

**Appendix E to DIR Contract No. DIR-SDD-XXX**

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**SOPHOS END-USER LICENCE AGREEMENT**

This Agreement is dated for reference as of the \_\_\_ day of \_\_\_\_\_ 20\_\_ between 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 \_\_\_\_\_ with offices at \_\_\_\_\_ ("Licensee" as hereinafter further defined).

**NOW IT IS AGREED** as follows:

**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, Licensee's computers that are capable of receiving mail from that server; (ii) on or called by an internet proxy or other gateway device, Licensee's computers that are capable of connecting to that proxy; (iii) on a database, Licensee's computers that are capable of retrieving data from that database; (iv) in any other manner to scan data, Licensee's 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, Licensee's computer.

**'Documentation'** means any documentation provided to Licensee 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 Licensee in respect of a licence to use the Licensed Products for the Licence Term, or, with respect to certain of Sophos's Products, in respect of a licence to use the Licensed Products in perpetuity.

**'Licensee'** means the purchaser of the license rights granted by this End-User License Agreement and 'Licensee's' means belonging to Licensee or engaged by Licensee or otherwise pertaining to Licensee as the context so allows, whether on a temporary basis or otherwise.

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

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

**'Maintenance Fee'** applies solely to Sophos's Products licensed on a perpetual basis and means the sums payable by Licensee in respect of a right to receive Maintenance for the Maintenance Term.

**'Maintenance Term'** means the period for which Licensee are eligible to receive Maintenance. For all Licensed Products other than Products licensed on a perpetual basis the Maintenance Term is coterminous with the License Term. For Products licensed on a perpetual basis, the Maintenance Term means the period for which Licensee has paid the applicable Maintenance 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 Licensee by Sophos.

**'Product'** means the Media and the Software.

**'Schedule'** means the schedule provided to Licensee by Sophos which sets out certain details in relation to Licensee's 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 Licensee by Sophos or its resellers, distributors or dealers, including any Upgrades, and Updates supplied to Licensee.

**'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 Licensee in consideration of the provision by Sophos of enhanced support services, if applicable, [calculated in accordance with Appendix C of DIR Contract No. DIR-SDD-XXX.](#)

**'Update'** means an update to the library of rules and/or identities made available to Licensee 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 Licensee by Sophos.

**'Upgrade'** means any enhancement or improvement to the functionality of the Licensed Product (excluding Updates) made available to Licensee 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 Licensee 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.

## **2. COPYRIGHT AND OWNERSHIP**

Once Licensee has paid the Licensed Product Fee, Licensee owns only the Media on which the Software is recorded. Licensee does 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 Licensee under this End-User Licence Agreement and Licensee hereby agrees not to remove any product identification or notices of proprietary restrictions. Further, Licensee hereby acknowledges and agrees that the right, title and interest in any modifications made by Licensee 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.** Licensee 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 Licensee's licence, the Expiry Date of Licensee's renewed licence as set out in a Schedule provided to Licensee by Sophos (and if no such date is specified, this Agreement shall continue in perpetuity although Licensee's right to use the Licensed Products is dependent upon Licensee's payment of the applicable Licensed Products Fee) or until terminated as provided in Clause 11 below, whichever is the sooner. If Licensee want to renew Licensee's licence Licensee should contact Sophos or Licensee's reseller, distributor or dealer, as applicable. Licensee's 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 Licensee, Sophos hereby grants to Licensee 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, and, solely with respect to Products licensed on a perpetual basis, subject to Licensee's payment of the applicable Maintenance Fees for the Maintenance Term. Licensee is permitted to:

3.3.1 use the Licensed Products for Licensee's internal business purpose, relating specifically to the integrity of Licensee's systems, networks, documents, emails and other data ("Licensee's Internal Business Purpose"). The number of Users for which Licensee may use the Licensed Products for Licensee's Internal Business Purpose must not exceed the number of User Licences. For the purposes of the foregoing calculation, if 'virtualized desktops' are being provided to Users then they shall not be counted as Computers towards the total count. However, if Servers are virtualized then such Servers shall be included in the total count. Licensee is wholly responsible for the compliance by Users with this End-User Licence Agreement. In addition, if the number of Servers on which Licensee has deployed the Licensed Products exceeds twenty-five percent (25%) of the number of User Licences, Licensee must purchase a Server Licence for each such Server;

3.3.2 IF LICENSEE IS AN EDUCATIONAL, HEALTH OR GOVERNMENT ENTITY OR IN RELATION TO ANY LICENCE FOR ENCRYPTION PRODUCTS, THE RESTRICTION ON THE NUMBER OF USERS IN CLAUSE 3.3.1 DOES NOT APPLY TO LICENSEE. Instead, the following restriction shall apply: the number of Computers on which Licensee may use the Licensed Products for Licensee's Internal Business Purpose must not exceed the number of User Licences.

3.3.3 when Licensed Products include “Sophos Endpoint Security and Control”, “Sophos Endpoint Security and Data Protection”, “Sophos Anti-Virus”, or a bundle that contains any of such three Software products, allow Licensee’s employees to use the “Sophos Anti-Virus” Licensed Product at home on a single workstation provided that Licensee shall be responsible for support and the distribution of Upgrades and Updates of such licenses. The number of employees Licensee may allow to use the “Sophos Anti-Virus” Licensed Products at home must not exceed the number of User Licences;

3.3.4 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;

3.3.5 except as provided in Clause 3.3.6 below, which relates only to the Documentation, make one copy of the Licensed Products or any part thereof for backup purposes provided that Licensee reproduces Sophos’s proprietary notices on any such backup copy of the Licensed Products. Such restriction shall not prevent Licensee from backing up or archiving Licensee’s data;

3.3.6 use, copy, reproduce in whole or in part, adapt and modify the Documentation for Licensee’s Internal Business Purpose only; and/or

3.3.7 transfer the Product and Licensee’s rights under this End-User Licence Agreement on a permanent basis to another person or entity, provided that Licensee transfer the Media, all copies of the Software and Documentation and prior to such transfer (i) Licensee pass full contact details for the recipient to Sophos; and (ii) Licensee 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. Where the Product is an encryption Product, then Licensee shall uninstall or decommission the Product prior to such transfer.

3.4 **Restrictions.** Licensee is not permitted to:

3.4.1 use the Licensed Products for the provision of any service for the benefit of third parties unless Licensee 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 Licensee’s 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 Licensee obtains a separate licence from Sophos for such purposes (for example, Licensee may not embed the Licensed Products into another application and then distribute such to third parties unless Licensee first acquires an OEM licence from Sophos);

3.4.7 use the Licensed Products in or in association with safety critical applications where the failure of the Licensed Products to perform can reasonably be expected to result in a significant physical injury, or in loss

of property, or loss of life. Any such use is entirely at Licensee's own risk, and Licensee agrees to hold Sophos harmless from any and all claims or losses relating to such unauthorized use; 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 Licensee to receive Maintenance for the Licence Term, or, if Licensee has purchased a license for Products licensed on a perpetual basis, for the Maintenance Term provided that Licensee has paid the applicable Maintenance Fee.

4.2 Licensee acknowledges and agrees that the Licensed Products and Sophos may directly and remotely communicate for the purposes of, without limitation, verifying Licensee's credentials, issuing reports and alerts such as automated support requests and alert messages, and to provide Maintenance.

4.3 Sophos reserves the right in its discretion to limit the number of Users who may contact Sophos technical support.

#### 5. WARRANTIES AND INDEMNITY

5.1 Sophos warrants to Licensee 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 Licensee's 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 ~~Indemnification shall be in accordance with Section 9.A. of Appendix A of the DIR Contract No. DIR-SDD-XXX. Sophos shall indemnify and keep Licensee 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 Licensee's use, possession or distribution of the Product in the country where Licensee's head office is located (provided that such country is a party to the World Intellectual Property Organization (WIPO) treaties on patents, trademarks and copyrights) in accordance with the terms of this End-User Licence Agreement infringes any third party patent, trademark or copyright in the country where Licensee's head office is located. Licensee shall not be entitled to the benefit of this indemnity if:-~~

~~5.3.1 Licensee fails to notify Sophos in writing within ten (10) days of any claim being made or proceedings being issued against Licensee; or~~

~~5.3.2 Licensee does not at the written request of Sophos forthwith cease to use or distribute the Product on any such claim being made; or~~

~~5.3.3 Licensee 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~~

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~~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 End-User Licence Agreement forthwith by notice to Licensee.~~

5.4 Sophos shall have no liability under clause 5.3 or otherwise if the alleged infringement arises due to:-

5.4.1 modification of the Product by anyone other than Sophos; or

5.4.2 use of the Product with any hardware, software or other component not provided by Sophos in circumstances where use of the Product without such other hardware, software or component would not have led to liability under Clause 5.3; or

5.4.3 use of the Product other than in accordance with the Documentation.

5.5 If any such claim referred to in Clause 5.3 is made against Licensee, then Sophos shall have:

5.5.1

~~the absolute discretion to decide whether or not to take or defend any proceedings in relation to such third party's claims;~~

~~5.5.2~~ the right to require, if it considers it necessary or desirable, Licensee to join in any such proceedings at Sophos' cost;

5.5.23 the right to require Licensee's full co-operation (at Sophos' expense) with Sophos in defending the claim;

5.5.34 the right to procure a license so that Licensee's use, possession and distribution of the Product in accordance with the terms of this End-User Licence Agreement does not infringe any third party patents, trademarks or copyrights;

5.5.45 the right to modify the Product so that they no longer infringe a third party's patents, trademarks or copyrights; and

5.5.56 the right to terminate this End-User Licence Agreement forthwith by notice to Licensee if Sophos cannot obtain a license or modify the Product in the manner referred to in Clauses 5.5.34 and 5.5.45 in a manner which Sophos considers commercially feasible and refund any applicable fees paid to Sophos by Licensee;

and Licensee will in any event mitigate Licensee's losses as far as possible.

CLAUSES 5.23, 5.34 AND 5.45 SET OUT LICENSEE'S SOLE REMEDY AND THE WHOLE LIABILITY OF SOPHOS IN THE EVENT THAT THE PRODUCTS INFRINGE THE PATENTS, TRADEMARKS OR COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

5.6 Licensee warrant that Licensee's use of the Licensed Products is and will continue to be in accordance with all applicable laws and regulations.

~~5.7 Licensee shall at Licensee's 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 Licensee's use of the Licensed Products (including without limitation breach of Licensee's warranty in Clause 5.6) 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 LICENSEE AND LICENSEE 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 LICENSEE'S 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 LICENSEE IS 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 LICENSEE'S USE OF THE LICENSED PRODUCT ("SUGGESTIONS").

6.3 SOPHOS DOES NOT WARRANT THAT LICENSEE IS ENTITLED TO ENCRYPT OR DECRYPT ANY THIRD PARTY INFORMATION.

6.4 LICENSEE FURTHER ACKNOWLEDGE AND AGREE THAT LICENSEE SHALL BE SOLELY RESPONSIBLE FOR PROPER BACK-UP OF ALL DATA AND THAT LICENSEE SHALL TAKE APPROPRIATE MEASURES TO PROTECT SUCH DATA. SOPHOS AND ITS THIRD PARTY LICENSORS ASSUME NO LIABILITY OR RESPONSIBILITY WHATSOEVER IF DATA IS LOST.

## 7. LIMITATION OF LIABILITY

~~7.1 LICENSEE USES THE PRODUCT AT LICENSEE'S 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 LICENSEE FOR OR TO THOSE CLAIMING THROUGH LICENSEE FOR ANY 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 LICENSED PRODUCTS FEE PAID BY LICENSEE AND SOPHOS'S LIST PRICE FOR THE PRODUCT.~~

~~7.3 IN NO EVENT SHALL SOPHOS'S AGGREGATE LIABILITY TO LICENSEE ARISING OUT OF OR IN CONNECTION WITH THIS END USER LICENCE AGREEMENT, FROM ALL CAUSES OF ACTION AND THEORIES OF LIABILITY, EXCEED THE AMOUNTS PAID BY LICENSEE FOR THE PRODUCT.~~ Limitation of Liability shall be in accordance with Section 9K of Appendix A, DIR Contract No. DIR-SDD-XXX.

## 8. OPTIONAL DATA SHARING

8.1 If Licensee does 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 Licensee.

8.2 If Licensee chooses to allow sharing of such supplementary data with Sophos or authorise Sophos to provide remote assistance, Licensee has 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 Licensee acknowledges that it may be possible for such data to include proprietary, confidential or user-identifiable data and Licensee represents to Sophos that Licensee has obtained all necessary permissions to share such data with Sophos.

## 9. U.S. GOVERNMENT RESTRICTED RIGHTS

If Licensee is 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

Licensee hereby agree that Licensee will use, disclose and/or transport the Product in accordance with any applicable export control laws and regulations and will not re-export or re-transfer the Product to any destination subject to restrictive sanctions measures or trade embargoes implemented at a national, regional or international level without the appropriate authorization and that Licensee is solely responsible for fulfilling any applicable governmental requirements in connection with Licensee's use, disclosure and/or transport of the Product and relating to any transfer under Clause 3.3.7 above. Licensee agrees 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 Licensee's violation of this paragraph.

## 11. TERMINATION

Licensee may terminate this End-User Licence Agreement at any time by destroying the Software and all copies of it [to the extent authorized by applicable records retention laws and policy](#). This End-User Licence Agreement and Licensee's rights under it will also terminate immediately if: (i) Licensee fail to pay the Fee in accordance with the agreed payment terms; or (ii) Licensee fail to comply with any of the terms and conditions of this End-User Licence Agreement; or (iii) other than for Products licensed on a perpetual basis, if Licensee take or suffer any action on account of debt or are insolvent. [To the extent authorized by applicable records retention laws and policy](#), ~~On~~ termination of this End-User Licence Agreement, Licensee must destroy the Software and all copies of it. Within one month after the date of termination of this End-User Licence Agreement, Licensee must supply written certification to Sophos of the destruction by Licensee of the Software and all copies of all or any part of it. [To the extent authorized by applicable records retention laws and policy](#), ~~W~~here Licensee has purchased a licence to use an encryption Product, then Licensee shall decrypt all encrypted drives and data prior to such uninstalling and destruction of the Product. In the event that Licensee wishes not to terminate Licensee's licence for the encryption Product, then Licensee must pay the applicable Fee. 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. Licensee is 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 Licensee expressly give Sophos permission to include and publish Licensee's name and logo on lists of Sophos's customers for the Licensed Products; and~~

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

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

~~12.23 Notwithstanding the foregoing, Sophos will only process personal information in accordance with the provisions of the Data Protection Act 1998. Personal information may be disclosed within the Sophos group of companies.~~

## 13. GENERAL

13.1 Any reseller, distributor or dealer from whom Licensee 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 Licensee with any representation, warranty or guarantee with or to Licensee 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 Licensee agrees that Sophos may use any technical information provided by Licensee, 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 ~~All invoicing and payment shall be in accordance with Sections 7.B and 7.C of Appendix A of the DIR Contract No. DIR-SDD-XXX. Licensee agrees to pay the Fee in full in accordance with an invoice from Sophos, or an authorised reseller, distributor, or dealer, if applicable. As per Section 151.309, Texas Tax Code. Governmental Customers under this Agreement are exempt from the assessment of State sales, use and excise taxes. Further, governmental Customers under this Agreement are exempt from Federal Excise Taxes. 26 United States Code Sections 4253 (j) Unless otherwise stated, the Fee is exclusive of any federal, state, municipal or other governmental taxes, duties, licences, fees, excises or tariffs. Licensee agrees 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 Licensee shall permit Sophos or an independent certified accountant appointed by Sophos access on written notice to Licensee's premises and Licensee's 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 Licensee's 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 Licensee has underpaid fees to Sophos, Licensee shall be invoiced for and shall pay to Sophos within 30 days of the date of invoice an amount

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equal to the shortfall between the fees due and those paid by Licensee. 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, Licensee 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 No amendment, modification or change of this End-User License Agreement will be valid unless in writing and signed by an authorized representative of both Sophos and Licensee.

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 This End-User Licence Agreement, [the DIR Contract No. DIR-SDD-XXX](#), 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 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.

13.11 A person who is not a party to this End-User Licence Agreement has no right to enforce any term of this Agreement under applicable legislation and the parties to this End-User Licence Agreement do not intend that any third party rights are created by this End-User Licence Agreement.

13.12 In the event the Sophos subsidiary entity from which Licensee has purchased the licenses is located in:

**THE UNITED STATES OF AMERICA, CANADA, LATIN AMERICA** this End-User Licence Agreement shall be governed by and construed in accordance with the laws of the [State of Texas](#), [Commonwealth of Massachusetts](#) and the courts of the [Commonwealth of Massachusetts](#) shall have non-~~exclusive jurisdiction to determine any disputes, which may arise out of, under, or in connection with this End-User Licence Agreement;~~ and the state courts of [Travis County](#) shall have exclusive jurisdiction to determine any disputes, which may arise out of, under, or in connection with this End-User Licence Agreement; and

~~**ALL OTHER COUNTRIES** this End-User Licence Agreement shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have non-exclusive jurisdiction to determine any disputes, which may arise out of, under, or in connection with this End-User Licence Agreement.~~

**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.**

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

SOPHOS PLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

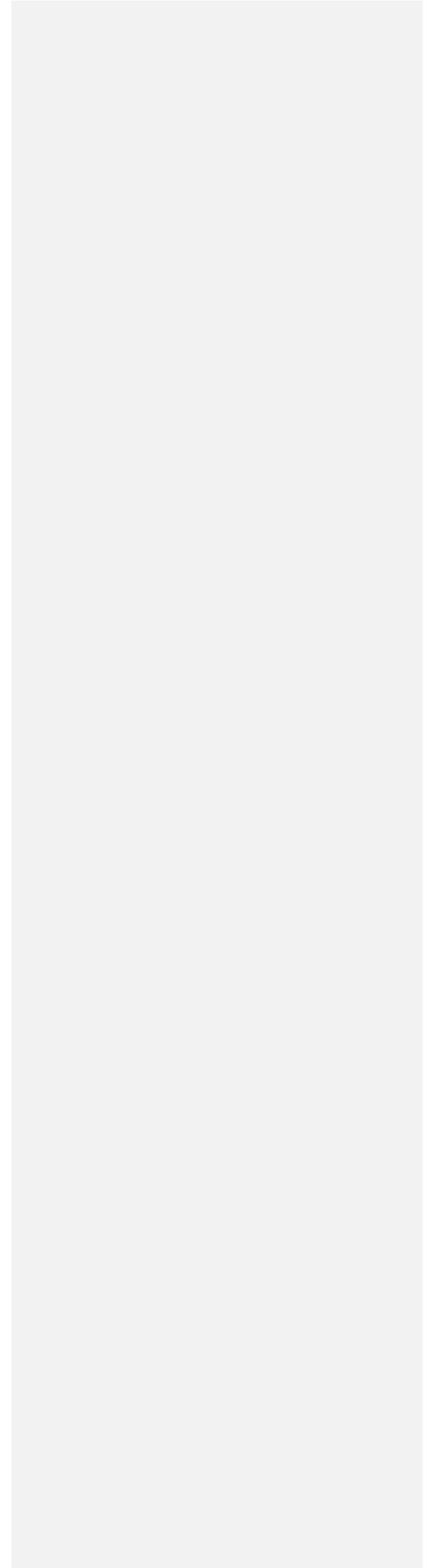
LICENSEE:

By: \_\_\_\_\_

Authorized Signatory

Name: \_\_\_\_\_

Title: \_\_\_\_\_



LICENSE SCHEDULE

**Licensee Information**

Name:

Address:

License Number:

License Type (if applicable): <subscription/perpetual>

License Term Start Date:

License Term Expiry Date:

Maintenance Term Start Date (if applicable):

Maintenance Term Expiry Date (if applicable):

**Licensed Product Information**

Licensed Products:

Number of User Licenses (if applicable):

Number of Server Licenses (if applicable):

**Security**

Username

Password

EM Library Databank:

Website Download:

