



NCIPHER SECURITY
IS AN ENTRUST COMPANY

nCipher Security

Product Evaluation Terms and Conditions

NCIPHER SECURITY LIMITED
One Station Square, Cambridge, CB1 2GA
United Kingdom

Registered in England No. 11673268

DEFINITIONS

Evaluator means the Party identified in the Schedule to this Agreement.

Evaluation Agreement or **Agreement** means these Terms and Conditions and the Schedule(s) to it that has/have been signed by Evaluator and nCipher.

Product(s) means the nCipher hardware and/or software products and/or Managed Service provided to Evaluator and listed in the Schedule(s) that has/have been signed by Evaluator and nCipher.

Purpose means the demonstration, assessment and evaluation of the performance of the Product(s), by the Evaluator.

The following terms and conditions shall govern Product Evaluation Agreements entered into by **nCipher Security Limited** ("nCipher") and the Evaluator and shall be deemed incorporated therein.

Individually a Party and together the Parties.

1. FEE

There is no fee or charge for the Evaluator's consideration or evaluation of the Product. However, if Evaluator does not return the Product to nCipher at the conclusion of the Evaluation Term (defined below) or if the Product(s) is returned in a damaged condition, (normal wear and tear accepted), then in that event Evaluator will pay nCipher the price set out in the Schedule for the Product(s).

2. EVALUATION LICENSE

Evaluator is hereby granted a non-exclusive, non-transferable, sub licensable license to operate the Product for the sole and limited purpose of demonstrating, evaluating and assessing the performance of the Product ("Evaluation License"). Evaluator's license rights (and that of any sub-licensee) are limited to those expressly granted by this Agreement and by the license terms and conditions embedded on or supplied with the medium on which the Product software or firmware is supplied. nCipher and its licensors reserve all other rights. nCipher, or its licensors, own all intellectual property rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Product. Evaluator may not:

- (i) modify, adapt, decompile, disassemble, or reverse engineer the Product unless specifically authorised by applicable law;
- (ii) create derivative works based on the Product;
- (iii) make unauthorised copies of the Product;
- (iv) allow any further disclosure, distribution or relocation, resale, lease, loan, rental, license, or assignment of any type or nature or unauthorised third party use or access to the software;
- (v) use the Product for the benefit of, or to support or provide services to any third party;
- (vi) disclose to any unauthorised third party the results of any Product performance benchmarks or any specific detailed comparisons between the Product and any Evaluator or third party product;
- (vii) to the fullest extent permitted by law, use any functionality of the Product or any output generated by such functionality to augment or replace functionality in a third party product or as an add-in to any third party product without nCipher's prior written consent; or
- (viii) use the Product for any purpose other than that defined above.

3. EVALUATION TERM

This Agreement shall commence on the date of shipment of the Product by nCipher and shall end following the expiration of the Evaluation Term specified in the Schedule to this Agreement or upon return of the Product or

upon termination of this Agreement as provided herein, whichever is earlier. Any extensions to the Evaluation Term must have the prior written consent of an authorised representative of nCipher.

4. RESTRICTIONS ON USE

The Product delivered pursuant to this Agreement is provided to Evaluator solely for the Purpose at the premises identified in the Schedule to this Agreement and shall not be distributed to third parties without the prior written consent of an authorised representative of nCipher. Evaluator shall not change, remove or obscure any labels, plates, insignia, lettering or other markings on the Products. No right, title or interest in or to the Products shall pass from nCipher to Evaluator unless and until Evaluator elects to purchase the Products as provided herein and has paid all monies owed by Evaluator for the Products. Until such event, Evaluator shall hold the Products on a fiduciary basis as nCipher's bailee unless or until the Products are returned to nCipher.

5. EVALUATOR RESPONSIBILITIES

- (a) The Evaluator shall install and operate the Product in accordance with the applicable nCipher specifications and instructions and shall preserve the Product in the same condition as it is received, fair wear and tear excepted.
- (b) All information relating to the Product, including, but not limited to, object codes, technical manuals and other documentation is confidential and proprietary to nCipher, and Evaluator shall hold the Products, related documentation, evaluation results and all related information strictly confidential. The Evaluator shall not disclose any such confidential information to any person other than its own duly authorised personnel without the prior written approval of an authorised representative of nCipher and shall take all reasonable steps to ensure that such information remains confidential. Evaluator shall use such confidential information only for the Purpose and Evaluator agrees that it shall not use, or exploit the confidential information for its own benefit or for the benefit of another. Evaluator agrees that it will promptly report any actual or suspected violation of the terms of this Agreement to nCipher and that it will take all necessary steps to prevent, control or remedy any and all such violations. These obligations of confidentiality shall continue until such time as the Evaluator has obtained the written consent of an authorised representative of nCipher that these obligations have expired.
- (c) The Evaluator agrees that it shall be responsible for all loss of or damage to the Product while it is in the Evaluator's custody, excluding only losses or damage caused by the acts or omissions of nCipher or its agents and contractors.
- (d) The Evaluator agrees that it shall be responsible for all local duties and taxes in connection with the Evaluation Equipment.
- (e) Within ten (10) days of expiration or termination of this Agreement, whichever is the earlier, Evaluator shall:
 - (i) return the Product and all associated items, (including, but not limited to software), to nCipher; and
 - (ii) delete all electronic copies of the Product and associated items. Evaluator shall be solely responsible for the cost of shipping and appropriate insurance for the return of the Product and associated items.

6. EXPORT CONTROL

nCipher Products are subject to the export control laws and regulations of the United Kingdom, 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 or products. Accordingly, Evaluator agrees to comply with all applicable export control regulations and laws and Evaluator agrees that it shall not export any nCipher Product or any encryption technology provided by nCipher or any of its affiliates to any prohibited destination, or export the direct product of the technology, directly or indirectly, to any prohibited country or person which is subject to any applicable export control regulation.

7. NCIPHER RESPONSIBILITIES

nCipher agrees to provide the Evaluator with such telephone based technical and support services as may be reasonably required in order to maintain the Product in operating condition. Telephone support is available by calling the number specified in the Schedule.

8. **DISCLAIMER OF WARRANTY AND LIABILITY**

- (a) nCipher shall not be liable to any Party for claims, demands or damages whatsoever, including, without limitation, direct, indirect consequential or special damages, arising out of the license or use of the Product hereunder and the use or failure of the Product to operate for whatever reason, regardless of whether the claim or action is based in contract, tort or otherwise. No action, regardless of form, arising out of or in any way connected with the Product or services furnished by nCipher may be brought by the Evaluator more than one (1) year after the cause of action has accrued, or such shorter statutory period as may be applicable. NOTWITHSTANDING THE FOREGOING, 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.
- (b) THE PRODUCT IS PROVIDED AS IS AND NCIPHER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, RELATING TO THE PRODUCT, ITS USE OR ANY INABILITY TO USE.

9. **OPTION TO PURCHASE**

Evaluator may elect to purchase the Product from nCipher. Evaluator agrees that its purchase of the Product shall be subject to nCipher's standard terms and conditions, a copy of which is available upon request. Evaluator agrees that it will be responsible for all applicable transportation charges, taxes and other fees as applicable. The price for the purchase shall either be that specified in the Schedule or some other mutually agreed upon price. Upon payment in full to nCipher, Evaluator shall be excused from the obligation to return the Product. However, if the Parties are unable to agree on a mutually agreed upon price within fifteen (15) days of the expiration of the Evaluation Term, or if Evaluator fails to return the Product to nCipher within fifteen (15) days of the expiration of the Evaluation Term, or if the Product is returned in a damaged condition (normal wear and tear excepted), then in that event, Evaluator will be deemed to have automatically elected to have purchased the Product for the price specified in the Schedule.

10. **SURVIVING PROVISIONS**

Clauses 1, 3, 5, 7, 11 and 12(b) shall survive termination or expiration of this Agreement.

11. **GOVERNING LAW AND JURISDICTION**

The laws of England and Wales shall govern this agreement and the Parties agree to exclusively submit themselves to the jurisdiction of the courts located in England and Wales.

12. **GENERAL PROVISIONS**

- (a) nCipher shall have the right to withdraw the Product and terminate the Evaluation License granted herein at any time and without reason on five (5) days written notice to the Evaluator, and the Evaluator shall return the Product to nCipher within such five (5) day period.
- (b) Subject to Clause 9, the Product remains the property of nCipher, and the Evaluator shall have no right, title or interest therein except as otherwise expressly set out herein.
- (c) The provisions of this Agreement shall be deemed severable. If any provision of this Agreement shall be held unenforceable by any competent jurisdiction, the remaining provisions shall remain in full force and effect.
- (d) This Agreement shall not be amended or modified except in writing and duly signed by authorised representatives of nCipher and the Evaluator. No course of dealing or usage of trade by or between the Parties shall be deemed to cause or constitute any such amendment or modification.
- (e) Any notice required to be sent or given by one Party to the other may be sent by fax, certified or registered mail, or via recognised commercial courier (e.g. FedEx, UPS, DHL, etc.) to the addresses set out in the Schedule to this Agreement.
- (f) No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further

exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (g) This Agreement may not be assigned by the Evaluator without the prior written consent of nCipher. Evaluator agrees that nCipher may assign this Agreement upon notice to Evaluator.
- (h) The Product will be deemed delivered when nCipher makes the Product available and ready for shipment from nCipher's shipping facility and Evaluator is responsible for all costs and bears all risks involved in taking the goods from nCipher's shipping facility to Evaluator (Ex Works as defined in Incoterms 2020, or FCA Incoterms 2020 where goods are shipped from the UK to a non-UK destination). 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. Delivery dates specified in any Evaluator documentation or purchase order shall not be binding on nCipher. All dates and times for delivery and installation of the Product 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 Evaluator as a result of such dates or times not being met.