

INTERNET SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT (the "Agreement") is made between

- (1) Sophos Plc (Company Number: 2096520), incorporated in England and Wales, with registered offices at The Pentagon, Abingdon, OX14 3YP, United Kingdom and its subsidiaries, or, as the context so applies, any of them ("Sophos"),

And

- (2) _____, a _____ corporation having its principal place of business at _____ ("Service Provider").

WHEREAS:

- A. Sophos provides security and email management software;
- B. Service Provider is in the business of offering general Internet connectivity and access services including email routing, storage and/or access and desires to use Sophos's products in connection with such services.

NOW IT IS AGREED as follows:

1. DEFINITIONS

In this Agreement:

- 1.1 "**Commencement Date**" means the date of the later of the two signatures below. ***[If agreement has a different commencement date please replace with "means [and state the date here]"***
- 1.2 "Contract Quarter" means each successive period of three calendar months following the Commencement Date.
- 1.3 "**Contract Year**" means any successive period of twelve calendar months measured from the Commencement Date or any anniversary of such date.
- 1.4 "**End User**" means an unaffiliated, third party customer of Service Provider to whom Services are provided for use in the regular course of such person's or entity's internal business or personal use and not for resale or sublicensing by such person or entity.
- 1.5 "**End User Licence**" means an end user licence agreement between Service Provider and any End User to whom Service Provider provides any Services and under the terms and conditions of which the Programs (and the Documentation and any Product Updates or Virus Updates) are licensed to End Users.
- 1.6 "**Fees**" means the amount payable in accordance with Clause 9.1.
- 1.7 "**Intellectual Property Rights**" means all present and future patent, copyright, confidential information, database rights, rights in designs, know-how, mask works, trademarks, service marks, trade and business names, domain names, trade secrets and any other similar rights in any country, whether registered or not and including all applications for such rights, throughout the world including all extensions and renewals.
- 1.8 "**Mailbox**" means an email address or account of the user.
- 1.9 "**Normal Working Hours**" shall mean 09:00 to 17:30 inclusive, local time, on Working Days and "Working Days" means Mondays to Fridays inclusive, but excluding bank and public holidays in the country where the notice is received.
- 1.10 "**Product Update**" means a subsequent update of the Programs that is generally made available to Sophos's own end users as part of their licence or subscription without extra charge.

- 1.11 **“Programs”** means the executable versions of the software programs owned, distributed or licensed by Sophos and listed in Exhibit A (and any part of them) which are to be supplied by Sophos to Service Provider and for which Service Provider is granted the Service Provider Licence; such term shall include all Virus Updates (if applicable), Spam Updates (if applicable) and Product Updates from time to time, the media upon which such software is delivered to Service Provider and the guides and manuals for use of such Programs (the "Documentation")
- 1.12 **“Service Provider Licence”** means the licence granted under this Agreement by Sophos to Service Provider in respect of the Programs.
- 1.13 **“Services”** means the services that are to be provided by Service Provider which are identified on Exhibit A attached hereto.
- 1.14 **“Sophos’s Trademarks”** means the Sophos’s trademarks listed in Exhibit D.
- 1.15 **“Spam Update”** means a subsequent update to the library of spam identification rules that is generally made available to Sophos’s own end users as part of their licence or subscription without extra charge where one of the Programs is a spam product.
- 1.16 **“Territory”** means the territory identified under heading 3 in Exhibit A.
- 1.17 **“User”** means an employee, consultant or other individual who uses a computer which benefits from the Programs licensed to Service Provider for the Services and ‘Users’ shall be construed accordingly.
- 1.18 **“Virus Update”** means a subsequent update to the library of virus identities, which is generally made available to Sophos’s own end users as part of their licence or subscription without extra charge where one of the Programs is a virus product.

2. SERVICE PROVIDER LICENCE

- 2.1 **Appointment.** Subject to the terms and conditions of this Agreement, Sophos hereby appoints Service Provider on a non-exclusive basis to use the Programs solely in provision of the Services to End Users directly in the Territory (and Service Provider shall have no right to allow others to exercise such right).
- 2.2 **Licence Grant.** Sophos hereby grants to Service Provider and Service Provider hereby accepts, a worldwide non-exclusive, non-transferable right and licence to use the Programs solely in the manner referred to in clause 2.1, until this Agreement expires or is terminated subject to the restrictions contained in the End User Licence (save as expressly amended by this Agreement).
- 2.3 **No Reverse Engineering.** Service Provider agrees that the Programs contain all the information and tools required for their incorporation into the Services without any adaptation, alteration, amendment, modification, reverse engineering, decompilation, disassembling or decoding of the Programs. Service Provider therefore agrees not to adapt, alter, amend, modify, reverse engineer, decompile, disassemble or decode the Programs provided always that:
- 2.3.1. Service Provider may observe, study or test the functionality of the Programs in order to understand the ideas and principles which underlie any element of the Programs; and
- 2.3.2. the information necessary to create an independent program which can be operated with the Program or with another program may be requested (which request Sophos shall not unreasonably refuse) by Service Provider from Sophos upon payment by Service Provider to Sophos of Sophos’s reasonable charges in connection with the provision of such information.
- 2.4 Service Provider shall ensure that it only uses the Programs as part of the Services.
- 2.5 **Pre-Release Programs.** Sophos may, at its option, supply Service Provider with pre-production releases of Programs (which may be labelled "technical preview" or "beta"). Service Provider acknowledges that these products are pre-release Programs, are provided “AS IS” without warranties of any kind, including any warranty as to infringement and are not suitable for general use and Service Provider agrees not to use such pre-release Programs in the Services.

- 2.6 **Sophos's Trademarks.** Except to the extent expressly authorized by Sophos, Service Provider shall not remove, delete or in any manner alter the splash screens, Sophos's Trademarks or other Intellectual Property Rights notices of Sophos and/or its licensors, if any, appearing on the Programs as delivered to Service Provider. If Service Provider adopts and uses its own trademarks to identify the Services, it shall state with reasonable prominence on the front of all marketing and packaging materials that the Services are "Powered by Sophos" or some other phrase previously approved in writing by Sophos. Where Service Provider uses Sophos's Trademarks it shall comply with Sophos's current style guidelines as such may be amended from time to time.
- 2.7 **Quality Assurance.** Service Provider shall use the Sophos's Trademarks solely in respect of Services that are of a high quality level. Sophos shall have the right to immediately terminate the Service Provider Licence if such quality level is not met, in Sophos's reasonable determination. Service Provider shall, whenever requested by Sophos, cease using the Programs in the Services if the quality or specifications thereof are not high quality.
- 2.8 **Support.** Sophos shall provide Service Provider with support in respect of the Programs as detailed in Exhibit B.

3. SERVICE PROVIDER'S OBLIGATIONS AND WARRANTIES

- 3.1 Service Provider warrants and agrees that it shall
- 3.1.1 be responsible for integrating the Programs into the Services;
- 3.1.2 integrate Virus Updates (if applicable) into the Services within 24 hours from the posting of the same on the Sophos's web site and Spam Updates (if applicable) within 24 hours of provision by Sophos;
- 3.1.3 be responsible for providing all support to End Users, in respect of the Services including, without limitation, handling customer inquiries and resolution of all basic problems relating to the Programs and employ a sufficient number of full-time staff , who are capable of competently providing first line technical support for the Programs so that a high quality first line support function is available for the Programs and such service reaches at least the following service standards:
- (a) available 09:00 hours to 17:30 hours local time week days excluding bank and public holidays
- (b) at least 70% of calls logged successfully resolved on the first call
- All problems that Service Provider is unable to resolve in respect of the Programs shall be referred by Service Provider to Sophos (and in this respect Service Provider will not suggest or allow its End Users to contact Sophos directly);
- 3.1.4 effect and maintain adequate security measures to safeguard the Programs and all copies of the Programs in the possession or control of Service Provider from theft or unauthorized access;
- 3.1.5 promptly inform Sophos of any facts or opinions of which Service Provider becomes aware and which are likely to be relevant in relation to the commercial exploitation of the Programs, whether advantageous or disadvantageous to the interests of Sophos;
- 3.1.6 conduct its business in a manner that will reflect favorably on the Programs and on the good name and reputation of Sophos;
- 3.1.7 not by itself, or with others, participate in any illegal, deceptive, misleading or unethical practices, including, but not limited to, disparagement of the Programs or Sophos or other practices which may be detrimental to the Programs or Sophos;
- 3.1.8 (whether alone or jointly, and whether directly or indirectly), not market, distribute, licence, sell or use in the Services or any other services provided by the Service Provider any software programs in a more favorable manner than the corresponding treatment of the Programs where such software programs are similar to, or competitive with, the Programs, or perform the same, or similar, function;

- 3.1.9. not make any promises or representations, or give any warranties, guarantees or indemnities in respect of the Programs except such as are contained in the Sophos End User Licence attached at Exhibit C, or as otherwise expressly authorized by Sophos in writing;
- 3.1.10. ensure and procure that to the extent that any End User receives or has access to the Programs, that each End User receives and is bound by an End User Licence which is no less protective of Sophos's rights than the Sophos End User Licence at Exhibit C (or such other form of licence as Sophos may notify to Service Provider on not less than 90 days prior written notice); and
- 3.1.11. not use the Programs to provide Services for use in or in association with safety critical applications such as, without limitation, medical systems, transport management systems, vehicle and power generation applications including but not limited to nuclear power applications.

4. VERIFICATION

- 4.1 **Records.** Service Provider shall keep during the term of this Agreement and for a period of three (3) years thereafter complete, up to date and accurate records of Service Provider's use, distribution and marketing of the Programs as part of the Services, and the information contained within the reports provided under Clause 9.2 including without limitation the relevant numbers of **users/mailboxes [delete unused option]** and calculations of the Fees.
- 4.2 **Audit.** Service Provider will for the duration of this Agreement and for 3 years thereafter permit Sophos and its employees or agents access on written notice to its premises at any time during normal business hours for the purpose of inspecting, auditing, verifying or monitoring the manner and performance of Service Provider's obligations under this Agreement including, without limitation, Service Provider's sales ledger and other books of account maintained under clause 4.1. In the exercise of its right under this clause 4.2, Sophos will not cause undue disruption to the business of Service Provider.
- 4.3 **Conduct and Consequences of Audit.** If an audit reveals that Service Provider has underpaid fees to Sophos, Service Provider shall be invoiced for and shall pay to Sophos an amount equal to the shortfall between the fees due and those paid by Service Provider plus interest thereon at the rate of one and a half per cent (1.5%) per month. If the amount of the underpayment exceeds 5% of the fees due or the audit reveals a violation of any licence restrictions pursuant to this Agreement, then, without prejudice to Sophos's other rights and remedies, Service Provider shall also pay Sophos's reasonable costs of conducting the audit.

5. OWNERSHIP

- 5.1 **Ownership.** Sophos shall retain all rights, title and interest in and to the Programs, the Sophos's Trademarks and all Intellectual Property Rights. Service Provider shall not obtain or claim any rights or interest in the Programs, the Sophos Trademarks or any Intellectual Property Rights , except as otherwise set forth in this Agreement. Service Provider shall not apply for or register as trademarks or domain names any trademarks or domain names identical or confusingly similar to the Sophos's Trademarks or other Intellectual Property Rights anywhere in the world.
- 5.2 **Improvements.** In the event that Service Provider makes suggestions to Sophos regarding new features, functionality or performance ("Improvements") that Sophos adopts for the Programs for general commercial release, such Improvements shall become the sole and exclusive property of Sophos. Service Provider hereby assigns to Sophos any and all rights, title and interest it might have in and to any such Improvements and all Intellectual Property Rights therein. Service Provider will execute or procure the execution of all such documents as may be required to assign such rights, title and interest to Sophos.

6. TERM AND TERMINATION

- 6.1 **Term.** The term of this Agreement shall begin on the Commencement Date and continue for an initial period of one (1) year **[check this figure for sanity – if they're paying for more than one year up-front, change as appropriate]**, unless terminated earlier pursuant to the terms of this clause 6. Thereafter this Agreement shall automatically renew for additional periods of one (1) year, unless and until either party terminates the Agreement on no less than ninety (90) days written notice, such notice to expire on an anniversary of the Commencement Date.
- 6.2 **Termination by either Party.** Either party may terminate this Agreement immediately upon written notice to the other party if:
- 6.2.1. the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice from the other party specifying the breach and requiring the breach to be remedied;
- 6.2.2. a resolution has been passed authorizing the issue of a notice (or a notice has been issued) convening a meeting of shareholders to consider a resolution for, or a petition has been presented (and not set aside within seven days of its presentation) for, the winding-up of the other party or the other party goes into liquidation (other than a winding-up for the purposes of a solvent amalgamation or reconstruction the terms of which have previously been approved in writing by the other party and in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the obligations imposed on the relevant party under this Agreement) or the other party has taken or suffered any similar action or procedure due to debt; or
- 6.2.3. the other party has been dissolved.
- 6.3 **Termination by Sophos.** Sophos may terminate this Agreement immediately upon notice to Service Provider if Service Provider engages in any activity that, in Sophos's opinion, materially or adversely affects Sophos's reputation including, without limitation, distributing a virus, implementing an email 'spam' campaign, or making claims regarding Sophos's products that are not authorized by Sophos.
- 6.4 **Effect of Termination.** Termination of this Agreement shall not relieve Service Provider of its obligations to pay all fees that have accrued or are otherwise owed by Service Provider to Sophos or Service Provider's duty to provide Services to End Users. In the event that Service Provider cannot or will not provide the contracted Services, Sophos shall have the right but not the obligation to do so. Clauses 3, 4, 5, 6, 7, 9, 10 and 11, shall survive termination of this Agreement.
- 6.5 **Handling of Programs Upon Termination.** Upon termination of this Agreement for any reason Service Provider shall (a) cease to offer or enter into new arrangements to provide the Services using any or all of the Trademarks and Programs but shall continue to provide Services to then existing End Users for (i) the remainder of each End User's then contracted period for Services or (ii) a period of one year following termination, whichever is the shorter; and (b) return to Sophos or destroy all copies of the Programs in its possession or under its control within one (1) month after the end of the period referred to in (a) above and certify to Sophos within one (1) month from the end of that period that Service Provider has destroyed or has returned to Sophos the Programs and all copies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials. Service Provider's obligation to continue to distribute Virus Updates (if applicable) and Spam Updates (if applicable) to then existing End Users described above is subject to Sophos continuing to provide to Service Provider the Virus Updates (if applicable) and Spam Updates (if applicable).

7. LIMITED WARRANTIES AND LIABILITY

- 7.1 **Limited Program Warranty and Remedy.** Sophos warrants to Service Provider that for a period of ninety (90) days from the date of delivery of the Programs (but not any Virus Updates or Spam Updates provided) to the Service Provider (the "Warranty Period") that:

7.1.1. the Programs will perform substantially in accordance with the Documentation provided that they are operated on the designated operation system(s); and

7.1.2. the media on which the Programs are supplied will be free of material defects.

In the event of breach of these warranties, Sophos's exclusive liability and Service Provider's sole remedy for breach thereof shall be (at Sophos's option) to correct or replace the Programs and/or the Documentation within a reasonable time or to terminate this Agreement. Sophos shall only be liable under this limited warranty where Sophos is notified in writing of the breach of warranty within the Warranty Period.

Where there is any Upgrade which materially affects the functionality of the Programs ("a Material Upgrade") then the Warranty Period shall be extended to include a period of thirty (30) days from the date of each such Material Upgrade being made available to Service Provider and such period will expire on the date prior to the next Material Upgrade being made available if a Material Upgrade occurs within the last 30 days of the initial 90 days Warranty Period or the 30 days Warranty Period from the last Material Upgrade.

7.2 Subject to clauses 7.3 and 7.4, Sophos's total liability to Service Provider, whether in contract, tort (including negligence) or otherwise in aggregate in respect of all claims arising in a Contract Year, shall not exceed the total fees paid to Sophos by Service Provider in the relevant Contract Year.

7.3 NOTWITHSTANDING CLAUSE 7.2, BUT SUBJECT TO CLAUSE 7.4, SOPHOS SHALL NOT BE LIABLE FOR ANY CLAIM IN RELATION TO ANY CONSEQUENTIAL, INCIDENTAL OR RESULTING DAMAGES; ANY LOSS OF PROFIT, REVENUES, GOODWILL, BUSINESS OPPORTUNITIES OR PURE ECONOMIC LOSS (IN EACH CASE WHETHER THE LOSS IS DIRECT OR INDIRECT); OR ANY CLAIMS MADE BY END USERS AGAINST SERVICE PROVIDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH CLAIM OR DAMAGES.

7.4 Notwithstanding anything to the contrary in this Agreement Sophos's liability to Service Provider for:-

7.4.1. death or personal injury caused by the negligence of Sophos; and

7.4.2. fraud

is not limited, in each case including where such acts defaults or omissions were attributable to Sophos, its employees or agents.

7.5 Except for the express warranties and indemnities given by Sophos in this Agreement and without prejudicing Sophos's liability for fraud, Sophos gives no warranty, undertaking, indemnity or other comfort and makes no representation of any kind (whether express, implied, under statute, custom or otherwise) in relation to the Programs, including without limitation;

7.5.1. as to their merchantability, quality or fitness for a particular purpose, or as to non-infringement;

7.5.2. that the Programs will detect, identify or disable all or any specific harmful programs, viruses or harmful components;

7.5.3. that the Programs will not give false positive results;

7.5.4. that Virus Updates will be provided for all harmful programs, viruses, or harmful components;

7.5.5. that Spam Updates will be provided for all forms of spam or spam campaigns;

7.5.6. that the Programs will meet Service Provider's or End Users' requirements; or

7.5.7. that the Programs will be error free and/or operate without interruption.

8. INDEMNITY

- 8.1 Sophos shall indemnify and keep Service Provider fully and effectively indemnified on demand from and against any and all losses, claims, damages, costs, charges, expenses and liabilities which arise from any claim or proceeding alleging that Service Provider's use, possession or distribution of the Programs in the country where the Service Provider's address at the top of this Agreement is located, in accordance with the terms of this Agreement infringes any third party patent, trademarks or copyrights. Service Provider shall not be entitled to the benefit of this indemnity if:-
- 8.1.1. Service Provider fails to notify Sophos in writing within 3 days of any claim being made or proceedings being issued against it; or
 - 8.1.2. Service Provider does not at the written request of Sophos forthwith cease to use or distribute the Programs on any such claim being made; or
 - 8.1.3. Service Provider shall have, without the prior written consent of Sophos, acknowledged the validity of the claim or proceedings of such third party or taken any action which would or might impair the ability of Sophos to contest the claim or proceedings of the third party if it so elects
- and in any such case Sophos shall be entitled to terminate this Agreement forthwith by notice to Service Provider.
- 8.2 Sophos shall have no liability under clause 8.1 or otherwise if the alleged infringement arises due to:-
- 8.2.1. modification of the Programs by anyone other than Sophos; or
 - 8.2.2. use of the Programs with any hardware, software or other component not provided by Sophos (including any other hardware, software or component used to provide the Services) in circumstances where use of the Programs without such other hardware, software or component would not have led to liability under clause 8.1; or
 - 8.2.3. use of the Programs other than in accordance with the Documentation.
- 8.3 If any such claim referred to in clause 8.1 is made against Service Provider, then Sophos shall have:
- 8.3.1. the absolute discretion to decide whether or not to take or defend any proceedings in relation to such third party's claims;
 - 8.3.2. the right to require, if it considers it necessary or desirable, Service Provider to join in any such proceedings at Sophos's cost;
 - 8.3.3. the right to require Service Provider's full co-operation (at Sophos's expense) with Sophos in defending the claim;
 - 8.3.4. the right to procure a licence so that Service Provider's use, possession and distribution of the Programs in accordance with the terms of this Agreement does not infringe any third party Intellectual Property Rights;
 - 8.3.5. the right to modify the Programs so that they no longer infringe a third party's Intellectual Property Rights; and
 - 8.3.6. the right to terminate this Agreement forthwith by notice to Service Provider if Sophos cannot obtain a licence or modify the Programs in the manner referred to in clauses 8.3.4 and 8.3.5 in a manner which Sophos considers commercially feasible and refund any applicable fees paid to Sophos by Service Provider in the Contract Year
- and Service Provider will in any event mitigate its losses as far as possible.
- 8.4 THIS CLAUSE 8 SETS OUT SERVICE PROVIDER'S SOLE REMEDY AND SOPHOS'S WHOLE LIABILITY IN THE EVENT THAT THE PROGRAMS INFRINGE THE PATENTS, TRADEMARKS OR COPYRIGHTS OF ANY THIRD PARTY.

- 8.5 Service Provider shall indemnify and keep Sophos fully and effectively indemnified on demand from and against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which Sophos may suffer or incur, or which may be brought or established against it by any person, and which in any case arises out of, or in relation to, or by reason of:-
- 8.5.1. any breach by Service Provider of its obligations under this Agreement;
 - 8.5.2. any unauthorized action or omission of Service Provider or its employees;
 - 8.5.3. the manner in which Service Provider markets or provides the Services;
 - 8.5.4. the manner in which Service Provider incorporates the Programs in the Services or the fact of their incorporation into the Services;
 - 8.5.5. (if translated by Service Provider) the manner in which the Program description and/or the Documentation are translated.

9. LICENCE FEES

- 9.1 **Fees** - Service Provider will pay to Sophos or to Sophos's authorised partner or representative as notified to Service Provider by Sophos from time to time, an amount calculated in accordance with the Fee Schedule in Exhibit A.
- 9.2 Service Provider shall be responsible for preparing reports that shall include, without limitation, information detailing Services provided for each month/quarter/year **[delete unused option]** including, without limitation, details of the Services supplied, the number of users/mailboxes **[delete unused option]** for Services supplied that month to End Users and accurately calculating the Fees together with the total number of users/mailboxes **[delete unused option]** and the Fees achieved in each country and such other information as Sophos may reasonably require from time to time. Service Provider shall submit each report to Sophos or to Sophos's authorised partner or representative, as notified to Service Provider by Sophos from time to time, within 10 working days of the end of each calendar month.
- 9.3 Payment of the Fees shall be due within 30 days of submission of Sophos's invoice and in no event later than 40 days after the end of the period to which the Fees relate.
- 9.4 **Interest.** If any sum payable under this Agreement is not paid when due or is delayed by Service Provider's failure to comply with clause 9.2 then, without prejudice to Sophos's other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Sophos, both before and after any judgement at the rate of 1.5% per calendar month.
- 9.5 **Taxes.** All payments, fees and other charges payable by Service Provider to Sophos under this Agreement are exclusive of all taxes, levies and assessments of any jurisdiction. Service Provider agrees to bear and be responsible for the payment of all such taxes, levies and assessments imposed on Service Provider or Sophos arising out of this Agreement, excluding any tax based on Sophos's net income. If Service Provider is required to pay Sophos a lower amount under this Agreement because of any withholding or tax, Service Provider shall pay to Sophos such grossed-up amount as would be necessary to provide Sophos the full amount of the Fees absent any withholding tax imposed on amounts payable hereunder.

10. CONFIDENTIAL INFORMATION

- 10.1 In this Agreement "Confidential Information" includes all information relating to the trade secrets, operations, processes, plans, intentions, product information, know-how, designs, market opportunities, transactions, affairs and/or business of the other party and/or to its customers or suppliers.
- 10.2 Each party shall both during the term of this Agreement and during the 3 years thereafter (or such longer period as the Confidential Information remains confidential):-
- 10.2.1. keep all Confidential Information strictly confidential;

- 10.2.2. not disclose any Confidential Information to a third party, other than to such of its employees and/or officers as will of necessity acquire it as a consequence of the performance of that party's obligations under this Agreement (in which case the relevant party shall ensure that each such consultant, employee and/or officer shall keep such Confidential Information confidential and shall not use any of it for any purpose or disclose it to any person, firm or company other than those for which or to whom that party may lawfully use or disclose it under this Agreement); and
- 10.2.3. use Confidential Information only in connection with the proper performance of this Agreement.
- 10.3 Clause 10.2 shall not apply to any Confidential Information to the extent that it:-
 - 10.3.1. comes within the public domain other than through breach of clause 10.2;
 - 10.3.2. is required or requested to be divulged by any court, tribunal or governmental authority with competent jurisdiction after notice by the receiving party to the disclosing party; or
 - 10.3.3. is known to the receiving party at the date of this Agreement or becomes known to it free from any duty of confidence.
- 10.4 This clause 10 shall continue in force after and despite the expiry or termination of this Agreement, whatever the reason for termination.

11. GENERAL PROVISIONS

- 11.1 **Governing Law.** The laws of England and Wales shall govern this Agreement and all matters arising out of or relating to this Agreement. The United Nations Convention on the International Sale of Goods shall not govern or otherwise apply to the transactions contemplated under this Agreement.
- 11.2 **Disputes.** Other than as set out in Clause 11.4, any disputes between the parties arising out of or in connection with this Agreement, which cannot be settled amicably, shall in the first instance be notified in writing to the authorized representatives of each party. In the event that such authorized representatives do not reach an amicable settlement within 7 days of receiving written notice of such a dispute then the matter shall be referred to mediation conducted by the Centre for Dispute Resolution in the United Kingdom. In the event that the mediation does not reach an amicable settlement within 1 month of referral to the same, the parties may proceed to the courts pursuant to Clause 11.3.
- 11.3 **Jurisdiction.** The courts of England and Wales shall have non-exclusive jurisdiction in connection with any dispute under this Agreement.
- 11.4 **Injunctive Relief.** Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and Intellectual Property Rights would cause substantial harm to the other party that could not be remedied by payment of damages alone. Accordingly, the party will be entitled to preliminary and permanent injunctive relief in any jurisdiction where damage may occur in addition to all other remedies available to it for any such breach.
- 11.5 **Notices.** Any notice under or in connection with this Agreement shall be in writing and shall be delivered by hand, or sent by first class post (or by airmail if sent abroad) or by fax or by email as follows:
 - 11.5.1. if to Sophos, to the address given on page 1, to legal@sophos.com or to fax number +44 (0)1235 559935 (marked for the attention of the Head of Legal);
 - 11.5.2. if to Service Provider, to the address, email and fax number set out in Exhibit A; or to such other person, address or fax number as either party may specify to the other from time to time by notice given in accordance with this Agreement, provided that any party giving any notice by fax shall also send a copy of that notice by post, which shall be placed in the post by that party on the date of transmission of the fax or the next Working Day thereafter.
- 11.6 In the absence of evidence of earlier receipt, any properly addressed notice shall be deemed to have been duly given:

- 11.6.1. if sent by first class post, two Working Days after posting, provided that there are no postal strikes affecting the relevant areas;
- 11.6.2. if sent by airmail, 10 days after posting, provided that there are no postal strikes affecting the relevant areas;
- 11.6.3. if sent by fax, on completion of its transmission (if during the normal working hours of the recipient) or at 10:00 on the next Working Day (if any part of the fax was transmitted outside the recipient's normal working hours);
- 11.6.4. if sent by email, at 10:00 on the next Working Day (provided that a copy is also sent in the manner required by clause 11.6.1 or 11.6.2 (as the case may be) on the same date as the email is sent).
- 11.7 **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- 11.8 **Waiver.** The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other or subsequent right or remedy.
- 11.9 **Export Administration.** Service Provider agrees to comply fully with all relevant current and future export laws and regulations of the United States and/or any other country ("Export Laws") including, without limitation, to ensure that neither the Programs, whether alone or as part of the Services, nor any direct product thereof are (i) exported, directly or indirectly, in violation of Export Laws; or (ii) intended to be used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Service Provider is solely responsible for fulfilling any applicable governmental requirements in connection with its use, disclosure and/or transport of the Programs either alone or as part of the Services.
- 11.10 **Relationship Between the Parties.** Each party is an independent contractor of the other; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.
- 11.11 **Product Reference.** Service Provider agrees, upon request and with reasonable notice from Sophos, to act in the capacity of a referee, discussing Sophos's products utilized and services received by Service Provider, with potential Sophos's resellers or business partners.
- 11.12 **Entire Agreement.** This Agreement together with the exhibits hereto constitutes the complete agreement between the parties and supersedes all prior or contemporaneous non-fraudulent agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits, appendices and attachments. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.
- 11.13 **Construction.** The headings in this Agreement are for purposes of convenience only and shall not affect the meaning or construction of the clauses to which they relate. Any use in this Agreement of words denoting the singular include the plural and vice versa.
- 11.14 **Assignment.** Neither this Agreement nor any rights granted hereunder, nor the use of any of the Programs may be assigned, or otherwise transferred, in whole or in part, by Service Provider, without the prior written consent of Sophos. Sophos may assign monies due or becoming due or this Agreement in the event of a merger or sale of all or substantially all of the stock or assets of Sophos without the consent of Service Provider. Any attempted assignment will be void and of no effect unless permitted by the foregoing. This Agreement shall inure to the benefit of the parties permitted successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

SOPHOS PLC

[INSERT NAME] (SERVICE PROVIDER)

Per: _____

Per: _____

Authorized Signatory

Authorized Signatory

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

1. PROGRAMS

[Insert name of program being used: PureMessage Anti-Virus/Anti-Spam/Extended Policy, SAV Interface, Sophos anti-spam engine; and name of relevant operating system(s) and platform(s)]

2. SERVICES

Email messaging services, including mailbox services, provided to individual users or organisations with fewer than 25 users

3. TERRITORY

[Insert description of territory where the services will be sold]

4. FEE SCHEDULE

[The following options set out the approved ways of charging ISPs. Please select one model and delete all unused ones. Pricing figures can be found in the Service Provider Price List. Any alternative models must be approved by Finance and Legal in association with Strategic Alliances]

Option 1: Monthly variable payment in arrears

Service Provider shall pay Sophos the following monthly amounts, based on the number of users/mailboxes ***[delete unused option]*** supported by the Services using the Programs on the last day of each month as reported to Sophos in accordance with Clause 9.2 of this Agreement:

Number of Users/Mailboxes <i>[delete unused option]</i>	Fee Per User/Mailbox <i>[delete unused option]</i> Per Month in <i>[Currency]</i> <i>[Figures for this column should be based on table 1 of the ISP Price List]</i>
1,000 – 1,999	
2,000 – 4,999	
5,000 – 9,999	
10,000 – 19,999	
20,000 – 49,999	
50,000 – 99,999	
100,000 – 199,999	
200,000 – 499,999	

The minimum monthly payment shall be ***[state amount]*** equivalent to 1,000 users.

Option 2: Monthly payment in arrears with minimum

Service Provider shall pay Sophos the following monthly amounts, based on the number of users/mailboxes ***[delete unused option]*** supported by the Services using the Programs on the last day of each month as reported to Sophos in accordance with Clause 9.2 of this Agreement. The per-user price is determined by the minimum payment agreed:

Agreed minimum monthly payment in [Currency]	Fee Per User/Mailbox [delete unused option] Per Month in [Currency] [Figures for this column should be based on table 2 of the ISP Price List]

The minimum payment can be increased at any time at the option of Service Provider by providing notice at the time of the monthly report. The minimum payment can only be reduced on the expiry date of the agreement as defined in Clause 6.1 of this Agreement. Notice of reduction of minimum payment must be provided in the last monthly report prior to any such expiration date.

Option 3: Annual up-front payment with quarterly adjustment

Service Provider shall pay Sophos the following fees:

- i) On the Commencement Date and on each anniversary thereof, an annual licence fee based on the number of **users/mailboxes [delete unused option]** supported by the Services using the Programs on that date.
- ii) At the end of each Contract Quarter, a top-up fee. This fee shall be based on the difference between the reported total number of **users/mailboxes [delete unused option]** and the number paid for up-front. The fee payable shall be obtained by multiplying this number by the rate shown below for the total number of **users/mailboxes [delete unused option]** at the beginning of the year.

In the event that the number of **users/mailboxes [delete unused option]** reported is smaller than the number originally paid for, no refund will be made.

These figures are to be reported to Sophos in accordance with Clause 9.2 of this Agreement.

Total number of Users/Mailboxes at start of year [delete unused option]	Fee Per User/Mailbox [delete unused option] Per Year in [Currency] [Figures for this column should be based on table 3 of the Service Provider Price List]	Fee Per additional User/Mailbox [delete unused option] Per Quarter in [Currency] [Figures for this column should be based on table 4 of the Service Provider Price List]
1,000 – 1,999		
2,000 – 4,999		
5,000 – 9,999		
10,000 – 19,999		
20,000 – 49,999		
50,000 – 99,999		
100,000 – 199,999		
200,000 – 499,999		

In the event that any quarterly top-up fee is calculated to be less than \$500, Sophos may, at its sole discretion, defer invoicing until the following quarter.

Option 4: Annual up-front payment with annual adjustment in arrears

Service Provider shall pay Sophos the following fees:

i) On the Commencement Date, an annual licence fee based on the number of **users/mailboxes [delete unused option]** supported by the Services using the Programs on that date.

ii) On each subsequent anniversary of the Commencement Date, a further annual licence fee calculated as at (i) above based on the reported **user/mailbox [delete unused option]** count on the anniversary date. In addition, a retrospective top-up fee shall be calculated as follows:

X = Total reported **users/mailboxes [delete unused option]** – number of **users/mailboxes [delete unused option]** at beginning of Contract Year

Y = price per **user/mailbox [delete unused option]** for the reported number of **users/mailboxes [delete unused option]** from the table below

$$\text{Top up fee} = \frac{1}{2} * X * Y$$

In the event that the number of **users/mailboxes [delete unused option]** reported is smaller than the number originally paid for, no refund will be made.

All figures are to be reported to Sophos in accordance with Clause 9.2 of this Agreement.

Number of Users/Mailboxes [delete unused option]	Fee Per User/Mailbox [delete unused option] Per Year in [Currency] [Figures for this column should be based on table 4 of the Service Provider Price List]
1,000 – 1,999	
2,000 – 4,999	
5,000 – 9,999	
10,000 – 19,999	
20,000 – 49,999	
50,000 – 99,999	
100,000 – 199,999	
200,000 – 499,999	

5. CURRENCY

All payments to Sophos shall be made in **[state currency]**

6. SERVICE PROVIDER DETAILS

- Address:
- Email:
- Fax Number:

7. CREDENTIALS

- Username:
- Password:

EXHIBIT B
STANDARD SUPPORT

1. Sophos

- 1.1 Sophos shall provide Product Updates, Virus Updates (if applicable) and Spam Updates (if applicable) to Service Provider at about the same time as it provides the same to its resellers and/or end users.
- 1.2 Requests for support with respect to viruses shall be classified according to the following severity levels:

Severity	Description
High	<i>Significant operations and business impact.</i> A virus which the Programs cannot detect is severely impacting an End User's normal operations.
Medium	<i>Some operations and business impact</i> A virus which the Programs cannot detect and which has little impact on End User's normal operations.

Sophos will ordinarily seek to respond to Service Provider's requests for assistance with respect to viruses within the following target times:

Severity	Response Time	Virus Resolution Time
High	2 hours	24 hours
Medium	2 hours	5 days

- 1.3 Requests for support with respect to software shall be classified according to the following severity levels:

Severity	Description
Critical	<i>Severe operations and business impact:</i> A Critical Severity will be assigned to a Sophos product problem that causes a complete loss of service: work cannot continue at all and operation is mission-critical to the customer's business. No acceptable workaround to the problem exists.
High	<i>Significant operations and business impact.</i> A High Severity will be assigned to a Sophos product problem that causes a significant loss of service and no acceptable workaround is available. The problem adversely impacts customer business, but operation can continue in a restricted fashion or be alternatively routed.
Medium	<i>Some operations and business impact</i> A Medium Severity will be assigned to a Sophos product problem that causes no loss in service, or only very minor loss, in service. The impact is an inconvenience, which does not impede operation or customer business All incidents initiated by email will be assigned Medium Severity in the first instance, except those of a Low Severity level, as defined below.
Low	<i>No operational impact</i> A Low Severity will be assigned to a question concerning the operation of a Sophos product, or a suggested change to a product or to the product documentation. Requests regarding programming to Sophos APIs will usually be classed in this category.

Sophos will ordinarily seek to respond to Service Provider's requests for assistance with respect to software in accordance with the following target times:

Severity	Response Time	Update frequency	Escalation time
Critical	24 hours	24 hours	24 hours
High	24 hours	3 days	3 days
Medium	24 hours	10 days	N/A
Low	24 hours	30 days	N/A

Service Provider acknowledges that no such response or fix times are guaranteed.

Definitions	
“Response time”	Time taken to respond to initial request for support
“Update frequency”	Time from when the support incident is created until first status update to customer and the time between subsequent status updates
“Escalation time”	Time from when the support incident is created until it is escalated to support management, unless the incident has been closed
“Virus resolution time”	Time taken from when the support incident is created until a virus identity is available on Sophos databank

2. Service Provider

- 2.1 Service Provider shall be responsible for ensuring the Services are provided using Product Updates.
- 2.2 Subject to Sophos's obligations in clause 2.8 of this Agreement, Service Provider shall be responsible for providing all support to End Users, which entails handling the initial customer inquiry and resolution of all basic problems relating to the service and the Program. All problems that Service Provider is unable to resolve after making reasonable efforts shall be referred by Service Provider to Sophos.

EXHIBIT B

PREMIUM SUPPORT

3. Sophos

- 3.1 Sophos shall provide Product Updates, Virus Updates (if applicable) and Spam Updates (if applicable) to Service Provider at about the same time as it provides the same to its resellers and/or end users.
- 3.2 Requests for support with respect to viruses shall be classified according to the following severity levels:

Severity	Description
High	<i>Significant operations and business impact.</i> A virus which the Programs cannot detect is severely impacting an End User's normal operations.
Medium	<i>Some operations and business impact</i> A virus which the Programs cannot detect and which has little impact on End User's normal operations.

Sophos will ordinarily seek to respond to Service Provider's requests for assistance with respect to viruses within the following target times:

Severity	Response Time	Virus Resolution Time
High	2 hours	24 hours
Medium	2 hours	5 days

- 3.3 Requests for support with respect to software shall be classified according to the following severity levels:

Severity	Description
Critical	<i>Severe operations and business impact:</i> A Critical Severity will be assigned to a Sophos product problem that causes a complete loss of service: work cannot continue at all and operation is mission-critical to the customer's business. No acceptable workaround to the problem exists.
High	<i>Significant operations and business impact.</i> A High Severity will be assigned to a Sophos product problem that causes a significant loss of service and no acceptable workaround is available. The problem adversely impacts customer business, but operation can continue in a restricted fashion or be alternatively routed.
Medium	<i>Some operations and business impact</i> A Medium Severity will be assigned to a Sophos product problem that causes no loss in service, or only very minor loss, in service. The impact is an inconvenience, which does not impede operation or customer business All incidents initiated by email will be assigned Medium Severity in the first instance, except those of a Low Severity level, as defined below.
Low	<i>No operational impact</i> A Low Severity will be assigned to a question concerning the operation of a Sophos product, or a suggested change to a product or to the product documentation. Requests for assistance in programming to Sophos APIs will usually be classed in this category.

Sophos will ordinarily seek to respond to Service Provider's requests for assistance with respect to software in accordance with the following target times:

Severity	Response Time	Update frequency	Escalation time	Software Fix Time
Critical	1 hours	2 hours	2 hours	5 business days*
High	2 hours	24 hours	2 days	10 business days
Medium	24 hours	10 days	20 days	Next maintenance release
Low	24 hours	30 days	30 days	Next maintenance release

Service Provider acknowledges that no such response or fix times are guaranteed.

Definitions	
“Response time”	Time taken to respond to initial request for support
“Update frequency”	Time from when the support incident is created until first status update to customer and the time between subsequent status updates
“Escalation time”	Time from when the support incident is created until it is escalated to support management, unless the incident has been closed
“Virus resolution time”	Time taken from when the support incident is created until a virus identity is available on Sophos databank
“Software fix time”	The time taken from when Sophos and Service Provider agree the support incident is caused by a software bug in the Programs until a software fix is available for download from the Sophos website * in the case of a Critical severity incident, Sophos support will work continuously with the Service Provider to investigate the cause of the problem and attempt to identify a workaround

- 3.4 **[For Service Providers using SAVI or PureMessage:** Full details of the support services available under the Premium support option are provided in the document “Sophos Premium Support Service Level Agreement” as updated from time to time.]

4. Service Provider

- 4.1 Service Provider shall be responsible for ensuring the Services are provided using Product Updates.
- 4.2 Subject to Sophos’s obligations in clause 2.8 of this Agreement, Service Provider shall be responsible for providing all support to End Users, which entails handling the initial customer inquiry and resolution of all basic problems relating to the service and the Program. All problems that Service Provider is unable to resolve after making reasonable efforts shall be referred by Service Provider to Sophos.

EXHIBIT C

SOPHOS END-USER LICENCE AGREEMENT

Please read carefully the following legally binding End-User Licence Agreement between Sophos and You for the Software defined below. By selecting the accept option, breaking the seal on the software package or installing, copying or otherwise using this Software You acknowledge that You have read, understand, and agree to be bound by the terms of this End-User Licence Agreement. If You do not agree with the terms of this End-User Licence Agreement, do not install the Software or, if You have received the Software, promptly return it and the accompanying items (including ANY written materials and packaging) to Your supplier together with proof of purchase for a full refund. If you do not agree with any of the terms or conditions of this End-User Licence Agreement, you are not authorised to use the Software for any purpose whatsoever. Also, by installing, copying or otherwise using Updates and/or Upgrades from Sophos You agree to be bound by any additional licence terms that accompany such Updates and/or Upgrades. If You do not agree to the additional licence terms that accompany such Updates and/or Upgrades, You may not install, copy or use such Updates and/or Upgrades.

Where a reseller, service provider, consultant, contractor or other party downloads the Licensed Products for You and/or installs the Licensed Products on Your behalf prior to Your use of the Licensed Products, such reseller, service provider, consultant, contractor or other party will be deemed to be Your agent acting on Your behalf and You will be deemed to have accepted all of the terms and conditions of this End-User Licence Agreement as if You had directly downloaded, installed or used the Licensed Products.

1. DEFINITIONS

‘**Computer**’ means where the Licensed Product is deployed, including non-persistent deployments using web agent technology, such as ActiveX: (i) on or called by an email server, Your computers that are capable of receiving mail from that server; (ii) on or called by an internet proxy or other gateway device, Your computers that are capable of connecting to that proxy; (iii) on a database, Your computers that are capable of retrieving data from that database; (iv) in any other manner to scan data, Your computers, workstations or other electronic devices that are capable of retrieving that data; (v) on or called by a virtual machine running an operating system, each concurrently operating virtual machine, and (vi) on or called by a computer other than a Server, Your computer.

‘**Documentation**’ means any documentation provided to You by Sophos (whether electronic or printed) which accompanies the Licensed Products.

‘**End-User Licence Agreement**’ means this Sophos end-user licence agreement and the Schedule.

‘**Expiry Date**’ means such date as may be set out in the Schedule.

‘**Fee**’ means the Licensed Products Fee and the Support Fee (if applicable).

‘**Licence Term**’ means the licence term set out in Clause 3.2 of this End-User Licence Agreement.

‘**Licensed Products**’ means all or each (as the context so allows) of those programs which are listed on the Schedule together with the Documentation and any of the Upgrades and Updates to those programs.

‘**Licensed Products Fee**’ means the sums payable by You in respect of a licence to use the Licensed Products for the Licence Term.

‘**Maintenance**’ means collectively Upgrades and/or Updates (where applicable to the Licensed Product), and standard technical support or enhanced technical support if You have paid a Support Fee.

‘**Media**’ means objects on which data can be stored including without limitation CD-ROMs, tapes and floppy disks or other media containing the Software provided to You by Sophos.

‘**Product**’ means the Media and the Software.

‘**Schedule**’ means the schedule provided to You by Sophos which sets out certain details in relation to Your use of the Licensed Products from time to time and which forms part of this End-User Licence Agreement.

‘**Server**’ means a Computer upon which the Licensed Product is installed AND from which other Computers receive or retrieve data PROVIDED THAT a Computer is not a Server where it is a single Computer from which other Computers receive or retrieve data AND such data is solely generated by the

Licensed Product.

'**Server Licence**' means the maximum number of Servers (if any) that are permitted under the Schedule to run the Licensed Product at any time.

'**Software**' means any program or data file supplied to You by Sophos or its resellers, distributors or dealers, including any Upgrades, and Updates supplied to You.

'**Sophos**' means Sophos Plc and its subsidiaries, or, as the context so applies, any of them.

'**Start Date**' means such date as may be set out in the Schedule.

'**Suggestions**' has the definition set out in Clause 6.2.

'**Support Fee**' means the sums payable by You in consideration of the provision by Sophos of enhanced support services, if applicable.

'**Update**' means an update to the library of rules and/or identities made available to You by Sophos; and/or other updates to the software filters, including but not limited to an update to the IP address reputation libraries made available to You by Sophos.

'**Upgrade**' means any enhancement or improvement to the functionality of the Licensed Product (excluding Updates) made available to You by Sophos at its sole discretion from time to time but excluding any software and/or updates marketed and licensed by Sophos as a new version or new release of the Licensed Product.

'**User**' means an employee, consultant or other individual who uses a Computer which benefits from the Licensed Product licensed to You and 'Users' shall be construed accordingly.

'**User Licences**' means the maximum number of Users, or Computers (if applicable in accordance with the licence exception set forth in Clause 3.3.1), as specified in the Schedule that are permitted to benefit from the Licensed Products.

'**You**' means the licensee and 'Your' means belonging to You or engaged by You or otherwise pertaining to You as the context so allows, whether on a temporary basis or otherwise.

'**Your Internal Business Purpose**' has the definition set out in Clause 3.3.1.

2. COPYRIGHT AND OWNERSHIP

Once You have paid the Licensed Product Fee, You own only the Media on which the Software is recorded. You do not own the Software itself. The Software is the exclusive property of Sophos and its licensors. The Software and the Documentation including all know-how, concepts, logic and specifications are proprietary products of Sophos and its licensors and are protected throughout the world by copyright and other intellectual property rights. No licence, right or interest in Sophos's logos, or trademarks is granted to You under this End-User Licence Agreement and You hereby agree not to remove any product identification or notices of proprietary restrictions. Further, You hereby acknowledge and agree that the right, title and interest in any modifications made by You to the Software or Documentation, as provided for below in this End-User Licence Agreement, is retained by Sophos.

3. RIGHTS AND RESTRICTIONS

3.1 **Evaluation.** You may use the Software for evaluation purposes only in a test environment without payment of a fee for a maximum of 30 days or such other duration as is specified by Sophos at its sole discretion. The Software is provided "AS IS" during such evaluation period and Clauses 3.3 and 5 below do not apply to such evaluation.

3.2 **Licence Term.** This End-User Licence Agreement is effective from the moment of acceptance as described in the first paragraph of this End-User Licence Agreement or from the Start Date, whichever date is earlier, and shall remain in force either until the Expiry Date specified in the Schedule or, upon renewal of Your licence, the Expiry Date of Your renewed licence as set out in a Schedule provided to You by Sophos (and if no such date is specified, this Agreement shall continue in perpetuity although Your right to use the Licensed Products is dependant upon Your payment of the annual Licensed Products Fee) or until terminated as provided in Clause 11 below, whichever is the sooner. If You want to renew Your licence You should contact Sophos or Your reseller, distributor or dealer, as applicable. Your obligations under this End-User Licence Agreement in respect of the intellectual property and confidential information of Sophos shall survive any expiry or termination of this End-User Licence Agreement.

3.3 **Rights.** In consideration of the payment of the Fee by You, Sophos hereby grants to You a non-exclusive right to use the Licensed Products and receive the Maintenance for the Licence Term subject to the terms and conditions contained within this End-User Licence Agreement. You are permitted to:

3.3.1 use the Licensed Products for Your internal business purpose, relating specifically to the integrity of Your systems, networks, documents, emails and other data (“Your Internal Business Purpose”). The number of Users on which You may use the Licensed Products for Your Internal Business Purpose must not exceed the number of User Licences. NOTWITHSTANDING THE FOREGOING, IF YOU ARE AN EDUCATIONAL, HEALTH OR GOVERNMENT ENTITY, THE RESTRICTION ON THE NUMBER OF USERS DOES NOT APPLY TO YOU. INSTEAD, THE FOLLOWING RESTRICTION SHALL APPLY: THE NUMBER OF COMPUTERS ON WHICH YOU MAY USE THE LICENSED PRODUCTS FOR YOUR INTERNAL BUSINESS PURPOSE MUST NOT EXCEED THE NUMBER OF USER LICENCES. . You are wholly responsible for the compliance by Users with this End-User Licence Agreement. In addition, if the number of Servers on which You have deployed the Licensed Products exceeds twenty-five percent (25%) of the number of User Licences, You must purchase a Server Licence for each such Server;

3.3.2 allow Your employees to use the Licensed Products at home on a single workstation provided that You shall be responsible for support and the distribution of Upgrades and Updates. The number of employees You may allow to use the Licensed Products at home must not exceed the number of User Licences (NOTE: CLAUSE NOT APPLICABLE TO YOU IF YOU HAVE PURCHASED A LICENCE TO USE THE SOPHOS CLIENT FIREWALL OR A LICENSED PRODUCT WHICH FORMS PART OF THE SOPHOS SMALL BUSINESS SOLUTIONS PRODUCT SET);

3.3.3 if such facilities are provided as part of the Product, create diskette sets containing any part of the Licensed Products. The number of such diskette sets created must not exceed the number of User Licences;

3.3.4 except as provided in Clause 3.3.5 below, which relates only to the Documentation, make one copy of the Licensed Products or any part thereof for backup purposes provided that You reproduce Sophos’s proprietary notices on any such backup copy of the Licensed Products. Such restriction shall not prevent You from backing up or archiving Your data;

3.3.5 use, copy, reproduce in whole or in part, adapt and modify the Documentation for Your Internal Business Purpose only; and/or

3.3.6 transfer the Product and Your rights under this End-User Licence Agreement on a permanent basis to another person or entity, provided that You transfer the Media, all copies of the Software and Documentation and prior to such transfer (i) You pass full contact details for the recipient to Sophos; and (ii) You procure that the recipient agrees to be bound by the terms of this End-User Licence Agreement and notifies Sophos in writing of its agreement.

3.4 **Restrictions.** You are not permitted to:

3.4.1 use the Licensed Products for the provision of any service for the benefit of third parties unless You first acquire an application service provider licence from Sophos;

3.4.2 modify or translate the Licensed Products except (i) as necessary to configure the Licensed Products using the menus, options and tools provided for such purposes and contained in the Software; (ii) as necessary to develop custom filters using the “PerlMx Application Programming Interface (API)” where contained in the Software; and, (iii) in relation to the Documentation, except as necessary to produce and adapt manuals and/or other documentation for Your Internal Business Purpose;

3.4.3 reverse engineer, disassemble or decompile the Licensed Products or any portion thereof or otherwise attempt to derive or determine the source code or the logic therein except to the extent and for the express purposes authorised by applicable law;

3.4.4 transmit or provide access to the Licensed Products save as provided in the User Licence;

3.4.5 use Software other than the Licensed Products;

3.4.6 sub-license, rent, sell, lease, distribute or otherwise transfer the Licensed Products save as provided under this End-User Licence Agreement unless You obtain a separate licence from Sophos for such purposes (for example, You may not embed the Licensed Products into another application and then distribute such to third parties unless You first acquire an OEM licence from Sophos);

3.4.7 use the Licensed Products in or in association with safety critical applications such as, without limitation, medical systems, transport management systems, vehicle and power generation applications including but not limited to nuclear power applications; and/or

3.4.8 use the Licensed Products for the purposes of competing with Sophos, including without limitation competitive intelligence.

4. MAINTENANCE

4.1 This End-User Licence Agreement entitles You to receive Maintenance for the Licence Term.

4.2 You acknowledge and agree that the Licensed Products and Sophos may directly and remotely communicate for the purposes of, without limitation, verifying Your credentials, issuing reports and alerts such as automated support requests and alert messages, and to provide Maintenance.

5. WARRANTIES AND INDEMNITY

5.1 Sophos warrants to You only that for a period of ninety (90) days from the date of purchase (the “Warranty Period”): (i) the Licensed Products will perform substantially in accordance with the Documentation provided that it is operated in accordance with the Documentation on the designated operating system(s) and (ii) the Documentation adequately describes the operation of the Licensed Products in all material respects.

5.2 If Sophos is notified in writing of a breach of this warranty during the Warranty Period, Sophos’s entire liability and Your sole remedy shall be (at Sophos’s option) to correct or replace the Licensed Products and/or its Documentation within a reasonable time or provide or authorise a refund of the Fee following the return of the Product accompanied by proof of purchase. Any items provided as replacement under the terms of this warranty will be warranted for the remainder of the original Warranty Period.

5.3 You warrant that your use of the Licensed Products is and will continue to be in accordance with all applicable laws and regulations.

5.4 You shall at Your own expense hold harmless, defend and fully and effectively indemnify Sophos against any claims, proceedings, damages, costs, expenses or other liability whatsoever arising out of, resulting from or relating to Your use of the Licensed Products (including without limitation breach of Your warranty in Clause 5.3) and/or any Suggestions.

6. DISCLAIMER OF WARRANTIES

6.1 EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN CLAUSE 5 ABOVE, SOPHOS AND ANY OF ITS THIRD-PARTY LICENSORS AND SUPPLIERS AND THE CONTRIBUTORS OF CERTAIN INCLUDED SOFTWARE MAKE NO WARRANTIES, CONDITIONS, UNDERTAKINGS OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE IN RELATION TO THE PRODUCT INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF DEALING, USAGE OR TRADE. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTIONS. WITHOUT LIMITATION TO THE FOREGOING, SOPHOS DOES NOT WARRANT THAT THE PRODUCT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE PRODUCT WILL BE ERROR FREE OR UNINTERRUPTED OR THAT DEFECTS IN THE PRODUCT WILL BE CORRECTED. SOPHOS DOES NOT WARRANT THAT THE LICENSED PRODUCTS WILL DETECT AND/OR CORRECTLY IDENTIFY AND/OR DISINFECT ALL THREATS, APPLICATIONS (WHETHER MALICIOUS OR OTHERWISE) OR OTHER COMPONENTS.

6.2 SOPHOS DOES NOT WARRANT OR REPRESENT THAT YOU ARE ENTITLED TO BLOCK ANY THIRD PARTY APPLICATIONS AND EXPRESSLY DISCLAIMS LIABILITY FOR ANY SUGGESTIONS MADE BY SOPHOS (INCLUDING WITHOUT LIMITATION BY ITS EMPLOYEES, CONSULTANTS AND SUB-CONTRACTORS) IN CONNECTION WITH YOUR USE OF THE LICENSED PRODUCT (“SUGGESTIONS”).

7. LIMITATION OF LIABILITY

7.1 YOU USE THE PRODUCT AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SOPHOS OR ANY OF ITS THIRD-PARTY LICENSORS AND SUPPLIERS OR THE CONTRIBUTORS OF CERTAIN INCLUDED SOFTWARE BE LIABLE TO YOU FOR OR TO THOSE CLAIMING THROUGH YOU FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGE OR LOSS OF ANY KIND INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF CONTRACTS, BUSINESS INTERRUPTIONS,

LOSS OF OR CORRUPTION OF DATA HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT OR TORT, INCLUDING NEGLIGENCE, EVEN IF SOPHOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 IF ANY LIMITATION, EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS END-USER LICENCE AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND SOPHOS BECOMES LIABLE THEREBY FOR LOSS OR DAMAGE THAT MAY LAWFULLY BE LIMITED, SUCH LIABILITY WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE LOWER OF THE FEE PAID BY YOU AND SOPHOS'S LIST PRICE FOR THE PRODUCT.

8. OPTIONAL DATA SHARING

8.1 If You do not choose to allow: (i) sharing of data with Sophos in order to improve protection and/or application control; or (ii) remote assistance, this Clause 8 does not apply to You.

8.2 If You choose to allow sharing of such supplementary data with Sophos or authorise Sophos to provide remote assistance, You have agreed to implement optional functions which allow the Licensed Products to provide Sophos with various data. While Sophos does not intend that such data include proprietary, confidential or user-identifiable data, by enabling this option You acknowledge that it may be possible for such data to include proprietary, confidential or user-identifiable data and You represent to Sophos that You have obtained all necessary permissions to share such data with Sophos.

9. U.S. GOVERNMENT RESTRICTED RIGHTS

If You are an agency or other part of the U.S. Government, the Software and the Documentation are commercial computer software and commercial computer software documentation and their use, duplication and disclosure are subject to the terms of this End-User Licence Agreement per FAR 12.212 or DFARS 227.7202-3, as amended.

10. EXPORT CONTROL REQUIREMENTS

You hereby agree that You will use, disclose and/or transport the Product in accordance with any applicable export control laws and regulations and that You are solely responsible for fulfilling any applicable governmental requirements in connection with Your use, disclosure and/or transport of the Product and relating to any transfer under Clause 3.3.6 above. You agree to indemnify and hold Sophos harmless from and against any claim, loss, liability or damage suffered or incurred by Sophos resulting from or related to Your violation of this paragraph.

11. TERMINATION

You may terminate this End-User Licence Agreement at any time by destroying the Software and all copies of it. This End-User Licence Agreement and Your rights under it will also terminate immediately if: (i) You fail to pay the Fee in accordance with the agreed payment terms; or (ii) You fail to comply with any of the terms and conditions of this End-User Licence Agreement; or (iii) if You take or suffer any action on account of debt or are insolvent. On termination of this End-User Licence Agreement, You must destroy the Software and all copies of it. Within one month after the date of termination of this End-User Licence Agreement, You must supply written certification to Sophos of the destruction by You of the Software and all copies of all or any part of it. All fees paid or payable are non-refundable to the extent allowed by applicable law.

12. CONFIDENTIALITY

12.1 The Software may include confidential information that is secret and valuable to Sophos and its licensors. You are not entitled to use or disclose that confidential information other than strictly in accordance with the terms of this End-User Licence Agreement. Sophos reserves the right to disclose details of the End-User Licence Agreement to third parties for publicity and promotional purposes and:-

12.1.1 You expressly give Sophos permission to include and publish Your name and logo on lists of Sophos's customers for the Licensed Products; and

12.1.2 You agree that Sophos may send emails to You to provide information and goods and services to You and to let You know about other goods and services in which You may be interested.

12.2 If You do not wish to give Sophos permission under Clause 12.1.1 and/or 12.1.2, You must notify Sophos by the date no later than seven days after the Licence Start Date specifying which permission is not granted.

12.3 Notwithstanding the foregoing, Sophos will only process personal information in accordance with the provisions of the Data Protection Act 1998.

13. GENERAL

13.1 Any reseller, distributor or dealer from whom You may have purchased the Product is not appointed or authorised by Sophos as its servant or agent. No such person has any authority, either express or implied, to enter into any contract or provide You with any representation, warranty or guarantee with or to You or to translate or modify this End-User Licence Agreement in any way on behalf of Sophos or otherwise to bind Sophos in any way whatsoever.

13.2 You agree that Sophos may use any technical information provided by You, including without limitation information provided under the terms of the Optional Data Sharing in Clause 8, for its business purposes, including without limitation for product support and development.

13.3 You agree to pay the Fee in full in accordance with an invoice from Sophos, or an authorised reseller, distributor, or dealer, if applicable. Unless otherwise stated, the Fee is exclusive of any federal, state, municipal or other governmental taxes, duties, licences, fees, excises or tariffs. You agree to pay such taxes or, in lieu thereof, to provide an exemption certificate acceptable to Sophos and the applicable authority. Invoices may provide for interest to be paid on any sums not remitted by the due date.

13.4 You shall permit Sophos or an independent certified accountant appointed by Sophos access on written notice to Your premises and Your books of account and records at any time during normal business hours for the purpose of inspecting, auditing, verifying or monitoring the manner and performance of Your obligations under this End-User Licence Agreement including without limitation the payment of all applicable licence fees. Sophos shall not be able to exercise this right more than once in each calendar year. If an audit reveals that You have underpaid fees to Sophos, You shall be invoiced for and shall pay to Sophos within 30 days of the date of invoice an amount equal to the shortfall between the fees due and those paid by You. If the amount of the underpayment exceeds 5% of the fees due or the audit reveals a violation of any licence restrictions pursuant to this End-User Licence Agreement then, without prejudice to Sophos's other rights and remedies, You shall also pay Sophos's reasonable costs of conducting the audit.

13.5 Sophos may at its sole discretion subcontract any of its rights or obligations hereunder to any of its subsidiaries, resellers, distributors or dealers, as applicable.

13.6 Sophos may amend the terms and conditions of this End-User Licence Agreement at any time by reasonable notice, including without limitation by posting revised terms on its website at the URL www.sophos.com/legal, which amended terms and conditions shall be binding upon You.

13.7 Failure by Sophos to enforce any particular term of this End-User Licence Agreement shall not be construed as a waiver of any of its rights under it.

13.8 The illegality, invalidity or unenforceability of any part of this End-User Licence Agreement will not affect the legality, validity or enforceability of the remainder.

13.9 If You and Sophos have signed a separate written software licence agreement covering the use of the Product, the terms of such signed software licence agreement shall take precedence over any conflicting terms of this End-User Licence Agreement. Otherwise this End-User Licence Agreement and the Schedule constitute the entire agreement between the parties in relation to the Product and its licensing and supersedes any other oral or written communications, agreements or representations with respect to the Product, save for any oral or written communications, agreements or representations made fraudulently.

13.10 The construction, validity and performance of this End-User Licence Agreement shall be governed by and submitted to the laws of England and Wales and the non-exclusive jurisdiction of the courts of England and Wales. Notwithstanding the foregoing, Sophos and its licensors shall have the right to seek injunctive, or similar, relief in any courts of competent jurisdiction. If there are any inconsistencies between the English language version of this End-User Licence Agreement and any translated version, then the English language version shall prevail.

Any notices required to be given in writing to Sophos or any questions concerning this End-User Licence Agreement should be addressed to The Company Secretary, Sophos Plc, The Pentagon, Abingdon, OX14 3YP, United Kingdom.

LICENCE SCHEDULE

Licensee Information

Name:

Address:

Licence Number:

Start Date:

Expiry Date:

Licensed Product Information

Licensed Products:

Number of User Licences (if applicable):

Number of Computer Licences (if applicable):

Number of Server Licences (if applicable):

Security

Username

Password

EM Library Databank:

Website Download:

EXHIBIT D

SOPHOS'S TRADEMARKS

PureMessage
SAV Interface
Sophos
Sophos Anti-Virus
Sophos MailMonitor