

## THALES CYBER SECURITY PRODUCTS END USER AGREEMENT

### PART 1: GENERAL TERMS AND CONDITIONS

#### 1. ORDERS.

##### 1.1 Ordering process.

- 1.1.1 Products and Services shall be procured by End User pursuant to an Order, either directly from Thales or through an Authorized Third Party.
- 1.1.2 Except as may be set out in the Product Specific Terms, each Order shall correspond to a Quote and shall set out the relevant SKUs and Licensed Volume, where each SKU represents a separate contractual entitlement to a Product or Service.
- 1.1.3 Thales shall be free to accept or reject an Order in its absolute discretion, without liability of any kind. An Order shall only become legally binding on Thales when it has been accepted in writing by Thales.
- 1.1.4 Each Order, together with the corresponding Quote, shall form a part of, be incorporated by reference into, and be subject to, this Agreement. To the extent there is any inconsistency between this Agreement and a provision in an Order, this Agreement shall prevail, except where the relevant provision(s) explicitly and expressly refers to and states that such provision(s) of the Order shall override the conflicting provision(s) of this Agreement and the Order has been signed by a duly authorized representative of Thales and End User.
- 1.1.5 All Orders are non-cancellable and non-refundable. Any amendment, cancellation or other change to an Order is only binding on Thales if signed by an authorized representative of Thales. End User acknowledges that administrative fees may apply to any such change, such as restocking fees.
- 1.1.6 Thales may in its sole discretion agree in writing to be bound by Quote-specific terms and conditions. Any Quote-specific terms which purport to amend this Agreement must be signed by an authorized representative of Thales.
- 1.1.7 Thales shall retain a purchase money security interest in all Appliances or Hardware delivered hereunder until all associated invoices therefor are paid in full. End User shall execute any documentation reasonably requested to enforce such security interest.
- 1.1.8 End User acknowledges that Products may be subject to a stop-ship restriction. Thales will provide reasonable notice to End User of such restriction; however, Thales does not guarantee the resolution of the restriction, nor that the Order will be fulfilled. Any Order for Products subject to a restriction will be fulfilled subject to availability in spite of the day and time of the Order. Any dates provided by Thales in connection with the restriction or shipment status are subject to change at any time by Thales. In no event will Thales be liable for any damages whatsoever related to Product availability, shortages or shipment delays in connection with the fulfilment of the Order.

##### 1.2 Direct Orders.

For Orders issued to Thales directly by End User (“**Direct Orders**”), End User shall pay the applicable fees directly to Thales in accordance with Section 2 of Part 1 of this Agreement.

##### 1.3 Ordering via an Authorized Third Party.

- 1.3.1 For Orders issued to Thales through an Authorized Third Party, End User shall pay the Authorized Third Party the applicable fees in accordance with the terms agreed between End User and the Authorized Third Party (and not in accordance with Section 2 of Part 1 of this Agreement).

- 1.3.2 The terms governing the use of Product and Services ordered through an Authorized Third Party shall be those set out in this Agreement.
- 1.3.3 Authorized Third Parties are not permitted to bind Thales to any terms other than those expressly set out in this Agreement. Any term, representation, warranty or other statement communicated to End User by an Authorized Third Party as part of the procurement of the Products or Services, and that is not expressly set out in this Agreement, shall not be binding upon Thales.
- 1.3.4 In the event of a conflict between this Agreement and the terms agreed between End User and the Authorized Third Party, as between Thales and the End User, this Agreement shall take precedence.
- 1.3.5 Should a service credit, refund or other payment become due to End User pursuant to this Agreement in respect of an Order issued through an Authorized Third Party, End User acknowledges and agrees that unless the Authorized Third Party agrees otherwise:
- (a) such service credit, refund or other payment shall be provided by Thales to the relevant Authorized Third Party; and
  - (b) End User may only obtain such service credit, refund or other payment from that Authorized Third Party.
- 1.3.6 Should an End User fail to pay any amount to an Authorized Third Party in respect of an Order, End User agrees that Thales may suspend or terminate an Order.

#### **1.4 Exceeding the Licensed Volume.**

If End User exceeds the Licensed Volume set out in the Order for any applicable SKU, End User shall pay Thales, or the relevant Authorized Third Party if applicable, the additional fees set out in this Agreement, the Order, or the Documentation. In the absence of a documented rule specifying a rate for additional fees, the End User shall pay any additional fees at Thales' then-current rate.

## **2 PAYMENTS TO THALES.**

### **2.1 Payment terms.**

- 2.1.1 Any fees payable to Thales under this Agreement are non-refundable.
- 2.1.2 All fees shall be payable in the currency specified in the Quote.
- 2.1.3 All payments from End User to Thales shall be payable by End User net thirty (30) days after the date of invoice.
- 2.1.4 If End User is thirty (30) days or more overdue on any payment owed to Thales pursuant to this Agreement, in addition to any of its other rights or remedies, Thales reserves the right to charge a late fee on any overdue amounts at a rate equal to 1.5% per year or the highest rate permitted by applicable law or regulation, whichever is lower. End User shall reimburse Thales for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting overdue amounts pursuant to this Agreement.
- 2.1.5 Upon termination or expiry of End User's rights with respect to a particular Product or Service pursuant to this Agreement, any amounts owed to Thales under the Agreement prior to such termination or expiry will be immediately due and payable.

### **2.2 Taxes.**

- 2.2.1 End User shall pay all sales, use, value-added and other taxes, tariffs and duties of any type and any other governmental charges assessed against End User. Fees are exclusive of all taxes and do not include freight, insurance costs or shipping handling fees.

- 2.2.2 Should End User be required under any law or regulation of any governmental entity or authority to withhold or deduct any portion of the payments due to Thales, then End User shall increase the sum payable to Thales by the amount necessary to yield to Thales an amount equal to the sum it would have received had no withholdings or deductions been made.

**2.3 Invoicing.**

Thales may invoice all fees for Products and Services in full upon Thales' acceptance of an Order, unless the applicable Quote states otherwise. Fees where the Licensed Volume has been exceeded shall be invoiced in accordance with Thales' then-current policy.

**2.4 No set-off.**

Neither party shall have any right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other party under this Agreement for any reason.

**3 TERM; TERMINATION.**

**3.1 Term.**

- 3.1.1 The term of each Order shall commence on the date the Order is accepted by Thales and shall continue in effect for such time as End User continues to have the right to use the Products and / or receive the Services.
- 3.1.2 The term of this Agreement shall commence upon the Effective Date and shall continue in effect until this Agreement is terminated in accordance with its terms.

**3.2 Termination.**

- 3.2.1 Either party shall be entitled to terminate this Agreement at any time upon notice in writing to the other if the other party:
- (a) commits a material breach of this Agreement which is not capable of remedy;
  - (b) commits a material breach of this Agreement that is capable of remedy but which remains un-remedied for more than thirty (30) days after such notice; or
  - (c) makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event.

**3.3 Consequences of termination.**

- 3.3.1 Upon termination or expiration of this Agreement: (a) Thales shall cease to provide the Products and Services, (b) the rights and licenses granted to End User under this Agreement shall terminate, (c) End User shall, within thirty (30) days, ship to Thales, or, where intangible, destroy (including purging from any system or storage media), all items in its possession which are proprietary to Thales, and (d) each party shall promptly return or destroy the other party's Confidential Information in accordance with the provisions of Section 4.2.3 of Part 1 of this Agreement.
- 3.3.2 Unless expressly stated in this Agreement or agreed to in writing by the parties, termination of any Order shall not affect any other Order. Upon termination of this Agreement, however, all Orders shall automatically terminate.
- 3.3.3 Upon termination or expiration of End User's rights with respect to a particular Product or Service pursuant to this Agreement, Thales shall cease to provide such Product or Service, and the applicable rights and licenses granted

to End User with respect to such Product or Service under this Agreement shall automatically and immediately terminate.

3.3.4 Termination shall not relieve End User of the obligation to pay any fees accrued or payable to Thales or an Authorized Third Party prior to the effective date of expiration or termination.

3.3.5 The following sections shall survive any termination or expiration of this Agreement: Sections 2, 3.3, 4, 5 (for one year after termination of the Agreement), 6, 7, 8, 9 and 10 of this Part 1; Section 1.2, of Sub-part 2.1; Sections 1.2 and 2 of Sub-part 2.2; Section 2.4 of Sub-part 2.3; Sections 3.2 and 5 of Sub-part 2.4; Sections 2.1 and 5 of Sub-part 3.1, Sections 1.2 and 5.2.2 of Sub-part 3.2, Sections 4.2 and 6 of Sub-part 3.3; Section 2.1 and 5 of Sub-part 4.1; Sections 1.2 and [4]of Sub-part 4.2; Sections 3.2 and 5 of Sub-part 4.3.

#### 3.4 **Temporary suspension and delay.**

3.4.1 Thales has the right, without liability to End User, to suspend in whole or in part End User's rights to access or use any Products or Services immediately upon notice if:

- (a) End User is in breach of its payment obligations to Thales, or to an Authorized Third Party, in respect of any Order until any overdue amounts are paid in full; or
- (b) End User makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event.

3.4.2 If Thales suspends access or use pursuant to Section 3.4.1 of Part 1 of this Agreement, End User shall:

- (a) remain responsible for all fees (to Thales and/or an Authorized Third Party) during the period of suspension; and
- (b) not be entitled to any service credits for any period of suspension.

3.4.3 Without liability to End User or any other person and without prejudice to any other remedy, Thales may withhold or delay Delivery of any Order if End User is late in performing any payment obligation pursuant to this Agreement or is otherwise in default under this Agreement.

### 4 **CONFIDENTIALITY.**

#### 4.1 **Confidential Information.**

4.1.1 As used in this Agreement, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

4.1.2 Thales' Confidential Information includes, without limitation, the Products and Services, their performance (including any benchmarking information), any compliance certifications or attestation reports in respect of the Products and Services and Thales' pricing of the Products and Services. The source code of any Software is a confidential trade secret of Thales.

4.1.3 Confidential Information shall not include any information that:

- (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;

- (b) was rightfully known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party (as can be demonstrated by reasonable supporting evidence);
- (c) was independently developed by the Receiving Party without access of or reference to the Disclosing Party's Confidential Information or any breach of any obligation owed to the Disclosing Party (as can be demonstrated by reasonable supporting evidence); or
- (d) is received from a third party which is not under an obligation of confidence or non-use with respect to such information and without breach of any obligation owed to the Disclosing Party (as can be demonstrated by reasonable supporting evidence).

## 4.2 **Treatment of Confidential Information.**

### 4.2.1 The Receiving Party agrees that it shall:

- (a) use Confidential Information for the sole purpose of exercising or enforcing its rights and performing its obligations under this Agreement;
- (b) divulge and allow access to Confidential Information only to those of its employees, directors, independent consultants or agents who have a need to know such Confidential Information and who are bound by professional duty or in writing (in advance) to confidentiality and non-use obligations at least as protective of such information as this Agreement;
- (c) not disclose any Confidential Information to any third party except as described in Section 4.2.1(b) of Part 1 of this Agreement; and
- (d) use at least the same degree of care in protecting the Disclosing Party's Confidential Information as the Receiving Party uses to preserve and safeguard its own valuable proprietary information, but in any event, no less than a reasonable standard of care.

### 4.2.2 The Receiving Party shall notify and cooperate with the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information of the Disclosing Party. The Receiving Party may disclose Confidential Information to comply with an order from a court of competent jurisdiction or with a mandatory requirement of a governing regulatory body, provided such party, to the extent permitted by law and as soon as reasonably practicable under the circumstances, informs the Disclosing Party and allows the Disclosing Party the opportunity to object to the disclosure order or to take action to preserve the confidentiality of the information. The Receiving Party shall cooperate with the Disclosing Party in such party's reasonable efforts to limit the disclosure of the information.

### 4.2.3 Upon termination of this Agreement, the Receiving Party shall:

- (a) immediately cease all use of the Disclosing Party's Confidential Information; and
- (b) if requested by the Disclosing Party, either promptly destroy (and permanently erase all Confidential Information from its computer systems) or return all Confidential Information of the Disclosing Party; and
- (c) provided, that the Receiving Party may retain a reasonable number of copies of the Confidential Information (and any materials embedding the same) for the sole purposes of satisfying legal or regulatory requirements regarding record and data retention that the Receiving Party is obligated to comply with, enforcing this Agreement and/or archiving consistent with good business practices. Retained copies of Confidential Information remain subject to the confidentiality and restricted use provisions of this Agreement.

- 4.2.4 If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 4, the Disclosing Party may have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts.

## **5 AUDIT.**

### **5.1 Thales right to audit.**

- 5.1.1 Thales shall have the right during the term of this Agreement, and for one year thereafter, to audit and/or inspect End User's systems and records to:

- (a) verify End User's use of the Products and Services; and/or
- (b) otherwise validate compliance with this Agreement.

- 5.1.2 Audits shall be carried out on reasonable notice by Thales and/or its selected external auditor. End User shall provide Thales and/or its selected external auditor with access to its relevant systems and records. Thales shall pay the expenses of the audit, unless such audit reveals an underpayment of five percent (5%) or more or any other material breach of this Agreement, in which case End User shall promptly pay Thales the reasonable fees and expenses incurred by Thales for such audit. End User shall promptly pay Thales or an Authorized Third Party, as applicable, the amount of any underpayment (and correct any other non-compliance) revealed by such audit.

### **5.1.3 Audits of Thales.**

Thales will audit the security of the computers and computing environment that it uses to provide the relevant Products and Services. Where Thales is auditing to a standard or framework which provides for audits, an audit will be performed at least annually. Each audit will be performed according to the requirements of the regulatory or accreditation body governing the control standard or framework and will be performed by qualified, independent, third party auditors selected by Thales at Thales' expense. End User shall be entitled to request a copy of the audit reports products by such third party auditors. Thales may redact certain parts of an audit report at its discretion. All information provided or otherwise accessed pursuant to an audit or an audit report shall be deemed Confidential Information. Where a customer is subject to jurisdiction of a governmental regulator, and it is a requirement pursuant to the governing law of this Agreement that Thales cooperates with the requests of such governmental regulator directly, at End User's cost, Thales shall cooperate with the requests of such governmental regulator.

## **6 DISCLAIMER OF WARRANTIES.**

**EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED AND/OR LICENSED "AS-IS" AND THALES MAKES NO ADDITIONAL WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THALES MAKES NO WARRANTY THAT USE OF THE PRODUCTS OR SERVICES SHALL BE UNINTERRUPTED, ERROR-FREE OR DEFECT-FREE, OR AVAILABLE AT ALL TIMES. THALES SPECIFICALLY DISCLAIMS, ON BEHALF OF ITSELF AND ITS PARTNERS AND SUPPLIERS, ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING ANY WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.**

## **7 LIMITATION OF LIABILITY.**

- 7.1 **SUBJECT TO SECTION 7.6, IN NO EVENT SHALL THALES' (AND ITS AUTHORIZED THIRD PARTIES' OR SUPPLIERS') TOTAL AND AGGREGATE LIABILITY ARISING FROM ALL CLAIMS UNDER OR RELATED TO THIS AGREEMENT (INCLUDING ALL PRODUCTS AND SERVICES HEREUNDER) EXCEED THE TOTAL AMOUNTS PAID BY END USER TO THALES OR AUTHORIZED THIRD PARTY (IF APPLICABLE) FOR THE PRODUCTS OR SERVICES IN RESPECT OF THE TWELVE (12) MONTH PERIOD IMMEDIATELY**

**PRECEDING THE FIRST EVENT GIVING RISE TO THE APPLICABLE CLAIM, LESS ALL AMOUNTS PAID BY THALES TO END USER FOR ALL PAST CLAIMS OF ANY KIND ARISING UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THALES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**

- 7.2 SUBJECT TO SECTION 7.6, IN NO EVENT SHALL THALES (OR ITS AUTHORIZED THIRD PARTIES' OR SUPPLIERS') HAVE ANY LIABILITY IN CONNECTION WITH THE PRODUCTS, SERVICES OR THIS AGREEMENT FOR ANY LOST PROFITS OR REVENUES, LOSS OF DATA OR USE OF THE PRODUCT(S) OR SERVICE(S), GOODWILL, REPUTATION, INTERRUPTION OF THE SERVICES, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**
- 7.3 END USER ACKNOWLEDGES AND AGREES THAT THALES HAS OFFERED THE PRODUCTS AND SERVICES, AND SET PRICES IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT, THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK, AND THAT THE WARRANTY DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET OUT IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN END USER AND THALES. THALES WOULD NOT BE ABLE TO PROVIDE THE PRODUCTS OR SERVICES ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.**
- 7.4 SUBJECT TO SECTION 7.6, EXCEPT FOR: (I) END USER'S BREACH OF ITS PAYMENT OBLIGATIONS TO THALES OR ANY AUTHORIZED THIRD PARTIES, AND/OR (II) END USER'S BREACH OF SECTION 8.2 (LICENSES AND USE RESTRICTIONS) OR SECTION 10.1 (EXPORT), IN NO EVENT SHALL END USER'S TOTAL AND AGGREGATE LIABILITY ARISING FROM ALL CLAIMS UNDER OR RELATED TO THIS AGREEMENT (INCLUDING ALL PRODUCTS AND SERVICES HEREUNDER) EXCEED THE TOTAL AMOUNTS PAID BY END USER TO THALES FOR THE PRODUCTS OR SERVICES IN RESPECT OF THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO THE APPLICABLE CLAIM, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**
- 7.5 SUBJECT TO SECTION 7.6, EXCEPT FOR: (I) END USER'S BREACH OF ITS PAYMENT OBLIGATIONS TO THALES OR ANY AUTHORIZED THIRD PARTIES, AND/OR (II) END USER'S BREACH OF SECTION 8.2 (LICENSES AND USE RESTRICTIONS) OR SECTION 10.1 (EXPORT), IN NO EVENT SHALL END USER HAVE ANY LIABILITY IN CONNECTION WITH THIS AGREEMENT TO THALES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**
- 7.6 NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS EITHER PARTY'S LIABILITY:**
- 7.6.1 FOR FRAUD OR FRAUDULENT MISREPRESENTATION;**
- 7.6.2 FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR THAT OF ITS EMPLOYEES OR AGENTS OR SUBCONTRACTORS; OR**
- 7.6.3 TO THE EXTENT SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED BY LAW.**
- 8 PROPRIETARY RIGHTS.**

## 8.1 **Reservation of Rights.**

Subject to the limited rights expressly granted to End User under this Agreement, Thales reserves and, as between the parties, shall solely own all rights, title and interest in and to the Products (excluding any Appliances or Hardware sold to End User pursuant to the terms of this Agreement) and Services, including all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing, and to the extent any such rights vest in End User, End User shall automatically and irrevocably assign such rights to Thales. No rights are granted to End User hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set out in this Agreement.

## 8.2 **License and use restrictions.**

End User may not (and may not permit any third party to) directly or indirectly:

- (a) modify, adapt, incorporate or use in any other works, translate, reverse engineer (except to the limited extent applicable statutory law expressly prohibits reverse engineering restrictions), decompile, disassemble, or otherwise attempt to derive source code from or create derivative works based on the Products or Services;
- (b) make unauthorized copies of the Products or Services;
- (c) disclose, distribute, transfer or market the Products or any material associated with the Product or Services to third parties;
- (d) remove or modify any proprietary notices, labels, or marks on or in any copy of the Products or any material associated with the Product or Services;
- (e) distribute, sell, sublicense, rent, lease or use the Products or Services (or any portion) for time sharing, hosting, service provider or other computer services to third parties or otherwise make the functionality of the Products or Services available to third parties;
- (f) publicly disseminate reports generated by the Products / Services or Product / Service performance information or analysis (including, without limitation, benchmarks and performance tests) from any source relating to the Products;
- (g) access the database or any other third party product that is embedded in the Products with applications (including spiders, robots, crawlers or any other similar data mining tools) other than the Products;
- (h) use the Products / Services or reports generated by the Products / Services in End User's products or services or in its marketing of products or services to third parties;
- (i) use the Product / Services or reports generated by the Products / Services to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Products / Services;
- (j) use the Products / Services to store, transmit, upload or post any infringing or otherwise unlawful or tortious material or any data for which it does not have the necessary consents or rights to store, transmit, upload or post (as applicable) in connection with the Products;
- (k) use the Products / Services in a way that does not comply with applicable law; or
- (l) use the Products / Services other than as expressly authorized in this Agreement.

### 8.3 **Feedback.**

From time to time End User may provide Thales with suggestions, feature requests, comments and feedback with regard to the Products and Services (collectively, "**Feedback**"). End User grants Thales a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Thales' business purposes, including, without limitation, the testing, development, maintenance and improvement of Thales' Products and Services.

## 9 **INDEMNIFICATION**

9.1 Subject to Sections 9.2 to 9.4 (inclusive) of Part 1 of this Agreement, Thales shall defend End User against any third party claim that the Products as provided infringe any patent, or any copyright, or misappropriates any third party trade secrets ("**Infringement Claim**") and indemnify End User from the resulting costs and damages finally awarded against End User to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed to in a settlement; provided that End User:

- (a) promptly notifies Thales of any and all threats, claims and proceedings involving such Infringement Claim;
- (b) gives reasonable assistance in response to Thales' request for assistance; and
- (c) grants Thales sole control over defense and settlement of the Infringement Claim.

9.2 Section 9.1 of Part 1 of this Agreement shall not apply to any Infringement Claim or associated costs or damages arising out of or in connection with the Products or portions or components:

- (a) that are modified by any party other than Thales or its authorized agents;
- (b) that are combined with other products, services, processes, software, content, data or materials, where the alleged infringement relates to such combination or such other products, services, processes, software, content, data or materials;
- (c) where modifications that would have avoided the alleged infringement have been made available to End User, and End User continues the allegedly infringing activity after being notified of it by Thales; or
- (d) where End User's use of such Products is not strictly in accordance with this Agreement.

9.3 In the event that a Product is held to or believed by Thales to infringe or misappropriate any Intellectual Property Rights of a third party, Thales at its discretion, shall have the option to:

- (a) modify the allegedly infringing Product to be non-infringing;
- (b) obtain for End User a license to continue using the Product; or
- (c) request the return of or terminate access to the infringing Product (as the case may be) and upon such return or termination, refund to End User (or have the applicable Authorized Third Party refund) the amount of fees paid for such infringing Product for any unused, prepaid portion of the term remaining as of the effective date of termination.

9.4 **THIS SECTION 9 SETS OUT THALES' SOLE OBLIGATION AND END USER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF AN INFRINGEMENT CLAIM AND RELATED VIOLATIONS OF THIRD PARTY RIGHTS.**

## **10 GENERAL.**

### **10.1 Export.**

- 10.1.1 In connection with its actions under or related to the Agreement, End User shall comply with all applicable export controls and economic sanctions (the “**Export Laws**”), including, as applicable, the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, export controls and restrictive measures maintained by the UK Government and EU.
- 10.1.2 End User acknowledges that the Products and Services contain encryption technology that is subject to export restrictions by the U.S. government and import restrictions by certain other governments. End User shall not directly or indirectly and shall not allow any third-party to remove or export, or allow the export or re-export of, any part of the Products or Services or any direct product of the Products and Services:
- (a) into (or to a national or resident of) any territory to the extent the U.S. government or any agency of it restricts export or re-export to such countries;
  - (b) to anyone on the U.S. Commerce Department’s Table of Denial Orders or U.S. Treasury Department’s list of Specially Designated Nationals;
  - (c) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency of it requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval;
  - (d) to the extent the Products or Services fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 or No 756/2006 (i) to the Russian Federation, Belarus or for use in the Russian Federation, Belarus or in the Ukrainian territories controlled by the Russian Federation, or (ii) to any individual or entity subject to E.U. sanctions or restrictive measures, as well as to any entity owned, controlled or acting for individuals or entities subject to EU sanctions or restrictive measures; or
  - (e) otherwise in violation of any export or import restrictions, laws or regulations of any U.S. or other government agency or authority.
- 10.1.3 End User shall immediately notify Thales of any violation of Section 10.1.2 of Part 1 of this Agreement.
- 10.1.4 End User agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products and Services are restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government.
- 10.1.5 End User shall obtain and bear all expenses relating to any necessary licenses and/or exemptions with respect to the export of all Thales products from the U.S., from any EU member state or from any other applicable country where End User is located to any location and shall demonstrate to Thales compliance with all applicable laws and regulations prior to delivery thereof by Thales.
- 10.1.6 End User shall not to engage in any activity related to this Agreement that would cause the other Thales to violate France, E.U., U.S. or relevant foreign sanctions programs.
- 10.1.7 End User represents that it will not offer employment, continue to employ, engage or contract with an individual or entity who is included on applicable French, E.U., U.S. or foreign sanctions lists, including those maintained by OFAC of specially designated nationals and blocked persons subject to financial sanctions. End User shall inform Thales immediately in the event that any representatives (i.e. employees, officers, representatives and advisers)

appear on any sanctions list, and will immediately remove such representatives from performing work with Thales products or applications.

10.1.8 End User agrees to indemnify and hold Thales, its partners and suppliers harmless against any claims, losses or expenses arising out of End User's breach of this Section 10.1.

10.1.9 Any breach of this Section 10.1 shall be deemed a material breach which is not capable of remedy.

## 10.2 **Anti-corruption**

End User shall comply with any and all applicable anti-corruption and influence-peddling laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010 and French law No. 2016-1691 of 9 December 2016 on transparency, anti-corruption and the modernisation of the economy (the "**Sapin II Law**"). Without limiting the foregoing, End User shall not, directly or indirectly, make, promise to make, or accept any payment, promise, donation, gift, offer or transfer of anything of value in connection with this Agreement to: (i) anyone working in an official capacity for a government, government entity (including employees of government owned or controlled corporations) or public international organization; (ii) any political party, party official, or candidate for political office; (iii) an intermediary for payment to any of the foregoing; (iv) any officer, director, employee of any actual or potential customer of End User; (v) any officer, director or employee of Thales or any of its affiliates; or (vi) any other person or entity if such payment, offer or transfer would violate the laws of the country in which made or which would be linked to a misuse that would be made by that person, or that has already been made by that person, of his/her real or supposed influence with a view to obtaining, for itself or for others, a distinction, a job, a contract or any other favourable decision. It is the intent of the parties that no payments, offers or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining or retaining business or directing business to any person or entity. Neither party shall solicit or accept for itself any offer, promise, donation, gift or benefit of any kind, for the purpose of misusing its influence with a view to making or obtaining any favourable decision. Each of the Parties declares that it has implemented a compliance program that meets the requirements of the Sapin II Law, insofar as it is subject to it.

## 10.3 **Force Majeure.**

Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a party's payment obligations) if the delay or failure is due to events which are beyond the reasonable control of the parties, including, but not limited to strikes, pandemics, epidemics, public health emergencies, blockade, government-imposed travel restrictions and quarantines, war, terrorism, riots, natural disasters, refusal of license by the government or other governmental agencies, communications failure, and internet and power outages or disruptions.

## 10.4 **Governing Law; Jurisdiction.**

10.4.1 If End User's address on the first page of this Agreement is in the United States, Canada or elsewhere in the Americas, this Agreement will be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to its conflict of laws principles. Any litigation relating to the formation, interpretation or alleged breach of this Agreement must be brought exclusively in the state and federal courts having jurisdiction in the city of Wilmington, Delaware, and End User irrevocably consents to the jurisdiction of and venue in such courts.

10.4.2 If End User's address on the first page of this Agreement is outside of the Americas, this Agreement will be governed by and construed in accordance with the laws of England and Wales, without giving effect to conflict of laws principles that would result in a different law being applicable. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

**10.4.3 EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

10.4.4 The parties agree that in all cases the United Nations Convention on Contracts for the International Sales of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement.

**10.5 End User Mention.**

End User consents to Thales using its name and logo to identify End User as a customer of Thales, including use on Thales' website and other marketing materials. Any use shall be subject to Thales complying with any guidelines that End User may deliver to Thales from time to time regarding the use of its name and logo. This consent terminates upon termination of this Agreement.

**10.6 Independent contractors.**

The parties are independent contractors under this Agreement and nothing in this Agreement authorizes a party to act as an agent of the other or bind the other to any transaction or agreement.

**10.7 Assignment.**

This Agreement shall bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or transfer this Agreement in whole or in part by operation of law or otherwise, without the other party's prior written consent (such consent not to be unreasonably withheld or delayed). Any attempt to transfer or assign this Agreement without such written consent shall be null and void. Notwithstanding the foregoing, however, Thales may assign this Agreement without consent to a Group Company or to the acquiring or surviving entity in a merger or acquisition in which Thales (or a subsidiary, division or group of Thales) is the acquired entity (whether by merger, reorganization, acquisition or sale of stock), or to the purchaser in connection with the sale of all or a portion of Thales' assets, without written consent. Additionally, End User grants Thales a general written authorisation to engage subcontractors.

**10.8 Third party rights.**

The parties agree that there shall be no third party beneficiaries to this Agreement, except to the extent set out in the Third Party Terms that an entity is an intended third party beneficiary of this Agreement (which may be amended without the consent of such beneficiaries).

**10.9 Waiver and remedies.**

10.9.1 Except as specifically provided in this Agreement, the exercise by either party of any rights and remedies under this Agreement (including any right to terminate this Agreement) shall be without prejudice to its other remedies under this Agreement or otherwise.

10.9.2 A waiver of any breach under this Agreement shall not constitute a waiver of any other breach or future breaches.

10.9.3 Except as otherwise set out in this Agreement:

- (a) no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver; and
- (b) no single or partial exercise of any right, remedy, power, or privilege pursuant to this Agreement shall preclude any other or further exercise of it or the exercise of any other right, remedy, power, or privilege.

**10.10 Amendments.**

This Agreement may be modified or waived only in a written instrument signed by duly authorized representatives of both parties.

#### **10.11 Counterparts.**

This Agreement may be executed in counterparts, including by transmission in.pdf or other means of electronic transmission, each of which shall constitute an original and together shall constitute one instrument.

#### **10.12 Notices.**

10.12.1 All notices, requests, legal proceedings, demands and other communications pursuant to this Agreement shall:

- (a) if issued to Thales: be in writing by major commercial delivery service, delivery verified, to the Thales DIS CPL, Inc. headquarters address;
- (b) if issued to End User: be in writing, (i) by email to the most recent address on Thales' files; or (ii) by major commercial delivery service, delivery verified, to the most recent address on Thales' files; and
- (c) with respect to either party, be deemed given twenty four (24) hours after it is sent: (i) by a major commercial delivery service, delivery verified; or (ii) to the most recent email address in Thales' files.

10.12.2 Either party may, by like notice, specify or change an address to which notices and communications shall from then on be sent.

#### **10.13 Entire Agreement.**

10.13.1 Along with the relevant Order in respect of the Products and / or Services to which it relates, this Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written between the parties with respect to said subject matter, including any prior non-disclosure agreements.

10.13.2 Without limiting the generality of Section 10.15.1 of Part 1 of this Agreement, any terms and conditions contained in any purchase order, vendor / supplier registration form, questionnaire or any other form or document that End User may provide to Thales in connection with this Agreement and/or the Products or Services shall be void, regardless of whether Thales fails to object to such terms and whether such forms were provided prior to or after the Effective Date.

10.13.3 Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in this Agreement). Each party waives all rights and remedies which, but for this Section 10.15, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance.

10.13.4 Nothing in this Agreement limits or excludes any liability for fraud.

#### **10.14 Severability and binding effect.**

If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, the provision shall be changed and interpreted, if possible, to accomplish the original intent of the parties within the constraints of the law, or if not possible, the provision shall be stricken from the Agreement. The remaining provisions of the Agreement shall remain in full force and effect.

#### 10.15 Authority to contract.

Each party represents that it has the required legal capacity, corporate power and authority to enter into and perform this Agreement, and that this Agreement has been duly and validly executed and constitutes the legal, valid and binding obligation of such party and is enforceable against such party in accordance with its terms.

#### 10.16 NON-SOLICITATION

10.16.1 The End User undertakes during the term of this Agreement and for one year after its termination not to solicit, hire, employ or offer employment, directly or indirectly through its affiliates, to any of Thales' employees who has been engaged in providing Services pursuant hereto without Thales' prior written consent; provided, however, that nothing herein shall preclude the hiring of any such individual who:

- (a) responds to general solicitation of employment through an advertisement not directed at such employees of Thales;
- (b) contacts End User on his or her own initiative and without any direct solicitation by End User;
- (c) has terminated employment with Thales prior to commencement of solicitation of such employee by End User.

10.16.2 This Section does not apply where explicitly prohibited by local law and/or regulation.

#### 10.17 Thales Entity.

10.17.1 Where the Purchaser places an Order for Thales Products and/or Thales Services, the applicable Thales contracting entity shall be determined in accordance with the table set out below.

| Location of Purchaser                                   | Thales Counterparty                                    | Notice Address                                                                     |
|---------------------------------------------------------|--------------------------------------------------------|------------------------------------------------------------------------------------|
| United States of America and the Caribbean              | Thales DIS CPL USA, Inc.                               | 9442 Capital of Texas Hwy, Plaza II, Suite 400, Austin, TX, 78759, USA             |
| Canada                                                  | Thales DIS CPL Canada, Inc.                            | 20 Colonnade Road - Suite 200, Ottawa, ON K2E 7M6                                  |
| Brazil                                                  | Thales DIS Brasil Cartões e Soluções Tecnológicas Ltda | 9442 Capital of Texas Hwy, Plaza II, Suite 400, Austin, TX, 78759, USA             |
| Mexico & Rest of the LATAM countries (except as noted)  | Thales DIS Mexico SA DE CV                             | 9442 Capital of Texas Hwy, Plaza II, Suite 400, Austin, TX, 78759, USA             |
| Hong Kong, China and the rest of Asia (except as noted) | Thales DIS CPL Hong Kong Limited                       | Units 1105 to 1107, 11/F, New Kowloon Plaza, 38 Tai Kok Tsui Road, KL, Hong Kong   |
| Japan                                                   | Thales DIS Japan KK                                    | 8th Floor, Akasaka Tameike Tower, 2-17-7 Akasaka, Minato-ku, Tokyo 107-0052, Japan |

|                         |                                   |                                                                                                 |
|-------------------------|-----------------------------------|-------------------------------------------------------------------------------------------------|
| India                   | Thales DIS India Private Limited  | 1st Floor, Plot No. 12 A, Sec-125, Distt. Gautam Budh Nagar Noida, Uttar Pradesh, 201301, India |
| Australia & New Zealand | Thales DIS CPL Australia Pty Ltd. | Northpoint Tower, Level 40, 100 Miller Street, North Sydney 2060, Australia                     |
| Germany                 | Thales DIS CPL Deutschland GmbH   | Werinherstrasse 81, 81541 München, Germany                                                      |
| United Kingdom          | Thales DIS CPL UK Limited         | 350 Longwater Avenue, Green Park Business Park, Reading, Berkshire RG2 6GF, United Kingdom      |
| EMEA (except as noted)  | Thales DIS Technologies BV        | Seattleweg 5, Rotterdam-Pernis, 3195 ND, The Netherlands                                        |
| Israel                  | Thales DIS Israel Ltd             | 35 Efal St., Kiryat Arye, P.O. Box 3968. Petach Tikvah, 4951132, Israel.                        |

10.17.2 Where the Purchaser places an Order for Imperva Products and/or Imperva Services, the Thales contracting entity shall be Imperva Inc, with a registered address of Arboretum Plaza II, Suite 400, 9442 Capital of Texas Highway North | Austin, TX 78759.

#### 10.18 Thales locations

Thales may utilise any of the regions or countries listed in Section 10.17 to provide the Products and Services.

### 11 INTERPRETATION

#### 11.1 DEFINED TERMS.

In this Agreement, the following capitalized terms shall have the meanings set out below:

|                                   |                                                                                                                                              |
|-----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Agreement”</b>                | has the meaning set out on the cover page;                                                                                                   |
| <b>“Appliance”</b>                | means the hardware on which certain Software operates, in each case as identified by the applicable SKU;                                     |
| <b>“Authorized Third Party”</b>   | means a third party that has a valid entitlement to procure Products and Services for onward resale (directly or indirectly) to an End User; |
| <b>“Cloud Services”</b>           | means services provided by Thales and made available to End Users through the internet;                                                      |
| <b>“Confidential Information”</b> | has the meaning set out in Section 4.1.1 of Part 1 of this Agreement;                                                                        |
| <b>“Console”</b>                  | means the interface through which certain features of the Software or Infrastructure may be accessed and configured;                         |
| <b>“Customer Support Guide”</b>   | means the part of the Documentation that describes support;                                                                                  |

|                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <b>“Data and Security Terms and Conditions”</b> | means the terms and conditions set out in Part 4 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>“Delivery”</b>                               | means, (i) in the case of Software, when the Software is made available by Thales for End User to electronically download; (ii) in the case of a Cloud Service or Infrastructure, when the Cloud Service or Infrastructure (as applicable) has been made available by Thales for End User to access; (iii) in the case of an Appliance that is an Imperva Product, when the Appliance has been tendered by Thales for shipment; and (iv) in the case of an Appliance that is a Thales Product and Hardware, F.C.A. (Incoterms 2020) at Thales’ facility. The term <b>“Deliver”</b> shall be construed accordingly;                                                                                        |
| <b>“Direct Orders”</b>                          | has the meaning set out in Section 1.2 of Part 1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>“Disclosing Party”</b>                       | has the meaning set out in Section 4.1.1 of Part 1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>“Documentation”</b>                          | means Thales’ standard materials that describe the Products, including the installation, use, operation, features and / or functionality of the Products, and how Thales provides maintenance and / or support in relation to the same, as available at <a href="https://thalesdocs.com/">https://thalesdocs.com/</a> , <a href="https://docs.imperva.com/">https://docs.imperva.com/</a> , <a href="https://supportportal.thalesgroup.com/">https://supportportal.thalesgroup.com/</a> , <a href="https://thales-cpl.stoplight.io/">https://thales-cpl.stoplight.io/</a> and <a href="https://cpl.thalesgroup.com/legal">https://cpl.thalesgroup.com/legal</a> , as updated by Thales from time to time; |
| <b>“DPA”</b>                                    | means the relevant Data Protection Agreement(s) as set out in Sub-parts 2.6 and 3.5 or referenced in Sub-parts 4.6 and 4.7 of this Agreement, applicable to certain Products and/or Services that may be ordered by Purchaser in accordance with this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>“DPOD Platform”</b>                          | means the Thales Data Protection On Demand Platform, a Cloud Service made available to End Users pursuant to Sub-part 3.1 of the Product Specific Terms Conditions (including the Annex to Sub-part 3.1 of the Product Specific Terms and Conditions);                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>“DPOD Service Description”</b>               | means the part(s) of the Documentation that detail the specific part of the Cloud Service comprised in the relevant Order that is available via the DPOD Platform;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>“Effective Date”</b>                         | means the date set out on the cover page of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“End User”</b>                               | means the entity set out on the cover page;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“Evaluation License”</b>                     | has the meaning set out in Sub-part 2.5, Sub-part 3.4 or Sub-part 4.4, as applicable;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>“Evaluation Period”</b>                      | has the meaning set out in Sub-part 2.5, Sub-part 3.4 or Sub-part 4.4 as applicable;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Evaluation Product”</b>                     | means a Product that Thales has elected to make available to End User on a temporary, without charge basis, for non-commercial use solely for internal evaluation purposes;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“Failure”</b>                                | means any reproducible defect in the Product that causes the Product to fail to perform substantially in accordance with the Documentation;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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| <b>“Feedback”</b>                      | has the meaning set out in Section 8.3 of Part 1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>“General Terms and Conditions”</b>  | means the terms and conditions set out in this Part 1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>“Group Companies”</b>               | means all entities which are controlled by Thales, or under common control with Thales, where “control” means the indirect or direct or beneficial ownership of a voting interest of more than fifty percent (50%) and “Group Company” shall be construed accordingly;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Hardware”</b>                      | means the hardware on which certain Software operates, in each case as identified by the applicable SKU;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>“Imperva Products”</b>              | means the Products for which Imperva, Inc. is the relevant Group Company listed on the Quote;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“Imperva Services”</b>              | means the Services for which Imperva, Inc. is the relevant Group Company on the Quote;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Information Notice”</b>            | means the notice for processing of contact details under Thales agreements available <a href="#">here</a> or such other URL as may be published from time to time;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>“Infrastructure”</b>                | means Thales’ or its licensor’s application and / or network protection solutions, in each case as identified by the applicable SKU;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>“Infrastructure SLA”</b>            | has the meaning set out in Section 3 of Sub-part 2.2 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>“Infringement Claim”</b>            | has the meaning set out in Section 9.1 of Part 1 of this Agreement;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>“Intellectual Property Rights”</b>  | 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; (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; |
| <b>“License Definitions and Rules”</b> | means the document set out <a href="#">here</a> or such other location as Thales may specify from time to time;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>“Licensed Volume”</b>               | means the volume or other measurement or conditions of permitted use for the Products as set out for the applicable SKU or as otherwise set out in a Quote;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>“Order”</b>                         | means, (i) an order form executed by End User and submitted to Thales or (ii) a purchase order submitted by End User, or by an Authorized Third Party on behalf                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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|                                                 | of End User, in each case, in response to a Quote (which the Order is deemed to include) and that is accepted by Thales;                                                                                                                                                                                       |
| <b>“Order Acknowledgment”</b>                   | means a written (confirmation notice electronic or otherwise) that the relevant Thales entity issues to End User confirming the purchase and/or license of the Products and/or Services by End User.                                                                                                           |
| <b>“Packaged Services”</b>                      | means Thales’ pre-formulated, defined scope, service offerings, as identified by the applicable SKU and subject to Sub-part 5.1 of the Services Specific Terms;                                                                                                                                                |
| <b>“Product Specific Terms and Conditions”</b>  | means the terms and conditions set out in Parts 2, 3 and 4 of this Agreement;                                                                                                                                                                                                                                  |
| <b>“Products”</b>                               | means the Software, Infrastructure, Console, Cloud Services, Hardware and Appliances, as may be supplied to an End User in accordance with this Agreement;                                                                                                                                                     |
| <b>“Purchaser”</b>                              | means the entity which has submitted an Order in response to a Quote for the Products and/or Services which shall be: (i) for Orders placed directly with Thales, the End User; and (ii) for orders placed by an Authorised Third Party, the Authorised Third Party that submits the order directly to Thales; |
| <b>“Quote”</b>                                  | means a Thales sales quotation which sets out Products and Services by SKU and which may include corresponding descriptions and details of the applicable Licensed Volume;                                                                                                                                     |
| <b>“Receiving Party”</b>                        | has the meaning set out in Section 4.1.1 of Part 1 of this Agreement;                                                                                                                                                                                                                                          |
| <b>“Scoped Services”</b>                        | means such other services set out in a Statement of Work that Thales may provide pursuant to this Agreement, excluding Packaged Services and Training Services and subject to Sub-part 5.2 of the Services Specific Terms;                                                                                     |
| <b>“Service Description”</b>                    | has the meaning set out in Section 1.1 of Sub-part 5.1 of this Agreement;                                                                                                                                                                                                                                      |
| <b>“Service Outcome”</b>                        | means a specific set of configuration tasks as set out in the Service Description;                                                                                                                                                                                                                             |
| <b>“Services”</b>                               | means the Packaged Services, Scoped Services, Training Services and Support Services, as may be ordered by Purchaser in accordance with this Agreement;                                                                                                                                                        |
| <b>“Services Specific Terms and Conditions”</b> | means the terms and conditions set out in Part 5 of this Agreement;                                                                                                                                                                                                                                            |
| <b>“SKU”</b>                                    | means Thales’ internal stock keeping unit for each of its Products and Services, which may include corresponding Product descriptions and details of the applicable Licensed Volume;                                                                                                                           |
| <b>“SLA”</b>                                    | means the description and definition of certain features of a Product or Service set out in the Documentation;                                                                                                                                                                                                 |
| <b>“Software”</b>                               | means Thales’ or its licensors’ software (in object code format), provided to End User by Thales or an Authorized Third Party, in each case as identified by the applicable SKU and subject to Sub-part 2.1, Sub-part 3.2 and Sub-part 4.2 of the Product Specific Terms Conditions;                           |

|                               |                                                                                                                                                                                                                                                                                                     |
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|                               |                                                                                                                                                                                                                                                                                                     |
| <b>“Statement of Work”</b>    | means a signed description of Scoped Services;                                                                                                                                                                                                                                                      |
| <b>“Support Services”</b>     | means the services described in the relevant Support Terms;                                                                                                                                                                                                                                         |
| <b>“Support Terms”</b>        | means solely where there is a valid subsisting Order that includes support: (a) in respect of the Imperva Products, the Customer Support Guide; or (b) in respect of the Thales Products, Sub-part 5.4 of the Services Specific Terms;                                                              |
| <b>“Thales Products”</b>      | means Products, for which a Group Company other than Imperva, Inc. is listed on the Quote;                                                                                                                                                                                                          |
| <b>“Thales Services”</b>      | means Services, for which a Group Company other than Imperva, Inc. is listed on the Quote;                                                                                                                                                                                                          |
| <b>“Third Party Products”</b> | means Products which are licensed to Thales by a third party and are subject to the Third Party Terms;                                                                                                                                                                                              |
| <b>“Third Party Terms”</b>    | means the document set out <a href="#">here</a> or such other location as Thales may specify from time to time;                                                                                                                                                                                     |
| <b>“Threat Data”</b>          | has the meaning set out in Section 2.3.2(c) of Sub-part 2.2;                                                                                                                                                                                                                                        |
| <b>“Traffic”</b>              | has the meaning set out in Section 2.3.2(b) of Sub-part 2.2 of this Agreement;                                                                                                                                                                                                                      |
| <b>“Training Services”</b>    | means the training services set out in Thales’ training catalog, in each case as identified by the applicable SKU and subject to Sub-part 5.3 of the Services Specific Terms;                                                                                                                       |
| <b>“Usage Data”</b>           | has the meaning set out in Section 5.2.2 of Sub-part 3.2 of this Agreement; and                                                                                                                                                                                                                     |
| <b>“Welcome Pack”</b>         | means the guide to using Thales technical support services located <a href="#">here</a> or such other document at such other URL as may be updated from time to time by Thales in its sole discretion and for this purpose including the details of the support plans set out in the Documentation. |

## 11.2 Interpretation.

In this Agreement (except where the context otherwise requires):

- (a) any reference to a Section is to the relevant Section of the relevant part or sub-part of this Agreement as applicable;
- (b) the Section headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;
- (c) words importing a particular gender do not exclude other genders;
- (d) use of the singular includes the plural and vice versa;
- (e) references to any law include a reference to that law together with all rules and regulations made under it or them, all as from time to time amended, consolidated or re-enacted;

- (f) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms;
- (g) references to other documents that are incorporated by reference shall include those documents as amended from time to time; and
- (h) any grant of license, permission or other right set out in this Agreement for the benefit of Thales shall be deemed to confer the same benefit on Thales' Group Companies.



THALES CYBER SECURITY PRODUCTS END USER AGREEMENT

PART 2: APPLICATION SECURITY PRODUCT SPECIFIC TERMS AND CONDITIONS

1. OVERVIEW.

1.1 This part of the Agreement is divided into the following sub-parts:

| Product Area         | Sub-part | Product Specific Terms and Conditions             |
|----------------------|----------|---------------------------------------------------|
| Application Security | 2.1      | Software Specific Terms and Conditions            |
|                      | 2.2      | Infrastructure Specific Terms and Conditions      |
|                      | 2.3      | Console Specific Terms and Conditions             |
|                      | 2.4      | Appliances Specific Terms and Conditions          |
|                      | 2.5      | Evaluation Specific Terms and Conditions          |
|                      | 2.6      | Data Protection and Security Terms and Conditions |

## **PART 2: APPLICATION SECURITY**

### **SUB-PART 2.1: SOFTWARE SPECIFIC TERMS AND CONDITIONS**

**THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. LICENSE TERMS.**

##### **1.1 Grant.**

- (a) Subject to End User's compliance with this Agreement, and upon acceptance of an Order, Thales grants End User a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software, in accordance with its corresponding Documentation, solely for End User's internal business purposes, on the Appliances (where applicable), subject to and up to the Licensed Volume, and for the license term, each as described in the relevant Quote.
- (b) If End User receives a license to the Software pursuant to this Agreement on a standalone basis, the license granted in this Section shall include the right to copy the Software up to the Licensed Volume.
- (c) End User acknowledges and agrees that the Licensed Volume shall be interpreted in accordance with the License Definitions and Rules.
- (d) In respect of Third Party Products, End User shall be bound by the Third Party Terms.

##### **1.2 Warranty.**

Thales warrants that during the sixty (60) day period commencing on the date of first Delivery, the Software shall perform substantially in accordance with the Documentation. In the event of a breach of the foregoing warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, either replace the Software with Software conforming to the warranty in this Section 1.2, or use reasonable efforts to modify the Software so that it performs substantially in accordance with the Documentation. The rights and remedies granted to End User under this Section state Thales' entire liability, and End User's exclusive remedy, with respect to any breach of the warranty set out in this Section.

#### **2. DELIVERY.**

##### **2.1 Delivery.**

Upon acceptance of an Order, Thales shall use commercially reasonable efforts to Deliver any Software license keys that may be required to use the Software in accordance with the Documentation for the duration of the Order. Direct Orders shall be Delivered to End User and Orders via an Authorized Third Party shall be Delivered via the Authorized Third Party. Software shall be deemed accepted by End User upon Delivery.

##### **2.2 Delay.**

Provided that Thales has used commercially reasonable efforts, Thales shall in no event be liable for any delay in Delivery or for failure to give notice of delay.

#### **3. MAINTENANCE AND SUPPORT.**

Maintenance and support are provided in accordance with the Customer Support Guide.

#### **4. DATA RECOVERY.**

End User is solely responsible for End User's data back-up, data recovery, and disaster recovery measures. Thales shall not be responsible for End User's internal processes and procedures to ensure the protection of End User's data or information stored within End User's own environment. End User shall maintain an unmodified copy of all Software and all related Documentation, archival files and configuration files necessary to reinstall, reconfigure or reconstruct any lost, altered or damaged Software.

#### **5. POLICIES.**

##### **5.1 Security maintenance.**

Where Thales reasonably considers End User's use of the Software could (i) pose a security risk to Thales, the Software or any third party; (ii) adversely impact Thales' systems, the Software or the systems, traffic or data of any other Thales partner or customer; (iii) subject Thales, its partner, suppliers or any third party to liability, or (iv) be fraudulent, Thales shall have the right to suspend in whole or in part End User's rights to access or use the Software (including any Support Services) immediately upon notice. During any such suspension, End User shall remain responsible for all fees during the period of suspension.

##### **5.2 End of life policy.**

All Software is subject to Thales' then-current End of Life Policy (available [here](#) or such alternate URL or other repository as Thales may specify from time to time).

## **PART 2: APPLICATION SECURITY**

### **SUB-PART 2.2: INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS**

**THESE INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. LICENSE TERMS.**

##### **1.1 Grant.**

- (a) Subject to End User's compliance with this Agreement, and upon acceptance of an Order by Thales, Thales grants End User a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Infrastructure, in accordance with its corresponding Documentation, solely for End User's internal business purposes, subject to and up to the Licensed Volume, and for the license term, each as described in the relevant Quote.
- (b) End User acknowledges and agrees that the Licensed Volume shall be interpreted in accordance with the License Definitions and Rules.
- (c) In respect of Third Party Products, End User shall be bound by the Third Party Terms.

##### **1.2 Warranty.**

Thales warrants that during the term of the relevant Order, the Infrastructure shall perform substantially in accordance with the Documentation and in compliance with the Infrastructure SLA. In the event of a breach of this warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, correct the Infrastructure so that it performs substantially in accordance with the Documentation and, either directly issue or have an Authorized Third Party issue, any credits to which End User may be entitled pursuant to the Infrastructure SLA.

#### **2. Access and use of Infrastructure.**

##### **2.1 Delivery.**

- 2.1.1** Upon acceptance of an Order, Thales shall use commercially reasonable efforts to Deliver (either directly or via an Authorized Third Party, as applicable) any Infrastructure credentials that may be required to use the Infrastructure in accordance with the Documentation for the duration of the Order. Infrastructure shall be deemed accepted by End User upon Delivery.
- 2.1.2** Provided that Thales has used commercially reasonable efforts, Thales shall in no event be liable for any delay in Delivery or for failure to give notice of delay.

## **2.2 Set up**

Except as explicitly set out in this Agreement, End User is solely responsible for acquiring and maintaining all of the equipment, software, services and items necessary to access and make use of the Infrastructure, including without limitation paying all fees, charges, taxes, and other costs related to internet access and for configuration changes that may be required to route activity to the Infrastructure. End User may access the Infrastructure only through the interfaces and protocols provided or authorized by Thales and agrees to set up, maintain and use the Infrastructure in strict compliance with Thales' and its Authorized Third Party's instructions.

## **2.3 Consents**

- 2.3.1 The routine operation of the Infrastructure involves End User traffic routing through the Thales network. Thales has no right to use any of the data within the traffic except as set out in this Agreement.
- 2.3.2 All of the consents granted in this Section 2.3 are to be exercised in accordance with the relevant DPA. End User consents to Thales using, and grants a nonexclusive, royalty-free, fully-paid up right and license to Thales to:
- (a) use, transfer, display, minimize and compress the content and material on End User's websites, in any media formats, in connection with the performance, improvement and support of the Infrastructure;
  - (b) use, transfer, monitor and inspect End User's traffic that is routed via the Infrastructure, including any related logs or other data as may be required ("**Traffic**"), in connection with the performance, improvement and support of the Infrastructure; and
  - (c) collect, analyze, use for the performance and improvement of the Products and Services, and the development of new products and services, and solely in a non-attributable format publish, the specific parts of the Infrastructure that relate directly and indirectly to purported attempts to compromise the security of End User via malicious traffic including but not limited to DDoS attacks, hacking attempts, and bot assaults plus false positives of the same ("**Threat Data**").
- 2.3.3 End User represents and warrants that it has all rights and permissions necessary to transfer, disclose and grant, to Thales, the rights contemplated by this Agreement, with respect to Traffic and Threat Data.

## **2.4 Abuse**

- 2.4.1 Thales operates an abuse desk for disputes about the use of the Infrastructure, including matters such as copyright infringement, child protection, spamming or another matter which potentially suggests that a site protected by Thales is involved in illegal activity.
- 2.4.2 Certain parts of the Infrastructure route traffic through the Thales network using a reverse proxy, before transmitting that traffic on to End User's specified destination server where data is stored. When a DNS lookup is performed, it appears that Thales is hosting the relevant website. Complaints are filed at [abuse@thalesgroup.com](mailto:abuse@thalesgroup.com) or such other location as Thales may specify from time to time. Thales does not have access to the host servers where data is stored and as such is unable to modify or take down any content from such websites.
- 2.4.3 Where a claim is submitted, Thales may share such information to any third party it considers appropriate, including End User that is the subject of the complaint and any relevant service provider related to the complaint.

## **2.5 End User responsibilities**

- 2.5.1 End User shall ensure that its use of the Infrastructure complies with all applicable laws, rules, codes and regulations regarding online conduct and the collection and transmission of data, including all laws, rules, codes and regulations of the countries in which End User operates and from which it collects or otherwise processes data.

- 2.5.2 The Infrastructure may include a shared web caching service, which means a number of different end users' sites are cached on the same server. End User shall not use the Infrastructure in a manner that could disrupt or otherwise adversely affect or impair the performance of any other sites of other end users and customers of Thales.
- 2.5.3 End User is responsible for configuring the encryption for Traffic that is routed through the Infrastructure and for any rules that End User implements or actions that may be taken that could result in performance degradation or other availability, access or performance issues.
- 2.5.4 In the event of expiration or termination of any Infrastructure that require DNS routing, End User shall be solely responsible for rerouting its DNS traffic and Thales, its partners and suppliers shall have no liability for End User's failure to do so.

## **2.6 Modifications**

- 2.6.1 Subject to Section 2.6.2, Thales engages in the constant evolution, innovation and improvement of its Infrastructure, and implements modifications that reflect new or enhanced features or functionalities. Thales may modify the features or functionalities of the Infrastructure provided that such modifications will not materially degrade the core functionality of the Infrastructure. Thales may discontinue the Infrastructure and will use commercially reasonable efforts to transfer End User to a substantially similar service. If Thales does not have a substantially similar service, Thales will refund to End User or Authorized Third Party the unused portion of any prepaid fee for End User's Infrastructure. Thales may notify End User of its actions pursuant to this section, provided that End User subscribed to receive such notification.
- 2.6.2 Section 2.6.1 shall not apply to any changes to any point of presence, cross-connect or other aspect of the network that forms part of the Infrastructure.

## **3. SERVICE LEVELS.**

The applicable service level document (available at such location as Thales may specify from time to time) shall apply to the Infrastructure ("**Infrastructure SLA**").

## **4. SUPPORT.**

Support is provided in accordance with the Customer Support Guide.

## **5. DATA RECOVERY.**

End User is solely responsible for End User's data back-up, data recovery, and disaster recovery measures. Thales shall not be responsible for End User's internal processes and procedures to ensure the protection of End User's data. End User shall maintain a copy of all configuration files necessary to reinstall, reconfigure or reconstruct any lost, altered or damaged data of that nature.

## **6. POLICIES.**

### **6.1 Security maintenance.**

Where Thales reasonably considers End User's use of the Infrastructure could: (i) pose a security risk to Thales, the Software or any third party; (ii) adversely impact Thales' systems, the Software or the systems, traffic or data of any other Thales partner or customer; (iii) subject Thales, its partner, suppliers or any third party to liability, or (iv) be fraudulent, Thales shall have the right to suspend in whole or in part End User's rights to access or use the Infrastructure immediately upon notice. During any such suspension, End User shall remain responsible for all fees during the period of suspension and shall not be entitled to any service credits that would have otherwise arisen pursuant to the Infrastructure SLA.

## **6.2 End of life policy.**

The Infrastructure is subject to Thales' then current-End of Life Policy (available [here](#) or such alternate URL or other repository as Thales may specify from time to time).

## **6.3 Acceptable use policy.**

End User agrees that at all times it shall comply with the then-current Acceptable Use Policy (available [here](#) or such alternate URL or other repository as Thales may specify from time to time). Thales may flag or block content, block access to End User's sites from particular jurisdictions or suspend or terminate End User's access to the Infrastructure immediately upon notice to End User where Imperva reasonably determines use of the Infrastructure to be contrary to the Acceptable Use Policy.

## **PART 2: APPLICATION SECURITY**

### **SUB-PART 2.3: CONSOLE SPECIFIC TERMS AND CONDITIONS**

**THESE CONSOLE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AND THE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND / OR INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE CONSOLE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL. IN THE EVENT OF CONFLICT BETWEEN THESE CONSOLE SPECIFIC TERMS AND CONDITIONS AND THE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND / OR INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS, THE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND / OR INFRASTRUCTURE SERVICES SPECIFIC TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. OVERVIEW.**

Certain Software and Infrastructure allow End User to access a Console. The specific details and purpose of the relevant Console is set out in the Documentation. Broadly, where a Software or Infrastructure includes a Console, the Console shall enable End User to access and configure certain features of the Product.

#### **1. CONSOLE-SPECIFIC TERMS.**

##### **1.1 Grant.**

The grant of a license to a Console shall be on the same terms and conditions as the relevant Software or Infrastructure.

##### **1.2 Access.**

- (a) End User is solely responsible for maintaining the confidentiality of any passwords and account information required to access the Console, for all acts that occur in connection with End User's account and to immediately notify Thales of any unauthorized use of End User's account. End User shall take notify Thales promptly in writing if it is aware of any unauthorized access or use of a Console.
- (b) Except as explicitly set out in this Agreement, End User is solely responsible for acquiring and maintaining all of the equipment, software, services and items necessary to access and make use of a Console, including without limitation paying all fees, charges, taxes, and other costs related to internet access.

##### **1.3 Records.**

- (a) End User is solely responsible for End User's data back-up, data recovery, and disaster recovery measures. Thales shall not be responsible for End User's internal processes and procedures to ensure the maintenance of copies of records made available to End User as part of the Console.
- (b) Thales does not provide backup services. If End User's use of the Console terminates for any reason, Thales may, without notice, delete or deny End User access to any records made available to End User as part of the Console.

##### **1.4 Consents.**

Where an End User utilizes certain Consoles, End User grants Thales a license to collect, analyze, use for the performance and improvement of the Products and Services, and the development of new products and services, and solely in a non-attributable format publish, Threat Data. The consents granted in this Section 2.4 are to be exercised in accordance with Part 2.6 of this Agreement (Data Protection and Security Terms and Conditions). End User represents and warrants that it has all rights and permissions necessary to transfer, disclose and grant, to Thales, the rights contemplated by this Agreement, with respect to Threat Data.

## **PART 2: APPLICATION SECURITY**

### **SUB-PART 2.4: APPLIANCES SPECIFIC TERMS**

**THESE APPLIANCES SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE APPLIANCES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. OVERVIEW.**

- 1.2 This section sets out the terms specific to Appliances only.
- 1.3 In respect of Third Party Products, End User shall be bound by the Third Party Terms.

#### **2. DELIVERY, RISK AND TITLE.**

- 2.1 Thales shall use commercially reasonable efforts to Deliver the Appliances in accordance with any reasonable delivery times requested in accepted Orders (in partial or full shipments). Provided Thales has used commercially reasonable efforts to Deliver the Appliances in accordance with any such requested delivery times, Thales shall in no event be liable for any delay in Delivery or for failure to give notice of delay. Appliances shall be deemed accepted by End User upon Delivery.
- 2.2 Risk of loss and, if applicable, title to Appliances shall pass to End User upon Delivery; provided that title shall not pass to End User for:
  - (a) any Software contained in or installed on such Appliances; or
  - (b) any Appliances for which End User has not purchased outright and paid for in full.
- 2.3 Appliances shall be delivered Ex Works (Incoterms 2020) to Thales' designated manufacturing facility.
- 2.4 End User may specify shipping instructions with the Order, which are subject to Thales' acceptance. In the absence of specific shipping instructions from End User, which have been agreed to by Thales, Thales shall ship by the method it deems appropriate.
- 2.5 End User shall pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums.
- 2.6 In its discretion, Thales may advance shipping charges on behalf of End User on Appliances shipped to End User, and End User agrees to reimburse Thales for any such advanced charges and expenses.
- 2.7 If End User enters into a term agreement for use of Appliances, all right, title and interest in such Appliances shall remain with Thales and must be returned by End User within fifteen (15) days after the end of the applicable term or End User shall be charged and pay for the Appliances at Thales' then-current list price. End User must keep such Appliances free from liens or pledges, shall be responsible for any damage to such Appliances during the applicable term, reasonable wear and tear excepted, and shall carry a policy of fire and extended coverage (all risks), in an amount equal to the full replacement value of such Appliances.

#### **3. SOFTWARE.**

- 3.1 End User acknowledges that the Software included with the Appliance is licensed, and not sold, with the applicable license terms set out in Sub-part 2.1 of this Agreement.

- 3.2 Software is licensed solely in conjunction with such Appliance (and not separately or apart from such Appliance). If End User sells, leases, lends, rents, distributes or otherwise transfers any Appliance to any third party or if Thales terminates this Agreement or any relevant Order, then End User shall erase all Software from such Appliance.

**4. MAINTENANCE AND SUPPORT.**

Maintenance and support are provided in accordance with the Customer Support Guide.

**5. WARRANTY.**

Thales warrants that during the ninety (90) day period commencing on the date of first Delivery, the Appliances shall perform substantially in accordance with the Documentation. In the event of a breach of this warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, following the return of such Appliance by End User, either repair the Appliance or replace the Appliance with a new or reconditioned Appliance that performs substantially in accordance with the Documentation. This warranty extends only to the original purchaser of the Appliance and shall not apply where there has been damage to the Appliance returned to Thales.

## PART 2: APPLICATION SECURITY

### SUB-PART 2.5: EVALUATION SPECIFIC TERMS AND CONDITIONS

THESE EVALUATION SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AND THE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND / OR INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE EVALUATION SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.

#### 1. APPLICABLE TERMS AND CONDITIONS.

- 1.1 From time to time, Thales may make available Evaluation Products to End User on a temporary basis for evaluation purposes, pursuant to an Order or otherwise.
- 1.2 Where an End User utilises an Evaluation Product:
  - 1.2.1 for Software the following Sections of the Software Specific Terms and Conditions set out in Sub-part 2.1 of this Agreement shall not apply: 1.1 and 1.2;
  - 1.2.2 for Infrastructure, the following Sections of the Infrastructure Specific Terms and Conditions set out in Sub-part 2.2 of this Agreement shall not apply: 1.1, 1.2 and 3;
  - 1.2.3 for Console, the following Sections of the Console Specific Terms and Conditions set out in Sub-part 2.3 of this Agreement shall not apply: 2.1;
  - 1.2.4 for Appliances, the following Sections of the Appliances Specific Terms and Conditions set out in Sub-part 2.4 of this Agreement shall not apply: 2 and 5; and
  - 1.2.5 the following Sections of the General Terms and Conditions shall not apply: 6, 7 and 9.

#### 2. EVALUATION LICENSE.

Where Thales agrees to make an Evaluation Product available to an End User, Thales grants to End User during the Evaluation Period, a cost-free, non-sublicensable, non-transferable, non-assignable and non-exclusive, revocable at will license to use the Evaluation Product, solely at the location identified in writing by End User and solely for End User's internal evaluation of the Evaluation Product ("**Evaluation License**").

#### 3. EVALUATION PERIOD.

- 3.1 Unless otherwise agreed to in writing, or terminated earlier in accordance with this Agreement, the term of the license to an Evaluation Product shall commence upon Delivery of the Evaluation Product and continue until the earlier of:
  - 3.1.1 thirty (30) days from Delivery; or
  - 3.1.2 the date that Thales provides written notice of termination to End User ("**Evaluation Period**").
- 3.2 Upon the expiration or termination of the Evaluation Period:
  - 3.2.1 the Evaluation License shall cease;
  - 3.2.2 End User shall immediately:
    - (a) return the Evaluation Product to Imperva;
    - (b) destroy or erase any intangible copies of the Evaluation Product; and

- (c) certify in a writing signed by an officer of End User and delivered to Thales that all such copies of have been returned, destroyed or erased.

**4. WARRANTY.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, END USER ACKNOWLEDGES AND AGREES THAT THE EVALUATION PRODUCT IS PROVIDED FOR EVALUATION "AS-IS" AND THALES AND ITS SUPPLIERS MAKE NO REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EVALUATION PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT, NONINFRINGEMENT OR ANY OTHER WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

**5. LIABILITY.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN NO EVENT SHALL THALES' TOTAL AND AGGREGATE LIABILITY IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE EVALUATION PRODUCT EXCEED ONE HUNDRED DOLLARS (\$100).

## **PART 2: APPLICATION SECURITY**

### **SUB-PART 2.6: DATA PROTECTION AND SECURITY**

Where the End User submits an Order for Imperva Products and/or Services, the Data Processing Addendum and Security Addendum set below, shall apply to the use of the applicable Imperva Products and/or Imperva Services.

|                                                 |
|-------------------------------------------------|
| <a href="#"><u>Data Processing Addendum</u></a> |
| <a href="#"><u>Security Addendum</u></a>        |



THALES CYBER SECURITY PRODUCTS END USER AGREEMENT

PART 3: DATA SECURITY PRODUCT SPECIFIC TERMS AND CONDITIONS

1. OVERVIEW.

1.1 This part of the Agreement is divided into the following sub-parts:

| Product Area  | Sub-part | Product Specific Terms and Conditions                                                                                                                                                                                                       |
|---------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Data Security | 3.1      | Cloud Services Specific Terms and Conditions<br><br>(Annex 1: Data Protection on Demand (DPOD) Platform Services Supplemental Terms and Conditions)<br><br>(Annex 2: Ciphertrust Data Security Assistant Supplemental Terms and Conditions) |
|               | 3.2      | Software Specific Terms and Conditions                                                                                                                                                                                                      |
|               | 3.3      | Appliances Specific Terms and Conditions                                                                                                                                                                                                    |
|               | 3.4      | Evaluation Specific Terms and Conditions                                                                                                                                                                                                    |
|               | 3.5      | Data Protection and Security                                                                                                                                                                                                                |

## **PART 3: DATA SECURITY**

### **SUB-PART 3.1: CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS**

**THESE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS GOVERN THE END USER'S ACCESS AND USE OF CLOUD SERVICES AND INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. LICENCE TERMS.**

##### **1.1 Grant.**

Subject to End User's compliance with this Agreement, and upon acceptance of an Order or, where transacted via the Thales marketplace, completion of the Order by an End User, Thales grants End User a non-exclusive, non-transferable, non-sublicensable, revocable right, during the Term, to access and use the Cloud Services, in accordance with its corresponding Documentation, solely for End User's internal business purposes, subject to and up to the Licensed Volume and for the license term. In respect of Third Party Products, End User shall be bound by the Third Party Terms.

#### **2. WARRANTY, SUPPORT AND SLA.**

- 2.1 Thales warrants that during the term of the relevant Order, the Cloud Services shall perform substantially in accordance with the Documentation and in compliance with the SLA. In the event of a breach of this warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, correct the Cloud Services so that it performs substantially in accordance with the Documentation and, either directly issue or have an Authorized Third Party issue, any credits to which End User may be entitled pursuant to the SLA.
- 2.2 If Thales suspends the Cloud Services in accordance with Section 6 of Sub-part 3.1, then during any such suspension, End User shall remain responsible for all fees during the period of suspension and shall not be entitled to any service credits that would have otherwise arisen pursuant to SLA.
- 2.3 Support is provided in accordance with the Support Terms.

#### **3. ACCESS AND USE OF CLOUD SERVICES.**

- 1.1 To access the Cloud Services, End User is required to set up an account or complete an Order for each Cloud Service. End User is responsible for ensuring the accuracy of the information required to set up the account. Thales' ability to deliver the Cloud Services depends upon End User's cooperation in setting up the account and on the accuracy of the information provided. If End User does not set up an account or if the information provided is inaccurate, Thales may not be able to perform the Cloud Services.
- 1.2 End User is responsible for the access to, and use of, the Cloud Services and for compliance with this Agreement, for which End User shall remain directly liable to Thales. End User will ensure that individuals which may access the Cloud Services maintain the confidentiality of login credentials and promptly notify Thales of any security breaches including compromise of End User accounts or credentials. End User shall maintain a written, up to date, list of all current individuals which may access the Cloud Services and provide such list to Thales within seven (7) days of Thales' written request from time to time. In addition, Thales reserves the right to monitor End User's use of the Cloud Services from time to time to assess whether such usage is in accordance with this Agreement (including any agreed usage limits). Where such monitoring reveals that End User has exceeded any agreed usage limits, Thales reserves the right to increase the Fees and End User shall pay such increased Fees to Thales.
- 1.3 Thales engages in the constant evolution, innovation and improvement of its Cloud Services, and implements modifications that reflect new or enhanced features or functionalities. Thales may modify the features or functionalities of the Cloud Services provided that such modifications will not materially degrade the core functionality of the Cloud Services. Thales may discontinue the Cloud Services and will use commercially

reasonable efforts to transfer End User to a substantially similar Cloud Service. If Thales does not have a substantially similar Cloud Service, Thales will refund to End User or Authorized Third Party the unused portion of any prepaid fee for End User's Cloud Service. Thales may notify End User of its actions pursuant to this section, provided that End User subscribed to receive such notification. Thales may perform scheduled or emergency maintenance of the Cloud Services during which time End User may experience interruption of the Cloud Services.

- 1.4 End User is responsible for ensuring the individuals using the Cloud Services comply with such acceptable use provisions relating to the Cloud Services as Thales may specify from time to time. Thales reserves the right to, without liability or prejudice to its other rights or remedies, disable any Users credentials and/or access to all or part of the Cloud Services in the event it reasonably suspects a breach of such acceptable use provisions. Thales shall notify the End User of its intention to disable any credentials pursuant to this Section 3.4 of Sub-part 3.1 before it disables such credentials.
- 1.5 Except as explicitly set out in this Agreement, End User is solely responsible for acquiring and maintaining all of the equipment, software, services and items necessary to access and make use of the Cloud Services including without limitation paying all fees, charges, taxes, and other costs related to internet access and for configuration changes that may be required to route activity to the Cloud Services. End User may access the Cloud Services only through the interfaces and protocols provided or authorized by Thales and agrees to set up, maintain and use the Cloud Services in strict compliance with Thales' and its Authorized Third Party's instructions.
- 1.6 Except to the extent set out in the Documentation, and where configuration is in accordance with the express requirements of the Documentation, use of the Cloud Services in conjunction with third party products is at End User's own risk.
- 1.7 End User acknowledges that Thales does not control the transfer of data over communications facilities, including the internet, and that the subscription may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

#### **4. EVALUATION SERVICES.**

Thales may offer Cloud Services as Evaluation Products. Any such use shall be pursuant to the terms of Sub-Part 3.4 of this Agreement.

#### **5. COMPLIANCE WITH LAWS.**

End User is solely responsible for and will comply with all laws or regulations of any governmental entity or authority applicable to End User's access or use of the Cloud Services.

#### **6. SUSPENSION OF THE CLOUD SERVICES.**

Thales may suspend End User's access to the Cloud Services in whole or part immediately and without any liability should Thales reasonably determine that End User's use of the Cloud Services: (i) is in breach of this Agreement, (ii) poses a security risk to Thales, the Cloud Services or any third party; (iii) may adversely impact Thales's systems, the Cloud Services or the systems, traffic or data of any other Thales partner or customer; (iv) subject Thales, its partner, suppliers or any third party to liability, (v) be fraudulent, or (vi) as otherwise required by laws or regulations of any governmental entity or authority. During any such suspension, End User shall remain responsible for all fees during the period of suspension and shall not be entitled to any service credits that would have otherwise arisen pursuant to the SLA.

## **ANNEX 1**

### **DPOD PLATFORM SERVICES SUPPLEMENTAL TERMS AND CONDITIONS**

**THESE DPOD PLATFORM SERVICES SUPPLEMENTAL TERMS AND CONDITIONS GOVERN THE END USER'S ACCESS AND USE OF THE DPOD PLATFORM, AND SHALL BE INCORPORATED WITHIN AND SUBJECT TO THE GENERAL TERMS AND CONDITIONS CONTAINED AT PART 1 AND THE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS SET OUT IN SUB-PART 3.1.**

#### **1. ORDERING PROCESS.**

##### **1.1 Account Set Up.**

Thales' provision of the DPOD Platform shall be conditional upon End User setting up an account for each Cloud Service on the DPOD Platform. End User is solely responsible for ensuring the accuracy of the information required to set up the DPOD Platform account. Thales' ability to deliver the Cloud Services depends upon End User's cooperation in setting up the account and on the accuracy of the information provided. If End User does not set up an account or if the information provided is inaccurate, Thales may not be able to perform the Cloud Services.

##### **1.2 DPOD Platform Orders.**

End User may purchase Cloud Services entitlements directly from Thales on the DPOD Platform. Where an End User orders directly from Thales, the term and applicable fees (including when payments are due) shall be set out in the Order. In each case, End User may elect to terminate an order upon no less than thirty (30) days' notice to Thales before the end of the current term, or enter into a new order to renew the Cloud Service entitlements. In the absence of a termination notice or renewal order, the End User's entitlements shall continue on a rolling basis chargeable at the then current Thales rates, until the End User provides written notice to terminate of no less than thirty (30) days' to Thales.

##### **1.3 Service Descriptions.**

Each Order for a Cloud Service on the DPOD Platform shall incorporate the relevant DPOD service description as set out in the Documentation.

## ANNEX 2

### CIPHERTRUST DATA SECURITY ASSISTANT SUPPLEMENTAL TERMS AND CONDITIONS

**THESE CIPHERTRUST DATA SECURITY ASSISTANT SUPPLEMENTAL TERMS AND CONDITIONS GOVERN THE END USER'S ACCESS AND USE OF THE CIPHERTRUST DATA SECURITY ASSISTANT, AND SHALL BE INCORPORATED WITHIN AND SUBJECT TO THE GENERAL TERMS AND CONDITIONS CONTAINED AT PART 1 AND THE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS SET OUT IN SUB-PART 3.1.**

#### **1. NATURE OF THE SERVICE.**

- 1.1 CipherTrust Data Security Assistant is a chatbot provided as a Cloud Service which uses large language model artificial intelligence ("AI"). It takes plain text questions inputted by a user, transmits these to the large language model (part of the Amazon Bedrock service hosted by AWS), which translates the plain text question to a knowledgeable answer. The service then sends the formulated answer back to the End User's installation of CipherTrust Data Security for follow-up actions.
- 1.2 CipherTrust Data Security Assistant is powered by third party AI technology. Thales has limited control or influence on the responses generated according to the technical capabilities of the third party AI technology. Whilst Thales has carried out reasonable third party due diligence, Thales cannot guarantee that responses generated will be accurate, relevant and free from bias, and it might be that a response generated may be unreliable or offensive to some users. As such, the End User is always independently responsible for exercising judgment to determine if a response is suitable prior to taking action with respect to the subject matter at hand.
- 1.3 If the End User considers that any content which is distributed or published by CipherTrust Data Security Assistant is inappropriate, defamatory or infringing any intellectual property rights, the End User should report this to the Thales support team immediately. Thales will use reasonable efforts to identify and remove any inappropriate or infringing content when notified, but shall not be responsible to do so if End User has failed to provide Thales with the relevant information. End User acknowledges that Thales is dependent on AWS to take any such action.

#### **2. CONDITIONS OF USE**

- 2.1 CipherTrust Data Security Assistant is provided pursuant to and subject to the parts of the [AWS Service Terms](#) relevant to AWS Bedrock. End User agrees to comply with the [AWS Service Terms](#) including the applicable documentation: <https://docs.aws.amazon.com/bedrock/>. Thales may prevent or suspend access to CipherTrust Data Security Assistant if End User does not comply with these terms or any applicable law.

#### **3. DATA PROCESSING AGREEMENT**

The Data Processing Agreement set out in the Appendix to this Annex 2 to Part 3 Sub-part 1 of the End User Agreement shall apply.

## APPENDIX

Where the End User submits an Order for the CipherTrust Data Security Assistant, the Data Processing Addendum below shall apply.

[Data Processing Addendum](#)

## **PART 3: DATA SECURITY**

### **SUB-PART 3.2: SOFTWARE SPECIFIC TERMS AND CONDITIONS**

**THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **2. LICENSE TERMS.**

##### **1.1 Grant.**

- (a) Subject to End User's timely payment of the Fees, compliance with this Agreement, and upon acceptance of an Order, Thales grants End User a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software, in accordance with its corresponding Documentation, solely for End User's internal business purposes, on the Appliances (where applicable), subject to and up to the Licensed Volume, and for the license term, each as described in the relevant Quote.
- (b) If End User receives a license to the Software pursuant to this Agreement on a standalone basis, the license granted in this Section shall include the right to copy the Software up to the Licensed Volume. End User may make one copy of the Software solely for archival purposes and one copy of the Software solely for backup purposes, provided the backup copy may only be used where the installed copy is inoperable and the inoperable copy is deleted.
- (c) All copies of the Software and the Documentation made by End User: (i) will be the exclusive property of Thales; (ii) will be subject to the terms and conditions of this Agreement; and (iii) must include all Intellectual Property Rights notices contained in the original delivered to End User.
- (d) End User acknowledges and agrees that, where applicable, the Licensed Volume shall be interpreted in accordance with the License Definitions and Rules.
- (e) In respect of Third Party Products, End User shall be bound by the Third Party Terms.

##### **1.2 Warranty.**

- 1.2.1 Thales warrants that during the ninety (90) day period commencing on the date of first Delivery, the Software shall perform substantially in accordance with the Documentation, provided that it is used on the computer hardware and with the operating system for which it was designed. In the event of a breach of this warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, either replace the Software with Software conforming to the warranty in this Section 1.2, or use reasonable efforts to modify the Software so that it performs substantially in accordance with the Documentation. The rights and remedies granted to End User under this Section 1.2 state Thales' entire liability, and End User's exclusive remedy, with respect to any breach of the warranty set out in this Section.
- 1.2.2 Warranty claims must be made in writing during the warranty period accompanied by evidence of the defect satisfactory to Thales together with any available details that may reasonably assist Thales to reproduce the noncompliance and effect a cure. Thales' obligations under this express warranty are subject to Thales' examination of the Software and Thales' determination to its reasonable satisfaction that the claimed defect or fault actually exists, and is not excluded from this warranty. If Thales determines that the Software is not defective or faulty within the terms of this warranty, End User shall be liable for all of Thales' costs at Thales' then prevailing repair rates.
- 1.2.3 This warranty is conditioned upon payment of the purchase invoice and proper use of the Software, in accordance with the Documentation. Thales shall have no obligation under this warranty unless End-User promptly notifies

Thales in writing of any failures within the applicable warranty periods. This warranty extends only to the End-User.

- 1.2.4 This warranty shall not apply to Software that has been: (i) improperly installed, modified or repaired by anyone other than Thales; (ii) used in a manner other than as authorized under the Documentation applicable to the Software purchased; (iii) installed, operated or maintained not in accordance with the instructions supplied by Thales, including but not limited to the installation, operation or maintenance of the Software on any hardware, operating system or tools (including their specific configurations) that are not compatible with the Software; (iv) modified, altered or repaired by a party other than Thales or a party authorized by Thales; (v) operated or maintained in unsuitable environmental conditions, or by any other cause external to the Software or otherwise beyond Thales' reasonable control, including any extreme power surge or failure or electromagnetic field, rough handling during transportation, fire or other act of God; (vi) use of the Software with telecommunication interfaces other than those supplied or approved by Thales not meeting or not maintained in accordance with Thales' specifications as described in the Documentation, unless Thales has specifically agreed in writing to include such modifications within the scope of this Agreement; (vii) damaged due to failure of power, air conditioning or humidity control, or failures of storage media not furnished by Thales or for consumable operating supplies or accessories outside the parameters designated in the Documentation or elsewhere, unless specifically included in this Agreement; (viii) subjected to accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse fault or negligence of End User, its employees, agents, contractors or visitors, operator error; or (ix) where the serial numbers, warranty data or quality assurance decals on the hardware are removed or altered. Thales's warranty does not apply to (i) products manufactured by third parties and resold by Thales without re-marking under Thales's trademarks, (ii) software products that are not developed by Thales, and (iii) consumable items (e.g. batteries).

## **2. DELIVERY.**

### **2.1 Delivery.**

Upon acceptance of an Order, Thales shall use commercially reasonable efforts to Deliver any Software license keys that may be required to use the Software in accordance with the Documentation for the duration of the Order. Direct Orders shall be Delivered to End User and Orders via an Authorized Third Party shall be Delivered via the Authorized Third Party. Software shall be deemed accepted by End User upon Delivery. Unless otherwise mutually agreed, Thales shall make available the Software for electronic download by the End User.

### **2.2 Delay.**

Provided that Thales has used commercially reasonable efforts, Imperva shall in no event be liable for any delay in Delivery or for failure to give notice of delay.

## **3. MAINTENANCE AND SUPPORT.**

- 3.1 If Thales is providing Imperva Products to the End User in accordance with these Software Specific Terms and Conditions set out in this Sub-part 3.2, maintenance and support are provided in accordance with the Customer Support Guide.
- 3.2 If Thales is providing Thales Products to the End User in accordance with these Software Specific Terms and Conditions set out in this Sub-part 3.2, the license granted hereunder does not entitle End User to any Software maintenance or Support Services unless End User purchases such maintenance and Support Services from Thales or an Authorized Third Party. Except as otherwise agreed by Thales under a separate written agreement, Support Services are subject to the Support Terms.

#### 4. **DATA RECOVERY.**

End User is solely responsible for End User's data back-up, data recovery, and disaster recovery measures. Imperva shall not be responsible for End User's internal processes and procedures to ensure the protection of End User's data or information stored within End User's own environment. End User shall maintain an unmodified copy of all Software and all related Documentation, archival files and configuration files necessary to reinstall, reconfigure or reconstruct any lost, altered or damaged Software.

#### 5. **AUDIT AND USAGE DATA.**

##### 5.1 **Audit of Thales Products**

5.1.1 In addition to the audit provisions set out in Section 5 of Part 1 (General Terms and Conditions) of this Agreement, the following audit terms shall apply to Software that is a Thales Product provided under the Software Specific Terms and Conditions set out in Sub-part 3.2 of this Agreement.

5.1.2 Upon Thales' written request, End User shall conduct a review of use of the Software and certify to Thales in a written instrument signed by an authorized representative of End User that it is in full compliance with this Agreement and, in particular, that it is not using more than the Licensed Volume. In the event of non-compliance, End User shall immediately remedy such non-compliance and provide Thales with written notice signed by the authorized representative to confirm the same. End User shall provide Thales with all access and assistance as Thales reasonably requests to further evaluate and remedy such noncompliance.

5.1.3 If the audit or any of the measures taken or implemented under this Section 5.1, determines that the End User's use of the Software exceeds the Licensed Volume:

- (a) End User shall, within thirty (30) days following the date of such determination by Thales, pay to Thales or the relevant Authorized Third Party the retroactive fees for such excess use at the then-current rates for such licenses;
- (b) If the use exceeds the Licensed Volume by more than ten percent (10%), End User shall pay Thales' reasonable costs incurred in conducting the audit; and
- (c) If the use exceeds the Licensed Volume by more than twenty percent (20%), Thales may terminate this Agreement and the license to the Software, effective immediately upon written notice to End User.

5.1.4 Thales's remedies set forth in this Section 5.1 are cumulative and are in addition to, and not in lieu of, all other remedies the Thales may have at law or inequity.

##### 5.2 **Usage Data for Imperva Products**

5.2.1 In addition to the audit provisions set out in Section 5 of Part 1 (General Terms and Conditions) of this Agreement, the following audit terms shall apply to Software that is an Imperva Product provided under the Software Specific Terms and Conditions set out in Sub-part 3.2 of this Agreement.

5.2.2 Notwithstanding anything to the contrary in this Agreement, Thales has the right to collect and use Usage Data to develop, improve, support, and operate its products and services during and after the term of this Agreement and to verify an End User's usage in compliance with this Agreement. With respect to Software that includes a feature permitting transmission of Usage Data to Imperva, an End User may choose to disable such feature, in which case Imperva shall not collect Usage Data automatically from the Software. Where an End User opts to disable automatic transmission of Usage Data to Imperva within the Software, End User shall be obliged to manually produce a Usage Data report using a manual feature within the Software and transmit the same to Imperva no less than every three (3) months by following the instructions in the Documentation from time to time. End User shall take such other reasonable steps as Imperva may require from time to time to facilitate the provision of Usage Data to Imperva. "**Usage Data**" means data directly or indirectly related to items such as versioning,

volumetrics, feature usage, traffic type, settings, telemetry and any other data (other than End User payload data) relating to the operation, support and/or about use of the Software by an End User and its authorized users.

## **6. STANDARD SOFTWARE.**

All Software shall be Thales' standard Software. Thales shall have no obligation to create special or customized versions of any Software, or to ensure that the Software operates with End User's equipment, software, or systems. Thales reserves the right, without prior approval from or notice to End User, to make changes to any Software: (i) to meet published Documentation; (ii) that do not adversely affect the performance of the Software 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 Software without any obligation to make the same changes to Software previously ordered by or licensed to End User.

## **7. POLICIES.**

### **7.1 Security maintenance.**

Where Thales reasonably considers End User's use of the Software could (i) pose a security risk to Thales, the Software or any third party; (ii) adversely impact Thales' systems, the Software or the systems, traffic or data of any other Thales partner or customer; (iii) subject Thales, its partner, suppliers or any third party to liability, or (iv) be fraudulent, Thales shall have the right to suspend in whole or in part End User's rights to access or use the Software immediately upon notice. During any such suspension, End User shall remain responsible for all fees during the period of suspension.

### **7.2 End of life policy.**

All Software that is a Thales Product is subject to Thales' then-current Cloud Protection and Licensing End of Life Policy (available [here](#) or such alternate URL or other repository as Thales may specify from time to time). All Software that is an Imperva Product is subject to Thales' then current-End of Life Policy (available [here](#) or such alternate URL or other repository as Thales may specify from time to time).

## **SUB-PART 3: DATA SECURITY**

### **SUB-PART 3.3: APPLIANCE SPECIFIC TERMS AND CONDITIONS**

**THESE APPLIANCE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. OVERVIEW.**

- 1.1 This section sets out the terms specific to Appliances only.
- 1.2 In respect of Third Party Products, End User shall be bound by the Third Party Terms.

#### **2. THALES PRODUCTS: DELIVERY, RISK AND TITLE**

- 2.1 Unless otherwise agreed by Thales in the Order Acknowledgment, delivery of Thales Products shall be F.C.A. (Incoterms 2020) at Thales's nominated facility.
- 2.2 Title to the Thales Products, and risk of damage or loss, shall pass to End User upon delivery of the Thales Products at Thales's nominated facility to the carrier for shipment to End User, as applicable.
- 2.3 Acceptance of the Thales Products shall occur upon delivery to the common carrier.
- 2.4 Thales will select the carrier of its choice, but in no event will Thales assume any liability in connection with the shipment, nor shall the carrier be considered an agent of Thales. Thales, in its sole discretion, may ship "collect", prepaid or subject to invoice payment terms.
- 2.5 Delivery dates specified in any Documentation, the Order or Order Acknowledgement are estimates only and shall not be binding on Thales, and the time of delivery is not of the essence. Thales shall not have any liability for damages or losses sustained by Purchaser as a result of (i) delivery dates or times not being met; (ii) any delay in delivery of the Products that is caused by a Force Majeure event; or (iii) End User's failure to provide Thales with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 2.6 Except as provided herein, Thales shall have no responsibility to store any Thales Products for End User except as may be required during manufacturing or processing. Thales reserves the right to make deliveries of Products in instalments, and any delay in delivery, or other default of any instalment of any one or more products, shall not relieve End User of its obligation to accept and pay for the remaining deliveries. If delivery is delayed due to End User, Thales may store the Thales Products at End User's risk and issue an invoice for the Thales Product as if it had been delivered.

#### **3. IMPERVA PRODUCTS: DELIVERY, RISK AND TITLE.**

- 3.1 If Thales is providing Imperva Products to the End User in accordance with these Appliance Specific Terms and Conditions set out in this Sub-part 3.3, Thales shall use commercially reasonable efforts to Deliver the Imperva Appliances in accordance with any reasonable delivery times requested in accepted Orders (in partial or full shipments). Provided Thales has used commercially reasonable efforts to Deliver the Imperva Appliances in accordance with any such requested delivery times, Thales shall in no event be liable for any delay in Delivery or for failure to give notice of delay. Imperva Appliances shall be deemed accepted by End User upon Delivery.
- 3.2 Risk of loss and, if applicable, title to Imperva Appliances shall pass to End User upon Delivery; provided that title shall not pass to End User for:
  - (a) any Software contained in or installed on such Imperva Appliances; or

(b) any Imperva Appliances for which End User has not purchased outright and paid for in full.

- 3.3 Imperva Appliances shall be delivered Ex Works (Incoterms 2020) to Imperva's designated manufacturing facility.
- 3.4 End User may specify shipping instructions with the Order, which are subject to Thales' acceptance. In the absence of specific shipping instructions from End User, which have been agreed to by Thales, Thales shall ship by the method it deems appropriate.
- 3.5 End User shall pay and be exclusively liable for all costs associated with shipping and delivery including without limitation, freight, shipping, customs charges and expenses, cost of special packaging or handling and insurance premiums.
- 3.6 In its discretion, Thales may advance shipping charges on behalf of End User on Appliances shipped to End User, and End User agrees to reimburse Thales for any such advanced charges and expenses.

#### **4. SOFTWARE.**

- 4.1 End User acknowledges that the Software included with the Appliance is licensed, and not sold, with the applicable license terms set out in Sub-Part 3.2 of this Agreement.
- 4.2 Software is licensed solely in conjunction with such Appliance (and not separately or apart from such Appliance). If End User sells, leases, lends, rents, distributes or otherwise transfers any Appliance to any third party or if Thales terminates this Agreement or any relevant Order, then End User shall erase all Software from such Appliance.

#### **5. MAINTENANCE AND SUPPORT.**

- 5.1 If Thales is providing Imperva Products to the End User in accordance with these Appliance Specific Terms and Conditions set out in this Sub-part 3.3, maintenance and support are provided in accordance with the Customer Support Guide.
- 5.2 If Thales is providing Thales Products to the End User in accordance with these Appliance Specific Terms and Conditions set out in this Sub-part 3.3, Support Services are subject to the Support Services Terms and Conditions set out at Sub-part 5.4 of this Agreement.

#### **6. WARRANTY.**

- 6.1 Thales warrants that during a one (1) year period commencing on the date of first Delivery, the Appliances shall perform substantially in accordance with the Documentation. In the event Thales determines that the Appliances are in a breach of the warranty in this Section 6.1, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, following the return of such Appliance by End User, either repair the Appliance or replace the Appliance with a new or reconditioned Appliance that performs substantially in accordance with the Documentation. This warranty extends only to the original purchaser of the Appliance and shall not apply where there has been damage to the Appliance returned to Thales. For clarity, any Software pre-installed in the Appliance is subject to the warranty set forth in Section 1.2 of Sub-part 3.2.
- 6.2 Warranty claims must be made in writing during the warranty period accompanied by evidence of the defect satisfactory to Thales together with any available details that may reasonably assist Thales to reproduce the noncompliance and effect a cure. All returns must comply with Thales' then-current return material authorization policy set forth in the Support Terms. If End-User receives a replacement unit of the Appliance, End-User may retain such Appliance, at Thales' option, in full satisfaction of any replacement remedy provided herein. Thales' obligations under this express warranty are subject to Thales' examination of the Appliance and Thales' determination to its reasonable satisfaction that the claimed defect or fault actually exists, and is not excluded from this warranty. If Thales determines that the Appliance is not defective or faulty within the terms of this warranty, End User shall be liable for all costs of handling, transportation and repairs at Thales' then prevailing repair rates.

- 6.3 This warranty is conditioned upon payment of the purchase invoice and proper use of the Appliances, in accordance with the Documentation or any other instructions or manuals issued by Thales. Thales shall have no obligation under this Warranty unless End-User promptly notifies Thales in writing of any failures within the applicable warranty periods. This warranty extends only to the End-User.
- 6.4 This warranty shall not apply to Appliances that have been: (i) improperly installed, modified or repaired by anyone other than Thales; (ii) used in a manner other than as authorized under the Documentation applicable to the Appliance purchased; (iii) installed, operated or maintained not in accordance with the instructions supplied by Thales, including but not limited to the installation, operation or maintenance of the Appliances on any hardware, operating system or tools (including their specific configurations) that are not compatible with the Appliances; (iv) modified, altered or repaired by a party other than Thales or a party authorized by Thales; (v) operated or maintained in unsuitable environmental conditions, or by any other cause external to the Appliances or otherwise beyond Thales' reasonable control, including any extreme power surge or failure or electromagnetic field, rough handling during transportation, fire or other act of God; (vi) use of the Appliances with telecommunication interfaces other than those supplied or approved by Thales not meeting or not maintained in accordance with Thales' specifications as described in the Documentation, unless Thales has specifically agreed in writing to include such modifications within the scope of this Agreement; (vii) damaged due to failure of power, air conditioning or humidity control, or failures of storage media not furnished by Thales or for consumable operating supplies or accessories outside the parameters designated in the Documentation or elsewhere, unless specifically included in this Agreement; (viii) subjected to accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse fault or negligence of Purchaser, its employees, agents, contractors or visitors, operator error; or (ix) where the serial numbers, warranty data or quality assurance decals on the Appliances are removed or altered. Thales's warranty does not apply to (i) products manufactured by third parties and resold by Thales without re-marking under Thales's trademarks, (ii) software products that are not developed by Thales, and (iii) consumable items (e.g. batteries).

## **7. STANDARD APPLIANCES.**

All Appliances shall be Thales' standard Appliances. Thales shall have no obligation to create special or customized versions of any Appliances, or to ensure that the Appliances operate with End User's equipment, software, or systems. Thales reserves the right, without prior approval from or notice to End User, to make changes to any Appliances: (i) to meet published Documentation; (ii) that do not adversely affect the performance of the Appliances 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 Appliances without any obligation to make the same changes to Appliances previously ordered by or licensed to End User.

## **SUB-PART 3: DATA SECURITY**

### **SUB-PART 3.4: EVALUATION SPECIFIC TERMS AND CONDITIONS**

**THESE EVALUATION SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AND THE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND / OR SOFTWARE SPECIFIC TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE EVALUATION SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. APPLICABLE TERMS AND CONDITIONS.**

- 1.1 From time to time, Thales may make available Evaluation Products to End User on a temporary basis for evaluation purposes, pursuant to an Order or otherwise. This Sub-Part 3.4 shall not apply to Appliances which are subject to a separate written agreement.
- 1.2 Where an End User utilises an Evaluation Product:
  - 1.2.1 for Cloud Services the following Sections of the Cloud Specific Terms and Conditions set out in Sub-Part 3.1 of this Agreement shall not apply: 1.1 and in Annex 1 to Sub-Part 3.1, Section 2;
  - 1.2.2 for Software the following Sections of the Software Specific Terms and Conditions set out in Sub-Part 3.2 of this Agreement shall not apply: 1.1 and 1.2; and
  - 1.2.3 the following Sections of the General Terms and Conditions shall not apply: 6, 7 and 9.

#### **2. EVALUATION LICENSE.**

Where Thales agrees to make an Evaluation Product available to and End User, Thales grants to End User during the Evaluation Period, a cost-free, non-sublicensable, non-transferable, non-assignable and non-exclusive, revocable at will license to use the Evaluation Product, solely at the location identified in writing by End User and solely for End User's internal evaluation of the Evaluation Product ("**Evaluation License**"). This Evaluation License does not include any rights to copy, alter, modify, reverse engineer, decompile, disassemble, make derivative works of, rent, lease, disclose, sublicense, or otherwise transfer the Product, related documentation, or other proprietary information of Thales. Thales will not provide any support or maintenance services with respect to the Product.

#### **3. RESTRICTIONS ON USE.**

The End User acknowledges that the Product and its related documentation will not be used in any way except as permitted by this Agreement, and except as explicitly permitted herein, will not be disclosed to any third party without Thales' prior written consent.

#### **4. EVALUATION PERIOD.**

- 4.1 Unless otherwise agreed to in writing, or terminated earlier in accordance with this Agreement, the term of the license to an Evaluation Product shall commence upon Delivery of the Evaluation Product and continue until the earlier of:
  - 4.1.1 thirty (30) days from Delivery; or
  - 4.1.2 the date that Thales provides written notice of termination to End User ("**Evaluation Period**").
- 4.2 Upon the expiration or termination of the Evaluation Period:
  - 4.2.1 the Evaluation License shall cease;

4.2.2 End User shall immediately:

- (a) return the Evaluation Product to Imperva;
- (b) destroy or erase any intangible copies of the Evaluation Product; and
- (c) certify in a writing signed by an officer of End User and delivered to Thales that all such copies of have been returned, destroyed or erased.

**5 WARRANTY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, END USER ACKNOWLEDGES AND AGREES THAT THE EVALUATION PRODUCT IS PROVIDED FOR EVALUATION “AS-IS” AND THALES AND ITS SUPPLIERS MAKE NO REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EVALUATION PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT, NONINFRINGEMENT OR ANY OTHER WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.**

**6 LIABILITY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN NO EVENT SHALL THALES’ TOTAL AND AGGREGATE LIABILITY IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE EVALUATION PRODUCT EXCEED ONE HUNDRED DOLLARS (\$100).**

**7 RETURN OR DESTRUCTION OF PRODUCT.**

If the End User wishes to purchase the Product following the Term, the End User may retain the Product and any related documentation, upon the submission of a purchase order for the Product or whilst the parties work in good faith to enter into a definitive agreement governing the purchase. In all circumstances, End User agrees to either destroy the Product (in the case of software) or return the Product to Thales without the requirement of demand and in good working order (excepting wear and tear from normal use with respect to hardware Product), to be received by Thales within ten (10) days of from the end of the Term (the “Return Date”), and in the case of destruction End User will send Thales a confirmation of such destruction signed by an authorized representative of End User within ten (10) business days from the end of the Term. Furthermore, if the Product includes software, the End User will immediately destroy or erase all copies of such software in its possession at the end of the Term. With respect to any unreturned Product: 1) that has not been, a) communicated to Thales in writing (via email acceptable) of End User’s intent to purchase the Product by the end of end of the Term, or b) not received by Thales by the Return Date; or 2) any Product returned in damaged condition (as determined at Thales’ discretion), Thales will invoice End User electronically via email to End User’s Email Address and/or mail the invoice, at Thales’ discretion, to End User’s Invoice Address specified below, and End User shall pay the list price for such Product applicable as of the Effective Date in accordance with the Thales issued invoice.

## PART 3: DATA SECURITY

### SUB-PART 3.5: DATA PROTECTION AND SECURITY

#### 1. OVERVIEW

1.1 This part of the Agreement is divided into the following sub-parts:

1.1.1 Where the Purchaser submits an Order for Imperva Products the Data Processing Addendum and the Security Addendum set out below, shall apply to the use of the applicable Imperva Products including all associated Services:

|                                                 |
|-------------------------------------------------|
| <a href="#"><u>Data Processing Addendum</u></a> |
| <a href="#"><u>Security Addendum</u></a>        |

1.1.2 Where the Purchaser submits an Order for Thales Products, the corresponding Data Processing Addendums set out below shall apply to the use of the applicable Thales Products including all associated Services:

|                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------|
| <a href="#"><u>Data Protection on Demand Data Processing Addendum</u></a>                                             |
| <a href="#"><u>Processing of Personal Data for Support Services for Thales Products Data Protection Agreement</u></a> |



THALES CYBER SECURITY PRODUCTS END USER AGREEMENT

PART 4: IDENTITY AND ACCESS MANAGEMENT SPECIFIC TERMS AND CONDITIONS

1. OVERVIEW

1.1 This part of the Agreement is divided into the following sub-parts:

| Product Area                   | Sub-part | Product Specific Terms and Conditions                                    |
|--------------------------------|----------|--------------------------------------------------------------------------|
| Identity and Access Management | 4.1      | Cloud Services Specific Terms and Conditions                             |
|                                | 4.2      | Software Specific Terms and Conditions                                   |
|                                | 4.3      | Hardware Specific Terms and Conditions                                   |
|                                | 4.4      | Evaluation Specific Terms and Conditions                                 |
|                                | 4.5      | OneWelcome Identity Platform (OIP) Supplemental Terms and Conditions     |
|                                | 4.6      | Safenet Trusted Access Workforce (STA) Supplemental Terms and Conditions |
|                                | 4.7      | IdCloud Supplemental Terms and Conditions                                |

## **PART 4: IDENTITY AND ACCESS MANAGEMENT**

### **SUB-PART 4.1: CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS**

**THESE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS GOVERN THE END USER'S ACCESS AND USE OF CLOUD SERVICES AND INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. LICENCE TERMS.**

##### **1.1 Grant.**

Subject to End User's compliance with this Agreement, and upon acceptance of an Order or, where transacted via the Thales marketplace, completion of the Order by an End User, Thales grants End User a non-exclusive, non-transferable, non-sublicensable, revocable right, during the Term, to access and use the Cloud Services, in accordance with its corresponding Documentation, solely for End User's internal business purposes, subject to and up to the Licensed Volume and for the license term. In respect of Third Party Products, End User shall be bound by the Third Party Terms.

#### **2. WARRANTY, SUPPORT AND SLA.**

- 1.1 Thales warrants that during the term of the relevant Order, the Cloud Services shall perform substantially in accordance with the Documentation and in compliance with the SLA. In the event of a breach of this warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, correct the Cloud Services so that it performs substantially in accordance with the Documentation and, either directly issue or have an Authorized Third Party issue, any credits to which End User may be entitled pursuant to the SLA.
- 1.2 If Thales suspends the Cloud Services in accordance with Section 6 of Sub-part 4.1, then during any such suspension, End User shall remain responsible for all fees during the period of suspension and shall not be entitled to any service credits that would have otherwise arisen pursuant to SLA.
- 1.3 Support is provided in accordance with the Support Terms.

#### **3. ACCESS AND USE OF CLOUD SERVICES.**

- 3.1 To access the Cloud Services, End User is required to set up an account or complete an Order for each Cloud Service. End User is responsible for ensuring the accuracy of the information required to set up the account. Thales' ability to deliver the Cloud Services depends upon End User's cooperation in setting up the account and on the accuracy of the information provided. If End User does not set up an account or if the information provided is inaccurate, Thales may not be able to perform the Cloud Services.
- 3.2 End User is responsible for the access to, and use of, the Cloud Services and for compliance with this Agreement, for which End User shall remain directly liable to Thales. End User will ensure that individuals which may access the Cloud Services maintain the confidentiality of login credentials and promptly notify Thales of any security breaches including compromise of accounts or credentials. Thales reserves the right to monitor End User's use of the Cloud Services from time to time to assess whether such usage is in accordance with this Agreement (including any agreed usage limits). Where such monitoring reveals that End User has exceeded any agreed usage limits, Thales reserves the right to additional Fees and End User shall pay such additional Fees to Thales at Thales's then current list price.
- 3.3 Thales engages in the constant evolution, innovation and improvement of its Cloud Services, and implements modifications that reflect new or enhanced features or functionalities. Thales may modify the features or

functionalities of the Cloud Services provided that such modifications will not materially degrade the core functionality of the Cloud Services. Thales may discontinue the Cloud Services and will use commercially reasonable efforts to transfer End User to a substantially similar Cloud Service. If Thales does not have a substantially similar Cloud Service, Thales will refund to End User or Authorized Third Party the unused portion of any prepaid fee for End User's Cloud Service. Thales may notify End User of its actions pursuant to this section, provided that End User subscribed to receive such notification.

- 3.4 End User is responsible for ensuring the individuals using the Cloud Services comply with such acceptable use provisions relating to the Cloud Services as Thales may specify from time to time. Thales reserves the right to, without liability or prejudice to its other rights or remedies, disable any End User access to all or part of the Cloud Services in the event it reasonably suspects a breach of such acceptable use provisions. Thales shall notify the End User of its intention to disable any credentials pursuant to this Section before it disables such credentials.
- 3.5 Except as explicitly set out in this Agreement, End User is solely responsible for acquiring and maintaining all of the equipment, software, services and items necessary to access and make use of the Cloud Services including without limitation paying all fees, charges, taxes, and other costs related to internet access and for configuration changes that may be required to route activity to the Cloud Services. End User may access the Cloud Services only through the interfaces and protocols provided or authorized by Thales and agrees to set up, maintain and use the Cloud Services in strict compliance with Thales' and its Authorized Third Party's instructions.
- 3.6 Except to the extent set out in the Documentation, and where configuration is in accordance with the express requirements of the Documentation, use of the Cloud Services in conjunction with third party products is at End User's own risk.
- 3.7 End User acknowledges that Thales does not control the transfer of data over communications facilities, including the internet, and that the subscription may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.
- 3.8 Thales may anonymously compile statistical information related to the performance of the Products for purposes of improving the Products, for statistical purposes, and for compliance verification provided that such information does not identify End User data or End User's name.

#### **4. EVALUATION SERVICES.**

Thales may offer Cloud Services as Evaluation Products. Any such use shall be pursuant to the terms of Sub-Part 4.4 of this Agreement.

#### **5. COMPLIANCE WITH LAWS.**

End User is solely responsible for and will comply with all laws or regulations of any governmental entity or authority applicable to End User's access or use of the Cloud Services.

#### **6. SUSPENSION OF THE CLOUD SERVICES.**

Thales may suspend End User's access to the Cloud Services in whole or part immediately and without any liability should Thales reasonably determine that End User's use of the Cloud Services: (i) is in breach of this Agreement, (ii) poses a security risk to Thales, the Cloud Services or any third party; (iii) may adversely impact Thales's systems, the Cloud Services or the systems, traffic or data of any other Thales partner or customer; (iv) subject Thales, its partner, suppliers or any third party to liability, (v) be fraudulent, or (vi) as otherwise required by laws or regulations of any governmental entity or authority. During any such suspension, End User shall remain responsible for all fees during the period of suspension and shall not be entitled to any service credits that would have otherwise arisen pursuant to the SLA.

## **PART 4: IDENTITY AND ACCESS MANAGEMENT**

### **SUB-PART 4.2: SOFTWARE SPECIFIC TERMS AND CONDITIONS**

**THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. LICENSE TERMS.**

##### **1.1 Grant.**

- (a) Subject to End User's compliance with this Agreement, and upon acceptance of an Order, Thales grants End User a non-exclusive, non-transferable, non-sublicensable, revocable license to use the Software, in accordance with its corresponding Documentation, solely for End User's internal business purposes, on the Hardware (where applicable), subject to and up to the Licensed Volume, and for the license term, each as described in the relevant Quote.
- (b) If End User receives a license to the Software pursuant to this Agreement on a standalone basis, the license granted in this Section shall include the right to copy the Software up to the Licensed Volume.

##### **1.2 Warranty.**

Thales warrants that during the sixty (60) day period commencing on the date of first Delivery, the Software shall perform substantially in accordance with the Documentation. In the event of a breach of the foregoing warranty, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, either replace the Software with Software conforming to the warranty in this Section 1.2, or use reasonable efforts to modify the Software so that it performs substantially in accordance with the Documentation. The rights and remedies granted to End User under this Section state Thales' entire liability, and End User's exclusive remedy, with respect to any breach of the warranty set out in this Section.

#### **2. DELIVERY.**

##### **2.1 Delivery.**

Upon acceptance of an Order, Thales shall use commercially reasonable efforts to Deliver any Software license keys that may be required to use the Software in accordance with the Documentation for the duration of the Order. Direct Orders shall be Delivered to End User and Orders via an Authorized Third Party shall be Delivered via the Authorized Third Party. Software shall be deemed accepted by End User upon Delivery.

##### **2.2 Delay.**

Provided that Thales has used commercially reasonable efforts, Thales shall in no event be liable for any delay in Delivery or for failure to give notice of delay.

#### **3. MAINTENANCE AND SUPPORT.**

Maintenance and support are provided in accordance with the Support Terms.

#### **4. DATA RECOVERY.**

End User is solely responsible for End User's data back-up, data recovery, and disaster recovery measures. Thales shall not be responsible for End User's internal processes and procedures to ensure the protection of End User's data or information stored within End User's own environment. End User shall maintain an unmodified copy of all Software and all related Documentation, archival files and configuration files necessary to reinstall, reconfigure or reconstruct any lost, altered or damaged Software. Upon termination or discontinuation for any reason or for any non-renewal, Thales may delete all information, keys, certificates, user material and/or any other data or information related to End User's use of the Products and may discontinue End User's access to and use of the Services.

#### **5. AUDIT**

5.1 In addition to the audit provisions set out in Section 5 of Part 1 (General Terms and Conditions) of this Agreement, the following audit terms shall apply to Software.

5.2 Upon Thales' written request, End User shall conduct a review of use of the Software and certify to Thales in a written instrument signed by an authorized representative of End User that it is in full compliance with this Agreement and, in particular, that it is not using more than the Licensed Volume. In the event of non-compliance, End User shall immediately remedy such non-compliance and provide Thales with written notice signed by the authorized representative to confirm the same. End User shall provide Thales with all access and assistance as Thales reasonably requests to further evaluate and remedy such noncompliance.

5.3 If the audit or any of the measures taken or implemented under this Section 5, determines that the End User's use of the Software exceeds the Licensed Volume:

- (a) End User shall, within thirty (30) days following the date of such determination by Thales, pay to Thales or the relevant Authorized Third Party the retroactive fees for such excess use at the then-current rates for such licenses;
- (b) If the use exceeds the Licensed Volume by more than ten percent (10%), End User shall pay Thales' reasonable costs incurred in conducting the audit; and
- (c) If the use exceeds the Licensed Volume by more than twenty percent (20%), Thales may terminate this Agreement and the license to the Software, effective immediately upon written notice to End User.

5.4 Thales's remedies set forth in this Section 5 are cumulative and are in addition to, and not in lieu of, all other remedies the Thales may have at law or inequity.

#### **5. POLICIES.**

##### **5.1 Security maintenance.**

Where Thales reasonably considers End User's use of the Software could (i) pose a security risk to Thales, the Software or any third party; (ii) adversely impact Thales' systems, the Software or the systems, traffic or data of any other Thales partner or customer; (iii) subject Thales, its partner, suppliers or any third party to liability, or (iv) be fraudulent, Thales shall have the right to suspend in whole or in part End User's rights to access or use the Software (including any Support Services) immediately upon notice. During any such suspension, End User shall remain responsible for all fees during the period of suspension.

##### **5.2 End of life policy.**

All Software is subject to Thales' then-current End of Life Policy (available [here](#) or such alternate URL or other repository as Thales may specify from time to time).

### **5.3 Usage data.**

Thales may anonymously compile statistical information related to the performance of the Products for purposes of improving the Products, for statistical purposes, and for compliance verification provided that such information does not identify End User data or End User's name.

## **PART 4: IDENTITY AND ACCESS MANAGEMENT**

### **SUB-PART 4.3: HARDWARE SPECIFIC TERMS AND CONDITIONS**

**THESE HARDWARE SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. OVERVIEW.**

- 1.1 This section sets out the terms specific to Hardware only.
- 1.2 In respect of Third Party Products, End User shall be bound by the Third Party Terms.

#### **2. DELIVERY, RISK AND TITLE**

- 2.1 Unless otherwise agreed by Thales in the Order Acknowledgment, delivery of Thales Products shall be F.C.A. (Incoterms 2020) at Thales's nominated facility.
- 2.2 Title to the Thales Products, and risk of damage or loss, shall pass to End User upon delivery of the Thales Products at Thales's nominated facility to the carrier for shipment to End User, as applicable.
- 2.3 Acceptance of the Thales Products shall occur upon delivery to the common carrier.
- 2.4 Thales will select the carrier of its choice, but in no event will Thales assume any liability in connection with the shipment, nor shall the carrier be considered an agent of Thales. Thales, in its sole discretion, may ship "collect", prepaid or subject to invoice payment terms.
- 2.5 Delivery dates specified in any Documentation, the Order or Order Acknowledgement are estimates only and shall not be binding on Thales, and the time of delivery is not of the essence. Thales shall not have any liability for damages or losses sustained by Purchaser as a result of (i) delivery dates or times not being met; (ii) any delay in delivery of the Products that is caused by a Force Majeure event; or (iii) End User's failure to provide Thales with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 2.6 Except as provided herein, Thales shall have no responsibility to store any Thales Products for End User except as may be required during manufacturing or processing. Thales reserves the right to make deliveries of Products in instalments, and any delay in delivery, or other default of any instalment of any one or more products, shall not relieve End User of its obligation to accept and pay for the remaining deliveries. If delivery is delayed due to End User, Thales may store the Thales Products at End User's risk and issue an invoice for the Thales Product as if it had been delivered.

#### **3. SOFTWARE.**

- 3.1 End User acknowledges that the Software included with the Hardware is licensed, and not sold, with the applicable license terms set out in Sub-Part 4.2 of this Agreement.
- 3.2 Software is licensed solely in conjunction with such Hardware (and not separately or apart from such Hardware). If End User sells, leases, lends, rents, distributes or otherwise transfers any Hardware to any third party or if Thales terminates this Agreement or any relevant Order, then End User shall erase all Software from such Hardware.

#### **4. MAINTENANCE AND SUPPORT.**

- 4.1 Support Services are provided in accordance with the Support Terms.

## **5. WARRANTY.**

- 5.1 Thales warrants that during a one (1) year period commencing on the date of first Delivery, the Hardware shall perform substantially in accordance with the Documentation. In the event Thales determines that the Hardware are in a breach of the warranty in this Section 5.1, as End User's sole and exclusive remedy, Thales shall, at its sole expense and discretion, following the return of such Appliance by End User, either repair the Appliance or replace the Appliance with a new or reconditioned Appliance that performs substantially in accordance with the Documentation. This warranty extends only to the original purchaser of the Appliance and shall not apply where there has been damage to the Appliance returned to Thales. For clarity, any Software pre-installed in the Appliance is subject to the warranty set forth in Section 1.2 of Sub-part 4.2.
- 5.2 Warranty claims must be made in writing during the warranty period accompanied by evidence of the defect satisfactory to Thales together with any available details that may reasonably assist Thales to reproduce the noncompliance and effect a cure. All returns must comply with Thales' then-current return material authorization policy set forth in the Support Terms. If End-User receives a replacement unit of the Appliance, End-User may retain such Appliance, at Thales' option, in full satisfaction of any replacement remedy provided herein. Thales' obligations under this express warranty are subject to Thales' examination of the Appliance and Thales' determination to its reasonable satisfaction that the claimed defect or fault actually exists, and is not excluded from this warranty. If Thales determines that the Appliance is not defective or faulty within the terms of this warranty, End User shall be liable for all costs of handling, transportation and repairs at Thales' then prevailing repair rates.
- 5.3 This warranty is conditioned upon payment of the purchase invoice and proper use of the Hardware, in accordance with the Documentation or any other instructions or manuals issued by Thales. Thales shall have no obligation under this Warranty unless End-User promptly notifies Thales in writing of any failures within the applicable warranty periods. This warranty extends only to the End-User.
- 5.4 This warranty shall not apply to Hardware that have been: (i) improperly installed, modified or repaired by anyone other than Thales; (ii) used in a manner other than as authorized under the Documentation applicable to the Appliance purchased; (iii) installed, operated or maintained not in accordance with the instructions supplied by Thales, including but not limited to the installation, operation or maintenance of the Hardware on any hardware, operating system or tools (including their specific configurations) that are not compatible with the Hardware; (iv) modified, altered or repaired by a party other than Thales or a party authorized by Thales; (v) operated or maintained in unsuitable environmental conditions, or by any other cause external to the Hardware or otherwise beyond Thales' reasonable control, including any extreme power surge or failure or electromagnetic field, rough handling during transportation, fire or other act of God; (vi) use of the Hardware with telecommunication interfaces other than those supplied or approved by Thales not meeting or not maintained in accordance with Thales' specifications as described in the Documentation, unless Thales has specifically agreed in writing to include such modifications within the scope of this Agreement; (vii) damaged due to failure of power, air conditioning or humidity control, or failures of storage media not furnished by Thales or for consumable operating supplies or accessories outside the parameters designated in the Documentation or elsewhere, unless specifically included in this Agreement; (viii) subjected to accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse fault or negligence of Purchaser, its employees, agents, contractors or visitors, operator error; or (ix) where the serial numbers, warranty data or quality assurance decals on the Hardware are removed or altered. Thales's warranty does not apply to (i) products manufactured by third parties and resold by Thales without re-marking under Thales's trademarks, (ii) software products that are not developed by Thales, and (iii) consumable items (e.g. batteries).

## **6. STANDARD APPLIANCES.**

All Hardware shall be Thales' standard Hardware. Thales shall have no obligation to create special or customized versions of any Hardware, or to ensure that the Hardware operate with End User's equipment, software, or systems. Thales reserves the right, without prior approval from or notice to End User, to make changes to any Hardware: (i) to meet published Documentation; (ii) that do not adversely affect the performance of the Hardware 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 Hardware without any obligation to make the same changes to Hardware previously ordered by or licensed to End User.

## **PART 4: IDENTITY AND ACCESS MANAGEMENT**

### **SUB-PART 4.4: EVALUATION SPECIFIC TERMS AND CONDITIONS**

**THESE EVALUATION SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AND THE SOFTWARE SPECIFIC TERMS AND CONDITIONS AND / OR INFRASTRUCTURE SPECIFIC TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE EVALUATION SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

#### **1. APPLICABLE TERMS AND CONDITIONS.**

- 1.1 From time to time, Thales may make available Evaluation Products to End User on a temporary basis for evaluation purposes, pursuant to an Order or otherwise. This Sub-Part 4.4 shall not apply to Hardware which are subject to a separate written agreement.
- 1.2 Where an End User utilises an Evaluation Product:
  - 1.2.1 for Cloud Services the following Sections of the Cloud Specific Terms and Conditions set out in Sub-Part 4.1 of this Agreement shall not apply: 1.1 and in Annex 1 to Sub-Part 4.1, Section 2;
  - 1.2.2 for Software the following Sections of the Software Specific Terms and Conditions set out in Sub-Part 4.2 of this Agreement shall not apply: 1.1 and 1.2; and
  - 1.2.3 the following Sections of the General Terms and Conditions shall not apply: 6, 7 and 9.

#### **2. EVALUATION LICENSE.**

Where Thales agrees to make an Evaluation Product available to and End User, Thales grants to End User during the Evaluation Period, a cost-free, non-sublicensable, non-transferable, non-assignable and non-exclusive, revocable at will license to use the Evaluation Product, solely at the location identified in writing by End User and solely for End User's internal evaluation of the Evaluation Product ("**Evaluation License**"). This Evaluation License does not include any rights to copy, alter, modify, reverse engineer, decompile, disassemble, make derivative works of, rent, lease, disclose, sublicense, or otherwise transfer the Product, related documentation, or other proprietary information of Thales. Thales will not provide any support or maintenance services with respect to the Product.

#### **3. RESTRICTIONS ON USE.**

The End User acknowledges that the Product and its related documentation will not be used in any way except as permitted by this Agreement, and except as explicitly permitted herein, will not be disclosed to any third party without Thales' prior written consent.

#### **4. EVALUATION PERIOD.**

- 4.1 Unless otherwise agreed to in writing, or terminated earlier in accordance with this Agreement, the term of the license to an Evaluation Product shall commence upon Delivery of the Evaluation Product and continue until the earlier of:
  - 4.1.1 thirty (30) days from Delivery; or
  - 4.1.2 the date that Thales provides written notice of termination to End User ("**Evaluation Period**").
- 4.2 Upon the expiration or termination of the Evaluation Period:
  - 4.2.1 the Evaluation License shall cease;

4.2.2 End User shall immediately:

- (a) return the Evaluation Product to Thales;
- (b) destroy or erase any intangible copies of the Evaluation Product; and
- (c) certify in a writing signed by an officer of End User and delivered to Thales that all such copies of have been returned, destroyed or erased.

**5 WARRANTY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, END USER ACKNOWLEDGES AND AGREES THAT THE EVALUATION PRODUCT IS PROVIDED FOR EVALUATION “AS-IS” AND THALES AND ITS SUPPLIERS MAKE NO REPRESENTATIONS, CONDITIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EVALUATION PRODUCT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT, NONINFRINGEMENT OR ANY OTHER WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.**

**6 LIABILITY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, IN NO EVENT SHALL THALES’ TOTAL AND AGGREGATE LIABILITY IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE EVALUATION PRODUCT EXCEED ONE HUNDRED DOLLARS (\$100).**

**7 RETURN OR DESTRUCTION OF PRODUCT.**

If the End User wishes to purchase the Product following the Term, the End User may retain the Product and any related documentation, upon the submission of a purchase order for the Product or whilst the parties work in good faith to enter into a definitive agreement governing the purchase. In all circumstances, End User agrees to either destroy the Product (in the case of software) or return the Product to Thales without the requirement of demand and in good working order (excepting wear and tear from normal use with respect to hardware Product), to be received by Thales within ten (10) days of from the end of the Term (the “Return Date”), and in the case of destruction End User will send Thales a confirmation of such destruction signed by an authorized representative of End User within ten (10) business days from the end of the Term. Furthermore, if the Product includes software, the End User will immediately destroy or erase all copies of such software in its possession at the end of the Term. With respect to any unreturned Product: 1) that has not been, a) communicated to Thales in writing (via email acceptable) of End User’s intent to purchase the Product by the end of end of the Term, or b) not received by Thales by the Return Date; or 2) any Product returned in damaged condition (as determined at Thales’ discretion), Thales will invoice End User electronically via email to End User’s Email Address and/or mail the invoice, at Thales’ discretion, to End User’s Invoice Address specified below, and End User shall pay the list price for such Product applicable as of the Effective Date in accordance with the Thales issued invoice.

## **PART 4: IDENTITY AND ACCESS MANAGEMENT**

### **SUB-PART 4.5: OIP SUPPLEMENTAL TERMS AND CONDITIONS**

**THESE OIP SUPPLEMENTAL TERMS AND CONDITIONS GOVERN THE END USER'S ACCESS AND USE OF THE OIP PRODUCT, AND SHALL BE INCORPORATED WITHIN AND SUBJECT TO THE GENERAL TERMS AND CONDITIONS CONTAINED AT PART 1 AND THE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS SET OUT IN SUB-PART 4.1.**

#### **1 CONTRACTING ENTITY**

For customers who already had a OIP Order on 1 December 2023 via OneWelcome B.V., the Thales contracting entity shall continue as OneWelcome B.V. for each renewal order.

#### **2 AUTO-RENEWAL**

On Order will automatically renew for a period equal to the previous Order term unless either Party gives the other Party at least a sixty (60) days' prior written notice of non-renewal before the end of the relevant Order term.

#### **3 METERED BILLING**

Some OIP features are charged based on the amount used. An Order may include a base price for a specific minimum amount of units for a resource ('minimum usage') with an additional fee for the units consumed beyond that minimum. If the amount of that resource used is more than the minimum usage, then End User will promptly inform Thales of the exact amount of the resource used and pay to Thales (or any Authorised Third Party) under the Agreement any additional fees for all use of that resource. Thales regularly measures the resource amounts used. If the amount as measured by Thales is higher than the minimum usage, then the higher number will apply and fees will be payable by End User in accordance with the amount of resources used.

#### **4 ACCESS CONTROLS**

End User will: (a) notify Thales immediately of any unauthorized use of any password or user id or any other known or suspected breach of security; (b) report to Thales immediately and use reasonable efforts to stop any unauthorized use of the Products that is known or suspected by the End User or its customers, and (c) not provide false identity information to gain access to or use the Products. Thales will not be liable for any loss of data or functionality caused directly or indirectly by any administrator.

#### **5 REGULATED DATA**

End User shall not process through the Subscription any protected health information ("PHI") as defined under the USA Health Insurance Portability and Accountability Act of 1996, as amended and supplemented from time to time ("HIPAA") or any cardholder data as defined under PCI-DSS ("Cardholder Data") unless (a) Customer has entered into an Order expressly permitting Customer to process PHI and/or Cardholder Data, as applicable; (b) Customer configures and operates the Services in accordance with any applicable Documentation; and (c) in the case of PHI, Customer has entered into a Business Associate Agreement with Thales. Thales will have no liability under the Agreement relating to PHI or Cardholder Data that is not processed in accordance with this Section notwithstanding anything in the Agreement, or in HIPAA or PCI-DSS (as applicable), or any other laws.

#### **6 DPA**

The OIP product is subject to the data processing agreement available [here](#) or such other URL as Thales may specify from time to time.

## PART 4: IDENTITY AND ACCESS MANAGEMENT

### SUB-PART 4.6: STA SUPPLEMENTAL TERMS AND CONDITIONS

THESE STA SUPPLEMENTAL TERMS AND CONDITIONS GOVERN THE END USER'S ACCESS AND USE OF THE STA PRODUCT, AND SHALL BE INCORPORATED WITHIN AND SUBJECT TO THE GENERAL TERMS AND CONDITIONS CONTAINED AT PART 1 AND THE CLOUD SERVICES SPECIFIC TERMS AND CONDITIONS SET OUT IN SUB-PART 4.1.

#### 1. SECURITY CREDENTIAL AND SECURITY TOKENS

1.1 In this Section 1, the following terms shall have the following meanings:

**"Security Credentials"** means the one-time password (OTP) produced by a Security Token, password, PIN, or digital certificate used to authenticate to the Products; and

**"Security Token"** means a hardware or software-based multi-factor authentication security device used to authenticate to the Products.

1.2 The End User is solely responsible for managing all Security Credentials and Thales assumes no responsibility for the supervision, management, or control of End User's Security Credentials. Thales assumes no responsibility and disclaims all liability for (a) any fraudulent access to and/or use of the Products, (b) any access to and/or use of the Products or any portion of them in violation of this Agreement, and (c) End User's use of, or failure to protect, the Security Credentials.

1.3 If any Security Token is lost, damaged, stolen, or compromised, End User shall report these incidents immediately to the End User's administrator to take the appropriate action including, but not limited to, disabling, changing, or replacing the affected Security Token. With respect to Security Tokens purchased from Thales or through an Authorized Third Party, End User will not, and will not permit any third party to, (a) reverse engineer, disassemble, decompile, decode, or alter the Security Tokens or any of their technology or components; (b) make or use any copies of any Security Tokens; (c) use a Security Token with any product other than STA; (e) use the Services or any component thereof other than as part of the Services or in any way other than the purposes for which the Services are intended.

1.4 End User will ensure that individuals using the Security Tokens comply with this Section.

#### 2. AUTO-RENEWAL

On Order will automatically renew for a period equal to the previous Order term unless either Party gives the other Party at least a sixty (60) days' prior written notice of non-renewal before the end of the relevant Order term.

#### 3. THIRD-PARTY SITES.

The Products may contain links to, or call the servers of, third-party websites or services that are not under Thales's control ("**Third-Party Sites**"). As such, Thales is not responsible for, and doesn't make any express or implied warranties with regard to, the information, content or other material, products, or services that are contained in, are accessible through, or the policies regarding the use and privacy of Third-Party Sites. Access to and use of Third-Party Sites, including information, content, material, products, and services on such websites or available through such websites, is solely at your risk.

#### 4. DATA COLLECTION.

Thales may collect system data (excluding Personal Data) regarding your use of the Products and how the Products function to: (a) enhance and/or deliver the Products; (b) provide you the option of upgrades, new

offerings, and enhancements to the Products; (c) for billing purposes including but not limited to usage-based billing; and (d) functioning of the Products for troubleshooting. You hereby consent to such collection activities and extension of offers from Thales or Authorized Third Party for upgrades, new offering, and enhancements.

## **5. STA DPA**

The STA product is subject to the data processing agreement available [here](#) or such other URL as Thales may specify from time to time.

## PART 4: IDENTITY AND ACCESS MANAGEMENT

### SUB-PART 4.7: IDCLOUD SUPPLEMENTAL TERMS AND CONDITIONS

#### 1. CONTRACTING ENTITY

For customers who already had an IdCloud Order on or before 1 December 2023, the Thales contracting entity applicable to that order shall continue for each renewal Order unless and until Thales notifies you otherwise.

#### 2. IDCLOUD DPA

The IdCloud Product is subject to the corresponding data processing agreement available below or such other URL as Thales may specify from time to time.

|                                             |
|---------------------------------------------|
| <a href="#">IdCloud Access FIDO DPA</a>     |
| <a href="#">IdCloud Access OATH DPA</a>     |
| <a href="#">IdCloud Onboarding DPA</a>      |
| <a href="#">IdCloud Risk Management DPA</a> |



THALES CYBER SECURITY PRODUCTS END USER AGREEMENT

PART 5: SERVICES SPECIFIC TERMS AND CONDITIONS

1. OVERVIEW

1.1 This part of the Agreement is divided into the following sub-parts:

|              |                                                 |
|--------------|-------------------------------------------------|
| Sub-part 5.1 | Packaged Services Specific Terms and Conditions |
| Sub-part 5.2 | Scoped Services Specific Terms and Conditions   |
| Sub-part 5.3 | Training Specific Terms and Conditions          |
| Sub-part 5.4 | Support Services Specific Terms and Conditions  |

## **SUB-PART 5.1: PACKAGED SERVICES SPECIFIC TERMS AND CONDITIONS**

**THESE PACKAGED SERVICES SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE PACKAGED SERVICES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

### **1. SERVICE DESCRIPTION.**

- 1.1 Each Quote for Packaged Services contains a standard packaged offering and sets out the scope and term of such Packaged Services ("**Service Description**").
- 1.2 Within the Service Description, a fixed number of hours or Service Outcomes shall be set out, to be provided on a capped basis (either capped per week, month or other finite period of time or limited to the Service Outcomes within specified time period). Where a Service Description is time-based, unused hours shall not carry over to the next week or month and shall be deemed forfeited with no right of refund.
- 1.3 Packaged Services are limited to the activities set out in the Service Description and shall exclude hardware maintenance and repair, software maintenance and support, infrastructure, console, time and materials services, training services or any other activities not specifically described in the Service Description.
- 1.4 Packaged Services do not include any rights or entitlements to Products. Packaged Services are a distinct contractual entitlement from Products.

### **2. OPERATIONAL MATTERS.**

#### **2.1 Remote only.**

All Packaged Services shall be provided remotely, unless otherwise expressly set out in the Service Description. Onsite services are available in Sub-part 5.2 of this Agreement.

#### **2.2 No custom development.**

No custom development shall take place in connection with any Packaged Services.

#### **2.3 End User dependencies.**

- 2.3.1 End User acknowledges that Thales is dependent on the cooperation of End User in order to provide Packaged Services.
- 2.3.2 To the extent that End User fails to meet a dependency that Thales reasonably requires in order to provide Packaged Services, Thales shall be relieved of its obligations to provide Packaged Services.
- 2.3.3 For the purpose of this Section 2.3, Thales shall be deemed to be dependent on End User with respect to the following:
  - (i) remote access and maintaining sufficient equipment and technology to facilitate Thales to provide the Packaged Services; and
  - (ii) promptly providing Thales with such information as may be reasonably required to enable Thales to provide the Packaged Services.

### **3 WARRANTY AND DISCLAIMER.**

- 3.1 Thales warrants that the Packaged Services shall be performed in a professional and workmanlike manner.

- 3.2 In the event of a breach of Section 3.1, Thales shall at its sole option and expense, either:
- (a) re-perform the applicable Packaged Services in a manner that is compliant with such warranty; or
  - (b) in the event Thales is unable to do so after using commercially reasonable efforts, terminate all or part of the applicable Packaged Services and upon such termination, Thales shall promptly refund End User all fees paid for the non-compliant Packaged Services.
- 3.3 The rights and remedies granted to End User under this Section 3 state Thales' entire liability, and End User's sole and exclusive remedy, with respect to any breach of the warranty set forth in this Section 3.

#### **4 SERVICE COMMENCEMENT.**

- 4.1 All Packaged Services shall commence at a mutually agreed time between the parties, to take place as soon as reasonably possible following acceptance of the relevant Order.
- 4.2 If a Packaged Service is not fully utilized within twelve (12) months (or such shorter period set out in a Service Description) of the date of acceptance of the relevant Order, all unused Packaged Services shall be deemed forfeited without refund.

#### **5. PERFORMANCE CONDITIONS.**

Thales will not be responsible for the loss or corruption of any End User data or for any system outage. Customer is responsible for creating backups of all End User data and scheduling system maintenance windows, as necessary for Thales to perform the Packaged Services. Thales will not be responsible for any application or host system access that encompasses coding, scripting, application analysis, system performance, troubleshooting, or applications logins outside of the services described in the applicable Service Description. Any and all future activity for trouble shooting, additions, or changes requested after End User's acceptance must be requested in writing by End User and is subject to a separate price quote. It is preferred that all technical inquiries are sent via email. Thales shall have five (5) business days from receipt of such inquiry to respond.

## **SUB-PART 5.2: SCOPED SERVICES SPECIFIC TERMS AND CONDITIONS**

**THESE SCOPED SERVICES SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SCOPED SERVICES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

### **1. STATEMENT OF WORK.**

- 1.1 Where a Quote contains Scoped Services, the specific Scoped Services to be provided shall be set out in a Statement of Work which shall signed by duly authorized representatives of Thales and End User.
- 1.2 Scoped Services are limited to the activities set out in the Statement of Work and shall exclude hardware maintenance and repair, software maintenance and support, infrastructure, console, training services or any other activities not specifically described in the Statement of Work.
- 1.3 Scoped Services do not include any rights or entitlements to Products. Scoped Services are a distinct contractual entitlement from Products.
- 1.4 Unless otherwise specified in the Agreement, all dates and times for the provision of the Scoped Services are estimates only and time shall not be of the essence for the performance of the Scoped Services. Thales shall not have any liability for delay or for any damages or losses sustained by Customer as a result of such dates or times not being met.

### **2. OPERATIONAL MATTERS.**

#### **2.1 Acceptance.**

- 2.1.1 Unless otherwise set forth in the applicable SOW, Scoped Services shall be deemed accepted upon the execution of the Certificate of Completion by the Customer or within 5 days of delivery of the Certification of Completion, whichever is sooner. If the Deliverables and/or Scoped Services are to be incrementally delivered or otherwise completed in phases, each phase shall be independently accepted or deemed accepted (as appropriate).
- 2.1.2 Unless otherwise set forth in the applicable SOW, Thales is not responsible for any future trouble shooting, additions or changes requested after final delivery of all Deliverables provided under the applicable SOW.

#### **2.2 Remote default.**

The default position is that the Scoped Services shall be provided remotely. Should on-site services be required, End User shall pay Thales additional travel, lodging and sustenance expenses in accordance with Thales' then-current rates, except where otherwise set out in a SOW. For on-site Scoped Services, End User shall:

- (a) provide Thales personnel with reasonable office space and necessary access to hardware and other systems; and
- (b) comply in all material respects with applicable laws relating to the treatment of Thales personnel who are on End User's premises.

#### **2.3 No custom development.**

No custom development shall take place in connection with any Scoped Services.

## **2.4 End User dependencies.**

- 2.4.1 End User acknowledges that Thales is dependent on the cooperation of End User in order to provide Scoped Services.
- 2.4.2 To the extent that End User fails to meet a dependency that Thales reasonably requires in order to provide Scoped Services, Thales shall be relieved of its obligation to provide Scoped Services.
- 2.4.3 For the purpose of this Section 2.4, Thales shall be deemed to be dependent on End User with respect to the following:
  - (a) remote access and maintaining sufficient equipment and technology to facilitate Thales to provide the Scoped Services; and
  - (b) promptly providing Thales with such information as may be reasonably required to enable Thales to provide the Scoped Services.

## **2. INVOICE AND PAYMENT.**

The following section applies only to Direct Orders for Scoped Services:

- 2.1 Scoped Services will be invoiced in accordance with the invoicing milestones provided by Thales, as applicable. Where there are no invoicing milestones details provided, Thales may invoice at such reasonable times as it deems appropriate. Unless expressly set out otherwise in a SOW, End User will pay the reasonable travel, living, and out-of-pocket expenses incurred by Thales.
- 2.2 Invoices shall be deemed accepted by End User upon receipt, unless End User advises Thales in writing of a material error within ten (10) days after receipt.
- 2.3 End User may not offset, defer or deduct any invoiced amounts that Thales determined are not erroneous following such period.
- 2.4 Amounts payable to Thales for Scoped Services are payable in full without deduction (net of applicable taxes, costs and expenses) and End User shall pay all such applicable taxes, costs and expenses (exclusive of taxes on Thales' net income) within thirty (30) days from the date of invoice in the method and currency identified. No discount for early payment is authorized.
- 2.5 All payments made by End User and any unused Scoped Services purchased by End User are non- refundable.
- 2.6 Thales may suspend or terminate any or all Scoped Services and refuse additional Orders until overdue amounts are fully paid by End User. Any late payment will bear interest at a rate of one percent (1%) per month, or such other lesser rate as may be required by applicable law. Thales reserves the right to withdrawn any credit advanced at any time.

## **3. WARRANTY AND DISCLAIMER.**

- 3.1 Thales warrants that the Scoped Services shall be performed in a professional and workmanlike manner.
- 3.2 In the event of a breach of Section 4.1, Thales shall at its sole option and expense, either:
  - (a) re-perform the applicable Scoped Services in a manner that is compliant with such warranty; or
  - (b) in the event Thales is unable to do so after using commercially reasonable efforts, terminate all or part of the applicable Scoped Services and upon such termination, Thales shall promptly refund End User all fees paid for the non-compliant Scoped Services.

- 3.3 The rights and remedies granted to End User under this Section 4 state Thales' entire liability, and End User's sole and exclusive remedy, with respect to any breach of the warranty set forth in this Section 4.

#### **4. SERVICE COMMENCEMENT.**

- 4.1 All Scoped Services shall commence at a mutually agreed time between the parties as set forth in the Statement of Work.
- 4.2 If a Scoped Service is not fully utilized within twelve (12) months of the date of acceptance of the relevant Order, all unused Scoped Services shall be deemed forfeited with no right to a refund.

#### **5. CHANGE MANAGEMENT PROCESS.**

The parties may request, in writing, additions, deletions, or modifications to the Scoped Services described in the applicable SOW ("Change Request"). Thales shall have 3 business days from receipt of the Change Request from End User or an Authorized Partner to research and document the proposed change, and prepare a Change Request form. The raising of a Change Request may necessitate additional time for the completion of the existing scope of the Scoped Services. No change to the applicable SOW shall be made unless it is accepted by Thales in writing, signed by an authorized signatory. Thales will not perform or commence work in connection with any proposed change until (i) a Change Request form is approved and signed by Thales and either the End User, or the Authorized Partner, as applicable; and (ii) to the extent the fees associated with the Scoped Services have changed based on the Change Request, Thales has received a purchase order for such changes.

#### **6. PERFORMANCE CONDITIONS.**

Thales will not be responsible for the loss or corruption of any End User data or for any system outage. End User is responsible for creating backups of all End User data and scheduling system maintenance windows, as necessary for Thales to perform the Scoped Services. Thales will not be responsible for any application or host system access that encompasses coding, scripting, application analysis, system performance, troubleshooting, or applications logins outside of the services described in the applicable SOW. Any and all future activity for trouble shooting, additions, or changes requested after End User's acceptance must be requested in writing by End User and subject to a separate price quote. It is preferred that all technical inquiries are sent via email. Thales shall have five (5) business days from receipt of such inquiry to respond.

## **SUB-PART 5.3: TRAINING SERVICES SPECIFIC TERMS AND CONDITIONS**

**THESE TRAINING SERVICES SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE TRAINING SERVICES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

### **1. SCOPE.**

The scope of the relevant Training Services is set forth in Thales' training catalog.

### **2. EXPIRATION OF TRAINING.**

Training Services shall be completed within twelve (12) months of the date an Order is accepted. If Training Services are not fully utilized within twelve (12) months of the date of acceptance of the relevant Order, all unused Training Services shall be deemed forfeited with no right to a refund.

### **3. COURSE CANCELLATION.**

- 3.1 If a student is unable to attend the class in which they are enrolled, please contact Thales in writing in advance. A substitute may attend that student's place, or the student can participate in a later session, subject to Section 2 above.
- 3.2 For all Thales hosted training, students may cancel their enrollment no later than twenty-five (25) business days prior to the course's start date. Students canceling fewer than twenty-five (25) business days prior to the course start date must pay for the course and are not entitled to a refund. Students are responsible for all travel, accommodation and other associate expenses.
- 3.3 Thales shall notify students of course cancellation at least ten (10) business days prior to the start of the course, and shall credit paid tuition towards a future training.
- 3.4 For all Thales private training, End Users must cancel their booking by emailing Thales no later than twenty (20) business days prior to the course's date. End Users cancelling their private booking fewer than twenty (20) business days prior to the course start date must pay travel related expenses incurred by Thales.
- 3.5 Thales reserves the right to cancel a course. In the event that Thales must cancel a course, Thales assumes no financial liability for any cancellation fees, including non-refundable airfare, hotel and rental costs.
- 3.6 Online e-learning courses are non-refundable and no cancellation is permitted.
- 3.7 Subscriptions are non-refundable and no cancellation is permitted.
- 3.8 On-line registrations: If a student is unable to attend the class in which they are enrolled, but prefers to schedule for a different session, the student may do so by un-enrolling from the course in the online system or by contacting [training@imperva.com](mailto:training@imperva.com). The student must re-enrol and complete the training within 60 days.
- 3.9 Thales Private Training: Any rescheduling of training with less than 20 business days prior written notice to [cpptechnicaltraining@thalesgroup.com](mailto:cpptechnicaltraining@thalesgroup.com), shall be subject to a rescheduling fee of US\$2,500; the fee is subject to modification or increase at Thales' discretion.

### **4. LIMITED WARRANTY.**

**EXCEPT AS EXPRESSLY STATED HEREIN, THE TRAINING IS PROVIDED "AS IS" AND THALES MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. THALES HEREBY SPECIFICALLY DISCLAIMS, ON BEHALF OF ITSELF AND ITS PARTNERS AND SUPPLIERS, ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT**

PERMITTED BY APPLICABLE LAW. SAVE IN RESPECT OF THOSE LIABILITIES WHICH CAN NOT LEGALLY BE LIMITED, THALES (AND ITS SUPPLIERS OR PARTNERS) SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, DIRECT, SPECIAL OR PUNITIVE DAMAGE, LOSS OR EXPENSES, BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS, LOST OPPORTUNITY, OR LOST SAVINGS, EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE. NEITHER PARTY SHALL BE LIABLE FOR DELAYS OR FAILURE IN PERFORMANCE DUE TO CAUSES BEYOND ITS REASONABLE CONTROL.

## **SUB-PART 5.4: SUPPORT SERVICES SPECIFIC TERMS AND CONDITIONS**

**THESE SUPPORT TERMS APPLY TO SUPPORT SERVICES FOR THALES PRODUCTS PURCHASED BY END USER EITHER DIRECTLY OR THROUGH AN AUTHORIZED THIRD PARTY. THESE SUPPORT SERVICES SPECIFIC TERMS AND CONDITIONS INCORPORATE AND ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS. IN THE EVENT OF CONFLICT BETWEEN THESE SUPPORT SERVICES SPECIFIC TERMS AND CONDITIONS AND THE GENERAL TERMS AND CONDITIONS, THE GENERAL TERMS AND CONDITIONS SHALL PREVAIL.**

### **1. PROVISION OF SUPPORT SERVICES.**

Subject to End User's timely payment of all fees owed to Thales, as applicable, Thales will provide Support Services to End User during the term of the relevant Order and at the support level purchased and confirmed by Thales in an Order Acknowledgment.

### **2. SUPPORT PERIOD, EXPIRED SUPPORT SERVICES AND SUPPORT SERVICES RENEWAL.**

- 2.1 The Support Services shall commence and end as of the dates set forth in the Order Acknowledgement.
- 2.2 In the event of termination of Support Services, End User shall not be entitled to any refund for any unused portion of the fees or charges paid for Support Services.
- 2.3 In the event Support Services expire or are otherwise terminated: (i) any reinstatement of Support Services shall be purchased to cover the lapsed Support Services since expiration or cancelation, and must be renewed until the Support Services is current; and (ii) a reinstatement fee of 20% of the list price shall be charged by Thales to End User. In addition, End User shall warrant that as of the date of the Order for renewal that (to the best of its knowledge) all Products to which the Support Services apply are functioning correctly.

### **3. SUPPORTED VERSIONS AND END OF LIFE.**

- 3.1 Unless otherwise specified by Thales, the provision of Support Services is limited to: (a) the current version; and (b) the immediately preceding version of the Product (where applicable). The Thales product-specific lifecycle policy and information defining currently supported versions is available upon request from Thales technical support team.
- 3.2 Thales will use commercially reasonable efforts to meet the response times in the Welcome Pack and herein. Access to the Support Help Center, e-mail or phone lines for the provision of Support Services may be suspended for brief periods due to scheduled maintenance and other factors.

### **4. SUPPORT SERVICES.**

- 4.1 The available support levels and options and the Return Material Authorization policy are set forth in the Welcome Pack (specifically the 'Thales client service support plans' in the Documentation). Thales' provision of Support Services is further subject to the information and disclaimers set forth the Thales product-specific lifecycle policy, available upon request from the Thales technical support team. During the term of an Order comprising Support Services, Thales will provide the following Support Services to End User in relation to the relevant Software:
  - 4.1.1 Commercially reasonable efforts to investigate and resolve Failures reported by End User and confirmed by Thales in accordance with the priority level assigned to the Failure by Thales in its reasonable discretion. End User agrees that Thales may determine in its sole discretion that the only resolution may be upgrading to the most recent version of Thales' Appliances, Hardware or Software.
  - 4.1.2 Updating the Documentation as and when necessary.
  - 4.1.3 The provision of generally available maintenance Software and Software release notes.

- 4.1.4 The provision, free of charge, during the term of an Order comprising Support Services, of generally available maintenance updates to the supported versions of the Software as and when available, in accordance with the support level purchased.
- 4.2 End User shall promptly download, distribute and install all Software maintenance updates as released by Thales during the term of an Order comprising Support Services. End User acknowledges that any failure to do so could result in End User's inability to receive Support Services. Certain updates may require a Appliance or Hardware upgrade to function properly. Thales reserves the right to address support requirements in the future by migrating this product to a "form, fit, function" next-generation equivalent. ProtectFile and ProtectV are excluded from any term or maintenance agreements longer than 3 years.

## **5. EXCLUSIONS AND DISCLAIMERS.**

### **5.1 CONDITIONS VOIDING SUPPORT SERVICES.**

For the avoidance of doubt, Thales will have no obligation to provide Support Services for any conditions attributable to:

- 5.1.1 use of the Products other than authorized by Thales or in accordance with Thales' official specifications as found in the Documentation;
- 5.1.2 any accident, act of nature, unusual physical, electrical or electromagnetic stress, or by any other cause external to the Product or otherwise beyond Thales' reasonable control, neglect, misuse, fault or negligence of End User, its employees, agents, contractors or visitors, operator error, or any other third party;
- 5.1.3 modifications, alteration or repairs made to the Product by a party other than Thales or a party authorized by Thales;
- 5.1.4 failure by End User to provide a suitable environment and operating conditions;
- 5.1.5 any customizable deliverables created by Thales or third-party service providers specifically for End User as part of professional services;
- 5.1.6 installation, operation or maintenance of the Products not in accordance with the instructions supplied by Thales, including but not limited to, installation, operation or maintenance of the Products on any hardware, operating system or tools (including their specific configurations) that are not compatible with the Products, as made available by Thales;
- 5.1.7 use of the Appliance, Hardware or Software with other hardware, software or telecommunication interfaces other than those supplied or approved by Thales or not meeting or not maintained in accordance with Thales' specifications as described in the Documentation, unless Thales has specifically agreed in writing to include such modifications within the scope of the Support Services; or
- 5.1.8 power, air conditioning or humidity controls, or to failures of storage media not furnished by Thales or for consumable operating supplies or accessories.

### **5.2 OTHER EXCLUSIONS.**

In addition, Thales shall have no obligation to:

- 5.2.1 create or modify custom business roles or reports, or support custom modification to databases, active server pages or other code, components or programs;
- 5.2.2 supply personnel to End User's premises;

- 5.2.3 provide software development or coding assistance or use of software developer tool kits to create or develop applications;
- 5.2.4 pay or reimburse End User for expenses relating to the import or export of Products, including custom clearances, inspection certificates, applications and license fees. Thales further disclaims any liability for delays resulting from an action by a government agency or from its failure to take timely action;
- 5.2.5 products in which the serial number, warranty data or quality assurance decals have been altered or removed; or
- 5.2.6 repair pre-existing defects in Products that are out of warranty.

### 5.3 **ADDITIONAL COSTS.**

To the extent Thales reasonably determines that a Failure is caused by any condition that is not covered by Support Services pursuant hereto, Thales may charge End User Thales' then current hourly fees and costs associated with diagnosing and repairing such Failure.

## 6. **END USER OBLIGATIONS.**

### 6.1 The End User shall:

- 6.1.1 promptly report any identified Failure to Thales by logging in the Support Help Center and submitting a request as described in the Welcome Pack, documenting it in sufficient detail for Thales to be able to recreate the Failure;
- 6.1.2 use the Product in accordance with the Documentation and promptly and regularly carry out all operator maintenance routines as and where specified;
- 6.1.3 use with the Product operating supplies and media which comply with Thales' recommendations;
- 6.1.4 permit only Thales or Thales' approved agents to adjust, repair, modify, maintain or enhance the hardware or software, save for any operator maintenance specified for Appliances or Hardware;
- 6.1.5 keep adequate back-up copies of the Product software, data, databases and application programs in accordance with best computing practice. End User agrees that it is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs;
- 6.1.6 consistently maintain the environmental conditions recommended by Thales;
- 6.1.7 permit the Products to be used or operated only by properly qualified operators in the employ of or under End User's control; and
- 6.1.8 install and implement all solutions, corrections, and new releases in accordance with Thales' installation instructions. End User acknowledges that failure to install such solutions, corrections, new releases may cause the Software to become unusable or non-conforming and may cause subsequent Failure corrections and updates to be unusable, including, without limitation, any updates provided pursuant hereto. Thales shall accept no liability for the performance of the Software in respect of Software that has not been installed in accordance with Thales' installation instructions.

## 7. **ON-SITE WORK.**

Any provision by Thales of support and maintenance services on End User's premises are not included hereunder and shall be subject to a separate professional services agreement or statement of work.

## **8. END USER CONTROL AND RESPONSIBILITY**

8.1 The End User has and will retain sole responsibility for:

- 8.1.1 all information, instructions and materials provided by or on behalf of End User or any authorized user in connection with the Support Services;
- 8.1.2 End User's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by End User or through the use of third-party services;
- 8.1.3 the security and use of End User's and its authorized users' access credentials; and
- 8.1.4 all access to and use of the Support Services and Products directly or indirectly by or through the End User's information technology infrastructure (as set out at Section 8.1.2 above) or its or its authorized users' access credentials, with or without End User's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

## **9. DISCLAIMER OF WARRANTIES**

- 9.1 **THALES WARRANTS THAT SUPPORT SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THALES EXCEED THE FEES PAID BY END USER FOR SUPPORT SERVICES IN THE 12 MONTHS PRECEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE.**
- 9.2 **THALES SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF END USER PROVIDES WRITTEN NOTICE OF THE BREACH TO THALES WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT SERVICES.**
- 9.3 **NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF END USER PURCHASES SUPPORT SERVICES AND MAINTENANCE SERVICES THROUGH AN AUTHORIZED PARTNER, THALES SHALL HAVE NO DIRECT LIABILITY TO END USER FOR ANY DAMAGES WHATSOEVER AND SHALL NOT BE REQUIRED TO INDEMNIFY END USER FOR ANY THIRD PARTY CLAIMS, INCLUDING, BUT NOT LIMITED TO, THOSE SET FORTH IN THIS SECTION.**
- 9.4 **THIS WARRANTY IS END USER'S EXCLUSIVE WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THALES DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED BY CUSTOM, TRADE USAGE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR WARRANTY IS GIVEN THAT FAILURES (AS DEFINED HEREIN) WILL BE FIXED OR FIXED WITHIN A SPECIFIED PERIOD OF TIME.**
- 9.5 **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THALES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO PROVIDING SUPPORT SERVICES, EVEN IF THALES HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.**