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nCipher Security

# nFinity Strategic Technology Partner Program

## Terms & Conditions of Membership



STRATEGIC TECHNOLOGY  
PARTNER PROGRAM

Release: 1.3

**nCipher Security Limited**

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**Definitions** Terms not otherwise defined in these nFinity Strategic Technology Partner Program Terms and Conditions of Membership shall have the meanings set forth in the Strategic Technology Partner Program Agreement entered into between the parties.

**Services** means nCipher’s maintenance and support services further described in the Welcome Pack document and subject to the [nCipher Global Support Terms and Conditions](#).

## 1. Membership

In return for Member’s participation in the nFinity Program and its commitment to enhancing its understanding of nCipher Products and enhancing the interoperability of nCipher Products and Member products, nCipher hereby grants Member membership in the nFinity Program, subject always to the terms and conditions of the nFinity Agreement.

## 2. nFinity Program

The nFinity Program provides a framework that is intended to facilitate communication between the parties and the collaboration and technical integration and interoperability of nCipher Products and Member products.

Member Benefits and Expectations	nCipher Benefits and Expectations
<p><b>Relationship Manager</b> – nCipher will assign an nCipher Relationship Manager who will be the focal point for Member’s interactions with nCipher pursuant to the nFinity Agreement.</p>	<p><b>Relationship Manager</b> – Member will assign a Member Relationship Manager who will be the focal point for nCipher’s interactions with Member pursuant to the nFinity Agreement.</p>
<p><b>nCipher Products</b> – nCipher will loan and/or license to Member, as applicable, the nCipher Products detailed in the nFinity Schedule.</p>	<p><b>Tested Integration</b> - Member will use the nCipher Products to integrate with and confirm interoperability of Member products with nCipher Products.</p>
<p><b>Maintenance and Support</b> – nCipher will provide the Services to Member in accordance with the details specified in the Welcome Pack, subject to the nCipher Global Support Terms and Conditions, and subject to payment of the fees as set out in the nFinity Schedule and/or any other relevant quotation.</p>	<p><b>Knowledge and Expertise</b> – nCipher will enhance its understanding of the type of support issues that may arise with customers who utilize Member products with nCipher Products.</p>
<p><b>Pre-Release Products</b> – Pursuant to a separate Beta test agreement, nCipher may loan beta (pre-release) versions of proposed nCipher Products to Member for evaluation, integration and interoperability testing purposes.</p>	<p><b>Insight and Understanding</b> – nCipher will receive information from Member that will confirm interoperability and will assist its efforts to improve customer satisfaction.</p>

Member Benefits and Expectations	nCipher Benefits and Expectations
<p><b>Market and Product Insight</b> – nCipher will from time to time facilitate access to its Product Management team members throughout the world to permit Member and nCipher to share knowledge, market and product insights, and perspectives.</p>	<p><b>Market and Product Insight</b> – Member will from time to time facilitate access to its Product Management team members throughout the world to permit Member and nCipher to share knowledge, market and product insights, and perspectives.</p>
<p><b>Product Roadmap and Technical Information</b> – nCipher will from time to time provide Member with information detailing the proposed future direction of nCipher Products that will help Member with its own product roadmap and product requirement planning efforts.</p>	<p><b>Product Roadmap and Technical Information</b> – Member will from time to time provide nCipher with information detailing the proposed future direction of Member products that will help nCipher with its own product roadmap and product requirement planning efforts.</p>
<p><b>Product Training</b> – nCipher will from time to time provide product training classes at nCipher selected or designated facilities that are intended to increase Member’s understanding of nCipher Products.</p>	<p><b>Effective Discussions</b> – nCipher expects to be able to engage in deeper and more complex technical discussions with Member.</p>
<p><b>Joint Marketing Activity</b> – nCipher and Member will consider opportunities for both companies to collaborate with respect to the promotion of the interoperability of their products including the issuance of possible case studies, joint press releases and participation in nCipher user group meetings.</p>	<p><b>Joint Marketing Activity</b> – nCipher and Member will consider opportunities for both companies to collaborate with respect to the promotion of the interoperability of their products including the issuance of possible case studies, joint press releases and Member participation in nCipher user group meetings.</p>

### 3. nCipher Products

A key element of the nFinity Program involves Member development of interoperability of Member products with nCipher Products. nCipher may loan and/or license to Member, as applicable, various nCipher Products (as specified and identified in the nFinity Schedule) free of charge, provided Member purchases the Services as specified herein (and further described in the Welcome Pack and as subject to the nCipher Global Support Terms and Conditions). Member agrees that its use of nCipher Products loaned and/or licensed hereunder shall be limited to interoperability and integration testing and nFinity Program purposes. nCipher Products that are provided pursuant to the nFinity Program may not be resold, licensed or distributed and may not be placed into, or used, for production purposes or to support or provide services to any third party not previously agreed in writing with nCipher.

Note: The nFinity Partner will only receive support for nCipher’s CodeSafe product if it has attended the related nCSD nCipher training course, obtained a Certificate of competency therefrom, and purchased Developer support (which may be subject to additional terms and conditions).

#### 4. Interpretation

For purposes of the nFinity Agreement, the terms “loan” or “buy/purchase” shall be deemed to apply to and include the terms “license” or “provision of a service” as the context so requires and nothing herein shall be deemed to establish or imply that a loan or purchase is a conveyance of the underlying intellectual property rights of the nCipher Products and no software or software component of an nCipher Product shall be deemed to have been purchased, bought or sold but rather shall only be deemed to have been licensed.

#### 5. Non-Exclusive Relationship

nCipher and Member agree that this is a non-exclusive relationship and that each party is an independent contractor with respect to the other and that nothing herein shall create an agency relationship, joint venture, partnership or other like arrangement between the parties. Neither party has the right or the authority to assume or create any obligation or responsibility on behalf of the other party.

#### 6. Non-Solicitation

Effective upon the Effective Date of the nFinity Agreement and for a period of two (2) years after the termination of the nFinity Agreement, nCipher and Member agree that neither party hereto nor its respective affiliates will, directly or indirectly, solicit or hire any employee of the other, including through third-party intermediaries, without the express written approval of the other, provided that general solicitation for employees or public advertising of employment opportunities shall not be restricted and provided further that neither party shall be restricted from hiring any such person who responds to any general solicitation or public advertising on his own initiative without solicitation by such party in contravention of this Section (Non-Solicitation).

#### 7. Loan

- a. Member shall pay to nCipher the replacement value of the loaned nCipher Products listed in the nFinity Schedule in the event of loss, destruction, or damage caused by Member’s misuse or loss of the equipment beyond economical repair (such damage to exclude ordinary wear and tear). Title to the loaned nCipher Products is and shall remain vested in nCipher. Member shall not incur any liens or encumbrances against the nCipher Products, or remove any markings from the nCipher Products or represent to any person that the loaned nCipher Products are Member’s property or that of a third party. Member assumes liability for loss of or damage to the loaned nCipher Products during the loan period and shall either maintain adequate insurance coverage naming nCipher as an additional insured and loss payee or, if self-insured, maintain reserves adequate to cover the replacement value specified in the nFinity Agreement. Such assumption of liability will start upon delivery of the loaned nCipher Products by nCipher to Member and will terminate when the loaned nCipher Products are returned in good condition to nCipher’s facility, normal wear and tear accepted.
- b. nCipher retains the right to demand by written notice to Member the return of any of the loaned nCipher Products within a reasonable time period. In the event that Member does not return said loaned nCipher Products within said timescales, Member shall be deemed to have elected to purchase the said nCipher Products. nCipher shall be entitled to payment of the replacement value of the said nCipher Products listed in the nFinity Agreement as consideration for the purchase. Title in the loaned nCipher Products shall remain vested in nCipher until all monies owed by Member to nCipher have been paid in full.
- c. Payment terms for any purchases in accordance with Section 7 (Loan) shall be thirty (30) days from date of invoice. Any sum that remains unpaid on the due date shall be subject to an interest charge at the rate of 4% per annum above the Base Rate of Barclays Bank plc, compounded monthly on all amounts overdue until payment thereof, such charge to run from day to day to accrue after as well as before any judgment.

#### 8. Confidentiality

8.1 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 “Recipient”)

knows or has reason to know should be treated as confidential, including the terms and conditions of this agreement.

8.2 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.

8.3 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.

8.4 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.

8.5 Term of Protections. Both parties agree to keep confidential any Confidential Information indefinitely subject to any such information becoming subject to Section 8.3 (Exceptions).