



NCIPHER SECURITY  
IS AN ENTRUST COMPANY

## nShield-as-a-Service (“nSaaS”) Terms of Service Agreement

### IMPORTANT: READ CAREFULLY PRIOR TO ANY INSTALLATION OR USE OF THE PRODUCT

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TERMS OF SERVICE AGREEMENT (“TERMS OF SERVICE”), UNLESS LICENSEE HAS A SEPARATE WRITTEN AGREEMENT WITH NCIPHER, THE USE OF THE PRODUCT IS SUBJECT TO THE TERMS AND CONDITIONS OF THESE TERMS OF SERVICE BETWEEN LICENSEE AND NCIPHER.

THESE TERMS OF SERVICE (INCLUDING ANY ADDENDUM OR AMENDMENT TO IT WHICH MAY BE SUPPLIED TOGETHER WITH THE PRODUCT) AND ANY OTHER TERMS AND CONDITIONS PROVIDED BY NCIPHER, IF APPLICABLE, IS THE ENTIRE AGREEMENT BETWEEN LICENSEE AND NCIPHER RELATING TO THE USE OF THE PRODUCT AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN COMMUNICATIONS, PROPOSALS AND REPRESENTATIONS WITH RESPECT TO THE USE OF THE PRODUCT OR ANY OTHER SUBJECT MATTER COVERED BY THESE TERMS OF SERVICE. IN THE EVENT OF CONFLICT BETWEEN THE TERMS OF THESE TERMS OF SERVICE AND ANY OTHER TERMS AS PROVIDED BY NCIPHER, THE TERMS OF THESE TERMS OF SERVICE SHALL PREVAIL.

BY ACCEPTING THIS TERMS OF SERVICE, YOU REPRESENT THAT YOU HAVE THE REQUISITE AND APPROPRIATE LEGAL AUTHORITY TO BIND THE LICENSEE. IF YOU DO NOT ACCEPT THESE TERMS OF SERVICE, YOU MAY NOT INSTALL OR OTHERWISE USE THE PRODUCT.

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. THE TERMS OF THIS TERMS OF SERVICE WILL BE DEEMED TO HAVE BEEN AGREED TO IF:

- A. YOU CLICK ON THE RESPECTIVE “I ACCEPT” BOX OR ACCEPTANCE KEY;
- B. THE PRODUCT IS DOWNLOADED AND/OR USED BY YOU;
- C. A SECURITY SEAL ON THE MEDIA PACKAGE CONTAINING THE PRODUCT IS BROKEN.

### 1) DEFINITIONS

“**Affiliate**” means, with respect to any company, any other company directly or indirectly through one or more intermediaries controlling, controlled by or under common control with such other company. The term “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any control, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

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

“**Confidential Information**” means information that the party disclosing it (the “Disclosing Party”) treats as confidential or proprietary, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing. Confidential Information does not include information that the party receiving it (the “Receiving Party”) can demonstrate by documentation: (a) was already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information directly or indirectly from or on behalf of the Disclosing Party; (b) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party’s Confidential Information; (c) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of the Receiving Party or any of its Representatives; or (d) was received by the Receiving Party from a third party who was not, at the time, under any obligation to the Disclosing Party or any other Person to maintain the confidentiality of such information.

“**Documentation**” means all 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.

**“Free Software Component”** means free or open source components, including Open Source Software.

**“Hardware”** means, individually or collectively, the nCipher’s branded hardware equipment products purchased from nCipher (or its Authorized partners) and that operate in conjunction with the Software, but excludes any Software or other intangible products. The 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).

**“Intellectual Property Rights”** means any and all intellectual property rights in any part of the world, arising under statutory or common law or by agreement and whether or not perfected, registered or unregistered, now existing or hereafter filed, issued, or acquired, and any renewals, extensions and other government issued indicia of ownership thereof, including, but not limited to, rights comprising or relating to: (a) patents, patent disclosures and inventions (whether patentable or not); (b) rights associated with works of authorship including copyrights and copyrightable works (including, but not limited to, computer programs), copyright registrations and application for copyright registration, “moral” rights and mask work rights (all “copyrights”); (c) rights relating to the protection of trade secrets, know-how and other Confidential Information; (d) trademarks, trade dress, trade names, logos and service marks, together with the goodwill or business symbolized by or associated therewith (“Trademarks”); (e) domain names, web addresses and social media identifiers; (f) any registrations or applications for registration for any of the foregoing, including any provisionals, divisions, continuations, continuations-in-part, renewals, reissuances, re-examinations and extensions (as applicable); and (g) analogous rights to those set forth above.

**“Licensee”** means the end user entity which has issued an Order directly to nCipher or indirectly through an nCipher Authorized Partner to license the Software from nCipher.

**“License Fees”** means the license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under these TERMS OF SERVICE.

**“Order Acknowledgement”** means the written (electronic or otherwise) confirmation notice that nCipher issues to Licensee confirming the purchase or license of Products and/or Services by Licensee (also referred to an “Offering”).

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**“Personal Data”** means all information made available by Licensee 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.

**“Product(s)”** means the Hardware and/or Software and/or Services.

**“Professional Services”** means collectively the training, consulting, installation, migration and/or deployment services purchased by Licensee either from nCipher or an Authorized Partner set forth in an Order Acknowledgement.

**“Services Agreement”** means the mutually executed document for the provision of Services (Professional Services or other Services), which may include a SOW (and Order Acknowledgment), and any related terms and conditions mutually incorporated by reference by the parties.

**“Software”** means the nCipher software in object code ordered by Licensee and set forth in an Order Acknowledgment and, if applicable, the software or firmware installed on the Hardware in executable code. Software also includes 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 Licensee is authorized to receive pursuant to the applicable End User License or TERMS OF SERVICE.

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“Update” means any updates, upgrades, bug fixes, patches, and other error corrections to the Software that nCipher provides to Licensee that receive continuing Support Services.

## 2) LICENSE GRANT

- a. nCipher hereby grants to Licensee a worldwide, non-exclusive, non-sublicensable and non-transferable limited license during the Term (as defined in Section 14) to use the Product and documentation solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 3 or elsewhere in these TERMS OF SERVICE.
- b. This license grants Licensee the right, exercisable solely by Licensee, to:
  - (i) Use and run unmodified the Software as properly installed in accordance with the Documentation, solely for Licensee’s internal operations. With respect to Software embedded in the Hardware, such use is permitted only on the Hardware on which the Software is installed.
  - (ii) Download, copy, and install in machine-readable, object code form only, in accordance with the Documentation, one copy of the Software on the number of servers and user licenses identified in the Order Acknowledgment. Licensee may make one copy of the Software solely for archival purposes.
- c. This license only applies to the version of the Product shipped at the time of purchase. Any potential Upgrades to the Product shall be licensed pursuant to the applicable Support Terms entered into by Licensee and nCipher to that effect.
- d. All copies of the Software and the Documentation made by Licensee: (i) will be the exclusive property of nCipher; (ii) will be subject to the terms and conditions of these TERMS OF SERVICE; and (iii) must include all Intellectual Property Rights notices contained in the original delivered to Licensee.

## 3) USE RESTRICTIONS

- a. Except as expressly authorized herein, Licensee shall not, and shall not permit, directly or indirectly:
  - (i) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 3;
  - (ii) without providing notice to nCipher, provide any other entity, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Software or Documentation;
  - (iii) modify, translate, adapt, or otherwise create derivative works of the Software or Documentation or any part thereof;
  - (iv) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;
  - (v) reverse engineer, disassemble, decompile, decode or in any other manner attempt to derive or gain access to the source code of any component of the Software or any part thereof for any purpose or any portion thereof and on all portions contained in or merged into other programs and/or the Documentation. Licensee shall notify nCipher if Licensee becomes aware of any person or entity attempting to reverse engineer, reverse compile, or disassemble any of the Product.
  - (vi) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;
  - (vii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service without nCipher’s written approval;
  - (viii) use the Product on operating systems or technology platforms other than those designated by nCipher in the Documentation;
  - (ix) use the Software or Documentation in violation of any law, regulation, or rule; or
  - (x) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to nCipher’s commercial disadvantage.

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

**4) LICENSE FEES**

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

**5) SUPPORT AND SERVICES**

**Support Tiers.** During the Term, Licensee shall receive, included within the Subscription Fee, the support services set forth below in the Section 5. Licensee will be responsible for nominating a maximum of 3 individuals who will act as Licensee’s support representatives.

- a. Support and Maintenance Services are subject to the Support and Maintenance Services Terms and Conditions located at <https://www.entrust.com/legal-compliance/terms-conditions>, which are hereby incorporated by reference in full force and effect.
- b. Services and professional services and any related SOW are subject to nCipher General Terms and Conditions located at <https://www.entrust.com/legal-compliance/terms-conditions>, which are hereby incorporated by reference in full force and effect.

**6) UPTIME AND UPTIME SERVICE LEVEL CREDITS**

- a. Targets – nCipher will use reasonable commercial efforts to achieve the target set out below;

Offering	Applicable Components/Functions	Target
nShield-as-a-Service (“nSaaS”)	HSM cluster availability and VPN connectivity	99.9% Uptime

- b. “Uptime” is calculated for each calendar month by subtracting the percentage of Downtime minutes during such month from 100%.
- c. “Downtime” means, subject to the exclusions below, an interruption of five (5) minutes or more during which the ability of ten percent (10%) or more of all users of the applicable Offering(s) to access the applicable component or function is substantially impaired due to interruptions or impairments.
- d. Maintenance Windows and Exclusions from Downtime – “Maintenance Windows” are the time frames during which nCipher may perform scheduled routine system maintenance. The Maintenance Windows will not exceed 12 hours per month. nCipher will use commercially reasonable efforts to provide 2 weeks’ advance notice of the Maintenance Windows. due to any of the following is excluded from Downtime: (i) any Maintenance Windows, (ii) suspension or termination of the applicable Offering in accordance with the terms of the applicable Agreement; (ii) implementation of critical / emergency security patches in accordance with a relevant risk/vulnerability assessment; (iii) factors outside of nCipher’s reasonable control, including any Force Majeure event, Internet accessibility problems beyond nCipher’s ISP environment; (iv) Licensee’s or any third party’s network, software, equipment or other technology or service.
- e. Notice of Default – In order to receive a Service Level Credit (as defined below), Licensee must provide written notice to nCipher within thirty (30) days of the failure if Licensee believes nCipher has failed to meet any Service Level Target (“Service Level Default”). Upon receipt of such notice, nCipher will verify the accuracy of details provided by Licensee against its service logs to determine, acting reasonably, whether a Service Level Default has or has not occurred, and will provide details relating to the cause of the Service Level Default to Licensee within thirty (30) days from the date of notification. Licensee’s failure to provide the notice required in this section will disqualify Licensee from receiving a Service Level Credit.
- f. Service Level Credit - Licensee will be entitled to receive the Service Level Credit for a confirmed Service Level Default. “Service Level Credit” means an amount equal to five percent (5%) of the Monthly Fee for the calendar month in which the Service Level Default occurs, where “Monthly Fee” means the subscription fees paid to nCipher for the applicable Offering divided by the number of months in the applicable Term. The total aggregate amount of the Service Level Credit to be issued by nCipher to Licensee for all Service Level Defaults that occur in a single calendar month will be capped at five percent (5%) of the Monthly Fee for such calendar month. Service Level Credits can only be applied against the renewal subscription fees due to nCipher for the applicable Offering and any unused Service Level Credits are forfeited upon termination of the Agreement. For clarity, nCipher is not required to issue refunds or make payments

against such Service Level Credits under any circumstances, including upon termination of this Agreement. The Service Level Credit is Licensee's sole and exclusive remedy for any Service Level Default.

## 7) INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

- a. Licensee shall use commercially reasonable efforts to safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify nCipher if Licensee becomes aware of any infringement of the nCipher's Intellectual Property Rights in the Software and fully cooperate with nCipher, at nCipher's sole expense, in any legal action taken by nCipher to enforce its Intellectual Property Rights.
- b. This TERMS OF SERVICE shall not be considered to be a sale of any Intellectual Property Rights or other proprietary interests embodied in the Products or Product component thereof (or any copy, derivative work, upgrade, Update, improvement or modification thereof), and nothing herein shall be deemed to establish or imply that the license granted is a conveyance of any underlying Intellectual Property Rights to the Products.
- c. All right, title, and interest in and to the Product and all Intellectual Property Rights arising out of or relating to the Product, in whole and in part and all copies thereof, are, and shall remain, the sole and exclusive property of nCipher, nCipher Affiliates, and/or its licensors, except as expressly granted to the Licensee in these TERMS OF SERVICE. nCipher hereby reserves all rights not expressly granted to Licensee.
- d. The source code of the Software is a confidential trade secret of nCipher.
- e. nCipher hereby reserves all rights not expressly granted to Licensee. Each Free Software Component is the copyright of its respective copyright owner. Only those terms and conditions specified for, or applicable to, each specific Free Software Component pursuant to its applicable governing license shall be applicable to such Free Software Component.

## 8) CONFIDENTIALITY

- a. Receiving Party agrees not to use, disseminate, or in any way disclose any Confidential Information of Disclosing Party to any person, firm or business, except to the extent necessary for the performance of Receiving Party's obligations hereunder, and for any other purpose Disclosing Party may hereafter authorize in writing.
- b. Receiving Party agrees to treat all Confidential Information of Disclosing Party with the same degree of care as Receiving Party accords to Receiving Party's own Confidential Information, but in no case less than reasonable care.
- c. Receiving Party agrees to disclose Confidential Information only to those Receiving Party's employees and independent contractors who need to know such information, and Receiving Party certifies that Receiving Party's employees and/or independent contractors have previously agreed in writing, to be bound by substantially similar terms and conditions to those contained herein. Receiving Party shall give immediate notice to Disclosing Party of any unauthorized use or disclosure of Disclosing Party's Confidential Information. Receiving Party will take all reasonable measures to ensure that no unauthorized person shall have access to the Confidential Information and that all authorized parties having access refrain from making any unauthorized disclosure in violation of this Agreement. Receiving Party agrees to assist Disclosing Party in remedying any such unauthorized use or disclosure by Receiving Party or any of its employees or independent contractors of Disclosing Party's Confidential Information. Receiving Party shall comply with all applicable federal and state laws, rules and regulations protecting the Confidential Information and privacy rights of the Disclosing Party, its Licensees and suppliers, and shall be responsible for any failure by the Authorized Parties to so comply.
- d. The obligations of Receiving Party under this Section 8 with respect to any portion of the Confidential Information of Disclosing Party, shall not apply to such portion that Receiving Party can document does not include any information which: (i) is Personal Data and Excluded Data, which are subject to Section 9 (Data Protection); (ii) is or becomes generally available to the public other than as a result of a breach of this Agreement; (iii) is known by Receiving Party prior to its receipt of the Confidential Information from Disclosing Party, or is furnished by a third party to Receiving Party as a matter of right and without restriction on disclosure, so long as Receiving Party can provide clear evidence of such prior disclosure; (iv) is independently developed by Receiving Party without use of, or reference to any Confidential Information, so long as Receiving Party can provide clear evidence of such independent development; or (v) is agreed in writing by the parties not to be considered Confidential Information.
- e. A disclosure of Confidential Information, either in response to a valid order by a court or other governmental body or

otherwise required by law, shall not be considered to be a breach of these TERMS OF SERVICE by Receiving Party or a waiver of confidentiality for other purposes; provided, however, Receiving Party shall provide prompt prior written notice thereof to Disclosing Party to enable Disclosing Party to seek a protective order or otherwise prevent or limit such disclosure.

- f. The parties acknowledge that it may be impossible to measure in money the damage to the parties hereto of any failure to comply with the obligations of this Section 8, that every such restriction and obligation is material, and that in the event of any such failure, the parties may not have an adequate remedy at law or in damages. Therefore, each party consents to the non-breaching party may seek an injunction or the enforcement of other equitable remedies against it at the suit of an aggrieved party, without bond or other security, to compel performance of all of the terms of this Section 8 and waives any defenses to an equitable remedy based on a failure of consideration, breach of any other provision of these TERMS OF SERVICE, and availability of relief in damages. The parties in no way waive their rights to contest any action on the merits or pursue any other remedy which might be available to such party.
- g. Both parties agree to keep confidential any Confidential Information during the Term of this Agreement and for a period of three (3) years thereafter, with the exception of trade secrets, which shall be confidential in perpetuity.

## 9) DATA PROTECTION

- a. Licensee acknowledges that as part of the use of some Offerings end users may be required to share with nCipher certain information which may include information about an identified or identifiable individual ("Personal Data") for the performance of the Offering or improvements thereof. With respect to any Personal Data provided to nCipher by Licensee or end users, Licensee represents and warrants that (i) it is duly authorized to provide such data to nCipher and it does so lawfully in compliance with applicable laws (including data protection laws), (ii) nCipher can, and is hereby instructed to process such data for the purposes of performing its obligations under this Agreement, (iii) nCipher may disclose such data to a third party solely for such purposes and may transfer such data to countries outside of the country of origin, and (iv) Licensee has made all necessary disclosures to, and obtained all necessary consents from its customers and from end users (e.g., data subjects) from whom such data is obtained.
- b. In addition, Licensee represents and warrants that it will not provide or transfer or cause to be provided or transferred to nCipher any Excluded Data. "Excluded Data" refers to: (a) social security numbers or their equivalent (e.g., social insurance numbers), driver license numbers, biometric data, health card numbers, criminal information and other health-related information; (b) other Personal Data that would be considered sensitive in nature including without limitation of a "special category of data" under GDPR (EU Regulation 2016/679) and any applicable law applying to Personal Data; and (c) data regulated under the Health Insurance Portability and Accountability Act or the Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards or similar laws or regulations in place now or in the future in the applicable jurisdiction (collectively, the "Excluded Data Laws"). Licensee recognizes and agrees that: (i) nCipher has no liability for any failure to provide protections set forth in the Excluded Data Laws or otherwise to protect excluded data; and (ii) nCipher's Offerings are not intended for management or protection of Excluded Data and may not provide adequate or legally required security for Excluded Data.
- c. Licensee agrees to defend, indemnify and hold harmless, nCipher and its Affiliates and their respective officers, directors and employees against any and all third party claims, demands, suits or proceedings, costs, damages, losses, settlement fees, and expenses (including without limitation attorney fees and disbursements) arising out of or related to: (a) Customer's breach of or errors in providing the representations and warranties set out in this Section 9 (Data Protection), (b) the Personal Data or Excluded Data provided by the Licensee, its customers or end users, and (c) any inaccuracies in any data provided by Customer, its customers or end users to nCipher.
- d. nCipher, when it acts as data controller, processes Personal Data in compliance with nCipher's Privacy Policy. To the extent that nCipher processes any Personal Data on Licensee's behalf (as data processor), as part of the performance of any Offering, the terms of nCipher's Data Processor Addendum ("DPA") shall apply and the parties agree to comply with such terms. For the purposes of the Standard Contractual Clauses attached to the DPA, when and as applicable, Licensee is the data exporter, and Customer's acceptance of this Agreement shall be treated as signing of the Standard Contractual Clauses and their Appendices. Licensee agrees that nCipher reserves the unilateral right to amend the DPA from time to time without providing express notice to the Licensee. The latest version posted on nCipher's website shall always apply

## 10) GENERAL INDEMNIFICATION

- a. Each party shall defend and indemnify the other against any third-party claim for personal bodily injury, including death, where the injury has been exclusively caused by the indemnifying party's gross negligence or willful misconduct in

connection with this Agreement.

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

## 11) INTELLECTUAL PROPERTY INFRINGEMENT

- a. Subject to Section 12, nCipher will defend at its own expense, or at its option, settle any action brought by a third party against Licensee to the extent that it is based upon a claim that a nCipher provided Product infringes a valid Canada, United States, European Union, Hong Kong or United Kingdom patent or copyright or misappropriates a third party's trade secret ("IP Claim"). nCipher will pay direct costs and direct monetary damages finally awarded against Licensee in any such IP Claim, which are directly and solely attributable to such IP claim (the "IP Indemnity").
- b. The IP Indemnity is subject to and limited by: (i) Licensee providing prompt notification in writing to nCipher of any such action; (ii) nCipher having sole control of the defense and all negotiations for settlement of such action; (iii) Licensee providing all available information, reasonable assistance and authority to enable nCipher to defend, negotiate and settle such action; and (iv) Licensee not making any admission or taking any other action that could prejudice the defense or settlement of the claim.
- c. Sole and exclusive remedy. Should such Products become, or in nCipher's opinion, be likely to become the subject of an IP Claim or the use thereof become restricted by a court awarded injunction, Licensee shall permit nCipher, at nCipher's sole option and expense, the right to either: (i) procure for Licensee the right to continue using such Products by license or release from claim of violation, infringement or misappropriation; (ii) modify such Product so that they are functionally equivalent but are no longer subject to a claim; (iii) replace the Product with equally suitable substitute Product free from claim; or (iv) refund to Licensee the purchase price for the impacted Product based on a three (3) year straight line depreciation schedule.
- d. Exceptions to nCipher's indemnity. nCipher shall have no liability to the Licensee under this IP Indemnity with respect to any IP Claim which is arising from: (i) nCipher compliance with any design, technical information, instructions or specifications furnished by the Licensee; (ii) the combination or utilization of the products or services not provided by nCipher or, provided that the Product when used alone does not give rise to such infringement; (iii) the modification of the Products furnished hereunder other than by nCipher or its agents, servants or subcontractors; or (iv) the use of the Products contrary to the Documentation.
- e. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF NCIPHER AND ITS LICENSORS AND THE SOLE AND EXCLUSIVE REMEDY OF LICENSEE 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, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING THE FOREGOING, ALL OPEN SOURCE SOFTWARE OR FREWARE INCLUDED WITH THE PRODUCT IS PROVIDED WITHOUT ANY RIGHTS TO INDEMNIFICATION. IN NO EVENT SHALL NCIPHER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR LOST PROFITS UNDER THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12) LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL NCIPHER'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, THESE TERMS OF SERVICE 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.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NCIPHER (NOR NCIPHER'S LICENSORS OR AUTHORIZED PARTNERS) BE LIABLE UNDER THIS AGREEMENT FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF DATA, LOSS OF BUSINESS, LOSS OF OPPORTUNITIES, LOSS OF TIME OR PROFIT AS A RESULT OF DEFENSE OF THE THIRD PARTY CLAIM, LOSS OF USE OF THE PRODUCT(S) OR SERVICE(S) OR ANY ASSOCIATED PRODUCT(S) OR SERVICE(S) (INCLUDING LOSS OF TIME OR PROFIT ATTRIBUTABLE THERETO), OR COST OF SUBSTITUTED FACILITIES OR PRODUCTS OR ASSOCIATED WITH PROCURING OR INSTALLING THIRD PARTY REPLACEMENT PRODUCTS, WHICH ARISE OUT OF LICENSEE'S PERFORMANCE, NON-PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATION CONTAINED WITHIN THIS AGREEMENT OR WITH USE, OR INABILITY TO USE, PRODUCT, REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED, EVEN IF NCIPHER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT AND WILL APPLY EVEN IF THE ABOVE STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. IN ADDITION, NCIPHER WILL HAVE NO LIABILITY TO LICENSEE UNDER THIS AGREEMENT, IF LICENSEE NEGLECTS TO INSTALL WITHIN A REASONABLE TIME PERIOD ANY FAILURE CORRECTION SOFTWARE DELIVERED TO LICENSEE, OR ANY UPDATE OR RELEASE OF THE SOFTWARE MADE GENERALLY AVAILABLE AFTER THE EFFECTIVE DATE THAT WOULD HAVE AVOIDED OR MITIGATED THE CLAIM AND LICENSEE HAS BEEN MADE AWARE OF SUCH.

### 13) PERSONAL DATA

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

### 14) COMPLIANCE WITH LAWS

- a. Each party shall be solely responsible for and shall comply with all applicable laws, ordinances, rules and regulations imposed by any country or subdivision thereof applicable in connection with the party's performance under these TERMS OF SERVICE, including but not limited to laws and regulations applicable to: (i) the import and export of the Products; (ii) the U.S. Foreign Corrupt Practices Act, the UK Bribery Act or any other laws or regulations regarding corruption or bribery; (iii) the use of deceptive or misleading practices; or (iv) the privacy of users of personally identifiable information and the collection, storage, transfer and any other processing of any personally identifiable information collected or used by the party in any manner or maintained by third parties having authorized access to such information.
- b. Licensee shall obtain any and all permits, licenses, authorizations and/or certificates that may be required in any jurisdiction or by any regulatory or administrative agency in connection with the conduct of its business and the distribution or sale of the Products.

### 15) TERM AND TERMINATION

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



trustee, received, or custodian for a substantial part of its property.

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

## 16) GOVERNING LAW AND DISPUTE RESOLUTION

When the nCipher entity under the Order Acknowledgment originates from North America, these TERMS OF SERVICE shall be governed by the laws of the State of New York, USA. When the Order Acknowledgment originates in Europe, these TERMS OF SERVICE shall be governed by and construed in accordance with the laws of England & Wales. When the Order Acknowledgment originates in Asia, these TERMS OF SERVICE shall be governed by and construed in accordance with the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

## 17) FORCE MAJEURE

Neither party shall not be considered in default in performance of its obligations hereunder if performance of such obligations is prevented or delayed by any circumstances not within nCipher's reasonable control including, without limitation: acts of God, pandemic, fire, explosion, flood, storm, terrorist attack, civil war, commotion or riots, war (or threat of war), imposition of sanctions, embargos or acts of government (including without limitation failure or delay to obtain export licenses), labor disputes, failure or delay of transportation, vendors or subcontractors, or any other similar cause or causes beyond the reasonable control of such party. Time of performance of nCipher's obligations hereunder shall be extended by the time period reasonably necessary to overcome the effects of such force majeure occurrences.

## 18) NOTIFICATIONS

All notices, requests and demands, and other communications required or permitted under this TERMS OF SERVICE shall be in writing and shall be deemed to have been duly given, made, and received only: (a) upon delivery, if delivered personally to a party; or (b) one business day after deposit if delivered to a nationally recognized courier service offering guaranteed overnight delivery. All such communications shall be sent to the address set forth in the introductory paragraph, and specifically to the attention of: nCipher Security, Attn: Legal Department, 13800 Northwest 14<sup>th</sup> Street, Suite 130, Sunrise, FL 33323, U.S.A with a copy to [DPS-Legal@entrust.com](mailto:DPS-Legal@entrust.com).

## 19) MISCELLANEOUS

- a. **Assignment.** Neither party may assign these TERMS OF SERVICE or any right hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempt to assign any rights, duties or obligations, which arise under these TERMS OF SERVICE without such permission shall be void.
- b. **No Waiver.** Any waiver or forbearance shall be valid only if in writing. No waiver by a party of any default shall operate as a waiver of any other default or of the same default on a future occasion. No delay, course of dealing or omission on the part of one party in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by such party of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy.
- c. **Severability.** If any provision or provisions of these TERMS OF SERVICE shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, provided such provisions still express the intent of the parties. If the intent of the parties cannot be preserved, these TERMS OF SERVICE shall either be renegotiated or rendered null and void.

- d. Non-exclusive remedies. No remedy conferred by these TERMS OF SERVICE is intended to be exclusive of any remedy, except as expressly provided, and each and every remedy shall be cumulative and in addition to every other remedy given under these TERMS OF SERVICE or now or in the future existing in law or in equity or by statute or otherwise.
- e. Right of Third Parties. These TERMS OF SERVICE is not made for the benefit of, nor shall any of its provisions be enforceable by any person other than the parties to this Agreement and their respective successors and permitted assignees.
- f. Entire Agreement. These TERMS OF SERVICE represent the entire agreement between the parties in relation to the subject matter contained herein and supersede any previous agreement whether written or oral between the parties in relation to that subject matter. Accordingly, all other conditions, representations and warranties which would otherwise be implied (by law or otherwise) shall not form part of these TERMS OF SERVICE.