Party, its Licensees and suppliers, and shall be responsible for any failure by the Authorized Parties to so comply.

- d. The obligations of Receiving Party under this Section 8 with respect to any portion of the Confidential Information of Disclosing Party, shall not apply to such portion that Receiving Party can document does not include any information which: (i) is or becomes generally available to the public other than as a result of a breach of this Agreement; (ii) is known by Receiving Party prior to its receipt of the Confidential Information from Disclosing Party, or is furnished by a third party to Receiving Party as a matter of right and without restriction on disclosure, so long as Receiving Party can provide clear evidence of such prior disclosure; (iii) is independently developed by Receiving Party without use of, or reference to any Confidential Information, so long as Receiving Party can provide clear evidence of such independent development; or (iv) is agreed in writing by the parties not to be considered Confidential Information.
- e. A disclosure of Confidential Information, either in response to a valid order by a court or other governmental body or otherwise required by law, shall not be considered to be a breach of this EULA by Receiving Party or a waiver of confidentiality for other purposes; provided, however, Receiving Party shall provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party to seek a protective order or otherwise prevent or limit such disclosure.
- f. The parties acknowledge that it may be impossible to measure in money the damage to the parties hereto of any failure to comply with the obligations of this Section 8, that every such restriction and obligation is material, and that in the event of any such failure, the parties may not have an adequate remedy at law or in damages. Therefore, each party consents to the non-breaching party may seek an injunction or the enforcement of other equitable remedies against it at the suit of an aggrieved party, without bond or other security, to compel performance of all of the terms of this Section 8 and waives any defenses to an equitable remedy based on a failure of consideration, breach of any other provision of this EULA, and availability of relief in damages. The parties in no way waive their rights to contest any action on the merits or pursue any other remedy which might be available to such party.
- g. Both parties agree to keep confidential any Confidential Information during the Term of this Agreement and for a period of three (3) years thereafter, with the exception of trade secrets, which shall be confidential in perpetuity.

## 9) GENERAL INDEMNIFICATION

- a. Each party shall defend and indemnify the other against any third-party claim for personal bodily injury, including death, where the injury has been exclusively caused by the indemnifying party's gross negligence or willful misconduct in connection with this Agreement.
- b. Licensee shall indemnify, defend and hold nCipher and their officers, employees and agents harmless from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorney fees, that are incurred by nCipher arising out of any third-party claim relating to, arising out of or resulting from, whether based in contract or tort, any: (i) Licensee's material breach of Sections 2, 3, 4 and 8 of this Agreement; (ii) use of the Products contrary to the Documentation; (iii) failure to comply with any applicable laws, regulations, or codes in the performance of its obligations under this EULA. The obligation of each party to indemnify the other pursuant to this Section 10 shall survive termination of this Agreement.

## 10) INTELLECTUAL PROPERTY INFRINGEMENT

- a. Subject to Section 11, nCipher will defend at its own expense, or at its option, settle any action brought by a third party against Licensee to the extent that it is based upon a claim that a nCipher provided Product infringes a valid Canada, United States, European Union, Hong Kong or United Kingdom patent or copyright or misappropriates a third party's trade secret ("IP Claim"). nCipher will pay direct costs and direct monetary damages finally awarded against Licensee in any such IP Claim,



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- c. Sole and exclusive remedy. Should such Products become, or in nCipher's opinion, be likely to become the subject of an IP Claim or the use thereof become restricted by a court awarded injunction, Licensee shall permit nCipher, at nCipher's sole option and expense, the right to either: (i) procure for Licensee the right to continue using such Products by license or release from claim of violation, infringement or misappropriation; (ii) modify such Product so that they are functionally equivalent but are no longer subject to a claim; (iii) replace the Product with equally suitable substitute Product free from claim; or (iv) refund to Licensee the purchase price for the impacted Product based on a five (5) year straight line depreciation schedule.
- d. Exceptions to nCipher's indemnity. nCipher shall have no liability to the Licensee under this IP Indemnity with respect to any IP Claim which is arising from: (i) nCipher compliance with any design, technical information, instructions or specifications furnished by the Licensee; (ii) the combination or utilization of the products or services not provided by nCipher or, provided that the Product when used alone does not give rise to such infringement; (iii) the modification of the Products furnished hereunder other than by nCipher or its agents, servants or subcontractors; or (iv) the use of the Products contrary to the Documentation.
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## 12) PERSONAL DATA

- a. It is the understanding of the Parties, and a condition of this EULA, that nCipher will not require access nor process any Personal Data to perform its obligations under this EULA and Licensee shall take appropriate precautions to prevent such access by nCipher or its personnel (including authorized subcontractors and agents). For the avoidance of doubt, the parties do not intend for nCipher to be a Data Processor on behalf of Licensee within the meaning of the GDPR.
- b. Notwithstanding the foregoing, nCipher's Privacy Notice shall apply to any Personal Data that Licensee may provide to nCipher in connection with the purposes described therein. A copy of the nCipher Privacy Notice can be found at <https://www.ncipher.com/privacy-policy>.

## 13) COMPLIANCE WITH LAWS

- a. Each party shall be solely responsible for and shall comply with all applicable laws, ordinances, rules and regulations imposed by any country or subdivision thereof applicable in connection with the party's performance under this EULA, including but not limited to laws and regulations applicable to: (i) the import and export of the Products; (ii) the U.S. Foreign Corrupt Practices Act, the UK Bribery Act or any other laws or regulations regarding corruption or bribery; (iii) the use of deceptive or misleading practices; or (iv) the privacy of users of personally identifiable information and the collection, storage, transfer and any other processing of any personally identifiable information collected or used by the party in any manner or maintained by third parties having authorized access to such information.
- b. Licensee shall obtain any and all permits, licenses, authorizations and/or certificates that may be required in any jurisdiction or by any regulatory or administrative agency in connection with the conduct of its business and the distribution or sale of the Products.
- c. In addition to any other indemnity under this EULA, Licensee shall indemnify and hold nCipher harmless from and against any and all claims, damages and liabilities asserted by any person or entity against nCipher in connection with any acts or omissions of Licensee's or third parties acting on Licensee's behalf which constitute a breach of this Section 14. Licensee's indemnification under this Section 14 shall include the payment of all reasonable attorneys' fees and other costs incurred by nCipher or its affiliates. This provision shall survive any termination or expiration of this EULA.

## 14) TERM AND TERMINATION

- a. This EULA and the license granted hereunder and any related SOW (if applicable) shall remain in effect for the term set forth on the Order Acknowledgment or until terminated as set forth herein (the "Term").
- b. Either party may terminate this EULA if: (i) the other party is notified in writing that it is in material breach of the terms or conditions of this EULA; and (ii) such other party fails to remedy such breach within thirty (30) days following such notice or ten (15) days following such notice if the breach is a failure by Licensee to pay any fees required.
- c. Either party may terminate this EULA if: (i) the other party files or has filed against it a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, or is adjudicated bankrupt (ii) makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its



property.

- d. In the event of termination of this EULA for a material breach by Licensee and in addition to all other rights and obligations each party may have under this EULA: (i) the rights and licenses granted to the Products pursuant to this EULA shall automatically terminate; and (ii) Licensee shall, within thirty (30) days, ship to nCipher or destroy (including purging from any system or storage media) all items in its possession proprietary to nCipher, including but not limited to all Products, and upon request by nCipher, an authorized representative of Licensee shall certify in writing to nCipher that the Products and other confidential Information of nCipher have been returned to nCipher or destroyed.
- e. Upon expiration or termination of this EULA for any other reason, the License granted hereunder for any term license shall terminate and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees that may have become due before such expiration or termination. Each party shall: (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; (ii) permanently erase all of the other party's Confidential Information from its computer systems; and (iii) certify in writing to the other party that it has complied with the requirements of this clause.

## 15) GOVERNING LAW AND DISPUTE RESOLUTION

- a. When the nCipher entity under the Order Acknowledgment originates from North America, this EULA shall be governed by the laws of the State of New York, USA. When the Order Acknowledgment originates in Europe, this EULA shall be governed by and construed in accordance with the laws of England & Wales. When the Order Acknowledgment originates in Asia, this EULA shall be governed by and construed in accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.
- b. Any dispute or claim arising out of or in connection with this EULA, including the determination of the scope or applicability of this EULA to arbitrate, shall be settled by arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce ("ICC") by one arbitrator appointed in accordance with said Rules. The arbitration shall be administered by the ICC and shall be conducted in the English language.
- c. Arbitrations shall be held in New York, USA, London, England, U.K. or Asia shall be held in Singapore.
- d. Either Licensee or nCipher may seek interim or provisional relief in any court of competent jurisdiction if necessary to protect the rights or property of that party pending the appointment of the arbitrator or pending the arbitrator's determination of the merits of the dispute. The arbitration award will be in writing and will specify the factual and legal basis for the award. The arbitration award will be final and binding upon the parties, and any judgment on the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

## 16) FORCE MAJEURE

nCipher shall not be considered in default in performance of its obligations hereunder if performance of such obligations is prevented or delayed by any circumstances not within nCipher's reasonable control including, without limitation: acts of God, fire, explosion, flood, storm, terrorist attack, civil war, commotion or riots, war (or threat of war), imposition of sanctions, embargos or acts of government (including without limitation failure or delay to obtain export licenses), labor disputes, failure or delay of transportation, vendors or subcontractors, nCipher inability to enter Licensee's premises to fulfill its obligations under this EULA when applicable, or any other similar cause or causes beyond the reasonable control of nCipher. Time of performance of nCipher's obligations hereunder shall be extended by the time period reasonably necessary to overcome the effects of such force majeure occurrences.

## 17) NOTIFICATIONS

All notices, requests and demands, and other communications required or permitted under this EULA shall be in writing and shall be deemed to have been duly given, made, and received only: (a) upon delivery, if delivered personally to a party; or (b) one business day after deposit if delivered to a nationally recognized

courier service offering guaranteed overnight delivery. All such communications shall be sent to the address set forth in the introductory paragraph, and specifically to the attention of: nCipher Security, Attn: Legal Department, Bldg A, 13800 Northwest 14<sup>th</sup> Street, Suite 130, Sunrise, FL 33323, U.S.A with a copy to [Legal@ncipher.com](mailto:Legal@ncipher.com).

## 18) ELLIPTIC CURVE CRYPTOGRAPHY ACTIVATION

If Licensee elects to purchase any Product containing elliptic curve cryptography software ("ECC"), it agrees that its use of ECC is limited to storing cryptographic keys and the performance of cryptographic operations in a hardware environment together with the management and issuance of digital certificates by a registration authority or certificate authority provided such certificates are either: (a) solely for the internal use of the registration authority; or (b) solely for the internal use of an enterprise that is hosted by a registration authority or certificate authority. No right or license is provided or granted to use ECC as part of a third party service provider for the purpose of acting as a commercial registration authority or certificate authority as part of a commercial service offered by an enterprise, either as a vendor of digital certificates or in the provisioning of certificates for use in a commercial service.

## 19) STANDARD PRODUCTS

All Products shall be nCipher's standard Products. Unless specifically stated in a separate written agreement between nCipher and Licensee, nCipher shall have no obligation to create special or customized versions of any Product, or to ensure that the Products operate with Licensee's equipment, software, or systems. nCipher reserves the right, without prior approval from or notice to Licensee, to make changes to any Product: (i) to meet published Documentation; (ii) that do not adversely affect the performance of the Product below any published Documentation; or (iii) when required for purposes of safety. nCipher also reserves the right to make changes to any Product without any obligation to make the same changes to Products previously ordered by or licensed to Licensee.

## 20) MISCELLANEOUS

- a. Assignment. Neither party may assign this EULA or any right hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempt to assign any rights, duties or obligations, which arise under this EULA without such permission shall be void.
- b. No Waiver. Any waiver or forbearance shall be valid only if in writing. No waiver by a party of any default shall operate as a waiver of any other default or of the same default on a future occasion. No delay, course of dealing or omission on the part of one party in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by such party of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- c. Limitation of Time. No action, regardless of form, which arises from or is related in any way whatsoever to this EULA may be commenced more than eighteen (18) months after such cause of action accrues, except that an action for nonpayment may be brought at any time within the governing statute of limitations.
- d. Severability. If any provision or provisions of this EULA shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided such provisions still express the intent of the parties. If the intent of the parties cannot be preserved, the EULA shall either be renegotiated or rendered null and void.
- e. Modifications. Any modifications to this EULA must be in writing and signed by a proper and duly authorized representative of the party to be bound thereby.
- f. Non-exclusive remedies. No remedy conferred by this EULA is intended to be exclusive of any remedy, except as expressly provided, and each and every remedy shall be cumulative and in addition to every other remedy given under this EULA or now or in the future existing in law or in equity or by statute or otherwise.
- g. Right of Third Parties. This EULA is not made for the benefit of, nor shall any of its provisions be enforceable by any person other than the parties to this Agreement and their respective successors and permitted assignees.
- h. Entire Agreement. This EULA represent the entire agreement between the parties in relation to the subject matter contained herein and supersede any previous agreement whether written or oral between the parties in relation



to that subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form part of this EULA.