GENERAL SALES TERMS AND CONDITIONS
GEMALTO (NZ) LIMITED

1. GENERAL

1.1 These General Sales Terms and Conditions shall apply to products and services ("Products") manufactured and/or provided by GEMALTO (NZ) Limited, a company organised and existing under the laws of New Zealand ("GEMALTO") to a customer (the "Buyer"). GEMALTO and Buyer are hereafter individually referred to as a "Party" and collectively as the "Parties". Any proposal (including any quotation) of whatever form ("Proposal") made by GEMALTO to the Buyer for its Products shall be governed by these General Sales Terms and Conditions which, unless expressly otherwise agreed in writing, shall prevail in the event of a discrepancy with any other written or oral agreement between GEMALTO and the Buyer.

1.2 The Proposal, including, without limitation, commercial, technical and financial documents sent to the Buyer together with these General Sales Terms and Conditions, shall be valid for a period of thirty (30) days from the date of its issuance, unless extended by GEMALTO by written notice to the Buyer.

1.3 The Buyer’s written acceptance of the Proposal, and/or use of the Products, and/or the placement of an order in writing by the Buyer ("Order") shall be deemed the Buyer’s unconditional and irrevocable agreement to these General Sales Terms and Conditions and the waiver of the Buyer’s own purchase terms and conditions or any other similar document.

1.4 The Proposal may be subject to alteration and withdrawal by written notice of GEMALTO to the Buyer at any time until a contract arising there from ("Contract") has been executed in writing by the Buyer’s and GEMALTO’s duly empowered representatives.

1.5 If the Buyer accepts the Proposal with additions, modifications, qualifications or assumptions, such acceptance shall be considered a new offer by the Buyer. Any such new offer shall only be binding upon GEMALTO if and to the extent it is accepted in writing by GEMALTO. Whether the Order was preceded or not by a Proposal, the Contract shall not be deemed binding unless the Buyer has received written acceptance of the Order from GEMALTO, both concerning the Order, and where applicable, the additions, modifications, qualifications or assumptions thereto (the "Order Acceptance"). In the event of a discrepancy between the Order and the Order Acceptance, the Order Acceptance shall prevail and determine the terms of the Contract. No Order may be cancelled or modified after the date of issuance of the Order Acceptance, except with the prior written approval of GEMALTO and provided that all costs resulting there from shall be borne by the Buyer.

1.6 The Contract shall consist of:

- an agreement signed by both Parties and/or the Order and its Order Acceptance agreed upon by both Parties, including, as the case may be, any complementary specific and/or special conditions of sale;
- these General Sales Terms and Conditions, which form an integral part of the Contract.

1.7 The Contract constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings (whether oral, in writing or any other form) between the Parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of GEMALTO which is not set out in the Contract.

2. DOCUMENTATION

2.1 The weight, dimensions, size, performance and other specifications or documentation relating to the Products provided for in the technical or commercial documentation (the "Documentation") of GEMALTO are of an indicative nature only and are not contractually binding unless expressly indicated so by GEMALTO in the Order Acceptance and / or provided in the Contract.

2.2 The Documentation provided to the Buyer remains the exclusive property of GEMALTO and may not be communicated, copied or reproduced by the Buyer without the prior written authorization of GEMALTO.

2.3 Subject to the terms of the Contract, the Buyer is granted a non-exclusive, non-transferable and non-assignable right to use the Documentation. The Buyer agrees to limit access to the Documentation to those employees who require such access in order to use the Products. The Buyer will not make available or disclose any information concerning the Documentation to any other person without the prior written consent of GEMALTO. The obligations expressed in this provision shall remain binding upon the Buyer even after completion or termination of the Contract. The Buyer shall take all the same precautions to maintain the confidentiality of the Documentation as those employed to protect its own proprietary information.

3. TERMS OF SALE

3.1 Unless otherwise expressly stated in the Proposal, the minimum quantity of any Order or Contract shall be of 200 Products (5'000 units in the case of cards) and the minimum price for a batch of any given Product to be delivered under any Order or Contract shall be eight thousand Euros (EUR 8'000).

3.2 Unless otherwise agreed in writing, all sales of the Products between the Parties are deemed concluded "FCA" as further specified in the Order Acceptance and / or the Contract.

3.3 The term "FCA" or any other term used to define the terms of sale provided for in the Contract shall be interpreted in accordance with the INCOTERMS® 2020 published by the International Chamber of Commerce.
4. DELIVERY

4.1 Except in the event of provisions to the contrary included in the Order Acceptance and / or the Contract or otherwise agreed in writing, the delivery schedule shall be calculated from the last to occur of the following dates:

- Receipt by GEMALTO of all the information and data necessary for the fulfillment of the Order;
- Receipt by GEMALTO of 100% of the payment owed as down payment for the Order (of, if applicable, notification to GEMALTO of the opening of the Documentary Credit and acceptance of its terms by GEMALTO); or
- Obtaining of any license or other official authorisation necessary for the import or export of the Products.

4.2 Unless otherwise provided by GEMALTO, the delivery schedule, shipping dates or lead times set forth herein, in any Order or Order Acknowledgment are indicative and shall not create any binding obligation on GEMALTO to deliver the Products within such delivery schedule, shipping dates or lead times. Any performance obligation of GEMALTO shall be subject to the condition that GEMALTO itself received a timely and correct delivery from its suppliers.

4.3 Prior to delivery, the Products will be preserved, packaged or crated in accordance with GEMALTO’s usual standards.

4.4 Products shall be deemed accepted by the Buyer upon delivery to the Buyer and the Products delivered in accordance with an Order are definitively transferred and may not be either returned or exchanged except in the event of a provision to the contrary.

4.5 GEMALTO reserves the right to make partial and/or anticipated deliveries with partial invoicing for the relevant amount. In particular, GEMALTO reserves the right, for any given Order or Contract, to deliver quantities that may differ from the quantity ordered by the Buyer by up to ten percent (10%), more or less and the Buyer undertakes to pay the price corresponding to the quantity of Products effectively delivered by GEMALTO within that tolerance.

4.6 For each Order of cards products, primary colours will be created by GEMALTO and printed on the card products on the basis of the proof (i.e. the initial reproduction of the artwork of the concerned cards sent by GEMALTO to the Buyer in electronic or paper format) signed by the Buyer. All other colours will be created and printed on the basis of the pantone colours chart available in each GEMALTO production site. The difference between on the one hand, for the primary colours the proof and for the other colours the pantone colours chart, and on the other hand the colours printed on the card products shall be measured with a spectrophotometer and will not exceed +/- 3.5 in the CIE 94 colorimetric space (2.1.1) D65/10 or D50/2 depending on the card product type.

4.7 Should the delivery of the Products or any part thereof be postponed either at Buyer’s request or for any reason not attributable to GEMALTO, GEMALTO shall be entitled to either, at its sole discretion: a) cancel the order if the delay exceeds forty-five days from the original delivery date; or (b) store the Products or any part thereof at Buyer’s risks and expense and to issue the corresponding invoice. The date of storage shall be deemed to be the date of delivery. In such a case, GEMALTO shall issue and sign a warehouse certificate discharging GEMALTO of all liabilities incurred in connection with such storage.

4.8 Should the delivery of the Products or any part thereof be delayed due to causes directly and solely attributable to GEMALTO, the Buyer may claim delay damages at the rate of one percent (1%) of the value of the delayed Order per week of delay, up to a maximum of five percent (5%) of the value of the delayed Order. For the avoidance of doubt, this shall not apply to situations where the delay is due to the Buyer, a third party or Force Majeure. The payment of delay damages pursuant to this section shall be the full and final (sole and exclusive) remedy of the Buyer in case of delayed deliveries, and shall be subject to the terms of Section 10.

5. TRANSFER OF RISKS AND TITLE

5.1 Risks in the Products shall pass to the Buyer at the time of delivery as per the applicable INCOTERM.

5.2 Title to the Products shall vest in the Buyer at the time of delivery as per the applicable INCOTERM, or at the time GEMALTO receives full payment for the Products, whichever is later.

6. PRICE

6.1 Unless stated otherwise in the Order Acceptance, the prices for the Products as per the Proposal and Order Acceptance of GEMALTO are fixed and firm for the Contract performance according to the terms and conditions herein contained.

6.2 Unless stated otherwise in the Order Acceptance, the prices hereunder are quoted in Euro, which shall be the invoicing and payment currency, unless otherwise agreed by the parties.

6.3 All prices of Products and/or parts thereof to be delivered by GEMALTO under the Contract are to be understood "FCA", as further specified in the Order Acceptance and/or the Contract according to the INCOTERMS® 2020.
6.4 Without prejudice to the above-mentioned INCOTERMS, all prices hereunder are exclusive of all taxes (including GST/VAT), customs duties, levies and other charges whatsoever which shall be at the exclusive charge of the Buyer. In the event of applicable withholding taxes, the Buyer shall provide to GEMALTO the proof of tax payment promptly. Both parties shall cooperate to secure a reduction or elimination of such withholding taxes and apply for treaty benefits, if applicable.

6.5 Except in the event of provisions to the contrary included in the Order Acceptance, all prices are valid for thirty (30) days starting with their date of issuance, unless extended by GEMALTO by written notice to the Buyer.

7. INVOICING AND PAYMENT

7.1 Unless stated otherwise in the Order Acceptance, the price of the Contract shall be payable in Euros in accordance with the following terms, and a separate invoice in GEMALTO format shall be issued for each shipment.

7.2 Payment shall be made as follows: 100% upon issuance of the Order, unless otherwise agreed by the parties.

7.3 Early payment shall not result in the granting of any reduction in the price by GEMALTO.

7.4 In the event the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to GEMALTO, GEMALTO may, at its option either: (i) postpone the fulfillment of its own obligations until full payment of the sums due for the principal; (ii) charge Buyer interest on the amount unpaid, calculated on a monthly basis at two percent (2.0%) above the cash rate set by Reserve Bank of Australia on the due date of the payment from the time the payment is due until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest); (iii) terminate the Contract upon expiry of a seven calendar (7) day written notice of GEMALTO to the Buyer which has remained without effect.

7.5 Time for payment shall be of the essence. In the event of a payment delay by the Buyer, GEMALTO may also require for any new delivery (regardless of the conditions that may have been agreed), payment prior to shipment or suspend or cancel the Contract or any pending Order without incurring any liabilities whatsoever.

7.6 GEMALTO reserves the right to establish, at any time, a limit for outstanding credit in favor of the Buyer, and adapt the applicable payment periods accordingly.

7.7 No discount will be accepted for advance or down payments except in case of prior written consent between the Parties.

7.8 Payments made hereunder are non-refundable. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by GEMALTO to the Buyer.

8. ACCEPTANCE TESTING

8.1 If an acceptance testing procedure is provided for in the Contract, an acceptance testing shall be carried out, after completion of manufacture and before delivery of the Products, at the premises of GEMALTO, within a maximum period of fifteen (15) calendar days from the date of issuance of the written notice for acceptance testing sent by GEMALTO. Any acceptance testing will be at the expense of the Buyer and performed in accordance with the GEMALTO standard testing procedures then in force.

8.2 The Buyer shall have the right to attend the acceptance testing subject to written notification to GEMALTO of the names and biodata of its representatives at least three (3) calendar days prior to the above-mentioned anticipated date. Failure of the Buyer to attend shall not delay or prevent the performance of such acceptance testing. GEMALTO may subsequently carry out the acceptance testing, in accordance with Section 8.1, the terms of which will thereafter be deemed completed.

8.3 Upon completion of the acceptance testing, GEMALTO shall issue, sign and submit to the Buyer's signature a report, which shall be signed by the Buyer no later than five (5) calendar days from its submission. Should the Buyer refuse to sign the said report, the Buyer shall so notify GEMALTO in writing by substantiating the non-conformities within the same five (5) day period of time. Should the Buyer fail to sign the report without notifying GEMALTO as per above, the report signed by GEMALTO shall then have the same value and effect as if both Parties had signed it.

8.4 Non-conformities evidenced during the acceptance testing shall be made good by GEMALTO within a reasonable time. Non-conformities not affecting the functional characteristics of the Products shall not constitute a ground for rejection thereof. Such non-conformities shall be corrected by GEMALTO before delivery.

8.5 Any and all costs incurred pursuant to inspections, and the lodging and travelling expenses of the Buyer's representative shall be borne by the Buyer.
9. WARRANTY

9.1 GEMALTO hereby warrants that the Products will conform to all hardware and/or software specifications related to the Product, authored and provided by Gemalto, for a period of twelve (12) months from the date of delivery. The Buyer shall notify GEMALTO of any defects in writing within seven (7) calendar days after the defects are discovered, and the notice shall thoroughly describe the conditions under which the defect has arisen in order to facilitate the diagnostic of the defect. Upon request by GEMALTO, the Buyer must send the Products alleged to be effective to GEMALTO to enable GEMALTO to perform an analysis. If the Products are found to be defective following counter-analysis by GEMALTO, the defects of the Products returned by the Buyer will be made good at GEMALTO’s expense by repair or replacement at GEMALTO’s option. Should a replaced part no longer be available, it will be replaced with a part that most closely matches it. The property of the defective Product shall pass to GEMALTO upon delivery of the replacement. For sale of Products that consist of Secure Elements, the Failure Analysis Process (available on demand) will apply. “Secure Element” or “SE” means any GEMALTO (or its affiliates) soldered products (eSE, eSIM, Combo, MIM etc.) irrespective of the final form factor package (MFF2, WLCS, etc.). Transportation and insurance costs for defective parts returned to GEMALTO shall be at the Buyer’s charge and transportation and insurance costs for parts replaced or repaired by GEMALTO shall be at GEMALTO’s charge. Notwithstanding the foregoing, for Secure Elements, GEMALTO is not liable and expressly disclaims all liability for Replacement Costs and Expenses (meaning costs and expenses incurred by a replacement of products and relating to but not limited to the removal of a defective product, customer support, calling center, channel support, products return (i.e., return of the product on a standalone basis, the vehicles or product, device, system into which the product is installed), workmanship to remove and reinstall the product, shipping and handling, scrapping). For the Products which have been replaced or repaired by GEMALTO hereunder, GEMALTO shall have the same liability as set out in this Section 9.1. The Products are provided “as is” and GEMALTO’s warranty hereunder is strictly limited to the repair or replacement of defective parts. The above warranty shall apply only in as much as the Products have been used and maintained in compliance with GEMALTO’s instructions for use. This warranty shall not apply to consumable and extendible items (such as batteries, fuses, etc.) at use, production or anticipated savings, loss of business, contract or commercial opportunities, loss or damage to goodwill or reputation, or any loss or corruption of any data, database or software incurred or suffered by the Buyer and/or any third party resulting from a defect, infringement or alleged infringement, an incident, the failure of the Products or any failure to perform according to the Contract even if GEMALTO has been advised of the possibility of such damages, losses or costs. The Buyer shall defend, indemnify, and hold GEMALTO harmless from and against any claim based on any such damages, losses or costs.

9.2 GEMALTO does not and shall not warrant that the Products will be resistant to all possible attacks and shall not incur, and disclaims, any liability in this respect. Even if each Product is compliant with current security standards in force on the date of their design, GEMALTO does not represent nor warrant that the Products conform to the state of the art in electronic security mechanisms at the time they were made and the Buyer acknowledges that the resistance of the security mechanisms necessarily evolves according to the state of the art in security and notably under the emergence of new attacks. Under no circumstances, shall GEMALTO be held liable for any third-party actions or claims and, in particular, in case of any successful attack against systems or equipment incorporating the Products. Buyer is deemed to have provided and is responsible for all designs, plans, data (e.g., personalization data), electronic security mechanisms and architecture, and specifications with respect to Products (collectively, “Designs”). If, at the Buyer’s request or otherwise, GEMALTO makes suggestions with respect to the Designs, Buyer will be responsible for analysing the same and determining whether or not to incorporate them into the Designs. The Buyer represents and warrants that by placing an order for the Products: (i) it relies on its own knowledge and judgment in the selection and use of the Products as well as the electronic security mechanism and/or architecture installed in the Products; and (ii) it has had, understood and accepted the electronic security mechanisms and/or architecture offered by the Products. GEMALTO shall not be liable in any manner whatsoever with respect to failure of, or attack on the electronic security mechanisms and/or architecture of the Products.

9.3 The warranty in this section 9 and the rights and remedies of the Buyer hereunder are exclusive and in lieu of and Buyer hereby expressly waives any other warranties, rights or remedies whether statutory, express or implied arising by law or otherwise with respect to any defects in or failures of the Products. In particular, GEMALTO does not warrant that the Products will be resistant to any and all possible efforts to defeat or disable its functions, including its security mechanisms, and GEMALTO shall not incur, and disclaims, any liability in this respect.

10. LIABILITY

10.1 To the maximum extent permitted by applicable law and with respect to any damages, losses, expenses, or costs arising out of or related to the Contract, GEMALTO and its directors, employees, affiliates, suppliers, agents and distributors shall not be, in any case whatsoever, liable to the Buyer, its officers, agents, employees, successors and/or assignees for any indirect, special, consequential or incidental damages of whatsoever kind or nature, nor for any loss, cost, damage, loss of revenue, loss of profit, income, revenue, (i.e.) at use, production or anticipated savings, loss of business, contract or commercial opportunities, loss or damage to goodwill or reputation, or any loss or corruption of any data, database or software incurred or suffered by the Buyer and/or any third party resulting from a defect, infringement or alleged infringement, an incident, the failure of the Products or any failure to perform according to the Contract even if GEMALTO has been advised of the possibility of such damages, losses or costs. The Buyer shall defend, indemnify, and hold GEMALTO harmless from and against any claim based on any such damages, losses or costs.

Under no circumstances shall GEMALTO be liable to the Buyer for: (i) the cancellation or delays in the shipping or delivery of the Products based on indicative or tentative delivery schedule, shipping dates or lead times; or (ii) any damages, losses, expenses or costs resulting from or arising out of any illegal and/or fraudulent use of the Products by the Buyer, any third party or the end-user.

Any action against GEMALTO must be brought within no later than ninety (90) days from the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the event giving rise to such claim. Any claims that have been brought or filed in conflict with the preceding sentence shall be null and void.
10.2 The maximum aggregate liability of GEMALTO and its suppliers, agents and distributors arising out of or in connection with the Contract, from any cause whatsoever, whether based on breach of contract, tort (including without limitation, negligence, strict liability, or otherwise), under any warranty, or otherwise, shall not exceed an amount that is equal to the lesser of: (i) ten percent (10%) of the price of the Order giving rise to the claim; or (ii) the total payments received by GEMALTO under the Contract during the six (6) months preceding the event leading to the claim by the Buyer. This limitation of liability shall apply regardless of the form of action, whether in contract or in tort (including negligence) or based on a warranty.

10.3 The Buyer acknowledges that using or selling Products in devices or systems where malfunction may result in personal injury, death, damage to property or the environment is at its own risk and agrees to indemnify and hold GEMALTO harmless from all loss, expense and damages (including reasonable attorney’s fees) which may be incurred by GEMALTO as a result of any claims or actions resulting from damages caused by the use of the Product in such devices or systems by Buyer or any party to whom the Buyer has directly or indirectly supplied the Product.

11. FORCE MAJEURE

11.1 Neither Party shall be liable or responsible for any failure or any delay to fulfill any of its obligation hereunder, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of the Contract (except for any obligations to make payments to the other Party under the Contract for the duration of a Force Majeure event and for 90 days thereafter, when and to the extent such failure or delay is caused by or results from a Force Majeure event.

11.2 The Party experiencing a Force Majeure event shall promptly notify the other Party of the inability to perform its obligations under the Contract resulting from Force Majeure ("Force Majeure Declaration"). If as a result of Force Majeure, the performance by either Party of its obligations under this Contract is only partially affected, such Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.

11.3 If Force Majeure continues for a period of more than ninety (90) consecutive calendar days from the date of the Force Majeure Declaration and has prevented either of the Parties from performing its obligations in whole or in part during that period, then the other Party shall be entitled to terminate the Contract either in whole or in part forthwith by written notice to said Party. The notice to terminate must specify the termination date, which must be not less than thirty (30) days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the Contract will terminate on the termination date set out in the notice. Each Party shall bear its own costs incurred by the Force Majeure.

"Force Majeure" means acts beyond the affected Party's reasonable control, including, without limitation: acts of God, fire, flood, earthquake, windstorm or other natural disaster, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; terrorist attack, civil war, civil commotion or riots, border or customs closure; nuclear, chemical or biological contamination or sonic boom; epidemic or pandemic; voluntary or mandatory compliance with any law (including a failure to grant any license or consent needed or any change in the law or interpretation of the law); explosion or accidental damage; extreme adverse weather conditions, sonic boom and meteor shower; collapse of buildings structures, failure of plant machinery, machinery, computers or vehicles; any labor dispute, including but not limited to strikes, industrial action or lockouts; non-performance or delayed performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service, including but not limited to electric power, gas or water.

12. TRADE CONTROL

12.1 The Buyer shall comply with all applicable export controls and economic sanctions ("Export Laws"), including, as applicable, the Export Administration Regulations maintained by the U.S. Department of Commerce ("EAR"), trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), export controls and restrictive measures maintained by the U.K. Government, the European Union (the "EU") and any EU member-state, as well as any embargo and trade control regulation.

Therefore, the Buyer shall not sell, export or supply GEMALTO's Products to any individuals or legal entities that are the subject of sanctions or of blocking or asset-freeze measures applicable in the United States of America, in any EU member-state (whether resulting from EU regulations or from a governmental decision), in Australia, New Zealand or in the United Kingdom. This shall apply, without limitation, to individuals and legal entities that are on the OFAC List of Specially-Designated Nationals and Blocked Persons, the national list of any EU member-state or the EU Consolidated List.

Should the Products be subject to export restrictions, the Buyer shall maintain full, true, and accurate records of exports, re-exports, and transfers of the Products purchased for at least five (5) years following the respective dates of such exports, re-exports, or transfers, and the Buyer agrees to provide such export-related records to GEMALTO upon the latter’s request.

12.2 The Parties acknowledge that the subject matter of the Contract may fall within the scope of the provisions set forth by the Wassenaar Arrangements or any successor, substitute or additional body regulating sensitive technologies. Should performance of the Contract legally be prevented by the regulators of the Wassenaar Arrangements or any such other body, such prevention shall be considered as a case of Force Majeure. GEMALTO shall not be liable to Buyer for any damages resulting from the non-performance of the Contract as a result of the application of any such provisions.

12.3 Any violation by Buyer of any provision of this section 12 shall be deemed a material breach by it of its contractual obligations, entitling GEMALTO either to suspend the execution of the Contract as long as the breach is not satisfactorily remedied or to terminate the Contract immediately, and this without prejudice to any other remedy to which GEMALTO may be entitled as per contractual provisions and/or at law.
13 INTELLECTUAL PROPERTY, CONFIDENTIALITY AND INFRINGEMENT

13.1 The information and data ("Information") contained in any document or support of information supplied by GEMALTO under the Proposal or the Contract shall remain GEMALTO’s or its third-party licensor’s exclusive property along with all intellectual property rights (including but not limited to patent rights, copyrights, trademarks, designs) attached thereto. No right, title or interest is transferred to the Buyer by the Contract in the names, trademarks, trade secrets, patents, pending patents, expertise, copyright and other intellectual property rights relating to the Products. In particular, to the extent that software is embedded in a Product, the sale of such Product shall not constitute the transfer of ownership rights or title in such software to Buyer, but, subject to the provisions set forth herein, shall only imply a non-exclusive and non-transferable license to Buyer under GEMALTO’s or its third-party licensors’ intellectual property rights incorporated in the Products: (i) to use such software in conjunction with and as embedded in the Products as supplied by GEMALTO; and (ii) to use such Product in or in conjunction with products of Buyer.

GEMALTO is not obliged to make the source code of the software available to the Buyer except as required by Open License Terms. The software may contain open source software the use of which is governed by the appropriate license conditions (the Open License Terms). The list of open source software and Open License Terms are included in the product documentation as required. GEMALTO may amend the list of open source software at any time. In the event of a conflict between the conditions of the Contract and the Open License Terms, the Open License Terms shall prevail. No license fee is charged to the Buyer by GEMALTO for the use of any such open source software. If required by the Open License Terms, GEMALTO will provide a copy of the source code (or an offer to provide such source code) of the open source software. Notwithstanding anything else to the contrary in the Contract, the Buyer, acknowledges and agrees that GEMALTO provides no warranties and shall have no liability whatsoever in respect of the Buyer’s use of the open source software.

Except if explicitly otherwise provided in this Section 13, Buyer shall not be granted any license, either directly or indirectly, by implication, estoppel, or otherwise, to any patent, trade secret, copyright and/or any other intellectual property right of GEMALTO. The Buyer shall not make any use of the Information other than for the purpose of the Contract or, as the case may be, installing, operating and/or maintaining the Products. GEMALTO retains and shall retain full ownership of all inventions, designs and processes made prior to or during the course of performance of any Contract resulting therefrom.

13.2 The Buyer shall keep the Information in strict confidence and shall not disclose any of the Information to any other person than the Buyer's employees who need to know such Information for the purposes stated in Section 13.1. Any other disclosure shall be subject to GEMALTO’s prior written approval.

13.3 Subject to Section 10, GEMALTO shall indemnify the Buyer against any and all claims, costs, expenses or liability directly and solely arising out of the alleged infringement or infringement of patent, copyright, trade secret rights in the country where the Buyer has its registered address as a consequence of the use by the Buyer of the Products in accordance with their technical specifications, provided that the Buyer shall promptly notify GEMALTO in writing of any claim, that no claim may be made after a period of one (1) year from the date of delivery of the Product giving rise to the claim, that the Buyer shall provide all information and assistance required by GEMALTO concerning the claim or action, that the Buyer shall give GEMALTO the opportunity to defend and settle under the responsibility of GEMALTO any lawsuit in this respect and that the Buyer shall refrain from making any admission, declaration or arrangement with the third party raising such claims.

The foregoing obligations to indemnify the Buyer shall not apply to GEMALTO for Products for which GEMALTO has not obtained a similar indemnification from its supplier(s) and shall not apply either to GEMALTO for any alleged infringement or infringement that is due to or based upon: (a) the association or combination of the Products with any other article, software, hardware, apparatus or device; and/or (b) any alteration or modification of the Products which is not made by GEMALTO or which is based upon a design supplied by the Buyer; and/or (c) damages attributable to the value of the use or non-use of a non-GEMALTO product, service, data or business process.

13.4 Should a court or an arbitrator finally establish that there has been a patent infringement or should GEMALTO consider that the Products could be the subject of a claim or suit for infringement, GEMALTO may choose, at its option, either:

- to obtain the right for the Buyer to continue using the Products; and/or
- to substitute equivalent products for the infringing Products; and/or
- to modify infringing Products so as to eliminate the infringement; and/or
- to terminate the Contract.

13.5 The foregoing states the entire liability and warranty of GEMALTO with respect to the infringement of any patent, copyright, trademark or trade secret or of any intellectual property right by the Products or any part thereof.

13.6 The Buyer on its part warrants that any design and/or instructions furnished or given by it shall not be such as will cause GEMALTO to infringe any intellectual property rights in the performance of the Contract. The Buyer shall, in this respect, hold harmless and protect GEMALTO in the same way as provided under Sections 13.3 and 13.4.

14 DATA PROTECTION

14.1 The parties shall comply with their respective obligations under data protection regulations (including the Privacy Act 1993 (NZ) and European Regulation 2016/679 relating to the processing of Personal Data ("GDPR")) that apply in the context of the performance of the Contract.
With respect to the personal data made available by the Buyer to GEMALTO under the Contract, the Buyer shall act as a data controller and GEMALTO shall process personal data only on behalf of the Buyer. Acting as data processor, GEMALTO shall be processing the Buyer personal data according to the Buyer documented instructions as further described in the Orders and for no other purposes than the ones expressly defined and approved by the Buyer, unless required to do so by the laws to which GEMALTO is subject. In such a case, GEMALTO shall inform the Buyer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

GEMALTO shall ensure that it has in place appropriate technical and organisational measures designed to ensure an appropriate level of security of the Buyer personal data in accordance with Article 32 of the GDPR.

If relevant, the Parties mutually agree on a form describing the processing activities under the template provided by GEMALTO.

In addition, GEMALTO shall:

- ensure that persons authorised to carry out processing of Buyer personal data are committed to confidentiality obligations and commit to have its sub-processors comply with the same obligations as the one defined hereunder;
- assist Buyer, at Buyer’s costs, by appropriate technical and organisational measures, insofar as this is possible, considering the nature of the processing activities, for the fulfilment of Buyer’s obligations to respond to requests for exercising the data subjects’ rights laid down in the applicable data protection legislation;
- immediately inform Buyer in writing if it believes that Buyer’s instructions with respect to the processing of Buyer personal data infringes any applicable data protection legislation;
- make available to Buyer, at Buyer’s costs, all information necessary to demonstrate compliance with the obligations set out in Article 28 of the GDPR and, upon two (2) weeks prior advance notice to GEMALTO, allow for and contribute to audits, including inspections, conducted by GEMALTO or another auditor mandated by Buyer;
- considering the nature of the processing activities and the information available to GEMALTO, assist Buyer, at Buyer’s costs, in ensuring compliance with the obligations as set out in Articles 32 to 36 of the GDPR;
- at the end of the Contract, GEMALTO shall, at the choice of Buyer, delete or return to Buyer all Buyer personal data and destroy existing copies unless otherwise required by applicable laws;
- where applicable under the GDPR and the Contract, not transfer Buyer personal data out of the European Economic Area without Buyer prior express consent; and
- notify Buyer without undue delay after becoming aware of a personal data breach.

Buyer hereby gives a general authorisation to GEMALTO to share Buyer personal data with sub-processors, it being understood that GEMALTO shall inform Buyer of any changes of sub-processors, thereby giving Buyer the opportunity to object to such changes in writing, for legitimate reasons and within thirty (30) calendar days following receipt of GEMALTO’ notice. GEMALTO shall remain fully liable to Buyer for the performance of the sub-processor’s obligations.

14.2 (To the extent applicable to SIM and eSIM cards) - Retention period: Pursuant to the personal data protection program (detailed on our website: https://www.thalesgroup.com/en/markets/digital-identity-and-security/policies), GEMALTO retains the input files for a period of four (4) months and the output file for a period of seven (7) months from the date of delivery of the Files (input and output files) to Buyer via the Allynis Connect highly secure data exchange solution (collectively referred to as the ‘GEMALTO Retention Period’). The retention of the Files is subject to the “Retention Rules for Output and Input Files” available on the Thales DIS web site: https://www.thalesgroup.com/sites/default/files/database/document/2021-03/UICC-production-retention-rules.pdf (The “Retention Terms”). The Retention Terms are incorporated by reference into these General Sales Terms and Conditions and above URL link provides specific, direct instructions on how to access the Retention Terms on the website https://www.thalesgroup.com/en/markets/digital-identity-and-security. The Retention Terms are subject to change, and the Retention Terms in effect at the time of each new order or delivery shall be those on the above identified website at the time of such order or delivery.

15 WASTE OF ELECTRICAL AND ELECTRONIC EQUIPMENT

15.1 Pursuant to the Directive 2002/96/CE on waste electrical and electronic equipment (‘WEEE’), to the Directive 2002/95/CE on restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS") and to the applicable national transposition legislation and/or regulations, the financing of the management of WEEE may be transferred from the manufacturer to the users.

15.2 Unless otherwise agreed in writing between the Parties, the Buyer hereby accepts such charge and shall therefore:

- Be responsible for financing the collection, treatment, recovery, recycling and environmentally sound disposal of (i) all WEEE arising or deriving from the Products and (ii) all WEEE arising or deriving from products already on the market as of August 13, 2005 where such products are to be replaced by the Products and such products are of an equivalent type or are fulfilling the same function as that of the Products;
- Comply with all additional obligations placed upon the users by the WEEE regulations by virtue of the Buyer accepting the responsibility set out in this Section 15.2.

15.3 The above-mentioned obligations shall be passed on by successive professional buyers to the final user of the EEE, always under the Buyer’s responsibility. Non-compliance by the Buyer with the above-mentioned obligations may lead to the application of criminal sanctions, as laid down in the applicable national transposition legislation and/or regulations.

16. ANTICORRUPTION AND INFLUENCE PEDDLING

16.1 The Parties shall always act in accordance with the national and foreign laws and regulations applicable to the prevention of risks of corruption and influence peddling ("Regulations") including, where the Buyer is subject to it, French law n° 2016-1691 of 9 December 2016 relating to transparency fight against corruption and modernization of the economy.
16.2 In compliance with Regulations, GEMALTO performs due diligence on all third parties with whom it intends to enter into or to continue a business relationship with. In the event that this due diligence reveals a material ethical risk which in GEMALTO’s reasonable opinion cannot be adequately mitigated with respect to the Buyer and/or the Contract, GEMALTO may, without incurring payment of damages or indemnity to Buyer, unilaterally terminate the Contract. This termination shall be effective with immediate effect upon written notice to be sent to the Buyer and shall be without prejudice to any other remedies that may be available to GEMALTO under applicable law.

16.3 Whether directly or via third parties, neither Party shall propose to any person, or shall accept from any person, any offer, promise, donation, gift or benefit of any kind 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 favorable decision.

16.4 Neither Party shall solicit nor accept for itself any offer, promise, gift or advantage of any kind, for the purpose of misusing its influence with a view to making or obtaining any favorable decision.

16.5 Each Party declares to have implemented a compliance program that meets the requirements of the Regulations, insofar as it is subject to such a requirement.

16.6 Any violation by the Buyer of any provision of this Section 16 shall be deemed a material breach of its contractual obligations, entitling GEMALTO either to suspend the Contract performance as long as the breach is not satisfactorily remedied or to terminate the Contract immediately and without prejudice to any other remedy for which it may be entitled under contractual and/or legal provisions.

16.7 The Buyer represents and warrants that none of its Legal Representatives is, has been within the last 3 years, or shall be, at any time over the term of the Contract, a Politically Exposed Person who may by virtue of his/her role or position unduly influence Buyer or its end-customer’s decisions or position in respect of the Parties’ rights and obligations pursuant to the Contract. If over the term of the Contract, the Buyer becomes aware of any circumstance that is likely to affect this representation, the Buyer shall promptly inform GEMALTO of such circumstances. For purposes of this Section: “Legal Representative” shall mean the directors or executive officers of the Buyer or of its controlling shareholders or ultimate financial beneficiaries; “Public Official” shall mean any person, whether appointed or elected, holding a legislative, administrative, military or judicial office, or exercising a public function, including for a public entity, or any official or agent of a public international organization and “Politically Exposed Person” shall mean a Public Official, or any representative of a major political party, as well as any of their respective relatives (i.e. direct ascendants and descendants, collateral relatives, any individual among parents, siblings, spouse, known partner, recognized cohabitee, children, in-laws) or close associates (i.e., those persons notoriously associated with them or who are widely and publicly known to maintain a close relationship with them, including the ultimate beneficiaries of a legal entity held jointly with that person).

17. APPLICABLE LAW AND SETTLEMENT OF DISPUTES

17.1 The Proposal and the Contract shall be governed by and construed in accordance with the laws of New Zealand, excluding its conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sales of Goods (1980) shall be expressly excluded.

17.2 In the event of any dispute arising out of or in connection with the existence, validity, construction, performance and/or termination of the Proposal and/or the Contract, the parties shall first refer the dispute to proceedings under the ICC Mediation Rules (“Mediation Rules”).

17.3 If the dispute has not been settled pursuant to the said Mediation Rules within 60 days following the filing of a Request for Mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally settled under the Rules of Arbitration of the ICC by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

17.4 The place of arbitration shall be Auckland, New Zealand.

17.5 The language to be used in the arbitral proceedings shall be English.

17.6 The arbitration proceedings shall be confidential.

17.7 Insofar as the Buyer is a State or a State-owned entity, it agrees to irrevocably waive its immunity from jurisdiction and execution.

17.8 For the purpose of any arbitration under this clause, the IBA Rules on the Taking of Evidence in International Arbitration, as presently in force, shall apply in respect of all procedural matters relating to evidence.
18. ASSIGNMENT

Neither GEMALTO nor the Buyer shall, without the express prior written consent of the other Party (which consent shall not be unreasonably withheld) assign to any third party the Contract or any part thereof, except that GEMALTO shall be entitled, without Buyer’s consent, to assign the Contract or any part thereof to (i) any affiliated company or to (ii) any third party in connection with a merger, the sale of substantially all of GEMALTO’S assets or a change of control.

19. TERMINATION

19.1 GEMALTO may terminate the Contract and/or its obligations hereunder at any time upon:
- Default by the Buyer in the payment of any amount due to GEMALTO hereunder;
- The Buyer’s failure to pay any debt to GEMALTO;
- The Buyer’s bankruptcy, insolvency or receivership;
- Breach by the Buyer of the Section 16 “Anticorruption and influence peddling”;
- Any material default by the Buyer under the Contract not cured within fifteen (15) days of the date GEMALTO notifies Buyer of such default.

19.2 The licenses granted under the Contract shall terminate immediately upon the termination of this Contract.

19.3 The Contract shall be firm and binding and may not be cancelled by Buyer except with and upon GEMALTO’s prior written consent.

20. MISCELLANEOUS

20.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue to be in full force and effect.

20.2 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts by any person that is not a party to it.