
Thales Terms and Conditions of Cloud HSM Under:

G-Cloud 13 Service Framework Agreement



THALES

© Thales UK Limited 2022

The copyright herein is the property of Thales UK Limited. It is not to be reproduced, modified, adapted, published, translated in any material form (including storage in any medium by electronic means whether or not transiently or incidentally), in whole or in part nor disclosed to any third party without the prior written permission of Thales UK Limited. Neither shall it be used otherwise than for the purpose for which it is supplied.

The information contained herein is confidential and, subject to any rights of third parties, is proprietary to Thales UK Limited. It is intended only for the authorised recipient for the intended purpose, and access to it by any other person is unauthorised. The information contained herein may not be disclosed to any third party or used for any other purpose without the express written permission of Thales UK Limited.

If you are not the intended recipient, you must not disclose, copy, circulate or in any other way use or rely on the information contained in this document. Such unauthorised use may be unlawful. If you have received this document in error, please inform Thales UK Limited immediately on +44 (0)118 9434500 and post it, together with your name and address, to The Intellectual Property Department, Thales UK Limited, 350 Longwater Avenue, Green Park, Reading RG2 6GF. Postage will be refunded.

THALES UK LIMITED

350 Longwater Avenue, Green Park, Reading, RG2 6GF

Tel: +44 (0)118 9434500

www.thalesgroup.com

CONTENTS

	Page No.
1 OVERVIEW	4
1.1 PURPOSE OF THE DOCUMENT	4
1.2 PRICES	4
1.3 GUARANTEES	4
1.4 DELAY	4
1.5 PERSONAL DATA	4
1.6 CONSULTING SERVICES	4
1.7 CLOUD HSM SERVICES	4
END USER LICENCE AGREEMENT	5

1 OVERVIEW

1.1 PURPOSE OF THE DOCUMENT

The purpose of this document is to set out the terms and conditions under which Thales UK Limited ("Thales") agrees to perform Services procured via the Digital Marketplace operated by the Crown Commercial Service. Terms and Conditions set out in this document complement those in the GCloud Framework Agreement and any associated Call-Off Agreement.

1.2 PRICES

All prices quoted in the Pricing Schedule assume payment in pounds sterling by BACS transfer (Thales does not accept the Government Procurement Card) no more than thirty (30) days from the date of invoice which shall be raised monthly in arrears and exclude Value Added Tax and all other taxes, fees, duties and tax levies related to the Services.

1.3 GUARANTEES

Thales does not offer Parent Company Guarantees under the GCloud Framework Agreement.

1.4 DELAY

Thales will exercise the degree of skill and diligence that would reasonably and ordinarily be expected in the performance of the services. However all dates contained in the Order Form are estimates, Thales shall not be responsible for the non-achievement of any particular date and time shall not be of the essence in this Call-Off Agreement

1.5 PERSONAL DATA

The Customer shall give Thales advance notice in the event that the services require Thales to process Personal Data such notice to be provided in the Order Form.

1.6 CONSULTING SERVICES

Any advice or recommendation provided by Thales is subjective and made on the basis of the information available at the time of production. Thales gives no warranty, express or implied with regard to the adequacy, accuracy or completeness of any such advice or recommendation

Documents generated by Thales and provided to Customer in performance of the Services under this Call-Off Agreement are for the sole and exclusive benefit of the Customer and may not be transferred to or used by others in whole or in part without the Thales' express written consent.

1.7 CLOUD HSM SERVICES

For the provision of Cloud HSM services Thales UK Limited will provide the services in accordance with the End User License Agreement as follows. A copy of which will also be issued on request.

END USER LICENCE AGREEMENT

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS END USER LICENSE AGREEMENT ("EULA"), UNLESS LICENSEE HAS A SEPARATE WRITTEN AGREEMENT WITH THALES OR WITH AN AUTHORIZED MANAGED SERVICE PROVIDER, THE USE OF THE PRODUCT IS SUBJECT TO THE TERMS AND CONDITIONS OF THIS EULA BETWEEN LICENSEE AND THALES.

THIS EULA (INCLUDING ANY ADDENDUM OR AMENDMENT TO IT WHICH MAY BE SUPPLIED TOGETHER WITH THE PRODUCT) AND ANY OTHER TERMS AND CONDITIONS PROVIDED BY THALES, IS THE ENTIRE AGREEMENT BETWEEN LICENSEE AND THALES 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 THIS EULA. IN THE EVENT OF CONFLICT BETWEEN THE TERMS OF THIS EULA AND ANY OTHER TERMS AS PROVIDED BY THALES, THE TERMS OF THIS EULA SHALL PREVAIL.

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

PLEASE READ THIS EULA CAREFULLY. THE TERMS OF THIS EULA 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 company, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such company, whether through ownership of voting securities, by contract or otherwise.

"Authorized Managed Service Provider" means any of Thales' authorized suppliers providing managed services, specifically information technology (IT) services that include storage, desktop and communications, mobility, help desk and technical support.

"Authorized Partner" means any of Thales' authorized distributors, resellers or business partners.

"Confidential Information" means non-public 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 competent evidence: (w) 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; (x) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party's Confidential Information; (y) 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 (z) 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.

"Effective Date" means the date Licensee accepts this EULA.

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

“Hardware” means, individually or collectively, the Thales’ branded hardware equipment products purchased from Thales (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 Thales from time to time in its sole discretion.

“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 applications 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 Thales or indirectly through a Thales Authorized Partner to license the Software from Thales.

“License Fees” means the license fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this EULA.

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

“Open Source Software” means any software generally distributed publicly in source code form under any license that is listed at <http://www.opensource.org/licenses> or that complies with the Open Source Definition available at <http://opensource.org/osd>. Open Source Material includes, without limitation, software that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla Public License, Apache License, or BSD License.

“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.

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

“Professional Services” means collectively the training, consulting, installation, migration and/or deployment services purchased by Licensee either from Thales or an Authorized Partner set forth in an Order Acknowledgement, including without limitation, deployment, Public Key Infrastructure services, Data Protection Manager replacement code signing, or developer services.

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

“Software” means the Thales software in executable 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 Thales may offer to Licensee or that Licensee is authorized to receive pursuant to the applicable EULA.

“Support Services” means the provision of technical support services for the Products purchased by Licensee either from Thales or an Authorized Partner subject to the support Level and support options purchased by Licensee set forth in the applicable Order Acknowledgement.

“SOW” means the statements of work executed by both Thales and Licensee and/or any applicable Order Acknowledgment that describes the specific Professional Services to be performed by Thales.

“Thales” means the Thales Affiliate as listed in Section 16 and as set forth in the Order Acknowledgment.

“Update” means changes to an existing Software product that add minor features, enhancements, or correct bugs. Updates are made available to Customers holding valid and current Support Contracts.

2) LICENSE GRANT

- a. Subject to Licensee’s timely payment of the License Fees and its compliance with the terms of this EULA, Thales hereby grants to Licensee a worldwide, non-exclusive, non-sublicensable and non-transferable limited license during the Term 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 this EULA.
- b. This license grants Licensee the right, exercisable solely by Licensee, to:
 - (i) Use and run the unmodified 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 and one copy of the Software solely for backup purposes, provided that Licensee shall not install or use any such copy other than if and for so long as the copy installed in accordance with the preceding sentence is inoperable and, provided, further, that Licensee uninstalls and otherwise deletes such inoperable copy(ies).
- c. This license only applies to the version of the Product shipped at the time of purchase. Any potential upgrades or Updates to the Product shall be licensed pursuant to the applicable Support Terms entered into by Licensee and Thales to that effect.
- d. All copies of the Software and the Documentation made by Licensee: (i) will be the exclusive property of Thales; (ii) will be subject to the terms and conditions of this EULA; 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 permit nor shall it, directly or indirectly:
 - (i) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2;
 - (ii) provide any other person, 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.

Licensee shall promptly notify Thales 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 Thales' written approval;
- (viii) use the Product on operating systems or technology platforms other than those designated by Thales 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 Thales's commercial disadvantage.

b. Thales 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 EULA.

4) CERTIFICATION AND AUDIT

- a. Upon Thales's written request, Licensee shall conduct a review of use of the Software and certify to Thales in a written instrument signed by an authorized representative of Licensee that it is in full compliance with this EULA and the Order Acknowledgment and, in particular, that it is not using more licenses than have been purchased. In the event of non-compliance, Licensee shall immediately remedy such noncompliance and provide Thales with written notice thereof. Licensee shall provide Thales with all access and assistance as Thales reasonably requests to further evaluate and remedy such noncompliance.
- b. During the Term, Thales may audit Licensee's use of the Software to ensure Licensee's compliance with this EULA and the Order Acknowledgment, provided that: (i) any such audit shall be conducted on not less than fifteen (15) days' prior notice to Licensee; and (ii) no more than one audit may be conducted in any twelve (12) month period except for good cause shown. Thales also may, in its sole discretion, audit Licensee's systems within twelve (12) months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Thales' personnel or agents conducting such audits and provide all reasonable access to records and information reasonably requested by Thales. Thales may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.
- c. If the audit or any of the measures taken or implemented under this Section 4, determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this EULA and the Order Acknowledgment then:
 - (i) Licensee shall, within thirty (30) days following the date of such determination by Thales, pay to Thales the retroactive License Fees for such excess use at the then-current rates for such licenses.
 - (ii) If the use exceeds the use permitted by this EULA and the Order Acknowledgment by more than ten percent (10%), Licensee shall pay Thales' reasonable costs incurred in conducting the audit.
 - (iii) If the use exceeds the use permitted by this EULA and the Order Acknowledgment by more than twenty percent (20%), Thales shall also have the right to terminate this EULA and the license granted hereunder, effective immediately upon written notice to Licensee.
- d. Thales's remedies set forth in this Section 4 are cumulative and are in addition to, and not in lieu of, all other remedies the Thales may have at law or inequity.

- e. Licensee must provide notice to Thales of the number of copies of the Software the Licensee has made upon Thales' written request, no more frequently than annually.

5) LICENSE FEES

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

6) SUPPORT AND SERVICES

The license granted hereunder does not entitle Licensee to any Software maintenance or Support Services unless Licensee purchases such maintenance and Support Services from Thales or an Authorized Partner. Except as otherwise agreed by Thales under a separate written agreement, including without limitation, the Services Agreement:

- a. Support and Maintenance Services are subject to the Support and Maintenance Services Terms and Conditions located at <https://www.thalesesecurity.com/about-us/legal> which are hereby incorporated by reference in full force and effect.
- b. Professional Services and any related SOW are subject to Thales General Terms and Conditions located at <https://www.thalesesecurity.com/about-us/legal> which are hereby incorporated by reference in full force and effect.

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 Thales if Licensee becomes aware of any infringement of the Thales' Intellectual Property Rights in the Software and shall fully cooperate with Thales, at Thales' sole expense, in any legal action taken by Thales to enforce its Intellectual Property Rights.
- b. This EULA shall not be considered to be a sale of any Intellectual Property Rights or other proprietary interests embodied in the Products or components thereof (or any copy, derivative work, Update, upgrade, 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 Thales, Thales Affiliates, and/or its licensors, and no title to any of Thales' Intellectual Property Rights is transferred to Licensee. Thales hereby reserves all rights not expressly granted to Licensee.
- d. The source code of the Software is a confidential trade secret of Thales.
- e. Thales 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 prompt written 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 EULA. 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 its 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 demonstrate by competent evidence: (i) was in the public domain at or subsequent to the time such portion was communicated to Receiving Party by Disclosing Party, through no fault of Receiving Party; or (ii) was known by the Receiving Party prior to its receipt of the Confidential Information from the Disclosing Party; or (iii) is furnished by a third party to the Receiving Party as a matter of right and without restriction on disclosure; or (iv) is independently developed by the Receiving Party without use of, or reference to any Confidential Information of the Disclosing Party; 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 this EULA 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 at its sole cost and expense 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, the parties agree that in the event of a breach of this Section 8, the Disclosing Party shall have the right to seek an injunction or other equitable relief to compel performance of all of the terms of this Section 8. The parties in no way waive their rights to contest any action on the merits or pursue any other remedy which may 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 Confidential Information that constitutes trade secrets, which shall be confidential until such time as such Confidential Information is no longer a trade secret through no fault of the Receiving Party.

9) WARRANTY

Except as otherwise agreed by Thales under a separate written agreement, the Products are warranted as per the warranty conditions set forth under the Thales Limited Warranty located at <https://www.thalesesecurity.com/about-us/legal> which is hereby incorporated by reference to this EULA.

10) GENERAL INDEMNIFICATION

- a. Each party shall defend and indemnify the other against any third-party claim for personal bodily injury, including death, to the extent the injury has been caused by the indemnifying party's gross negligence or willful misconduct.
- b. Licensee shall indemnify, defend and hold Thales and its officers, directors, 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 attorneys' fees, that are incurred by Thales arising out of any third-party claim relating to, arising out of or resulting from, whether based in contract or tort (including strict liability) any: (i) material breach of any of Licensee's obligations under Sections 2, 3, 4 and 8 of this EULA; (ii) use of the Products contrary to the Documentation; (iii) Licensee's failure to comply with any applicable laws, regulations, or codes in the performance of its obligations under this EULA, including without limitation, any export control laws; and (iv) negligent acts or omissions of Licensee, including reckless or willful misconduct in connection with the performance of its obligations under this EULA.
- c. The obligation of each party to indemnify the other pursuant to this Section 10 shall survive the expiration or termination of this Agreement.

11) INTELLECTUAL PROPERTY INDEMNIFICATION

- a. Subject to Section 12 (Limitation of Liability), Thales 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 Thales provided Product infringes a valid Canada, United States, European Union, Hong Kong or United Kingdom patent or copyright that are in effect as of the Effective Date, or misappropriates a third party's trade secret ("IP Claim"). Subject to Section 12 (Limitation of Liability), Thales will pay direct costs and direct monetary damages finally awarded against Licensee with respect to 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 Thales of any such action; (ii) Thales 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 Thales 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 IP Claim.
- c. Sole and exclusive remedy. Should such Products become, or in Thales' opinion, be likely to become the subject of an IP Claim or the use thereof become restricted by a court awarded injunction, Thales shall, at Thales' sole option and expense, 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 Products so that they are functionally equivalent but are no longer subject to an IP Claim; (iii) replace the Product with equally suitable substitute Product free from the IP Claim. If the foregoing options are not practical or available on commercially reasonable terms and conditions, as determined by Thales in its sole judgment, Thales may require the return of the Products and upon such return refund to Licensee the purchase price for the impacted Product based on a five (5) year straight line depreciation schedule, with such depreciation schedule to be deemed to have commenced on the applicable Product delivery date.
- d. Exceptions to Thales' indemnity. Thales shall have no liability to the Licensee under this IP Indemnity with respect to any IP Claim which is based upon or arises from: (i) Thales' compliance with any design, technical information, instructions or specifications furnished by the Licensee; (ii) the combination or utilization of Products furnished hereunder with products or services not provided by Thales, if the infringement would not have occurred in the absence of such combination; (iii) the modification of the Products furnished hereunder other than by Thales or its agents, servants or subcontractors; or (iv) the use of the Products contrary to the Documentation; (iv) the use of the Products in a country other than the country of ultimate destination of the Product; (v) the issuance, operation or use of the Products for the benefit of any third party other than the Licensee; and (vi) Licensee's continuing the allegedly infringing activity or using allegedly infringing versions of the Products, or any portion or component thereof, after (x) being notified thereof, and (y) being provided at no cost to Licensee, modifications to the Product that would have avoided the alleged infringement without significant loss of performance, functionality, or compatibility.
- e. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION OF THALES 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 OR ARISING BY CUSTOM OR TRADE USAGE, AND INDEMNITIES WITH RESPECT THERETO. NOTWITHSTANDING THE FOREGOING, ALL OPEN SOURCE SOFTWARE OR FREEWARE INCLUDED WITH THE PRODUCT IS PROVIDED WITHOUT ANY RIGHTS TO INDEMNIFICATION. IN NO EVENT SHALL THALES BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OR LOST PROFITS UNDER THIS SECTION 11, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The provisions of this section 11 shall survive the expiration or termination of this EULA.

12) LIMITATION OF LIABILITY

EXCEPT FOR CLAIMS INVOLVING BREACH OF THE CONFIDENTIALITY OBLIGATIONS (SECTION 8), AND CLAIMS FOR PERSONAL INJURY OR DEATH TO THE EXTENT CAUSED BY THALES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FOR FRAUD OR FRAUDULENT MISREPRESENTATION, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW, THALES' AGGREGATE LIABILITY IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THIS EULA OR THE USE OF THE PRODUCTS SHALL NOT EXCEED THE LESSER OF: (i) LICENSEE'S ACTUAL DIRECT DAMAGES; OR (ii) THE AMOUNTS PAID BY LICENSEE FOR THE PURCHASE OF THE PRODUCT GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CLAIM FIRST AROSE. THIS LIMIT, WHICH INCLUDES ALL COSTS AND FEES ARISING OUT OF ANY SUCH CLAIM, SHALL APPLY TO ANY AND ALL CLAIMS REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THALES (NOR THALES' LICENSORS OR AUTHORIZED PARTNERS) BE LIABLE UNDER THIS EULA 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 USE OF THE PRODUCT, OR COST OF COVER OR COST OF SUBSTITUTE PRODUCTS, WHICH ARISE OUT OF THALES' PERFORMANCE, NON- PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATION CONTAINED IN THIS EULA OR WITH USE, OR INABILITY TO USE, PRODUCT, REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED, EVEN IF THALES 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 EULA OR IN THE LIMITED WARRANTY AND WILL APPLY EVEN IF THE LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. IN ADDITION, THALES WILL HAVE NO LIABILITY TO LICENSEE UNDER THIS EULA, 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.

13) PERSONAL DATA

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

14) COMPLIANCE WITH LAWS

- a. Licensee 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 Licensee's performance under this EULA, 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 Licensee 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.
- c. In addition to any other indemnity under this EULA, Licensee shall indemnify and hold Thales harmless from and against any and all claims, damages and liabilities asserted by any person or entity against Thales in connection with any acts or omissions of Licensee's or third parties acting on Licensee's behalf which constitute a breach of this Section 14. Licensee's indemnification under this Section 14 shall include the payment of all reasonable attorneys' fees and other costs incurred by Thales or its Affiliates. This provision shall survive any termination or expiration of this EULA.

15) TERM AND TERMINATION

- a. Unless sooner terminated in accordance with other provisions of this EULA, this EULA 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 EULA if: (i) the other party is notified in writing that it is in material breach of any material obligation under this EULA; and (ii) such other party fails to remedy such breach within thirty (30) days following receipt of written notice specifying the default or ten (15) days following such notice if the breach is a failure by Licensee to pay any fees required.

- C. Thales may terminate this EULA if: (i) Licensee fails to make any payment when due; (ii) Licensee 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) Licensee 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, receiver, or custodian for a substantial part of its property.
- d. In the event of termination of this EULA for a material breach by Licensee and in addition to all other rights and obligations each party may have under this EULA: (i) the rights and licenses granted to the Products pursuant to this EULA shall automatically terminate; and (ii) Licensee shall, within thirty (30) days, ship to Thales or destroy (including purging from any system or storage media) all items in its possession proprietary to Thales, including but not limited to all Products, and upon request by Thales, an authorized representative of Licensee shall certify in writing to Thales that the Products and other Confidential Information of Thales have been returned to Thales or destroyed.
- e. Upon expiration or termination of this EULA 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

This Agreement shall be governed by and construed in accordance with the table below without regard to the application of conflicts of laws principles, and each party irrevocable submits to the specified jurisdiction.

Licensee Country	Thales Contracting Entity	Governing Law	Forum for Disputes
Austria, Germany, Switzerland	THALES DIS CPL DEUTSCHLAND GMBH	German Law	Munich Tribunal
United Kingdom	THALES DIS CPL UK LIMITED	English Law	Courts of London
Rest of the EMEA countries	THALES DIS TECHNOLOGIES BV	English Law	Courts of London
Israel	THALES DIS ISREAL LTD	Laws of England & Wales	Courts of London
Australia & New Zealand	THALES DIS CPL AUSTRALIA PTY LTD	Laws of New South Wales	Courts in Sydney, Australia
Japan	THALES DIS JAPAN KK	Laws of Japan	Courts in Tokyo, Japan
India	SAFENET INDIA PRIVATE LIMITED	Laws of India	Courts in New Delhi, India
United States of America and the Caribbean	Thales DIS CPL USA, Inc.	Laws of Texas (USA)	Courts of Travis County, TX
Brazil	THALES DIS BRASIL CARTÕES E SOLUÇÕES TECNOLOGICAS LTDA	Laws of Brazil	Courts in São Paulo, Brazil
Canada	THALES DIS CPL CANADA, INC.	Laws of the Province of Ontario	Courts of the Province of Ontario
Mexico & Rest of the LATAM countries (except as noted)	THALES DIS MEXICO SA DE CV	Laws of Mexico	Courts in Mexico City
Hong Kong, China and the rest of Asia (except as noted)	THALES DIS CPL HONG KONG LIMITED	Laws of Hong Kong	Courts in Hong Kong

17) FORCE MAJEURE

Thales 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 Thales' reasonable control including, without limitation: acts of God, fire, explosion, flood, storm, terrorist attack, civil war, commotion or riots, war (or threat of war), imposition of sanctions, embargoes or acts of government (including without limitation failure or delay to obtain export licenses), labor disputes, failure or delay of transportation, vendors or subcontractors, Thales inability to enter Licensee's premises to fulfill its obligations under this EULA when applicable, or any other similar cause or causes beyond the reasonable control of Thales. Time of performance of Thales' 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 EULA shall be in writing and shall be given: (a) by personal delivery to a party; or (b) by an internationally recognized overnight courier service offering guaranteed overnight delivery. Notice shall be effective upon receipt. All such communications shall be sent to the Licensee at the address for Licensee stated in the Order Acknowledgment, and in the case of Thales shall be addressed as follows: Thales DIS CPL, Attn: VP Legal, 9442 Capital of Texas Highway North, Suite 400, Austin, Texas 78759 U.S.A with a copy to legalcontracts.cpl-americas@thalesgroup.com. Either party may hereafter change its address for notice purposes by notice given to the other in accordance with the provisions of this paragraph.

19) ELLIPTIC CURVE CRYPTOGRAPHY ACTIVATION

If Licensee elects to purchase any Product containing elliptic curve cryptography software ("ECC"), it agrees that its use of ECC is limited to storing cryptographic keys and the performance of cryptographic operations in a hardware environment together with the management and issuance of digital certificates by a registration authority or certificate authority provided such certificates are either: (a) solely for the internal use of the registration authority; or (b) solely for the internal use of an enterprise that is hosted by a registration authority or certificate authority. No right or license is provided or granted to use ECC as part of a third party service provider for the purpose of acting as a commercial registration authority or certificate authority as part of a commercial service offered by an enterprise, either as a vendor of digital certificates or in the provisioning of certificates for use in a commercial service.

20) STANDARD PRODUCTS

All Products shall be Thales' standard Products. Unless specifically stated in a separate written agreement between Thales and Licensee, Thales shall have no obligation to create special or customized versions of any Product, or to ensure that the Products operate with Licensee's equipment, software, or systems. Thales reserves the right, without prior approval from or notice to Licensee, to make changes to any Product: (i) to meet published Documentation; (ii) that do not adversely affect the performance of the Product such that the functionality or performance is less than that specified in the published Documentation; or (iii) when required for purposes of safety. Thales also reserves the right to make changes to any Product without any obligation to make the same changes to Products previously ordered by or licensed to Licensee.

21) MISCELLANEOUS

- a. Assignment. Licensee may not assign this EULA or any of its rights hereunder without the prior written consent of Thales. Any attempt by the Licensee to assign any rights, duties or obligations, which arise under this EULA without such permission shall be void. Thales may assign this EULA and its rights hereunder or delegate its obligations in whole or in any part, upon thirty (30) days prior written notice to Licensee.
- 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. Limitation of Time. No action, regardless of form, which arises from or is related in any way whatsoever to this EULA may be commenced more than eighteen (18) months after such cause of action accrues, except that an action for nonpayment may be brought at any time within the governing statute of limitations.
- d. Severability. If any provision or provisions of this EULA 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, the EULA shall either be renegotiated or rendered null and void.
- e. Modifications. Any modifications to this EULA must be in writing and signed by a proper and duly authorized representative of the party to be bound thereby.
- f. Non-exclusive remedies. No remedy conferred by this EULA 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 this EULA or now or in the future existing in law or in equity or by statute or otherwise.
- g. Right of Third Parties. This EULA 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.
- h. Entire Agreement. This EULA represents the entire agreement between the parties in relation to the subject matter contained herein and supersedes 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 a part of this EULA.