

# Terms and Conditions

Thales Cyber Services NZ  
Limited

**THALES**  
Building a future we can all trust

## 1. STATEMENT OF WORK

- (a) These terms and conditions apply to any Statement of Work that Thales sends to or is accepted by the Customer.
- (b) Each Statement of Work incorporates, is subject to, and is governed by, these terms and conditions and, to the extent of any inconsistency, these terms and conditions shall, subject only to clause 24(e), prevail over any condition or term of the Statement of Work. Any acceptance by the Customer of a Statement of Work is deemed acceptance of these terms and conditions to the Statement of Work, exclusively, and no other conditions, terms, qualifications, variations, departures or waivers, express or implied, contained in any other document provided by any party other than Thales can apply or be incorporated.
- (c) To accept a Statement of Work, the Customer must sign and return to Thales the Statement of Work. A Statement of Work binds the parties when the Customer provides a signed copy to Thales.
- (d) No request, order, confirmation, shipment or delivery docket or other document or terms or conditions issued by or on behalf of the Customer at any time in relation to the Products or Services or the Statement of Work will have any legal effect to vary, and the Customer releases Thales from any claim relating to any such variation of, these terms and conditions or any Statement of Work.
- (e) For Managed Services, the Initial Term of the Agreement commences on the Commencement Date. Unless the Customer gives Thales written notice to terminate the Agreement at least 90 days prior to the end of the Initial Term or a renewed Term, as the case may be, the Agreement continues for successive terms of 12 months and the Service Pricing payable for a renewed Term shall be the same amount as was payable immediately before expiry of the prior Term unless varied pursuant to this Agreement or any variation of this Agreement.

## 2. SUPPLY OF PRODUCTS AND PERFORMANCE OF SERVICES

- (a) Thales shall use its best endeavours to deliver, or arrange for the delivery of, the Products to the specified location by the delivery date set out in the Statement of Work.
- (b) Unless specified to the contrary by a Statement of Work, delivery of Products by Thales is deemed effected upon delivery or arrival of the Products at the location specified in a Statement of Work.
- (c) Risk in the Products passes to the Customer upon delivery pursuant to clause 2(b) and title to the Products passes to the Customer upon receipt by Thales of payment in full for the Products.
- (d) Thales shall use its best endeavours to provide the Services in accordance with the Service Levels (if any) and any other requirements, including location, dates and times, and Personnel, as may be set out in the relevant Statement of Work.

## 3. WARRANTIES

- (a) The Customer warrants that all information provided to Thales was, and continues to be, to the best of the Customer's knowledge, truthful and accurate and the Customer has not omitted and will not omit to declare anything that it knew, or should reasonably have known and the Customer releases Thales from any obligation to supply any Product or Service, and indemnifies Thales against, and must pay to Thales on demand the amount of any claim by Thales arising out of or in connection with any such breach.

- (b) Thales warrants that the Products will be free from defects in design, workmanship and materials and will be fit for the particular purpose (if any) expressly described in the Statement of Work and Thales will provide the Services promptly, diligently, in a professional manner and with due care and skill.

#### 4. ACCESS

The Customer must provide Thales with access to, and Thales must accordingly comply with any reasonable policies notified to it by the Customer in relation to the IT Systems from time to time and must only access and use, the Customer's Personnel, Site and such other facilities of the Customer to the extent reasonably required by Thales to enable Thales to supply the Products or Services or otherwise comply with its obligations under a Statement of Work.

#### 5. PRICE, INVOICE AND PAYMENT

- (a) The prices set out in a Statement of Work are inclusive of all costs and expenses incurred by Thales in supplying the Products or Services to the Customer.
- (b) If, after the issue of a Statement of Work, the Customer requests:
- (i) implementation, and any meetings related to the implementation, outside of business hours then the Customer must pay Thales such amount which Thales charges its customers generally in respect of outside of business hours implementation;
  - (ii) any visit to a Customer's premises then the Customer must pay Thales's then-current consulting rates (including for travel time and reasonable out-of-pocket incidental expenses); and
  - (iii) Thales to comply with the Customer's processes or procedures, or deliver any document (including test plans, project plans and network diagrams) or do any work or perform any service outside of what is required for implementation, then the Customer must pay Thales on a time-and-materials basis at Thales's then-current consulting rates for such additional work or services.
- (c) If before or during implementation Thales becomes aware of Additional Costs:
- (i) Thales must notify the Customer as soon as practicable of the anticipated Additional Costs; and
  - (ii) thereafter within two days the Customer must notify Thales whether the Customer accepts an amendment to the Statement of Work that includes the Additional Costs, failing which the Customer is deemed to have not accepted the Additional Costs and Thales may, within seven days, in its absolute discretion, terminate the Statement of Work and clause 16(c) shall apply.
- (d) Thales must provide a valid tax invoice to the Customer (monthly, or such other frequency and terms specified in the applicable Statement of Work) for the price, and any Additional Costs where applicable, plus GST (if any) payable for the supply of Products or Services.
- (e) The Customer must pay the amount in any invoice issued pursuant to clause 5(d) within 30 days of the invoice date, or such other date or time if specified in the applicable Statement of Work, without set-off, deduction or withholding unless required by law.
- (f) For Managed Services, Thales may, by giving at least 30 days' written notice, vary pricing:
- (i). at any time, to apply after the Initial Term expires, or

(ii) where the Initial Term exceeds 12 months, on each anniversary of the Commencement Date; and

(iii) to reasonably reflect exchange rate fluctuations if Thales has, with the Customer's consent, sub-contracted the Services to a third party who has supplied its services for a fee expressed in a currency other than New Zealand dollars (such variation will be in addition to any other variation but must not occur more than once during each 12 month period).

(g) If the Customer and Thales fail to agree on the varied pricing within 30 days of the notice by Thales, either party may terminate the Agreement by giving 30 days' written notice to the other party. This clause does not apply to variations pursuant to clause 5(f)(iii).

## 6. COMPLIANCE WITH LAWS

- (a) Thales may refuse any request from the Customer in relation to these terms and conditions if compliance with that request may constitute or require a breach of any applicable law including any laws regulating privacy, the use of surveillance devices or workplace relations and Thales's refusal is not a breach by Thales of the relevant Statement of Work or these terms and conditions. The Customer agrees to take any action that is reasonably required by Thales to enable Thales to ensure compliance with any relevant laws regarding the provision of Products or Services.
- (b) If the Customer discloses Personal Information to Thales, or permits or enables Thales to collect, access, or handle Personal Information, then the Client warrants, and must ensure, that it has obtained all authorisations from individuals required under all applicable Privacy Laws and Thales will only collect, access, otherwise use, disclose or handle Personal Information to the extent necessary for performance of the Services. The Customer must, if required by Thales acting reasonably, enter any GDPR agreement as Thales may request if the Personal Information relates to a subject of the GDPR.
- (c) Each party must not cause or knowingly contribute to, and ensure that it is not directly linked to, any Modern Slavery Offences and not knowingly do or omit to do anything that would cause the other party to be in breach of any Modern Slavery Laws. If requested by a party, the other party must cooperate and provide information as reasonably requested to enable the party to comply with its obligations under Modern Slavery Laws. Thales publishes an annual report on the Modern Slavery Register, has no knowledge of any Modern Slavery Offence currently occurring within its organisation or supply chains, and takes reasonable commercial steps to identify the risk of and prevent Modern Slavery Offences, and will notify the Customer if it becomes aware of any Modern Slavery Offence (or of any charges laid or orders made in relation to a Modern Slavery Offence) within its organisation or supply chain that directly or adversely impact the obligations in these terms and conditions.
- (d) The Customer must not use, or permit other person to use, the Products or Services in breach of any applicable law, to send bulk unsolicited e-mails (or otherwise contravene *Unsolicited Electronic Messages Act 2007*), to infringe the Intellectual Property Rights of any person, to cause harm to or breach the legal rights of any person, to engage in any illegal, offensive, discriminatory or bullying behaviour, to attack, probe or test for vulnerabilities in any other person's information network or systems, to knowingly, recklessly or negligently transmit any content (such as a virus) that is designed to or may damage or disrupt any network or device, in any way that results in, or is likely to result in, damage to any person or property.
- (e) Each party must comply with Anti-bribery Laws and must:
- (i) not give, offer or promise to give, receive, or agree to accept, any payment, gift or other benefit or advantage which breaches Anti-bribery Laws;

- (ii) have for the Term its own policies and procedures to ensure compliance with the Anti-bribery Laws and enforce them where appropriate;
  - (iii) not prepare, approve or execute any contract or other document or make any record in connection with a Statement of Work that the party knows, or ought reasonably know, is false, inaccurate or misleading;
  - (iv) promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with a Statement of Work which will or may be in breach of the Anti-bribery Laws; and
  - (v) procure and be responsible for the observance and performance of the Anti-bribery Laws by all persons performing services in connection with these terms and conditions on behalf of the party or under its supervision or control.
- (f) The Customer releases Thales from any obligation of these terms and conditions or a Statement of Work to the extent contrary to or affected by any Legal Directive, and the Customer shall hold harmless and release Thales from any claim by the Customer arising out of or in connection with any act or omission of Thales in complying with any Legal Directive.
  - (g) The Customer is responsible for ensuring that the selection and use of Products and Services satisfies all of the Client's legal, regulatory and compliance obligations and, unless expressly set out in a Statement of Work, Thales is not liable for and the Customer releases Thales from any claim relating to any of the Customer's legal, regulatory or compliance obligations.
  - (h) The Customer shall notify Thales of, and obtain, any consent, permit, licence, approval or authority of any person other than the Customer (including but not limited to the owner of any relevant equipment or premises, any relevant governmental, municipal, local or other competent authorities, or any others whose permission is or may be necessary for the supply of any Product or Service) that is required in order to enable Thales to discharge its obligations under the Statement of Work lawfully and without infringing the rights of any person provided that if that consent, approval or authority must be obtained by Thales than the Customer must do all things necessary to assist Thales to obtain that consent, approval or authority before Thales performs that relevant part of the Statement of Work.

## 7. RESELLING

- (a) If in providing the Products and Services Thales provides the Customer with Third Party Products or Third Party Services, the Third Party Products and Third Party Services are provided 'as is', the Customer's right to use any Third Party Products or Third Party Services is conditional on the Client's acceptance of the Third Party Provider's licence agreement or terms of use, title in and to any Third Party Products and Third Party Services remains at all times with the Third Party Provider unless expressly provided otherwise in a licence agreement between the Customer and the party holding the Intellectual Property Rights in the Third Party Products or Third Party Services, and the Customer hereby releases Thales from any claim arising out of any representation or warranty of any kind regarding the Third Party Products.
- (b) The Customer must comply, and use its best endeavours to ensure each End User complies with any Acceptable Use Policy that applies to each Product or Service and any act or omission by an End User is deemed to be an act or omission of the Customer. Without limiting the foregoing, the Customer must ensure that its End Users do not do, or omit to do, anything that would cause the Customer to breach the terms of these terms and conditions or a Statement of Work or a Third Party Provider's licence agreement or terms of use.

- (c) The Customer must not, without the prior written consent of Thales, share, assign, re-sell or supply any Products or Services to any person who is not an End User.

## 8. INTELLECTUAL PROPERTY

- (a) All Intellectual Property and other information that Thales provides or makes available in connection with the supply of any Products or Services is, shall be and remain, subject only to clause 7, the property of Thales. All Intellectual Property Rights in Developed Intellectual Property upon creation shall vest in, and the Customer hereby assigns any interest therein to, Thales.
- (b) The Customer must not use or disclose Intellectual Property or information for any purpose other than for the purpose of obtaining the benefit of the Products and Services or as otherwise expressly permitted under these terms and conditions. The Customer must not infringe or attempt to reverse engineer, disassemble, decode or decompile any Intellectual Property of Thales, including any Developed Intellectual Property.
- (c) The Customer must execute all documents and do all things required to give effect to this clause 8.

## 9. INSURANCE

- (a) Thales must effect and maintain from a reputable insurer professional indemnity and public liability insurance for an amount not less than the amount specified in the Statement of Work.
- (b) Thales may, if the Customer reasonably requests, provide to the Customer evidence of the currency of such insurance.

## 10. GRANT OF LICENCE

- (a) If Thales's provision of Products or Services requires the Customer's use of Software then, to the extent it is able, Thales grants to the Customer a royalty free, non-exclusive, non-transferable, non-sublicensable licence to use such Software for the sole purpose of enabling the Customer to obtain the benefit of the relevant Product or Service and any such licence shall terminate on the earlier of termination of the applicable Statement of Work or termination of these terms and conditions.
- (b) To the extent Thales utilises any OEM Software in connection with the provision of any Products or Services to the Customer:
  - (i) Thales warrants that it has entered into a valid licence agreement with the relevant OEM to enable that OEM Software to be used or accessed by Thales or the Customer (as the case may be) in connection with the Products or Services and, otherwise, Thales provides no warranties, expressed or implied, in respect of the OEM Software;
  - (ii) the Customer's right to use any OEM Software:
    - A. may be subject to licence from the OEM and the Customer must not (directly or indirectly) rent, lease, distribute, resell, publish, sublease, sublicense, or in any other way transfer to any other party, the OEM Software or any right the Customer may have to use the OEM Software;
    - B. will not confer any rights to the Customer in respect of copyright, trademarks or patents, or the rights associated with any application made by the OEM in respect of copyright, trademarks or patents;

C. is only in connection with the use of a Product or Service, and not otherwise;

(iii) the Customer must:

A. not, and must not permit any, attempt to reverse engineer, disassemble, decode or decompile the OEM Software;

B. not attempt to defeat any security controls (including any access controls, locking or encryption mechanisms) on any of the OEM Software;

C. not claim against Thales, and releases Thales from any claim, in connection with the OEM Software or its use and, in respect of any failure, defect or error in the OEM Software, other than only for Thales to liaise with the relevant OEM to request the OEM to provide a fix for the relevant failure, defect or error;

D. keep confidential all Confidential Information in respect of the OEM and the OEM Software; and

E. abide by any export restrictions or embargoes required by the OEM (including restrictions on the export, re-export, diversion, transfer, or direct or indirect disclosure, of any OEM Software, related knowhow or technical information);

(iv) the Customer may be entitled to support from the OEM in relation to the OEM Software if specifically agreed by Thales or the OEM; and

(v) the Customer releases Thales from any claim relating in any way to the physical location of the OEM Network and relaying of data to and from the OEM Network.

(c) Upon termination or expiration of these terms and conditions (however arising), the Customer must promptly remove from its IT Systems all Software licensed to the Customer, provide any documentation requested by Thales evidencing compliance with its obligations under this clause 10 and permit Thales, or any third party appointed by Thales, to conduct an audit of the Customer's IT Systems to ensure the Customer's compliance with its obligations under clause 10.

## **11. VIRUSES, MALWARE, HACKING AND DATA SOVEREIGNTY**

(a) Thales will use due care and skill to ensure that Products and Services are delivered to the Customer in a way likely to reduce the risks associated with computer viruses, malware and hacking of the Customer's IT Systems.

(b) The Customer is responsible for, and releases Thales from any claim arising from, the backup and recovery of Customer's own data and systems and any computer virus or malware or any data or security breach by an external hacker, or by any person engaged directly or indirectly by the Customer, except to the extent the Customer demonstrates its claim is a direct result of a breach of any express obligation of Thales under these terms and conditions.

(c) Thales will use its best endeavours to ensure that all Customer-related data stored by Thales under these terms and conditions is stored in secure data centres physically located in Australia or New Zealand unless otherwise agreed with the Customer.

## 12. ADMINISTRATION OF IP ADDRESSES

To the extent any IP addresses or domain names are allocated to the Customer in connection with the provision of any Products or Services, the Customer is responsible for the renewal of any such domain names, unless specified otherwise in the Statement of Work, and releases Thales from any claim relating in any way to any decision by, or act of, any external authority that administers any such IP addresses or domain names, and shall not use in any way, and releases Thales from any claim to or for, any IP addresses or domain names provided by Thales upon the completion or termination of the provision of Products or Services under a Statement of Work.

## 13. PLANNED OUTAGES

Thales will use reasonable endeavours to schedule outside of business hours, and the Customer releases Thales from any claim in connection with, any Planned Outage. Thales will provide five Business Days' (or such shorter period as is practicable if Thales or its Third Party Provider determines that a Planned Outage needs to be scheduled within less than five days) notice to the Customer of any Planned Outage.

## 14. THALES EQUIPMENT

### Provision, installation, maintenance, replacement, decommission

- (a) Thales or a Third Party Provider may, from time to time, loan or otherwise make available, replace or remove Thales Equipment and may instal, reinstall, commission, maintain, replace or decommission Thales Equipment during business hours or, if the Customer pays Thales such additional fees (based on Thales's then-current time- and-materials rates) as Thales may notify the Customer, outside of business hours.
- (b) The Customer must pay Thales's then-current time-and- materials rates and any out-of-pocket travel and incidental expenses if installation, reinstallation, decommissioning, maintenance or replacement of any Thales Equipment requires travel by Thales's staff of more than 50km or has to be rescheduled as a result of the Customer's failure to comply its obligations under this clause 14.
- (c) Risk in Thales Equipment passes from, as applicable, Thales or the Third Party Provider to the Customer on the date such Thales Equipment is delivered to the Customer.
- (d) Title in Thales Equipment remains with, as applicable, Thales or the relevant Third Party Provider in respect of any Thales Equipment.

### Customer obligations

- (e) The Customer must:
  - (i) ensure that no harm or damage (normal wear and tear appropriate to computer equipment excepted) comes to Thales Equipment;
  - (ii) not modify whatsoever, relocate wheresoever or repurpose howsoever Thales Equipment;
  - (iii) use Thales Equipment only for utilisation of the Products or Services supplied by Thales to the Customer;
  - (iv) ensure that Thales Equipment is maintained with clean, UPS-filtered, power, housed in a secure and clean environment with appropriate ventilation and maintained at a temperature and humidity appropriate for computer related equipment;

(v) effect and maintain, at its cost, insurance in respect of Thales Equipment with a reputable insurer at all times such Thales Equipment is under the control or possession of the Customer, and provide evidence of insurance to Thales upon Thales's request;

(vi) obtain, at its cost, all relevant consents required in respect of the installation, replacement and operation of Thales Equipment;

(vii) comply with all relevant occupational health and safety laws for Thales or its Third Party Provider to deliver and install Thales Equipment;

(viii) do any other thing reasonably required by Thales or its Third Party Provider to install, monitor, maintain or replace Thales Equipment; and

(ix) within seven days of the earlier of completion of the Service for which Thales Equipment was provided or termination of these terms and conditions, return Thales Equipment to Thales or, if notified by Thales, permit Thales or its Third Party Provider access to the premises where Thales Equipment is located for Thales or its Third Party Provider to collect and remove Thales Equipment, in each case, ensuring Thales Equipment has been diligently packaged in the original packaging provided with Thales Equipment, or suitable replacement packaging.

### **Indemnity**

(f) The Customer hereby indemnifies Thales against any claim arising from any act or omission caused by use of the Thales Equipment by the Customer or any person for whom the Customer is responsible or to whom the Customer gave access or use of the Thales Equipment.

## **15. CUSTOMER REQUESTS**

(a) Thales may provide a Support System. If Thales provides a Support System then the Customer may only initiate a Support Request by a representative of the Customer specified in a Statement of Work or, if not specified, the CEO of the Customer, through the Support System provided that Thales shall advise the Customer of an alternative method to initiate a Support Request if the Support System is unavailable for any reason.

(b) If Thales, acting reasonably, determines a Support Request:

(i) requires Thales's Personnel to attend the Customer's premises, then Thales may charge the Customer for any related travel, out-of-pocket and incidental expenses;

(ii) does not relate specifically to a Product or Service, or relates to a Product or Service delivered in any part on an IT System (including any virtualised environment not provided by or managed by Thales), then Thales may invoice the Customer at its then-current consulting rates for general consulting services; or

(iii) is outside the scope of support to be reasonably provided for a Service, then Thales may decline to respond to the Support Request.

## **16. TERMINATION**

(a) A party may immediately terminate these terms and conditions (and all Statements of Work) by written notice to the other party if:

(i) the other party commits a material breach of these terms and conditions or a Statement of Work which is incapable of rectification or does not rectify the breach within 30 days of receiving a notice to rectify;

(ii) the other party threatens to cease or ceases to carry on its business or becomes insolvent (within the meaning of the Companies Act); or

(iii) the other party is subject to a resolution for winding up or dissolution, becomes an externally administered body corporate (within the meaning of the Companies Act) or a controller (within the meaning of the Companies Act) takes possession or control of its any property.

- (b) Thales may terminate a Statement of Work immediately if the Customer has not paid an invoice within five days of Thales notifying the Customer that it has not paid an invoice nor disputed that invoice in accordance with these terms and conditions, or upon effective control (by any means) of the Customer being or purportedly transferred to a person who does not have that control as at the date of these terms and conditions or the Customer attempts to assign these terms and conditions other than in accordance with these terms and conditions.
- (c) If Thales terminates a Statement of Work pursuant to clause 6(c)(ii), 16(a) or 16(b) then Thales may, by further notice in writing to the Customer, terminate these terms and conditions and any other outstanding Statements of Work with immediate effect (in which event, the Customer releases Thales from any claim relating to these terms and conditions and any other Statement of Work).
- (d) Termination or expiration of these terms and conditions or a Statement of Work will not prejudice any accrued rights or liabilities of either party or excuse any party from a breach of these terms and conditions or a Statement of Work occurring prior to such expiration or termination.
- (e) Upon termination (howsoever occurring) or expiration of these terms and conditions or a Statement of Work, any amount payable by the Customer to Thales in respect of the Products and Services provided prior to the date of termination or expiration (as the case may be) shall become immediately due and payable.
- (f) Those provisions of clauses 1 and 24 necessary to the interpretation, construction or enforcement of any of the provisions, and clauses 2(c), 8, 10(c), 14, 16(d), 16(e), 17, 20 and 24(p) shall survive termination or expiration of these terms and conditions.

## 17. DISPUTE RESOLUTION

- (a) A party may give a Dispute Notice to the other party if there is a Dispute and forthwith thereafter the parties must each procure a senior representative to meet and undertake genuine and good faith negotiations with a view to resolving the Dispute specified in that Dispute Notice.
- (b) If the Dispute is not resolved within 10 days after the date of a Dispute Notice, the parties must refer the Dispute to mediation in accordance with, and subject to, the Mediation Rules of the New Zealand International Arbitration Centre.
- (c) If the Dispute is not resolved within 40 days after the date of a Dispute Notice (or any longer period the parties may agree) then the Dispute must be determined by arbitration in accordance with the Arbitration Rules of the New Zealand International Arbitration Centre.

## 18. LIABILITY

- (a) Thales's maximum aggregate liability to the Customer in respect of any claim regarding a either or both of a Statement of Work and these terms and conditions (including all breaches), any Products or Services supplied (or failed to be supplied), howsoever arising, is the greater of the Statement of Work Value and the amount (if any) specified by a provision of the SOW that expressly refers to this section of these terms and conditions and Thales's intention to offer a different limit.
- (b) Clause 18(a) does not limit or exclude a party's liability to the other party for:
  - (i) the death or personal injury caused by the negligence of that party or its Personnel to the extent caused by Thales;
  - (ii) damage to tangible property caused by Thales's negligent act or omission; or

- (iii) for any direct loss suffered by the Customer arising from any third party claim that the Customer's use of the Products or Services (other than third party hardware or software) infringes the rights, including intellectual property rights, of a third party provided that the Customer permits Thales to manage any relevant claim or action in the name of the Customer and the Customer has not modified the Products or materials provided by Thales, used the Products other than accordance with any directions given by Thales, failed to comply with any third party licence, failed to take all reasonable steps to mitigate any loss on becoming aware of any such third-party intellectual property claims.
- (c) The liability of a party for any claim by the other party arising out of or in connection with these terms and conditions or a Statement of Work will be reduced proportionately to the extent that claim was caused or contributed to by any breach of these terms and conditions or a Statement of Work by the other party or other act or omission of the other party.
- (d) Other than in respect of the indemnity under clause 14.3 or 19(c), a party is not liable to the other party for consequential, indirect or special loss or damage, including loss of profits, loss of opportunity, economic or financial loss, loss of goodwill, or loss of data, even if such loss or damage was reasonably foreseeable or the other party informed the party of the possibility of such loss.
- (e) To the extent permitted by law, the Customer releases Thales from any claim relating to any data or security breach caused or contributed by an external hacker, (provided Thales has maintained its ISO27001 accreditation) or a person engaged directly or indirectly by the Customer, howsoever claimed in breach of contract, negligence or other tort or under statute.
- (f) Other than as expressly provided under these terms and conditions, Thales makes no, and the Customer releases Thales from any claim relating to any, warranty in respect of the Products or Services to be provided to the Customer under these terms and conditions. If any applicable legislation implies any term, condition or warranty into these terms and conditions, and prohibits provisions excluding or modifying the application of, exercise of, or liability under such implied term, condition, warranty or remedy, then that implied term, condition, warranty or remedy will be deemed to be included in these terms and conditions. However, Thales's liability for any breach of such implied term, condition or warranty or under such remedy will be limited, at Thales's option, to any one or more of the ways permitted by that legislation including, where so permitted:
  - (i) if the breach relates to Products, then the replacement of those Products or the supply of equivalent Products, the repair of those Products, the payment of the cost of replacing those Products or acquiring equivalent products, or the payment of the cost of having those Products repaired; and
  - (ii) if the breach relates to Services, then the supplying of those Services again, or the payment of the cost of having those Services supplied again.
- (g) For the avoidance of doubt, if the Customer is a Consumer within the meaning of the NZ Consumer Law then this clause 18(g) applies for Thales's liability (if any) for failure to comply with a Consumer Guarantee, Thales's Products and Services come with guarantees that cannot be excluded under the NZ Consumer Law and:
  - (i) for major failures:
    - (A) in the Services, the Customer may cancel its contract for those Services with Thales, and to a refund for the unused portion, or to compensation for its reduced value; and
    - (B) in the Products, the Customer may choose a refund or replacement of the Products; and
  - (ii) for a failure that does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time, failing which the Client is entitled to a refund for the Products and to cancel the contract for the Service and obtain a refund of any unused portion and must be compensated for any other reasonably foreseeable loss or damage from a failure in the Products or Services.

**19. RELIANCE ON THIRD PARTY SERVICES**

- (a) The Customer must comply with all requirements and conditions that it may be notified are imposed by any Third Party Provider.
- (b) Except and to the extent that Thales recovers any loss from a Third Party Provider (the manner of such recovery to be at the unfettered discretion of Thales), the Customer releases Thales from any claim by the Customer associated with interruption to, delay in or a failure of, a Third Party Provider to provide any Third Party Service or any part thereof.
- (c) The Customer indemnifies Thales against any claim against Thales by a Third Party Provider arising out of or in connection with any act or omission of the Customer.

**20. CONFIDENTIALITY**

- (a) Each party must keep confidential, and must procure that each of their respective Personnel keeps confidential, all Confidential Information except:
  - (i) if disclosure is required by law or the rules of a recognised stock or securities exchange and the party must keep matters confidential or procure that those matters are kept confidential has before disclosure is made notified the other party of the requirement to disclose and, where the relevant law or rules permit and where practicable to do so, given the other party a reasonable opportunity to comment on the requirement for and proposed contents of the proposed disclosure;
  - (ii) if disclosure is reasonably required to enable a party to perform its obligations under these terms and conditions;
  - (iii) if disclosure is to any professional adviser of a party who has been retained to advise in relation to the transactions contemplated by these terms and conditions or to the auditor of a party; or
  - (iv) to the extent required to enable a party to enforce the provisions of these terms and conditions or for the purpose of defending any judicial proceedings brought against that party.
- (b) A party must notify the other party immediately on becoming aware of any suspected or actual breach of this clause 20 and will take all reasonable steps required to prevent or stop the continuation of the suspected or actual breach.
- (c) Within five days of termination or expiration of these terms and conditions, each party must:
  - (i) return to the other party all documents and other materials containing Confidential Information of the other party in its possession, power or control;
  - (ii) delete, or procure the deletion of, any Confidential Information of the other party that has been entered into a computer, database or other electronic means of data or any other information storage medium by or on behalf of that party; and
  - (iii) confirm in writing to the other party that all of the Confidential Information of the other required to be returned, destroyed or deleted pursuant to this clause 20 has been so returned, destroyed or deleted.

**21. FORCE MAJEURE**

- (a) An obligation of a party (other than an obligation to pay money) will be suspended for any period during which the party is prevented from or delayed in complying with that obligation by Force Majeure.
- (b) A party affected by Force Majeure shall promptly after being affected, give written notice to the other party setting out full particulars of the event of Force Majeure and the manner in which the estimated time for its performance is thereby prevented or delayed, use reasonable endeavours to remove or mitigate the effect of the Force Majeure at the earliest possible time, provided that a party shall not be obliged to settle a strike, lockout or other labour difficulty, and notify the

other party promptly upon becoming aware of the abatement of the event of Force Majeure.

- (c) If the suspension of the obligations of a party due to Force Majeure continues for more than three months, either party may terminate these terms and conditions by seven days' notice in writing to the other party.

## 22. GST

- (a) Unless otherwise expressly stated in these terms and conditions or a Statement of Work, all consideration to be provided under or in connection with these terms and conditions or a Statement of Work is exclusive of GST.
- (b) The GST Amount is payable by the Customer at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable.
- (c) If an adjustment event arises for a supply made under or in connection with these terms and conditions or a Statement of Work, the GST Amount must be recalculated to reflect that adjustment, Thales or the Customer (as the case may be) must make any payments necessary to reflect the adjustment and Thales must issue an adjustment note.
- (d) Any payment, reimbursement, indemnity or similar payment that is required to be made under these terms and conditions or a Statement of Work which is calculated by reference to an amount paid by another party shall be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 22(b) will apply to the reduced payment.
- (e) For the purposes of this clause 22, unless the contrary intention appears, any words and phrases which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning when used in this clause 22.

## 23. NOTICES

Any communication under these terms and conditions or any demand, consent or approval, must be in writing and delivered by either hand, prepaid post or email to the relevant recipient's address for notices as specified in the Statement of Work and takes effect, as the case may be, on the date of hand delivery, on the second day after the date of prepaid posting (or on the seventh day after the date of prepaid posting if from a place outside New Zealand), or on the date of transmission (or, if sent after 5pm, on the next day) provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.

## 24. GENERAL

- (a) These terms and conditions and each Statement of Work constitutes the entire agreement between the parties as to its subject matter and supersedes all previous agreements, arrangements and understandings (whether written or oral) between the parties in relation to the same.
- (b) These terms and conditions are binding upon and endure to the benefit of the parties and will be, unless repugnant to the sense or context, to their respective administrators, successors and permitted agents and assigns.
- (c) These terms and conditions may be executed in any number of counterparts and all counterparts when executed and taken together will constitute one agreement.
- (d) Each party warrants that it satisfied any legal, and its internal procedural, requirement for that party to execute these terms and conditions or a Statement of Work by any method of electronic signature and consents to the other party signing on an electronic device or by digital signature.
- (e) Subject to sub-clause (r), these terms and conditions may only be amended, and a right of

Thales may only be waived, by a document signed by Thales that expressly cites this clause of these terms and conditions, states which clause or clauses of these terms and conditions are to be amended or right waived, and the specific amendments to that clause or those clauses or waiver, failing which the Customer releases Thales from any claim insofar as the Customer may or does rely on, or refers to, any amendment or waiver of these terms and conditions.

- (f) Each party must do all that is reasonably necessary or desirable to give effect to these terms and conditions and enable the other party to perform its obligations under these terms and conditions.
- (g) These terms and conditions shall be governed by and construed in accordance with the laws in force in the Wellington Region, New Zealand and each party submits unconditionally to the jurisdiction of the courts of that Region and any courts competent to hear appeals therefrom.
- (h) The Customer acknowledges and agrees that it does not enter into these terms and conditions in reliance on any representation or other inducement by or on behalf of Thales, except for any representation or inducement expressly set out in these terms and conditions.
- (i) None of the terms of these terms and conditions, or anything done under or by virtue of these terms and conditions or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, will operate as a merger of any of the rights and remedies of the parties under these terms and conditions, and those rights and remedies will at all times continue in force.
- (j) If any provision of these terms and conditions is void, voidable, unenforceable or illegal in its terms but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, then that provision will be read down accordingly.
- (k) If, notwithstanding clause 24(j), a provision of these terms and conditions is or, but for this clause 24(k), would be void, voidable, unenforceable or illegal then, if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words are severed and in any other case, the whole provision is severed, and the remainder of these terms and conditions will be of full force and effect.
- (l) The waiver by any party of any breach of any term of these terms and conditions shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach of that term.
- (m) The relationship between the parties is and will remain that of independent contractors and nothing in these terms and conditions constitutes the parties as partners or joint venturers or constitutes either party as the agent of the other.
- (n) Thales may sub-contract any of its obligations under these terms and conditions, including under any Statement of Work and Thales will be liable for the acts and omissions of each of such sub-contractor as if such acts and omissions were the acts and omissions of Thales.
- (o) The Customer must not assign, novate or transfer any of its rights or obligations under these terms and conditions or a Statement of Work without the prior written consent of Thales (which Thales may give or withhold in its absolute discretion).
- (p) To protect the goodwill of the other party's business, each party must not, and must procure that each other Related Entity (as that term is defined under the Companies Act) does not, during the Term and for a period of 12 months following the Term, solicit, induce or encourage, or attempt to solicit, induce or encourage, any employee, officer or contractor of the other party to leave the employment or engagement of the other party, excepting advertising employment vacancies in any newspaper, website or other publication or through a recruitment agency that does not target employees, officers or contractors of the other party) or interviewing and negotiating with, and employing or engaging, any person responding to that advertisement.
- (q) Each party shall bear its own costs in relation to the negotiation and execution of these terms and conditions and any Statements of Work.
- (r) Thales may from time to time update these terms and conditions by adding, amending or deleting clauses and any such update shall be effective and bind the parties 10 days after



Thales notifies the Customer that Thales has updated these terms and conditions and provides the Customer with the updated terms and conditions or publishes them on its publicly accessible website.

## 25. INTERPRETATION

(a) In these terms and conditions unless the contrary intention appears:

**Acceptable Use Policy** means any policy which may be published by Thales in connection with any Product or Service, where the purpose of that policy is to provide guidelines for the acceptable use of the Product or Service.

**Additional Costs** means any costs that are associated with the provision of a Product or Service that were not reasonably identifiable by Thales at the time of execution of a Statement of Work.

**Anti-bribery Laws** means all applicable laws relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) and, where applicable, the *Foreign Corrupt Practices Act 1977* (United States) and the *Bribery Act 2010* (United Kingdom).

**NZ Consumer Law** means the law as set out in the Fair Trading Act 1986 and the Consumer Guarantees Act 1993 and the corresponding provisions as applicable of each of its equivalents in the New Zealand States and Territories.

**Claim** means any direct, or indirect, claim, right, loss, cost, expense, damage, or liability, whether alleged, contingent, suffered or incurred, and whether arising in contract, negligence, tort or otherwise, and whether express, implied, statutory, or otherwise, and any assertion, proceeding or process, howsoever made, relating to any of the foregoing.

**Commencement Date** means the earlier of the date specified as the commencement date in, or the date on which Thales first provides a Product or Service to the Customer pursuant to, a Statement of Work.

**Confidential Information** means the terms of these terms and conditions, the terms of any Statement of Work and any information (in any form) relating to these terms and conditions or to the business of one party supplied or disclosed by that party to the other party at any time in connection with these terms and conditions or a Statement of Work, but excludes information in the public domain prior to the date of these terms and conditions, which has become part of the public domain by publication or by any other means except an unauthorised act or omission on the part of any person or supplied to the recipient without restriction by a third party who was under no obligation to the supplier to maintain such information in confidence.

**Companies Act** means the *Companies Act 1993*.

**Customer** means the party who is named as the customer in the Statement of Work.

**Developed Intellectual Property** means all Intellectual Property Rights that are developed, discovered or have otherwise come into existence as a result of, for the purposes of, or in connection with the Products or Services, a Statement of Work or these terms and conditions, including all modifications, inventions or improvements to any Products or Services.

**Dispute** means a dispute or difference in respect of any fact, matter or thing arising out of, or in any way in connection with, these terms and conditions, the supply of Products or Services by Thales pursuant to a Statement of Work, or the conduct of a party.

**Dispute Notice** means a notice given by a party to the other party stating there is a Dispute, particulars of what is in Dispute and the position which the party believes is correct.

**End User** means any person who makes use of the Products or Services who is either an employee, sub-contractor, director or agent of the Customer, or who otherwise uses the Products or Services with the express or implied consent of the Customer, or whom the Customer should reasonably have known is using the Products or Services.

**Expiry Date** means the later of the date specified as the expiry date in the Statement of Work and the completion of the provision of the Products or Services pursuant to the Statement of Work.

**Force Majeure** means any event or cause which is beyond the reasonable control of the party affected by it and which is not the result of any wrongful or negligent act of the affected party, and such events or causes may include:

- (i) public health emergency, epidemic, pandemic or quarantine (including in relation to COVID-19, being the outbreak of the coronavirus disease known as COVID-19 that was categorised by the World Health Organisation as a pandemic on 11 March 2020);
- (ii) any event or cause arising out of or in connection with COVID-19, including any restrictions, travel restrictions, lockdowns, guidelines, public health orders or directions issued by any governmental agency in relation to COVID-19;
- (iii) war (declared or undeclared), invasion, act of foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (iv) interruption, loss, malfunction or failure of technology, communications or utility services;
- (v) act of public enemy, terrorism, sabotage, civil unrest, riot or revolution;
- (vi) strikes, lockout or other material industrial or labour disputes;
- (vii) earthquake, meteor, lightning, fire, flood, cyclones, hurricanes, tsunamis, landslides, mudslides, nuclear, chemical or biological contamination, act of God or any other natural disaster; or
- (viii) any government act, restraint, prohibition or intervention, except to the extent such action is being taken to prevent the affected party committing an offence or unlawful act or arises in connection with an act or omission of the affected party or a failure by the affected party to comply with any applicable law.

**GDPR** means Regulation (Eu) 2016/679 of the European Parliament and of the Council of 27 April 2016.

**GDPR agreement** means an agreement comprising the standard contractual clauses for transfer of personal data to third countries pursuant to Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to GDPR with the Customer as controller and Thales as processor (as those expressions are defined in the GDPR).

**GST** has the meaning given in the *Goods and Services Tax Act 1985*.

**GST Amount** means an amount equal to the GST payable, or notionally payable, on a supply made under or in connection with these terms and conditions or a Statement of Work.

**Implementation** means the supply of any one or more Products and Services by Thales to the Customer pursuant to a Statement of Work.

**Intellectual Property** means all Software, network address ranges, domain names and any other item in which Intellectual Property Rights subsist.

**Intellectual Property Rights** means all patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark, circuit layout rights and plant breeders rights, copyright (including copyright in software, websites, databases and advertising and other promotional materials), all rights to have information (including trade secrets, know-how, operating procedures and technical information) kept confidential, database rights and rights in respect of any computer or source code, and all other rights or protections having similar effect anywhere in the world, including all other rights with respect to intellectual property as defined in Article 2 of the Convention of July 1967 establishing the World Intellectual Property Organisation.

**Initial Term** means the period commencing on the Commencement Date and described as the initial term in the Statement of Work.

**IT Systems** means the Customer's information technology and computer systems, including development, test and production environments.

**Laws** means all laws including rules of common law, statutes, regulations, subordinate legislation, proclamations, ordinances, by laws, rules, regulatory principles and requirements, mandatory codes of conduct, writs, orders, injunctions, judgments and any awards, which are applicable from time to time in the jurisdiction in which Thales or its Personnel deliver Products or Services or perform these terms and conditions or any Statement of Work.

**Legal Directive** means a directive from an authorised law enforcement agency or national security agency with jurisdiction over Thales or the Customer.

**Managed Services** means any services described as managed services in a Statement of Work.

**Modern Slavery Laws** means the Modern Slavery Act 2018 (Cth), the Modern Slavery Act 2018 (NSW), Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) and any other modern anti-slavery laws or regulations in force in Australia from time to time.

**Modern Slavery Offence** means any offence under any Modern Slavery Laws and any conduct which would constitute modern slavery under any Modern Slavery Laws.

**OEM** means any party who is not a party to these terms and conditions and upon whom Thales relies in respect of any Products, Software, or other technology or knowhow, in performing its obligations under these terms and conditions, or whose products, Software, or other technology or knowhow is on-sold, licensed or distributed to the Customer.

**OEM Network** means any computer network used by an OEM in relation to OEM Software.

**OEM Software** means Software, or any other technology or knowhow, developed by an OEM, which is used by Thales in providing any Product or Service to the Customer under these terms and conditions.

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not, or such other meaning as may from time to time be given to that term by the Privacy Act or such other Privacy Laws with which Thales must comply to perform these terms and conditions, any Statement of Work or deliver any Products or Services.

**Planned Outage** means a foreseeable interruption to the provision of Services, generally to facilitate equipment upgrades or preventative maintenance, that is, in Thales's reasonable opinion, required.

**Personnel** means a party's officers, employees, contractors, agents and suppliers.

**Privacy Act** means the *Privacy Act 2020*.

**Privacy Laws** means the Privacy Act and all other applicable privacy and data protection Laws as may be in force from time to time which regulate the collection, use, disclosure, storage of and granting of access rights to Personal Information.

**Products** means any products or equipment that Thales agrees to provide to the Customer pursuant to a Statement of Work, as more particularly described in that Statement of Work.

**Releases** means releases and forever discharges, and these terms and conditions may be pleaded in bar to any claim made or brought by the Customer against.

**Service Levels** means the service levels for any specific Services (if any) as set out in the relevant Statement of Work.

**Services** means any service that Thales agrees to provide (directly or indirectly) to, or perform for, the Customer pursuant to a Statement of Work, as more particularly described in that Statement of Work.

**Site** means the location specified in a Statement of Work, if applicable.

**Software** means any software, including computer code, data and documentation, that may be supplied or licensed, or for which access may be given, by Thales to the Customer in connection with the provision of any Products or Services.

**Statement of Work** means a proposal, quote or statement of work or other offer that Thales gives to the Customer, including any response indicating Thales will accept the Customer's offer to pay Thales, for the supply of Products or Services by Thales and that references or incorporates these terms and conditions.

**Statement of Work Value** means the total fees and charges payable by the Customer to Thales for the relevant Products or Services pursuant to the Statement of Work.

**Support Request** means a Customer's request, using the Support System, made in accordance with clause 16(b) for support in respect of Products or Services.

**Support System** means an on-line support request system provided pursuant to clause 15(a) for any Service which permits the Customer to initiate a Support Request.

**Term** means the period that commences on the Commencement Date and, unless terminated earlier in accordance with its terms, continues until the Expiry Date.

**Terms and Conditions** means these terms and conditions, as may, from time to time, be varied or amended strictly pursuant to and in accordance with these terms and conditions.

**Thales** means Thales Cyber Services NZ Limited 8176952 of Level 5, 69 -71 The Terrace, Wellington, 6011 , New Zealand , or its related body corporate if that related body corporate is named in the Statement of Work as the principal supplier of goods and services to the Customer.

**Thales Equipment** means equipment Thales or a Third Party Provider may, from time to time, loan or otherwise make available to the Customer in accordance with clause 14 in connection with the provision of Products or Services.

**Third Party Products** means any third-party owned or proprietary products and software (but not any support which Thales has expressly agreed to itself provide) provided, but not licensed or owned, by Thales pursuant to a Statement of Work.

**Third Party Provider** means the provider of a Third Party Service or owner of the Intellectual Property Rights in the Third Party Product.

**Third Party Service** means a service provided by any person (other than Thales) to Thales or directly to the Customer for the purposes of Thales supplying Products or Services to the Customer in connection with a Statement of Work.

(b) In these terms and conditions headings are for convenience only and do not affect interpretation and, unless the context indicates a contrary intention:

(i) the expression “person” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust or other entity and includes any successor by merger or otherwise of such person;

(ii) a reference to any person or to any party to these terms and conditions includes that person’s or party’s executors, administrators, successors and permitted assigns, including a person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

(iii) a reference to any document (including these terms and conditions) is to that document as varied, novated, ratified or replaced from time to time;

(iv) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

(v) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

(vi) references to parties, clauses, schedules and annexures are references to parties, clauses and schedules or annexures to or of these terms and conditions, and a reference to these terms and conditions includes any schedule or annexure to these terms and conditions;

(vii) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(viii) the word “includes” in any form is not a word of limitation;

(ix) a reference to “\$” or “dollar” is to New Zealand currency;

(x) if any day appointed or specified by these terms and conditions for the payment of any money or doing of any thing falls on a day which is not a day, the day so appointed or specified shall be deemed to be the next succeeding day;

(xi) references to payments to any party to these terms and conditions shall be construed to include payments to another person upon the direction of such party;

(xii) all payments to be made under these terms and conditions will be made by immediately available funds in New Zealand dollars and will be made free and clear of all deductions or withholdings unless the deduction or withholding is required by law;

(xiii) a reference to a party using its best endeavours or reasonable endeavours or best efforts does not include or imply a reference to or an obligation upon that party paying money or providing other valuable consideration to or for the benefit of any person;

(xiv) a reference to “day” is to a day (ending at 5pm) that is not a Saturday, Sunday or public holiday at the location in which the Product or Service is being supplied by Thales;

(xv) a reference to time is to New Zealand Standard Time (or NZST) as applicable in Wellington, Wellington Region, New Zealand; and

(xvi) monetary amounts stated in these terms and conditions are exclusive of GST.



Level 5, 69 -71 The Terrace,  
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[thalesgroup.com](https://www.thalesgroup.com)