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nCIPHER STANDARD TERMS AND CONDITIONS FOR SUPPORT AND MAINTENANCE

You, the customer ("**Customer**"), have acquired certain nCipher hardware cryptographic accelerators ("**Products**"), together with nCipher software and firmware either embedded in or supplied with those Products, or supplied separately ("**Software**") either directly from nCipher, or via an nCipher authorised Reseller, Distributor or Value Added Reseller. The following Standard Terms and Conditions for Support and Maintenance ("**Terms and Conditions**") shall govern all orders for, purchases and delivery of support services relating to the use and operation of the Products and the provision of error corrections, workarounds and updates thereto ("**Services**"). Without limiting the generality of the foregoing, nCipher shall not be bound by any terms additional to or different from those in these Terms and Conditions that may appear in any purchase order or in any other communication. 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 Customer acceptance of these Terms and Conditions.

1 **Definitions**

- 1.1 "**Documentation**" means any user manuals, reference manuals, installation, release, application or methodology notes, written utility programs and other materials in any form which are supplied by nCipher for use in conjunction with the Hardware and/or Software, together with such Updates thereto as nCipher may from time deliver to the Customer.
- 1.2 "**End User**" means an authorized person or entity that acquires the Bundled Product(s) from OEM for its own internal use and not for further disclosure, distribution or relocation (other than within the End User) sale, lease, loan, rental, license, or assignment of any type or nature.
- 1.3 "**Error**" means a defect that causes the Hardware and/or Software not to perform substantially in accordance with the applicable specification set forth in the Documentation.
- 1.4 "**Error Correction**" means the use of reasonable commercial efforts to remedy an Error.
- 1.5 "**Hardware**" means physical equipment directly involved in the performance of data-processing, information security, communication, or other information technology functions made available from, or through, nCipher, together with Updates thereto.
- 1.6 "**Product(s)**" means together or individually, as the context may require, the Hardware, Software and Documentation purchased from nCipher or via an nCipher authorised Reseller, Distributor or Value Added Reseller by Customer, including any Workarounds, Error Corrections and Updates as may from time to time be provided by nCipher as part of Support and Maintenance Services, in respect of the foregoing and / or made available by nCipher in the form of Security Advisories.
- 1.7 "**Security Advisory**" means a formal written advisory, issued by Cipher, which if acted upon in accordance with such advisory, would enhance the security features offered by the Product(s).
- 1.8 "**Software**" means any software supplied by nCipher, including, but not limited to, the software and firmware embedded in or supplied with the Hardware for use in conjunction with the Hardware, together with such additional or replacement firmware and Software as may from time to time be made available by nCipher in the form of Security Advisories, or supplied by nCipher in performance of warranty obligations, or in performance of Services in pursuant to a contract entered into under these Terms and Conditions, in the form of an Update, Error Correction or as part of a Workaround, including all copies made thereof. For the avoidance of doubt, the Software, Updates and Documentation are licensed and not sold.
- 1.9 "**Services**" means the provision of support (by nCipher) in the use and operation of the Hardware and Software, together with the provision of Error Corrections, Workarounds and Updates in relation thereto.
- 1.10 "**Support and Maintenance Agreement**" means an Agreement for the provision of Support and Maintenance Services in respect of one or more items of Hardware or Software.
- 1.11 "**Update(s)**" means
- 1.11.1 improvements, enhancements or modifications to existing features and/or functionality of the Hardware, Software or Documentation which may include Error Corrections that nCipher makes available to End Users with a current Support and Maintenance Agreement for no additional license fee; and
- 1.11.2 Security Advisories.
- 2 **Quotations** Only a written quotation of prices and terms for Services executed by an authorized representative of nCipher shall constitute a quotation hereunder (a "**Quotation**"). Services will be provided by nCipher only if Customer has purchased Services under a Quotation.
- 3 **Orders and Acceptance of Orders** All orders must be made by Customer in writing and are subject to these Terms and Conditions and nCipher's acceptance. All payments made by Customer are non-refundable except as otherwise provided herein.
- 4 **Prices** Unless otherwise specified in a valid Quotation, all prices for Services shall be as specified in nCipher's then-current price list and shall be net shipping, insurance, handling and taxes. Discounts, if any, applicable to qualifying Services shall be only as specified in a Quotation.
- 5 **Terms of Payment** Unless otherwise specified in a Quotation or order, all amounts due for Services must be prepaid before provision of Services commences. Any other payment terms offered by nCipher are subject to Customer and nCipher maintaining a mutually acceptable credit arrangement. nCipher reserves the right to withdraw any credit advanced at any time. If Customer 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 for the collection of such amounts. If Customer fails to

pay the price or any other amount due and payable hereunder, nCipher shall cease to be obligated to provide warranty remedies hereunder.

6 **Security Advisories** nCipher may from time to time issue Security Advisories. Customer hereby undertakes to subscribe with nCipher for the delivery of Security Advisories by sending an e-mail, immediately following delivery of the Product(s), to security-announce-request@ncipher.com. Such e-mail shall contain the word "subscribe" in the message body.

7 **Service Levels** Based on the service coverage Platinum Level Services or Gold Level Services elected by Customer, nCipher will provide the applicable Services described below. Maintenance parts, which will be new or reconditioned, will be furnished on a return and repair basis. Services provided under this Agreement do not guarantee uninterrupted or error-free operation of the Products or Software. In the event that Customer requests Services to be performed outside the service coverage period for the selected service coverage, nCipher will provide such Services on an as-available basis at nCipher's then-current per call rates and terms.

7.1 **Platinum Services** allow support centre access which includes:

- 24 x 7 response via telephone at (+44) (0)1223 723 666;
- 24 x 7 access to the online support form, where issues can be logged for support worldwide, via: <http://www.ncipher.com/support/tech/>;
- Email support during normal business hours (9 am – 5.30 pm GMT/BST Monday to Friday, excluding English public holidays);
- Software and document updates online via nCipher Software Download System;
- Technical Alert Notices (as issued);
- Response within four (4) hours and escalation management within one (1) business days; and
- Repair / replacement of failed units: After nCipher technical support personnel have investigated and validated the reported Product failure, a replacement Product will be shipped to Customer within one (1) business day. Customer will be issued a Return Material Authorization ("RMA") number for return of the failed Product to nCipher production labs; failed units should not be returned to nCipher without such RMA number. The failed Product must be returned within fifteen (15) calendar days, otherwise Customer will be invoiced for the full amount of the replacement unit.

7.2 **Gold Level Services** allow support centre access which includes:

- Telephone and e-mail support during normal business hours (9 am – 5.30 pm GMT/BST Monday to Friday, excluding English public holidays);
- 24 x 7 access to the online Support form, where issues can be logged for Support worldwide, via: <http://www.ncipher.com/support/tech/>;
- Software and document updates online via nCipher Software Download System;
- Technical Alert Notices (as issued);
- Response within one (1) business day and escalation management within two (2) business days; and
- Repair / replacement of failed units: If an nCipher Product is reported faulty, Customer is expected to work closely with nCipher support to troubleshoot the problem and determine its source, providing debugging, logging and any other information required by nCipher support. If the Product is verified faulty, nCipher's Support Department will issue an RMA number, and upon receipt of the RMA number Customer must ship the failed Product to nCipher's Support Department for final evaluation and processing. Failed units must not be returned to nCipher without an allocated RMA number. If the Product's status cannot be verified remotely, it must be shipped back

to nCipher's Support Department for final evaluation and processing. If nCipher's Support Department determines that a Product returned under RMA is faulty, all repairs and replacements will be processed within three (3) business days (subject to export regulations).

7.3 If nCipher's Support Department determines that a Product returned under RMA is not faulty, Customer may be liable for:

7.3.1 shipping costs from and to Customer; and

7.3.2 fees (calculated at the rate of two hundred US Dollars (US\$ 200) per hour, or part thereof) in respect of the time spent by nCipher's Support Department in investigating the reported failure.

7.4 The Services provided under these Terms and Conditions in respect of Software shall be in respect of the current released whole-number revision of such software and the immediate prior whole-number released revision for a maximum period of twelve (12) months from the release date of the immediate prior whole-number release. Customer acknowledges that nCipher shall have no obligation to support any other prior version or release.

8 **Licences** All temporary and permanent Error Corrections, patches, Workarounds, releases, versions and Updates supplied by or on behalf of nCipher in the provision of the Services provided under these Terms and Conditions are supplied to Customer subject to a non-exclusive, non-transferable, non-sublicensable licence to operate any such items and use any related documentation provided by nCipher pursuant thereto solely for Customer's own internal use in conjunction with the Product.

9 **End of Life Policy** Customer's attention is drawn to nCipher's End of Life Product Information as posted on nCipher's website at <http://www.ncipher.com/support/resources.php>, and any End of Life Announcement(s) contained therein in respect of any of the Products. Customer acknowledges that insofar as any Product is or becomes the subject of an End of Life Announcement, with effect from the Last Time Buy Date determined by that End of Life Announcement, the Services provided under these Terms and Conditions shall not extend to Error corrections, patches or Workarounds other than those which nCipher, in its sole discretion, determines are necessary to deal with security related issues affecting the Products.

10 **Additional support Offerings** Customer may request on-site support. On-site support is provided between the hours of 9 am and 5.30 pm GMT/BST at nCipher's then-current per call rates and terms. Such on-site support visits are subject to engineer availability. Customer may also request training services. Training services are provided between the hours of 9 am and 5.30 pm GMT/BST at nCipher's then-current per call rates and terms. Such training services are subject to engineer availability.

11 **Exclusions from Services** The following are specifically excluded from the scope of Services to be provided:

11.1 Customer's use of nCipher Software versions that are no longer supported or which have entered nCipher's End of Life Programme and are beyond their allocated End of Support date;

11.2 Electrical work external to the Product;

11.3 Repair of damages, defects or malfunctions due to any cause external to the Product adversely affecting the Product's operability or serviceability which shall include, but not be limited to, fire, flood, water, wind, lightning and transportation, or due to accident, abuse, neglect, misuse, tampering, or any act of God;

11.4 Repair of non-conforming or damaged Product caused by failure to provide a suitable installation environment including, but not limited to, the failure to provide adequate electrical power and properly use, manage and supervise the equipment in accordance with nCipher's specifications;

11.5 Repair of non-conforming or damaged Product caused by the use of the Product for purposes other than normal and intended use, from using accessories or supplies not approved by nCipher, or from modification or replacement of any components on any boards supplied with the Product;

- 11.6 Furnishing software, supplies or accessories, painting or refinishing the machines or furnishing material therefore, making specification changes or performing services in connected with the relocation of the Product, or adding or removing approved accessories, attachments or other devices except as set forth herein; and
- 11.7 Defects or errors which would not have arisen had Customer taken the steps recommended in any Security Advisory.
- 11.8 Any Services provided as a result of any of the above may be invoiced to Customer as an additional charge based on nCipher's then-current rates.
- 12 **Access to Product** In cases where on-site assistance is required or requested by Customer, Customer shall provide the nCipher personnel with full and free access to the Product and in a place, which conforms to the safety standards of the Health and Safety at Work Act for nCipher personnel to perform such Services. If persons other than nCipher's technical engineers repair, modify or attempt to perform Services on any Product covered by these Terms and conditions, and as a result thereof, any Services by nCipher are required to restore the Product to acceptable operating condition, such Services will be provided only at the applicable nCipher rates and terms then in effect.
- 13 **Engineering Changes**
- 13.1 Engineering changes determined applicable by nCipher will be made available to Customer for Products covered by these Terms and Conditions. Customer may, by providing notice, elect to have only those changes mandated by nCipher for safety purposes, such changes will be provided at no cost to Customer.
- 13.2 If Customer requests installation of engineering changes, including safety changes, at times other than during nCipher's normal working hours, nCipher reserves the right to assess Customer an additional charge for such service at the applicable nCipher rates and terms then in effect.
- 14 **Warranty, Disclaimers, and Limitation of Liability**
- 14.1 nCipher warrants that all services provided under these Terms and Conditions shall be performed in a professional and workmanlike manner.
- 14.2 nCIPHER'S SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY UNDER THESE TERMS AND CONDITIONS FOR THE BREACH OF WARRANTY SHALL BE LIMITED TO, AT nCIPHER'S DISCRETION, THE REPERFORMANCE OF SERVICES OR REPLACEMENT OF THE EQUIPMENT. EXCEPT AS HEREIN EXPRESSLY STATED, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, MADE OR AUTHORIZED TO BE MADE WITH RESPECT TO ANY PRODUCTS OR SERVICES FURNISHED HEREUNDER. WITHOUT LIMITING THE FOREGOING, nCIPHER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 14.3 No action arising out of these Terms and Conditions may be brought by either party more than one (1) year after the cause of action has accrued except that actions for non-payment may be brought within two (2) years from date of last payment.
- 15 **Default** nCipher reserves the right to terminate or suspend Services in the event Customer is in default under these Terms and Conditions with nCipher and such default is not corrected within five (5) business days after written notice. In addition, the contract formed between Customer and nCipher on the basis of these Terms and Conditions, and all charges due thereunder will become immediately due and payable in the event that Customer makes an assignment for the benefit of creditors or a voluntary or involuntary petition is filed by or against Customer under any bankruptcy or insolvency laws.
- 16 **Proprietary Rights**
- 16.1 The Services ordered or delivered pursuant to this Agreement are provided to Customer solely for Customer's use and shall not be distributed or resold to third parties. Unless otherwise agreed in writing, any resale by Customer shall be void. Customer shall not change, remove or obscure any labels, plates, insignia, lettering or other markings that are on the Products at the time of delivery.
- 16.2 The Products incorporate proprietary technology and trade secrets of nCipher. All right, title and interest in and to the Products, other than that expressly granted to Customer herein, shall remain vested in nCipher and its third party suppliers. Customer shall not, and shall not permit others to, copy, translate, modify, create derivative works from, reverse engineer, disassemble, dissect or decompile the Products or Software, except as may be required by law. All appropriate copyright and other proprietary notices and legends shall be retained on all Products supplied by nCipher, and Customer shall maintain and reproduce such notices on all authorized copies of the Software and related Documentation.
- 16.3 Customer shall hold the Software and related documentation strictly confidential. Customer shall limit use of, and access to, the Software and related documentation to such of Customer's employees and contractors as are directly involved in the operation and maintenance of the Products. Customer shall, by all appropriate means, prevent disclosure to, or display or use of the Software and related documentation by third parties and employees not authorized to use the Products hereunder. Customer shall enter into binding written agreements with employees and contractors to prevent unauthorized publication, disclosure or use of Software and related documentation. In the event that Customer is in default of its obligations under this Clause and nCipher requests the return of Products and/or Software, Customer shall immediately discontinue use of and shall return to nCipher the original and all copies of the Software, related documentation and the related Products.
- 17 **Cancellation of Orders** nCipher may cancel any accepted order and may delay or decline to make any further shipments in the event of:
- 17.1 any non-payment or other default by Customer;
- 17.2 any conduct prohibited by Clause Sixteen of these Terms and Conditions;
- 17.3 bankruptcy or insolvency of Customer; or
- 17.4 any proceeding brought by or against Customer, 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.
- 18 **Import and Export** Customer shall supply nCipher with such documents, information and undertakings as may be required to enable nCipher to apply for export licenses or comply with import requirements, where necessary, or to apply for any authorization required for the performance of the Services. Customer acknowledges that conditions have been imposed on the export of the Products under export control Regulations of the United States, United Kingdom and other relevant countries or agreed to by participants of the Wassenaar Arrangement. Customer agrees to comply with all such export control regulations. Customer shall not export either directly or indirectly any Products, or any direct product thereof, without first obtaining express written authorization from nCipher.
- 19 **Use** Customer agrees that the Products will not be used for any purpose related to chemical, biological, or nuclear weapons or missiles capable of delivering such weapons.
- 20 **Assignment** This Agreement, including these Terms and Conditions, shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Customer may not assign or transfer its rights or obligations hereunder without the prior written consent of nCipher.
- 21 **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.

- 22 **Notices** All notices or other communications required or permitted shall be in writing and shall be deemed duly served if sent by a recognized commercial courier or other express mail service, or by certified or registered mail, return receipt requested, first class postage prepaid, to nCipher at the address stated on the face hereof and to the Customer at the address given in the Quotation or order signed by Customer, or to such other address as the parties may designate from time to time by giving notice as prescribed in this Clause. Any such notice shall be deemed to be served on the second business day after posting.

nCipher's Technical Support Department in the United Kingdom may be contacted on:

Telephone: +44 1223 723666
Fax: +44 1223 723601
E-mail: support-uk@ncipher.com
Web: <http://www.ncipher.com/support/>

- 23 **Force Majeure** Except for payment of funds, neither nCipher nor Customer 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 labour dispute, riot or the intervention of any government authority. If any such contingency occurs, nCipher may allocate production and deliveries among its customers.
- 24 **No Third Party Beneficiaries** nCipher and Customer agree that these Terms and Conditions are intended to govern the rights and obligations between nCipher and Customer only and that there are no express or implied third party beneficiaries under these Terms and Conditions.
- 25 **Governing Law** These Terms and Conditions shall be governed by, and construed and enforced in accordance with, the laws of England and Wales. No failure by nCipher to enforce or take advantage of any of its rights shall constitute a waiver of nCipher's right subsequently to enforce any of its rights. The Customer and nCipher agree to submit to the exclusive jurisdiction of the English courts.
- 26 **Agreement** These Terms and Conditions and a Quotation(s) or accepted order(s), constitutes the entire agreement between the parties with respect to the subject matter hereof and no addition to or modification of any provision hereof shall be binding upon nCipher unless made in a writing by an authorized officer of nCipher. All Quotations shall be deemed to incorporate these Terms and Conditions reference and shall accordingly be governed by the provisions of these Terms and Conditions.