

nCipher Security

# **Global Support Terms and Conditions**

These Support Terms and Conditions set forth the legally binding rights and obligations of Customer and nCipher with respect to support and maintenance services together with the provision of a helpdesk, repairs and replacements, failure resolution, workarounds and updates for Products purchased or licensed by Customer pursuant to a Primary Agreement (as defined below). These Support Terms and Conditions are supplemental to the Primary Agreement.

nCipher shall not be bound by any terms additional to or different from those set forth in these Support Terms and Conditions that may appear in any purchase order or in any other communication. The Primary Agreement (including quotation, order or Order Acknowledgement) shall be deemed to incorporate and be governed by these Support Terms and Conditions. Customer consents to be bound by these Support Terms and Conditions by (i) entering into any Primary Agreement, (ii) by contacting the Support Help Center (as defined below), whether by phone, email or through the web portal, (iii) by registering any product, (iv) by receiving, downloading or deploying any Product furnished in connection with Support, or (v) by otherwise receiving or taking advantage of the Support offered or in any other way expressing agreement to these Support Terms and Conditions.

## GENERAL

### 1) DEFINITIONS

In these conditions:

**“Authorized Partner”** means any of nCipher’s authorized distributors, resellers or other business partners.

**“Business Day”** means either (a) in the United Kingdom from 08:30 AM to 05:00 PM, Monday to Friday excluding Saturdays, Sundays and public holidays; or (b) in Hong Kong from 09:00 AM to 05:00 PM, Monday to Friday excluding Saturdays, Sundays and public holidays; or (c) in the State of Florida, USA from 09:00 AM to 09:00 PM, Monday to Friday excluding Saturdays, Sundays and public holidays;

**“Customer”** means the entity which has purchased Products and to which nCipher has agreed to provide Support;

**“Documentation”** means any user manuals, operating manuals, technical manuals, handbooks, installation guides, design documents and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, structure, installation, testing, operation, use, maintenance, support, technical or other components, features or requirements of the Products, whether in printed or electronic form.

**“EULA”** means the End User License Agreement accompanying the Software, as amended from time to time by nCipher in its sole discretion. The EULA may be included with the Software media packaging or provided to Customer during the installation or use of the Software.

**“Failures”** means any reproducible defect in the Software or Hardware that causes the Software or Hardware to fail to perform substantially in accordance with the Documentation;

**“Hardware”** means, individually or collectively, hardware equipment designed or manufactured by nCipher ordered by Customer and set forth in an Order Acknowledgment. Hardware may be modified by nCipher from time to time in its sole discretion (as new Products become available or Products are removed as obsolete).

**“NCIPHER SECURITY”** (“nCIPHER”) is nCipher Security, LLC (a Delaware USA corporation); nCipher Security Limited (a UK registered corporation); and nCipher Security (Hong Kong) Limited (a Hong Kong corporation).

**“Order Acknowledgement”** means the written (electronic or otherwise) confirmation notice that nCipher issues to Customer confirming Products and Support purchased by Customer, including without limitation Customer’s Support Level and Support Period;

**“Personal Data”** means all information relating to an identified or identifiable person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity and personal data as defined under EU Data Protection Directive 95/46/EC, the EU Privacy & Electronic Communications Directive 2002/58/EC and implementing legislation and the General Data

Protection Regulation (GDPR) (EU) 2016/679 upon becoming applicable.

**“Primary Agreement”** means the agreement pursuant to which nCipher and Customer have agreed to purchase or license the Products, including, without limitation, nCipher’s Worldwide General Terms and Conditions or End-User License Agreement, which are incorporated by reference into any quotation or Order Acknowledgement issued by nCipher or, if applicable, any Software license and/or Hardware purchase agreement agreed to between nCipher and Customer;

**“Product(s)”** means nCipher’s Software and Hardware products specified in the Order Acknowledgement with respect to which Customer has purchased Support for the Support Period;

**“Resolution”** means a bug fix, correction, patch, workaround or modified release of the Software or Documentation provided to Customer by nCipher to resolve a Failure;

**“Software”** means software designed by nCipher in executable code ordered by Customer and set forth in an Order Acknowledgement. Software includes firmware installed on the Hardware, all new versions, new releases and any updates, upgrades or new features, functionality or enhancements, or error correction to the Software that nCipher may offer to or that Customer is authorized to receive pursuant to the applicable EULA.

**“Support”** means the provision of technical support for the Products purchased by Customer either from nCipher or an Authorized Partner subject to the Support Level and Support Options purchased by Customer set forth in the Order Acknowledgement;

**“Support Help Center”** means the nCipher Technical Support Help Center that can be accessed from the following link <https://help.ncipher.com>.

**“Support Level”** means the description for the particular level of Support referred to in the Order Acknowledgement that nCipher has agreed to make available to Customer;

**“Support Options”** means the description for the particular Support option referred to in the Order Acknowledgement that nCipher has agreed to make available to Customer;

**“Support Period”** means the effective time period for which Customer has purchased Support that is confirmed by nCipher in an Order Acknowledgement;

**“Updates”** means any updates or enhancements to the Products that receive continuous Support;

**“Welcome Pack”** means the guide to using nCipher technical support services, which may be updated from time to time by nCipher in its sole discretion.

## 2) PROVISION OF SUPPORT

- a. Subject to Customer’s timely payment of all fees owed to nCipher, nCipher will provide Support to Customer during the Support Period at the Support Level and pursuant to the Support Options that have been purchased and paid by Customer and confirmed to Customer by nCipher in an Order Acknowledgment.
- b. For the avoidance of doubt, the Support Level for Software included as part of the Products subject to Support pursuant hereto (the “Supported Products”) shall be the same Support Level as that of the Supported Products.

## 3) SUPPORT PERIOD, EXPIRED SUPPORT AND SUPPORT RENEWAL

- a. The Support Period shall commence and end as of the dates set forth in the Order Acknowledgement, unless terminated by Customer or nCipher pursuant to any applicable provisions of the Primary Agreement.
- b. In the event of termination of Support, Customer shall not be entitled to any refund for any unused portion of the fees or charges paid for Support.
- c. Support fees for renewal of a Support Period will be charged at rates not to exceed 3% of the preceding

annual Support fees. nCipher will notify Customer thirty (30) days in advance of the expiration of each Support Period of any increase in Support fees. If Customer does not agree to the Support fee increase by issuing an order prior to expiration of the current term, Support will not renew and nCipher shall have no further obligation to provide any Support to Customer.

- d. In the event Support expires or is otherwise terminated, (i) any reinstatement of Support shall be purchased to cover the lapsed Support since expiration or cancellation and must be renewed until the Support is current and (ii) a reinstatement fee of 20% of the list price shall be charged by nCipher to Customer. In addition, Customer shall warrant that as of the date of the order for renewal is placed that (to the best of its knowledge) all Products to which the Support applies are functioning correctly.
- e. These Support Terms and Conditions shall automatically update to nCipher's then-current Support Terms and Conditions upon any renewal of Support.

#### **4) SUPPORTED VERSIONS AND END OF LIFE**

- a. Unless otherwise specified by nCipher, the provision of Support is limited to (a) the current version and (b) the immediately preceding version of the Product. The nCipher End-of-Life policy and information defining currently supported versions is available on request from nCipher Technical Support.
- b. nCipher will use commercially reasonable efforts to meet the response times in the Welcome Pack and herein. Access to the Support Help Center, e-mail or phone lines for the provision of Support may be suspended for brief periods due to scheduled maintenance and other factors.

#### **5) HARDWARE SUPPORT**

##### **a. SUPPORT LEVEL AND OPTION**

###### **i) REPAIR REPLACEMENT OPTION**

If, for the Support Period, the Support Level purchased by Customer includes the Repair/Replacement option, nCipher will repair the original unit or, will ship a replacement unit following receipt of Customer's report and acknowledgement by nCipher that a Product set forth in the Order Acknowledgement and supplied by nCipher or its Authorized Partners has experienced a Failure which is covered by Support pursuant hereto. nCipher will ship the repaired or replacement unit within fifteen (15) Business Days after receipt at nCipher offices of the unit that has experienced a Failure.

###### **ii) ADVANCE REPLACEMENT OPTION**

If, for the Support Period, the Support Level purchased by Customer includes the Advanced Replacement option, nCipher will ship a replacement unit by the end of the next Business Day following receipt of Customer's report and acknowledgement by nCipher that a Product set forth in the Order Acknowledgement and supplied by nCipher or its Authorized Partners has experienced a Failure which is covered by Support pursuant hereto.

###### **iii) RAPID DELIVERY AND ON-SITE SPARE SERVICE OPTIONS**

If, for the Support Period, Customer has purchased the Rapid Delivery or the On-Site Spare Support Options, nCipher will, within four (4) operational hours of notification that a Hardware unit covered by Rapid Delivery support has experienced a Failure and requires replacement, dispatch a support engineer with a replacement hardware unit. The Rapid Delivery Support option is operational during Business Days only. For the On-Site Spare Support Option it shall require the Customer to be responsible for holding an additional spare at each of its allocated sites. Furthermore, the Customer is responsible for ensuring that the unit that has experienced a Failure is made available for collection by the support engineer when the replacement Hardware unit is delivered. Customer is responsible for informing nCipher of the location of all units covered by either the Rapid Delivery Support or the On-Site Spare Support Option and for informing nCipher of any changes to the locations of the units. Where Customer has used its site Hardware unit spare under the On-Site Spare Support Option it shall be accountable for immediately notifying nCipher's Technical Support in order that arrangements can be made (with no additional cost to the Customer) to collect the faulty Hardware unit and provision a new Hardware unit that can respectively be stored at Customer's site. The Rapid Delivery Support

and On-Site Spare Support Option services do not include the installation and nor does it include the removal of the Hardware units where the Rapid Delivery service has been chosen.

**b. HARDWARE RETURN MATERIAL AUTHORIZATION POLICY**

- i) Prior to returning any Product to nCipher for repair or replacement, Customer must ensure that (i) the Product is free of any legal obligations or restriction and of any Customer proprietary or confidential information that would prevent nCipher from exchanging, repairing or replacing the Hardware, (ii) Customer has obtained a return material authorization from nCipher, including a return material authorization Number, and (iii) it has complied with all applicable export and import control requirements.
- ii) All returns must comply with nCipher's RMA instructions. If Customer does not follow nCipher' RMA policy, nCipher may invoice Customer the full costs of returning the Products.
- iii) Customer shall be responsible for the removal and return of the Product that has experienced a Failure and the installation of the replacement Product unless the Purchaser has purchased the Rapid Delivery or the 24x7 Rapid Delivery Support Options with respect to such Product. Failure to ship the original Product back to nCipher within 14 days of receipt of the replacement Product shall cause Customer to be responsible for the retail purchase of the replacement Product.
- iv) In all cases, if nCipher, after inspection, concludes, in its absolute discretion, that a Product returned or replaced by Customer has not experienced a Failure or falls outside the scope of Support pursuant hereto, nCipher shall ship the unit back to Customer and nCipher shall have the right to claim the costs plus 15% from Customer of such return and the investigation.

**c. HARDWARE UPGRADES**

Customer recognizes and acknowledges that as a replacement unit may contain a different or upgraded software version or other product variants that have developed or evolved over time, a possibility exists that such replacement unit may not be immediately compatible with Customer's operating environment such as to require Customer to make adjustments to its operating environment.

**6) SOFTWARE SUPPORT**

**a. FIRMWARE OR SOFTWARE SUPPORT SERVICES**

nCipher will provide during the Support Period the following Support to Customer in relation to Software:

- (i) Use commercially reasonable efforts to investigate and find a Resolution to Failures reported by Customer and confirmed by nCipher in accordance with the priority level assigned to the Failure by nCipher in its reasonable discretion. Customer agrees that nCipher may determine in its sole discretion that the only Resolution may be by upgrading to the most recent version of nCipher's Hardware or Software.
- (ii) Updating of the Documentation as and when necessary.
- (iii) The provision of generally available maintenance Software and Software release notes.
- (iv) The provision, free of charge, during the Support Period, of generally available maintenance Updates to the supported versions of the Software as and when available.

Customer shall promptly download, distribute and install all Software maintenance Updates as released by nCipher during the Support Period. Customer acknowledges that any failure to do so could result in Customer's inability to receive Support. Certain Updates may require a Hardware upgrade to function properly.

**b. HOT FIXES OR PATCHES**

nCipher may periodically make available a software correction or patch that is intended to address specific Customer problems or issues. Such Software corrections, updates or patches shall be designated by nCipher as Hot Fixes. Customer acknowledges that the Hot Fix is not subject to nCipher's full quality assessment and review process and that Customer must undertake testing to determine suitability for use. nCipher does not guarantee that the Hot Fix will be compatible with the Hardware purchased by Customer.

## 7) EXTENDED SUPPORT

nCipher will provide Extended Support for two (2) years post End of Support (EOS) date if purchased by the Customer within a minimum of thirty (30) days prior written notice of the defined EOS date.

### a. EXTENDED LIFE MAINTENANCE WITH REPLACEMENT

nCipher will provide during the Extended Support Period the following Support to Customer:

- i. Access to technical support, via the Help Center, telephone and email, is provided at the same level as the nCipher Standard support package.
- ii. Hardware is handled per the terms of Standard Support. Failed hardware must be returned to nCipher and will be repaired or replaced within 15 business days. In the case that a returned device can't be repaired, nCipher will make reasonable efforts to replace a failed unit with an equivalent part. However, nCipher reserves the right to supply the "nearest equivalent" part, in the event that a failed product is no longer available. The replacement may be a newer generation of the product than the failed item, and this is therefore reflected in the charges for the extended support service.
- iii. Commitment to software or firmware upgrades is limited to correcting critical security vulnerabilities or correcting date related defects. nCipher will apply any defect corrections to the most recent firmware or software release that is available for the selected product. Security vulnerabilities may be addressed by replacing the affected unit(s) with the "nearest equivalent" current generation product.

### b. EXTENDED LIFE MAINTENANCE EXCLUDING REPAIR OR REPLACEMENT

nCipher will provide during the Extended Support Period the following Support to Customer:

- i. Access to technical support, via the Help Center, telephone and email, is provided at the same level as the nCipher Standard support package.
- ii. Commitment to software or firmware upgrades is limited to correcting critical security vulnerabilities or correcting date related defects. nCipher will apply any defect corrections to the most recent firmware or software release that is available for the selected product. Security vulnerabilities may be addressed by replacing the affected unit(s) with the "nearest equivalent" current generation product.
- iii. Hardware failures are not covered under this support package.

## 8) EXCLUSIONS AND DISCLAIMERS

### a. CONDITIONS VOIDING SUPPORT

For the avoidance of doubt, nCipher will have no obligation to provide Support for any conditions attributable to:

- i) use of the Products other than authorized under the Primary Agreement or in accordance with nCipher's official specifications as found in the Documentation;
- ii) any accident, unusual physical, electrical or electromagnetic stress, neglect, misuse, fault or negligence of Customer, its employees, agents, contractors or visitors, operator error;
- iii) modifications, alteration or repairs made to the Product by a party other than nCipher or a party authorized by nCipher;
- iv) failure by Customer to provide a suitable environment and operating conditions or by any other cause external to the Product or otherwise beyond nCipher's reasonable control, including any extreme power surge or failure or electromagnetic field;
- v) any customizable deliverables created by nCipher or third-party service providers specifically for Customer as part of professional services;
- vi) installation, operation or maintenance of the Products not in accordance with the instructions supplied by nCipher, including but not limited to, installation, operation or maintenance of the Products on any hardware, operating system or tools (including their specific configurations) that are not compatible with the Products, as made available on nCipher's helpdesk;
- vii) use of the Software or Hardware with other hardware, software or telecommunication interfaces other than those supplied or approved by nCipher or not meeting or not maintained in accordance with nCipher's specifications as described in the Documentation, unless nCipher has specifically agreed in writing to include such modifications within the scope of the Support; or

- viii) power, air conditioning or humidity controls, or to failures of storage media not furnished by nCipher or for consumable operating supplies or accessories unless specifically included in the Primary Agreement.

**b. OTHER EXCLUSIONS**

In addition, nCipher shall have no obligations to:

- i) Import or export Personal Data, create or modify custom business roles or reports, or support custom modification to databases, active server pages or other code, components or programs;
- ii) Supply personnel to Customer's premises other than for delivery in accordance with the Rapid Delivery or 24x7 Rapid Delivery Service options;
- iii) Provide software development or coding assistance or use of software developer tool kits to create or develop applications.

**c. ADDITIONAL COSTS**

- i) To the extent nCipher reasonably determines that a Failure is caused by any condition that is not covered by Support pursuant hereto, nCipher may charge Customer nCipher's then current hourly fees and costs associated with diagnosing and repairing such Failure.
- ii) In the event the Parties agree to supply nCipher personnel to Customer's premises other than for delivery in accordance with the Rapid Delivery or 24x7 Rapid Delivery Service options, nCipher shall charge nCipher's then current rates for visits to Customer's premises by nCipher's engineers. For the avoidance of doubt nCipher's rates do not include travel, hotel or subsistence expenses or the cost of materials and external services incurred in providing the Support. These amounts shall be charged at cost. Support does not include the supply of operating supplies, accessories or consumable items.

**9) CUSTOMER OBLIGATIONS**

**a. GENERAL**

The Customer shall:

- i) Promptly report any identified Failure to nCipher by logging in the Support Help Center or by email or by telephone as described in the Welcome Pack, documenting it in sufficient detail for nCipher to be able to recreate the Failure, in compliance with its information security responsibilities set forth below, and by providing:
  - o Product Serial number;
  - o A description of the Failure and the circumstances in which it occurred;
  - o Information on the supported Product, e.g. software version, license number, environment etc.
  - o Diagnostic information (logs, debugs)
  - o An assessment of the severity of the Failure in terms of operational impact;
- ii) Quote the nCipher contract number when reporting the initial problem. Once the problem has been logged and assigned a ticket number, this number should be quoted in all communications;
- iii) Use the Product in accordance with the Documentation and promptly and regularly carry out all operator maintenance routines as and where specified;
- iv) Use with the Product operating supplies and media which comply with nCipher's recommendations;
- v) Permit only nCipher or nCipher's approved agents to adjust, repair, modify, maintain or enhance the hardware or software, save for any operator maintenance specified for Hardware;
- vi) Keep adequate back-up copies of the Product software, data, databases and application programs in accordance with best computing practice. Customer agrees that it is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs;
- vii) Maintain consistently the environmental conditions recommended by nCipher;
- viii) Permit the Products to be used or operated only by properly qualified operators in the employ of or under Customer's control;



- ix) Install and implement all solutions, corrections, Resolutions, Hot Fixes and new releases in accordance with nCipher's installation instructions. Customer acknowledges that failure to install such solutions, corrections, Resolutions, Hot Fixes and new releases may cause the Software to become unusable or non-conforming and may cause subsequent Failure corrections and Updates to be unusable, including, without limitation, any Updates provided pursuant hereto. nCipher shall accept no liability for the performance of the Software in respect of Software that has not been installed in accordance with nCipher's installation instructions.

**b. ACCESS**

- i) In the event that nCipher agrees to send an engineer to Customer's site, Customer shall permit nCipher reasonable access to the Product(s) for the purpose of carrying out the Support and shall in any event make available suitable staff, telecommunications facilities and connections, modem links, electricity, light, heating and other normal services and operating time on any associated system to enable tests to be carried out, including at any remote location if necessary for this purpose. The Customer shall provide the Companies personnel access to the Product in a place, which conforms to the health and safety regulations of the country where the Companies personnel is to perform such Support.
- ii) It is the understanding of the Parties, and a condition of these Support Terms and Conditions, that nCipher will not require access to any Customer Personal Data other than basic contact information from select Customer representatives to provide Support. The parties do not intend for nCipher to access, have access, or be provided access to any Customer Personal Data other than basic contact information from select Customer representatives and Customer shall take appropriate precautions to prevent such access by nCipher's personnel (including authorized subcontractors and agents) unless and until the Parties agree to such access in writing. In the event nCipher determines it has possession of Personal Data other than basic contact information from select Customer representatives, other than pursuant to an agreed separate writing, nCipher shall immediately notify Customer of such and promptly return to Customer or destroy such information.

**10) ON-SITE WORK**

In the event of nCipher's employees or agents being on Customer's premises nCipher shall instruct them:

- a. to take reasonable steps to minimize interference with and inconvenience to Customer's business;
- b. at all times to comply with the health and safety and all other relevant rules and regulations applicable to such premises that have been notified to those employees or agents.
- c. Not to access Personal Data.

**11) NON-SOLICITATION**

The Customer undertakes during the term of the Support Period and for one year after its termination not to solicit, hire, employ or offer employment, directly or indirectly through its affiliates, to any of nCipher's employees who has been engaged in providing Support pursuant hereto without nCipher's prior written consent; provided, however, that nothing herein shall preclude the hiring of any such individual who (i) responds to general solicitation of employment through an advertisement not directed at such employees of nCipher; (ii) contacts Customer on his or her own initiative and without any direct solicitation by Customer; (iii) has terminated employment with nCipher prior to commencement of solicitation of such employee by Customer.

**12) PERSONAL DATA**

nCipher may process basic contact information from select Customer representatives when providing Support pursuant hereto. The processing of this Personal Data is subject to nCipher's Privacy Notice ("**Privacy Notice**").

**13) SYSTEMS AND SECURITY OBLIGATIONS**

- a. nCipher employs security measures in accordance with its privacy and security policy ("**Privacy and Security Policy**") as amended from time to time, a current copy of which is available on request from



nCipher.

- b. nCipher's helpdesk system uses a third party cloud solution. By using the Support, Customer authorizes nCipher to store Customer's emails and any attached files within the helpdesk in the cloud. Customers will receive the benefit of added protection for its data against unauthorized access by virtue of this system, which uses industry best practice AES 256 encryption.
- c. Telephone calls made to, or received from, nCipher's support team may be recorded for training or analysis purposes. In addition to the information supplied by Customer during a support incident, and to enable operation of the Support, nCipher will record limited information about end users and other companies using the Support. This includes:
  - o Contact email addresses
  - o Contact telephone numbers
  - o Business addresses
  - o Product serial numbers affected.

**14) CUSTOMER CONTROL AND RESPONSIBILITY**

The Customer has and will retain sole responsibility for:

- a. all information, instructions and materials provided by or on behalf of Customer or any authorized user in connection with the Support;
- b. Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**");
- c. the security and use of Customer's and its authorized users' access credentials; and

- d. all access to and use of the Support and Products directly or indirectly by or through Customer Systems or its or its authorized users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

**15) DISCLAIMER OF WARRANTIES**

- a. NCIPHER WARRANTS THAT SUPPORT WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NCIPHER EXCEED THE FEES PAID BY CUSTOMER FOR SUPPORT IN THE 12 MONTHS PRECEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE. NCIPHER SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF CUSTOMER PROVIDES WRITTEN NOTICE OF THE BREACH TO NCIPHER WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT.
- b. THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NCIPHER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED BY CUSTOM, TRADE USAGE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR WARRANTY IS GIVEN THAT FAILURES (AS DEFINED HEREIN) WILL BE FIXED OR FIXED WITHIN A SPECIFIED PERIOD OF TIME.
- c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NCIPHER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO PROVIDING SUPPORT, EVEN IF NCIPHER HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

**16) ENTIRE AGREEMENT**

- a. These Support Terms and Conditions, forming part of the Primary Agreement, constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, conditions, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, covenant, condition or warranty (whether express or implied, made innocently or negligently) that is not expressly set out in these Support Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Support Terms and Conditions or in the Primary Agreement. Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation. These Support Terms and Conditions shall not be varied except with both Parties' written consent.
- b. If the services required by Customer are special services such as installation, commissioning, training, development or management services, any additional terms of nCipher applicable to such services will apply except that in the event of any conflict these conditions shall prevail.

**17) CONFIDENTIALITY**

- a. Confidential Information. "Confidential Information" means all non-public information, whether in oral, written or other tangible form that the party disclosing the information (the "Discloser") designates as being confidential or which, under the circumstances surrounding disclosure, the receiving party (the "Receiver") know or has reason to know should be treated as confidential, including the terms and conditions of this Agreement.

- b. Confidentiality Obligations. Recipient agrees not to use, disseminate, or in any way disclose any Confidential Information of Discloser to any person, firm or business. Except to the extent necessary for the performance of Recipient's obligations hereunder, and for any other purpose Discloser may hereafter authorize in writing. Recipient agrees to treat all Confidential Information of Discloser with the same degree of care as Recipient accords to Recipient's own Confidential Information, but in no case less than reasonable care. Recipient agrees to disclose Confidential Information only to those Recipient's employees and independent contractors who need to know such information, and Recipient certifies that Recipient's employees and/or independent contractors have previously agreed in writing, to be bound by substantially similar terms and conditions to those contained herein. Recipient shall give immediate notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information. Recipient agrees to give prompt assistance to Discloser in remedying any such unauthorized use or disclosure of the Confidential Information.
- c. Exceptions. "Confidential Information" does not include any information which: a) is or becomes generally available to the public other than as a result of a breach of this Agreement; b) is known by Recipient prior to its receipt of the Confidential Information from Discloser, or is furnished by a third party to Recipient as a matter of right and without restriction on disclosure, so long as Recipient can provide clear evidence of such prior disclosure; c) is independently developed by Recipient without use of, or reference to any Confidential Information, so long as Recipient can provide clear evidence of such independent development; or d) agreed in writing by the parties not to be considered Confidential Information.
- d. Required Disclosure. Disclosure of Confidential Information, either in response to a valid court order or other governmental body, or otherwise required by law, shall not be considered a breach of this Agreement, or a waiver of confidentiality for other purposes; provided that Recipient gives Discloser prompt prior written notice to enable Discloser to seek protective order or otherwise prevent such disclosure.
- e. Term of Protection. 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.