

NCIPHER SECURITY

Worldwide General Terms and Conditions

Release: 0.2

NCIPHER SECURITY

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Cambridge
CB1 2GA United Kingdom

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Causeway Bay, Hong Kong

The following terms and conditions ("Terms and Conditions") constitutes an offer, (the "Offer") by nCipher to any potential or actual purchaser, ("Purchaser") of nCipher provided equipment or software ("Products") or the provision of nCipher provided professional services relating to the installation, use and operation of the Products and support and maintenance services together with the provision of error corrections, workarounds and updates thereto all as specified in an applicable nCipher quotation document ("Quotation"). All Quotations shall be deemed to incorporate and be governed by these Terms and Conditions. nCipher's acceptance of an order is subject to and conditional on Purchaser's acceptance of these Terms and Conditions. NCIPHER SECURITY ("nCipher") is a business unit of Thales eSecurity, made up of Thales eSecurity, Inc., Thales UK Limited and Thales Transport and Security (Hong Kong) Limited.

1. OFFER ACCEPTANCE

Purchaser may accept a Quotation and this offer either by submitting a purchase order for the Products specified in an applicable Quotation or by any conduct that acknowledges the existence of an agreement for such Products, including without limitation, acceptance or use of the Products. This Offer is conditional upon and can only be accepted upon the terms and conditions specified herein in this Offer. If Purchaser has previously proposed or subsequently proposes any terms that add to, vary from, or conflict with the terms of this Offer, nCipher hereby objects to and rejects such terms. Other than as specifically provided in any separate written agreement between Purchaser and nCipher, these Terms and Conditions may not be altered, supplemented, or amended without the written consent of nCipher. No order placed by Purchaser shall be deemed to constitute an acceptance of this Offer unless or until nCipher issues a written acknowledgement of Purchaser's order or nCipher delivers the Products to Purchaser. Once accepted, Purchaser's order is not cancelable. All nCipher specified delivery dates or delivery schedules identified in any nCipher issued acknowledgement shall be binding on Purchaser unless Purchaser notifies nCipher of its rejection of such delivery schedule within five (5) days of receipt of a nCipher issued acknowledgment. Purchaser acknowledges that it has not relied on any promise, statement or representation made or given by or on behalf of nCipher which is not set out in these Terms and Conditions.

2. PRICES

Prices or license fees shall be as specified in an applicable Quotation and do not include transportation fees, insurance costs, handling fees or taxes which shall be invoiced by nCipher and paid by Purchaser.

3. TERMS OF PAYMENT

Purchaser agrees to pay the price or fee stated in an applicable Quotation within thirty (30) days of the date of receipt of nCipher's invoice WITHOUT ANY OFFSET OR DEDUCTION WHATSOEVER. TES reserves the right to withdraw any credit advanced at any time. If Purchaser fails to pay the price or any other payment due hereunder when due, nCipher may recover, in addition to the price or other payment, interest thereon at the rate of one and one half percent (1.5%) per month where lawful, otherwise the maximum lawful monthly interest rate, and reasonable legal fees incurred by nCipher for the collection of such amounts. If Purchaser fails to pay the price or any other amount due and payable hereunder, no right, title or interest in or to the Products shall pass from nCipher and Purchaser shall hold the Products on a fiduciary basis as nCipher's bailee and accordingly nCipher shall have the right to trace any proceeds of sale by Purchaser. All payments made by Purchaser are non-refundable. nCipher may cancel any accepted order and may delay or decline to make any further shipments in the event of

- a. any non-payment or other default by Purchaser;
- b. bankruptcy or insolvency of Purchaser; or
- c. any proceeding brought by or against Purchaser, voluntarily or involuntarily, under any provision of any bankruptcy or other insolvency law of any nation or community of nations and any political subdivision thereof.

4. DELIVERY

Products will be deemed delivered when TES makes the Products available and ready for shipment from nCipher's shipping facility (EXW as defined in Incoterms 2010) or in the case of export orders when nCipher delivers Products to the Purchaser's carrier (FCA as defined in Incoterms 2010). Purchaser is responsible for all costs and bears all risks involved in taking the goods from nCipher's shipping facility/Purchaser's carrier to Purchaser. In the absence of specific instructions, nCipher will select the carrier and, at its discretion, may ship "collect", prepaid or subject to invoice payment terms, but shall not be deemed thereby to assume any liability in connection with the shipment, nor shall the carrier be construed to be the agent of nCipher.

nCipher will insure the full value of the Products against loss or damage in transit in return for an additional charge as indicated on the Quotation. In the event of a claim for loss in transit, claims may be made 48 hours after the expected delivery date, whereupon nCipher will refund the price of the lost shipment. Items that are damaged in transit should be returned in their original packaging, whereupon nCipher will replace the damaged equipment, such replacements to be subject to normal lead times.

Delivery dates specified in any Purchaser documentation or purchase order shall not be binding on nCipher. All dates and times for delivery and installation of the Products or the provision of Services are estimates only and nCipher shall not have any liability for delay or for any damages or losses sustained by Purchaser as a result of such dates or times not being met.

5. TAXES

Purchaser shall pay on or before their due dates all such taxes, fees, duties and charges which arise out of or in connection herewith, (except for taxes arising or connected with nCipher's net income), unless Purchaser provides nCipher with a proper tax-exemption certificate. If Purchaser is required by law to make any deduction or withholding from any sum payable to nCipher by Purchaser hereunder, then the sum payable by Purchaser upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after all deduction and withholding, nCipher receives and retains, free from liability for any deduction or withholding, a net amount equal to the amount nCipher would have received and retained in the absence of such required deduction or withholding.

6. SOFTWARE AND FIRMWARE LICENSE

Software or documentation provided by nCipher that is incorporated into a hardware device or that is provided separately or on a stand-alone basis is licensed and is not sold. Purchaser's rights are established by and limited to the terms and conditions specified in the End User License Agreement (EULA) accompanying the Products. No right is granted to Purchaser to obtain source code for any nCipher provided software. A breach by Purchaser of any provision of the EULA shall also constitute a breach of these Terms and Conditions. For purposes of this Agreement, the terms "sale", "sell", "buy" or "purchase" shall be deemed to apply to and include the terms "license" or "provision of a service" as the context so requires and nothing herein shall be deemed to establish or imply that a purchase or sale is a conveyance of the underlying intellectual property rights of the Products and no software or no software component of a Product shall be deemed to have been purchased, bought or sold but rather shall only be deemed to have been licensed.

7. ELLIPTIC CURVE CRYPTOGRAPHY

If the Purchaser desires to purchase any Product containing the elliptic curve cryptography ("ECC"), Purchaser 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

- i. solely for the internal use of the registration authority; or
- ii. are solely for the internal use of an enterprise that is hosted by a registration authority or certificate authority. For the avoidance of doubt, the Purchaser does not have the right 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. Purchasers who desire to use ECC in the manner prohibited by this clause should contact Certicom Corp., www.certicom.com, to obtain the required license rights.

8. PROPRIETARY RIGHTS

Purchaser shall not remove any trademark or copyright notice from any nCipher provided Product, or documentation. Products incorporate proprietary technology and trade secrets of nCipher and its licensors. All right, title and interest in and to the Products, other than that expressly granted to purchaser shall remain vested in nCipher and its third party suppliers. Purchaser acknowledges that the Products and accompanying documentation provided by nCipher contain proprietary technical knowledge and techniques embedded in the Products and as between Purchaser and nCipher, the ownership of all intellectual property rights shall remain with nCipher and its licensors. Purchaser agrees that a sale of Products does not constitute a sale of any of nCipher's or its licensors intellectual property rights.

9. INTELLECTUAL PROPERTY INDEMNITY

nCipher shall defend or, at its option, settle, any claim, action or proceeding brought against Purchaser alleging that any Product infringes a trademark, patent, copyright or trade secret or other intellectual property right, and shall indemnify Purchaser from and against all damages and costs finally awarded against Purchaser in any such action or proceeding, provided that Purchaser

- a. promptly notifies nCipher in writing of the claim;
- b. gives nCipher full authority, information and assistance to defend such claim; and
- c. gives nCipher sole control of the defense of such claim and all negotiations for the compromise or settlement thereof. If a Product or any part thereof becomes, or in nCipher's opinion is likely to become, the subject of a valid claim of infringement or the like under any trademark, patent, copyright or trade secret or other intellectual property right law, nCipher shall have the right, at its option and expense, either to obtain for Purchaser a license permitting the continued use of the Product or such part, to replace or modify it so that it becomes non-infringing, or to grant Purchaser a credit for the then-value of the Product, as depreciated on a straight line basis over a five-year life and to terminate the license thereof, and Purchaser shall return such product to nCipher. nCipher shall have no liability hereunder for any costs incurred or settlement entered into without its prior written consent. nCipher shall have no liability hereunder with respect to any claim based upon
 - i. the combination of the product with other equipment not furnished by nCipher (except if the infringement occurs due to the use of the Product itself as originally provided by nCipher);
 - ii. any addition to or modification of the Product by any person or entity other than nCipher; or
 - iii. use of a superseded or altered release of the Product. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF NCIPHER AND ITS LICENSORS AND THE SOLE AND EXCLUSIVE REMEDY OF PURCHASER WITH RESPECT TO ANY CLAIM OF PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER PROPRIETARY RIGHTS INFRINGEMENT BY THE PRODUCTS, ANY SERVICE, ANY PART THEREOF OR THE USE THEREOF, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, AND INDEMNITIES WITH RESPECT THERETO. NOTWITHSTANDING THE FOREGOING, ALL OPEN SOURCE SOFTWARE OR FREWARE INCLUDED WITH THE PRODUCT IS PROVIDED WITHOUT ANY RIGHTS TO INDEMNIFICATION.

10. DATA PROTECTION

Personal information provided by the customer shall be used for the sole purpose of providing the Services and for no other purpose. Details will be stored securely in one or more databases controlled by the Company and managed by the Company, one of its affiliate companies or a third party. Data may be transferred to other countries including those with a higher or lower level of data protection standards. To

exercise your data protection rights of opposition, access, rectification and deletion you may write to the Data Protection Officer at DataProtectionOffice@thales-ecurity.com.

11. WARRANTIES

nCipher warrants that the Product will function substantially as detailed in the respective Product specification. Such warranty is valid for a period of twelve (12) months from the date of delivery in the case of hardware, and ninety (90) days from the date of delivery in the case of software. In the event that the Product's functionality is materially impaired by virtue of defects in workmanship nCipher will repair or replace the affected Product, provided that nCipher receives written notification of claim under this warranty within the warranty periods herein described. For the avoidance of doubt nCipher neither warrants, nor can be expected to warrant that any Product is fit for Purchaser's purpose, that the Product is wholly free from defect, or that any particular defect can be remedied. The foregoing warranty is contingent upon Purchaser's payment of the price or fee specified in an applicable Quotation. The foregoing warranty shall also not apply if the Product nonconformity issue is caused by the Product being subjected to unusual physical, electrical, electromagnetic or electronic stress after delivery, fire or other acts of god, rough handling during transportation, Product modification or repairs performed by anyone other than nCipher or to any associated or complementary equipment or software not furnished by nCipher, or any Product misuse, or neglect.

12. DISCLAIMER

THE WARRANTIES IN CLAUSE 10 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED OR ARISING BY CUSTOM OR TRADE USAGE, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NCIPHER'S EXPRESS WARRANTY SHALL NOT BE ENLARGED, DIMINISHED OR AFFECTED BY, AND NO OBLIGATION OR LIABILITY SHALL ARISE OUT OF NCIPHER RENDERING TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS. NCIPHER MAKES NO WARRANTY AS TO THE SECURITY PROVIDED BY ANY PRODUCT.

13. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL NCIPHER'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, THESE TERMS AND CONDITIONS OR NCIPHER'S PERFORMANCE OR ASSERTED FAILURE TO PERFORM HEREUNDER EXCEED THE PURCHASE PRICE OF THE APPLICABLE PRODUCT THAT GAVE RISE TO THE CLAIM REGARDLESS OF WHETHER SUCH CLAIM OR LIABILITY ARISES OR ALLEGES IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. NOTHING IN THESE TERMS AND CONDITIONS SHALL HOWEVER LIMIT OR EXCLUDE NCIPHER'S LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM THE NEGLIGENCE OF NCIPHER, FOR FRAUD OR FRAUDULENT MISREPRESENTATION OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW. IN NO EVENT WILL NCIPHER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR TORT DAMAGES OR FOR ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SERVICES OR NCIPHER'S PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THESE TERMS AND CONDITIONS, WHETHER OR NOT NCIPHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER SUCH DAMAGE IS OF A DIRECT OR INDIRECT NATURE. THE PROVISIONS OF THIS CLAUSE ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN NCIPHER AND PURCHASER.

14. IMPORT AND EXPORT

nCipher products are subject to the export control laws and regulations of the United Kingdom, the United States and other countries and may not be exported or re-exported to certain countries or to persons or entities prohibited from receiving export restricted items. Purchaser agrees to comply with all applicable export control regulations and laws and Purchaser shall not export any Product or any encryption technology information provided by nCipher to any destination directly or indirectly to a prohibited country which is subject to any applicable export control regulation or restriction.

15. SEVERABILITY

In the event that any term, clause or provision of these Terms and Conditions is construed to be or adjudged invalid, void or unenforceable, such term, clause or provision will be modified or severed in such manner as to cause these Terms and Conditions to be valid and enforceable while preserving to the maximum extent possible the terms, conditions and benefits of these Terms and Conditions, and the remaining terms, clauses and provisions will remain in full force and effect.

16. GENERAL

Each right and remedy of nCipher under these Terms and Conditions is without prejudice to any other right or remedy of nCipher whether under these Terms and Conditions or not. Failure or delay by nCipher in enforcing or partially enforcing any provision of these Terms and Conditions shall not be construed as a waiver of any of its rights under these Terms and Conditions. Any waiver by nCipher of any breach of, or any default under, any provision of these Terms and Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Terms and Conditions.

17. GOVERNING LAW AND DISPUTE RESOLUTION

Offers and any resulting contract with Thales e-Security Inc., shall be governed by the laws of the State of New York, U.S.A. Offers and resulting contracts with Thales UK Limited shall be governed by and construed in accordance with the laws of England & Wales. Offers and resulting contracts with Thales Transport & Security (HK) Limited, shall be governed by and construed in accordance with the Law of the Hong Kong Special Administrative Region of the People's Republic of China. Any dispute or claim arising out of or in connection with these Terms and Conditions, including the determination of the scope or applicability of these Terms and Conditions 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. Arbitrations involving Thales e-Security, Inc. shall be held in New York City, New York, U.S.A. Arbitrations involving Thales UK Limited shall be held in London, England, U.K. Arbitrations involving Thales Transport & Security (Hong Kong) Limited shall be held in Singapore. Either Purchaser 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.

18. FORCE MAJEURE

Except for payment of funds, neither nCipher nor Purchaser shall be liable for any failure or delay in performing its obligations hereunder during any period in which such performance is prevented or delayed by causes beyond its reasonable control, including without limitation, flood, war, embargo, strike or other labor dispute, riot or the intervention of any government authority.

19. U.S. GOVERNMENT RESTRICTED RIGHTS

All software being acquired by the United States Government that comprises or is incorporated into or accompanying any product or service is "restricted computer software" as such term is defined in paragraph (a) of the Federal Acquisition Regulation 52.227.19, Commercial Computer Software - Restricted Rights. Such software is licensed with "Restricted Rights". If Software or Firmware are being acquired by the United States Government, the Software and Firmware and related Documentation shall be deemed to be commercial computer software and documentation developed exclusively at private expense; and

- a. if acquired by or on behalf of a civilian agency, shall be subject to the terms of the computer software license as specified in 48 C.F.R. 12.212; and

- b. if acquired by or on behalf of units of the United States Department of Defense ("DoD") shall be subject to the terms of the commercial computer software license as specified in 48 C.F.R. 227.7202, DoD FAR Supplement and its successors. All Products provided by nCipher are Commercial Items as defined in FAR Part 2.101.

20. NO THIRD PARTY BENEFICIARIES

nCipher and Purchaser agree that these Terms and Conditions are intended to govern the rights and obligations between nCipher and Purchaser only and that there are no express or implied third party beneficiaries under these Terms and Conditions.

21. WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT

For sales made in the European Union, the Purchaser alone shall be responsible for, and shall bear the cost of the collection, treatment, recovery and environmentally sound disposal of waste electrical and electronic equipment for the purposes of any decree, statute, regulations, order or other legislation which implements the terms of Directive 2002/96/EC on Waste Electrical and Electronic Equipment in the member state concerned.