

# Global Support Terms and Conditions

Cloud Protection & Licensing



UNLESS A SEPARATE WRITTEN AGREEMENT IS CURRENTLY IN FORCE BETWEEN YOU AND THALES WITH RESPECT TO THE SUBJECT MATTER SET FORTH HEREIN, THESE SUPPORT TERMS APPLY TO SUPPORT AND MAINTENANCE SERVICES FOR THALES CLOUD PROTECTION & LICENSING OFFERINGS PURCHASED BY PURCHASER EITHER DIRECTLY OR THROUGH AN AUTHORIZED PARTNER. THESE SUPPORT TERMS SUPPLEMENT THE GENERAL TERMS AND CONDITIONS. ANY TERMS NOT DEFINED HEREIN SHALL HAVE THE MEANING SET FORTH IN THE GENERAL TERMS AND CONDITIONS.

THALES SHALL NOT BE BOUND BY ANY TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE SET FORTH IN THESE SUPPORT TERMS THAT MAY APPEAR IN ANY ORDER OR IN ANY OTHER COMMUNICATION.

## GENERAL

### 1) DEFINITIONS

**“General Terms and Conditions”** mean the Product Sales terms located at: <https://www.thalesecurity.com/about-us/legal>.

**“Failures”** means any reproducible defect in the Software or Hardware that causes the Software or Hardware to fail to perform substantially in accordance with the Documentation.

**“Support Help Center”** means the Thales Technical Support Help Center that can be accessed as described in the Welcome Pack.

**“Support Level”** means the description for the particular level of Support referred to in the Order Acknowledgement that Thales has agreed to make available to Purchaser.

**“Support Period”** means the effective time period for which Purchaser has purchased Support that is confirmed by Thales in an Order Acknowledgement.

**“Welcome Pack”** means the guide to using Thales technical support services located at [https://supportportal.gemalto.com/csm?id=kb\\_article\\_view&sys\\_kb\\_id=1d2bac074f13f340102400818110c7d9&sysparm\\_article=KB0019882](https://supportportal.gemalto.com/csm?id=kb_article_view&sys_kb_id=1d2bac074f13f340102400818110c7d9&sysparm_article=KB0019882) which may be updated from time to time by Thales in its sole discretion.

### 2) PROVISION OF SUPPORT SERVICES

Subject to Purchaser or Authorized Partner's timely payment of all fees owed to Thales, as applicable, Thales will provide Support Services to Purchaser during the Support Period and at the Support Level purchased and confirmed by Thales in an Order Acknowledgement.

### 3) SUPPORT PERIOD, EXPIRED SUPPORT SERVICES AND SUPPORT SERVICES RENEWAL

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

### 4) SUPPORTED VERSIONS AND END OF LIFE

- a. Unless otherwise specified by Thales, the provision of Support Services is limited to (a) the current version and (b) the immediately preceding version of the Product. The Thales product-specific lifecycle policy and information defining currently supported versions is available upon request from Thales Technical Support.

- b. Thales will use commercially reasonable efforts to meet the response times in the Welcome Pack and herein. Access to the Support Help Center, e-mail or phone lines for the provision of Support Services may be suspended for brief periods due to scheduled maintenance and other factors.

## 5) SUPPORT SERVICES

The available Support Levels and options and the Return Material Authorization policy are set forth in the Welcome Pack. Thales' provision of Support Services is further subject to the information and disclaimers set forth in the Thales product-specific lifecycle policy, available upon request from Thales Technical Support. During the Support Period, Thales will provide the following Support Services to Purchaser in relation to Software:

- (i) Commercially reasonable efforts to investigate and resolve Failures reported by Purchaser and confirmed by Thales in accordance with the priority level assigned to the Failure by Thales in its reasonable discretion. Purchaser agrees that Thales may determine in its sole discretion that the only resolution may be upgrading to the most recent version of Thales' Hardware or Software.
- (ii) Updating the Documentation as and when necessary.
- (iii) The provision of generally available maintenance Software and Software release notes.
- (iv) The provision, free of charge, during the Support Period, of generally available maintenance updates to the supported versions of the Software as and when available, in accordance with the Support Level purchased.

Purchaser shall promptly download, distribute and install all Software maintenance updates as released by Thales during the Support Period. Purchaser acknowledges that any failure to do so could result in Purchaser's inability to receive Support Services. Certain updates may require a Hardware upgrade to function properly. Thales reserves the right to address support requirements in the future by migrating this product to a "form, fit, function" next-generation equivalent. ProtectFile and ProtectV are excluded from any term or maintenance agreements longer than 3 years.

## 6) EXCLUSIONS AND DISCLAIMERS

### a. CONDITIONS VOIDING SUPPORT SERVICES

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

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

### b. OTHER EXCLUSIONS

In addition, Thales shall have no obligation to:

- i) create or modify custom business roles or reports, or support custom modification to databases, active

- server pages or other code, components or programs;
- ii) supply personnel to Purchaser's premises;
- iii) provide software development or coding assistance or use of software developer tool kits to create or develop applications;
- iv) pay or reimburse Purchaser for expenses relating to the import or export of Products, including custom clearances, inspection certificates, applications and license fees. Thales further disclaims any liability for delays resulting from an action by a government agency or from its failure to take timely action;
- v) products in which the serial number, warranty data or quality assurance decals have been altered or removed; or
- vi) repair pre-existing defects in Products that are out of warranty.

## c. ADDITIONAL COSTS

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

## 7) PURCHASER OBLIGATIONS

The Purchaser shall:

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

## 8) ON-SITE WORK

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

## 9) NON-SOLICITATION

The Purchaser undertakes during the term of the Support Period and for one year after its termination not to solicit, hire, employ or offer employment, directly or indirectly through its affiliates, to any of Thales' employees who has been engaged in providing Support Services pursuant hereto without Thales' prior written consent; provided, however, that nothing herein shall preclude the hiring of any such individual who (i) responds to general solicitation of employment through an advertisement not directed at such employees of Thales; (ii) contacts Purchaser on his or her own initiative and without any direct solicitation by Purchaser; (iii) has terminated employment with Thales prior to commencement of solicitation of such employee by Purchaser. This Section does not apply where explicitly prohibited by local law and/or regulation.

## 10) PERSONAL DATA

Thales may process basic contact information from select Purchaser representatives when providing Support Services pursuant hereto. The processing of personal data is subject to Thales' Privacy Notice located at <https://www.thalesecurity.com/privacy-policy> ("**Privacy Notice**").

## 11) SYSTEMS AND SECURITY OBLIGATIONS

- a. Thales employs security measures in accordance with its privacy and security policy ("**Privacy and Security Policy**") as amended from time to time, a current copy of which is available on request.
- b. Thales' helpdesk system may use a third party cloud solution. By using the Support Services, Purchaser authorizes Thales to store Purchaser's emails and any attached files within the helpdesk in the cloud. Thales will follow the Privacy and Security Policy with respect to this information.
- c. Telephone calls made to, or received from, Thales' support team may be recorded for training or analysis purposes. In addition to the information supplied by Purchaser during a support incident, and to enable operation of the Support Services, Thales will record limited information about end users and other companies using the Support Services. This includes:
  - o Contact email addresses
  - o Contact telephone numbers
  - o Business addresses
  - o Product serial numbers affected.

## 12) PURCHASER CONTROL AND RESPONSIBILITY

The Purchaser has and will retain sole responsibility for:

- a. all information, instructions and materials provided by or on behalf of Purchaser or any authorized user in connection with the Support Services;
- b. Purchaser's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Purchaser or through the use of third-party services ("**Purchaser Systems**");
- c. the security and use of Purchaser's and its authorized users' access credentials; and
- d. all access to and use of the Support Services and Products directly or indirectly by or through Purchaser Systems or its or its authorized users' access credentials, with or without Purchaser's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

## 13) DISCLAIMER OF WARRANTIES

- a. THALES WARRANTS THAT SUPPORT SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THALES EXCEED THE FEES PAID BY PURCHASER FOR SUPPORT SERVICES IN THE 12 MONTHS PRECEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE.

THALES SHALL ONLY HAVE LIABILITY FOR SUCH BREACHES OF WARRANTY IF PURCHASER PROVIDES WRITTEN NOTICE OF THE BREACH TO THALES WITHIN THIRTY (30) DAYS OF THE PERFORMANCE OF THE APPLICABLE SUPPORT SERVICES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF PURCHASER PURCHASES SUPPORT SERVICES AND MAINTENANCE SERVICES THROUGH AN AUTHORIZED PARTNER, THALES SHALL HAVE NO DIRECT LIABILITY TO PURCHASER FOR ANY DAMAGES WHATSOEVER AND SHALL NOT BE REQUIRED TO INDEMNIFY PURCHASER FOR ANY THIRD PARTY CLAIMS, INCLUDING, BUT NOT LIMITED TO, THOSE SET FORTH IN THIS SECTION.

- b. THIS WARRANTY IS PURCHASER'S EXCLUSIVE WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THALES DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED BY CUSTOM, TRADE USAGE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL

IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR WARRANTY IS GIVEN THAT FAILURES (AS DEFINED HEREIN) WILL BE FIXED OR FIXED WITHIN A SPECIFIED PERIOD OF TIME.

- c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THALES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO PROVIDING SUPPORT SERVICES, EVEN IF THALES HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

## 14) ANTI-CORRUPTION AND INFLUENCE PEDDLING

- a. The Purchaser shall always act in accordance with the national and foreign laws and regulations applicable to the prevention of risks of corruption and influence peddling and in particular French law n° 2016 1691 of 9 December 2016 relating to transparency fight against corruption and modernization of the economy ("Sapin II Law"). Whether directly or through third parties, the Purchaser shall not offer or promise any gift or advantage to a person, for himself or for others, with the purpose that this person abuses or because this person would have made illegitimate use of its real or supposed influence in order to obtain distinctions, jobs, contracts or any other favorable decision. The Purchaser shall not solicit or accept for itself any offer, promise, gift or advantage of any kind, to make illegitimate use of its influence for the purpose of making or obtaining any favorable decision. The Purchaser declares to have implemented a compliance program that meets the requirements of the Sapin II Law, insofar as the Purchaser is subject to this requirement.

## 15) FORCE MAJEURE

- a. Thales shall not be considered in default of performance of its obligations under the Agreement if performance of such obligations is prevented or delayed by any circumstances not within Thales' reasonable control including, without limitation: acts of God, fire, explosion, flood, storm, terrorist attack, civil war, commotion or riots, war (or threat of war), imposition of sanctions, embargoes or acts of government (including without limitation failure or delay to obtain export licenses), pandemic, labor disputes, failure or delay of transportation, vendors or subcontractors, Thales' inability to enter Customer's premises to fulfill its obligations under the Agreement when applicable, or any other similar cause or causes beyond the reasonable control of Thales. Time of performance of Thales' obligations hereunder shall be extended by the time period reasonably necessary to overcome the effects of such force majeure occurrences.

## 16) ENTIRE AGREEMENT

- a. These Support Terms constitute the entire agreement between the parties with respect to the maintenance and support services and supersede and extinguish all previous agreements, promises, conditions, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, covenant, condition or warranty (whether express or implied, made innocently or negligently) that is not expressly set out in these Support Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Support Terms. Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation. These Support Terms shall NOT be varied except with both Parties' written consent.
- b. If the services required by Purchaser are special services such as installation, commissioning, training, development or management services, any additional terms of Thales applicable to such services will apply except that in the event of any conflict these conditions shall prevail.