

SCHEDULE 3.6(B) – ANTI-VIRUS PRODUCT AND SUPPORT SERVICES

1. APPLICATION

- 1.1 This schedule, which contains a description of the Anti-Virus Product and Support Services form part of the Agreement entered into between the Parties for the provision of Services.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in Annex 1 and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the General Conditions.

2. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

- 2.1 The Supplier is a Sophos MSP Provider and is authorised to sub-license the Licensed Products. Licensed Products are licensed, not sold. Except as expressly stated in this Schedule 3.6(B), no license or right is granted directly or by implication, inducement, estoppel, or otherwise.
- 2.2 The Products, including without limitation all know-how, concepts, logic and specifications, are proprietary to Sophos and its licensors and are protected throughout the world by copyright and other intellectual property rights.
- 2.3 The Customer hereby agrees not to remove any product identification or notices of proprietary restrictions. Further, the Customer hereby acknowledges and agrees that the right, title and interest in the Products and in any modifications made to the Products is retained by Sophos.
- 2.4 No license, right or interest in Sophos's logos or trademarks is granted to the Customer under this Schedule 3.6(B).

3. RIGHTS AND RESTRICTIONS

Evaluation

- 3.1 Where the Supplier provides the Customer with a Product for evaluation purposes, the Customer may use the Product in a test environment only and for the duration specified by the Supplier. The Product is provided "AS IS" during such evaluation period and paragraphs 3.2 and 5 below do not apply to such evaluation.
- 3.2 In consideration for receipt by the Supplier of the fees due and subject to the Customer meeting its obligations set forth in this Schedule 3.6(B), the Supplier hereby grants the Customer a sub-license to use the Product for Internal Business Purposes subject to the terms and conditions contained within this Schedule 3.6(B).

Usage

- 3.3 The Products are licensed by User, or other applicable units, as specified in the Order and the Customer agrees to pay the fees as detailed in the Order.
- 3.4 The Customer is liable to pay for its total actual usage for each calendar month in arrears. Actual usage may vary from month to month and are not charged on a pro-rata basis. In the event that the Customer fails to pay the Supplier by the due date, in addition to Supplier's other rights, the Supplier may require the Customer to purchase an advance subscription service.
- 3.5 The Customer may not assign or transfer the licenses without the Supplier's prior written consent.
- 3.6 If an audit reveals that the Customer has underpaid fees, the Customer shall be invoiced for and shall pay to us within thirty (30) days of the date of invoice an amount equal to the shortfall between the fees due and those paid.
- 3.7 The Customer may make a reasonable number of copies of the Licensed Products or any part thereof for backup or disaster recovery purposes, provided the Customer reproduces Sophos's proprietary notices on any such copies.

Such restriction shall not prevent you from backing up or archiving your data.

Restrictions

- 3.8 The Customer is not permitted to:
- 3.8.1 use the Products for the provision of any service for the benefit of third parties or other than for Internal Business Purposes;
- 3.8.2 modify or translate the Products:
- (i) except as necessary to configure the Licensed Products using the menus, options and tools provided for such purposes and contained in the Product;
 - (ii) except as necessary to develop custom filters using the Application Programming Interfaces (APIs) where contained in the Licensed Product or provided directly by Sophos for such purposes; and,
 - (iii) in relation to the Documentation, except as necessary to produce and adapt manuals and/or other documentation for any Internal Business Purpose;
- 3.8.3 reverse engineer, disassemble or decompile the Products or any portion thereof or otherwise attempt to derive or determine the source code or the logic therein except to the extent that such restriction is prohibited by applicable law;
- 3.8.4 transmit or provide access to the Products save as provided in this Schedule 3.6(B);
- 3.8.5 use Products for which the Supplier has not received the applicable fees;
- 3.8.6 sub-license, rent, sell, lease, distribute or otherwise transfer the Products;
- 3.8.7 use or allow use of the 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
- 3.8.8 use or allow use of the Products for the purposes of competing with the Supplier or Sophos, including without limitation competitive intelligence (except to the extent that this restriction is prohibited by applicable law).

- 3.9 The Customer acknowledges and agrees that the functionality of the Sophos Product requires the complete erasure of the hard disk of the target device during installation, including without limitation the operating system resident thereon. By installing or enabling installation of the aforementioned Product, the Customer expressly agrees that it is the Customer's responsibility to ensure that the device on which such Product is to be installed does not contain any valuable data, the loss of which would cause damage, and the Supplier expressly exclude any liability for losses of any kind related to the Customer's failure to comply with this warning.

4. MAINTENANCE AND SUPPORT

- 4.1 The Supplier shall provide Maintenance support Monday to Friday between 9am to 5pm during the term of this Schedule 3.6(B).
- 4.2 All requests for technical support should be made directly to the Supplier and not Sophos. The Customer can request technical support by contacting the Supplier's support desk.

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- 4.3 Any custom or sample code, files or scripts (“Fixes”) provided by the Supplier as part of the provision of technical support which does not form part of the Supplier’s standard commercial offering and may only be used in conjunction with the Product for which such scripts were developed.
- 5. LICENSED PRODUCT WARRANTIES**
- 5.1 For a warranty period of ninety (90) days from the execution of this Schedule 3.6(B), the Supplier warrants that:
- 5.1.1 if properly used and installed, the Licensed Products will perform substantially in accordance with the Documentation on the designated operating system(s), and
- 5.1.2 the Documentation adequately describes the operation of the Licensed Products in all material respects.
- 5.2 If the Customer notifies us of a breach of the warranty described in paragraph 5.1 above during the applicable warranty period, the Supplier’s entire liability and the Customer’s sole remedy shall be (at the Supplier’s option and to the maximum extent permitted by applicable law) to correct, repair or replace the Licensed Products and/or Documentation, as applicable, within a reasonable time or provide or authorise a pro rata refund of the fee.
- 5.3 The warranty in paragraph 5.1 shall not apply if:
- 5.3.1 the Licensed Product has not been used in accordance with the terms and conditions of this Schedule 3.6(B) and the Documentation,
- 5.3.2 the issue has been caused by failure to apply Updates, Upgrades or take any recommended action,
- 5.3.3 the issue has been caused by the act or omission of, or by any materials supplied by the Customer or any third party, or
- 5.3.4 the issue results from any cause outside of our reasonable control.
- 5.4 To the maximum extent permitted by applicable law, the warranties in this paragraph 5 are personal to the Customer and are not transferable.
- 6. INDEMNITY**
- 6.1 Subject to paragraphs 6.2 to 6.4 inclusive below, the Supplier shall defend, indemnify, and hold the Customer harmless from any claim or proceeding alleging that the Customer’s use of the Licensed Product in accordance with the terms and conditions of this Schedule 3.6(B) infringes any third party patent, trademark or copyright.
- 6.2 The Customer shall not be entitled to the benefit of the indemnity in paragraph 6.1 if:
- 6.2.1 the Customer fails to notify the Supplier in writing within seven (7) days of being notified of any such claim or proceeding;
- 6.2.2 the Customer does not at the Supplier’s written request immediately cease to use or possess the Product on any such claim being made;
- 6.2.3 the Customer, without the Supplier’s prior written consent, acknowledges the validity of or takes any action which might impair the ability of the Supplier or Sophos to contest the claim or proceedings if we so elect;
- 6.2.4 the infringement arises due to modification of the Product by anyone other than the supplier or Sophos, use of the Product other than in accordance with the Documentation, or use of the Product with any hardware, software or other component not provided by the Supplier, and the infringement would not have arisen without such use or modification, or
- 6.2.5 the claim is raised based on use or possession in a country that is not a party to the World Intellectual Property Organization (WIPO) treaties on patents, trademarks and copyrights.
- 6.3 If any such claim or proceeding referred to in paragraph 6.1 is made against the Customer, the Supplier alone shall have the right (in our sole discretion):
- 6.3.1 to defend and/or settle any such third-party claim or proceedings and/or to initiate counter-proceedings, and to require the Customer to join and co-operate with the defence, settlement and/or counter proceedings at the Supplier’s reasonable cost.
- 6.3.2 if the Supplier elects to not assume the defence of, settle such claims and/or initiate counter-proceedings, the Customer may proceed with defending the claim in good faith and the Supplier will reimburse all claims, damages, charges, expenses and liabilities (including reasonable counsel fees and costs) finally awarded or agreed to in a monetary settlement.
- 6.3.3 the Supplier shall have the right to approve the Customer’s chosen counsel under this paragraph 6.3.1, such approval not to be unreasonably withheld.
- 6.3.4 to (i) procure a license so that the Customer’s use of the Product in accordance with the terms and conditions of this Schedule 3.6(B) does not infringe any third party patents, trademarks or copyrights, or (ii) modify or replace the Product with a functionally equivalent Product so that it no longer infringes a third party’s patents, trademarks or copyrights.
- 6.3.5 If the Supplier cannot achieve paragraphs 6.3.2 (i) or (ii) above on a commercially reasonable basis, the Supplier may terminate the license to use the Product upon notice to the Customer and provide a pro rata refund of fees paid for such Product which (i) relates to the period after the date of termination in the case of subscription term Products, and (ii) is depreciated on a straight line five (5) year basis commencing on the date of purchase in the case of perpetual term Products.
- 6.4 Paragraphs 6.1, 6.2 and 6.3 set out the customer’s sole remedy and the whole liability of the supplier in the event that the products infringe the patents, trademarks, copyrights or other intellectual property rights of any third party. The customer will in any event mitigate its losses as far as possible.
- 7. DISCLAIMER OF WARRANTIES**
- 7.1 Except for the express warranties for the licensed products and hardware contained in paragraph 5 above, the Supplier makes no warranties, conditions, undertakings or representations of any kind, either express or implied, statutory or otherwise in relation to the product or any third party software 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.
- 7.2 Without limitation to the foregoing, the Supplier does not warrant that the product will meet the Customer’s requirements or that the operation of the product will be

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error free or uninterrupted or that defects in the product will be corrected. The Supplier does not warrant that the products will detect and/or correctly identify and/or disinfect all threats, applications (whether malicious or otherwise) or other components. Further, the Supplier does not warrant or represent that the Customer is entitled to block any third party applications or that the Customer is entitled to encrypt or decrypt any third party information.

- 7.3 The Customer further acknowledges and agrees that it shall be solely responsible for proper back-up of all data and that the Customer shall take appropriate measures to protect such data. The Supplier assumes no liability or responsibility whatsoever if data is lost or corrupted.

8. LIMITATION OF LIABILITY

- 8.1 The Customer accepts that use of the Product is at its own risk. Subject to paragraph 8.4 and to the maximum extent permitted by applicable law, in no event shall the Supplier be liable to 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 without limitation negligence, (including but not limited to any loss or damage related to any third party software), even if the Supplier has been advised of the possibility of such damages.

- 8.2 If any limitation, exclusion, disclaimer or other provision contained in this Schedule 3.6(B) is held to be invalid for any reason by a court of competent jurisdiction and the Supplier becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including without limitation negligence) or otherwise, will not exceed the greater of the fees paid by you for any 12 month period or £10,000.

- 8.3 Subject to paragraph 8.4, in no event shall the Supplier's aggregate liability arising out of or in connection with this Schedule 3.6(B), from all causes of action and theories of liability (including without limitation negligence), exceed a sum equal to the fees paid by the Customer for any twelve (12) month period.

- 8.4 The Supplier does not limit or exclude its liability for (i) death or personal injury caused by negligence, (ii) fraudulent misrepresentation, or (iii) any other liability to the extent that such liability cannot be excluded or limited by applicable law.

9. THIRD PARTY SOFTWARE

- 9.1 The Products may operate or interface with software or other technology that is licensed to Sophos from third parties ("**Third Party Licensors**"), which is not proprietary to Sophos, but which Sophos and the Supplier has the necessary rights to license ("**Third Party Software**").

- 9.2 The Customer agrees that:

- 9.2.1 to use such Third Party Software in accordance with this Schedule 3.6(B);
- 9.2.2 no Third Party Licensor makes any warranties, conditions, undertakings or representations of any kind, either express or implied concerning such Third Party Software or the Products themselves;
- 9.2.3 no Third Party Licensor will have any obligation or liability as a result of this Schedule 3.6(B) or use of such Third Party Software;
- 9.2.4 such Third Party Software may be licensed under license terms which grant additional rights or contain

additional restrictions in relation to such materials, beyond those set forth in this Schedule 3.6(B), and such additional license rights and restrictions are described or linked to in the applicable Documentation, the relevant Sophos webpage, or within the Product itself.

10. TERM AND TERMINATION

- 10.1 This Schedule 3.6(B) shall commence upon execution of the Order and continue unless and until terminated in accordance with the provisions set out herein or as set out in the General Conditions.

- 10.2 The Supplier may terminate this Schedule 3.6(B) immediately upon written notice if:

10.2.1 it does not receive the fees (in whole or in part) in accordance with the agreed payment terms, or

10.2.2 the Supplier fails to comply with any of the terms and conditions of this Schedule 3.6(B), or

10.2.3 the Supplier takes or suffers any action on account of debt or become insolvent.

Effects of Termination

- 10.3 The Customer's obligations under this Schedule 3.6(b) in respect of the intellectual property and confidential information of shall survive any expiry or termination of this Schedule 3.6(B).

- 10.4 Termination of this Schedule 3.6(B) shall not relieve the Customer of its obligations to pay all fees that have accrued or are otherwise owed. All fees paid are non-refundable to the maximum extent allowed by applicable law.

- 10.5 All rights to use the Licensed Products will automatically cease upon termination of this Schedule 3.6(B).

11. CONFIDENTIALITY AND DATA PROTECTION

- 11.1 The Customer agrees that the Supplier may send promotional emails to the Customer to provide information about other goods and services which may be of interest. The Customer may notify the Supplier that you wish to withdraw permission for such promotional emails at any time by sending an email to marketing@chessICT.co.uk.

- 11.2 The Customer acknowledges and agrees that the Supplier and Sophos may directly and remotely communicate with the Products in order to provide Maintenance and technical support, and to collect the following types of information:

11.2.1 Products, Product versions, Product features and operating systems being used;

11.2.2 processing times taken by the Product;

11.2.3 customer identification code and company name, and

11.2.4 IP address and/or ID of the machine which returns the above listed information.

Certain Products may require the collection of additional information as detailed in the Sophos privacy policy at: <http://www.sophos.com/en-us/legal/sophos-group-privacy-policy.aspx> (the "**Sophos Privacy Policy**").

- 11.3 The information collected under paragraph 11.2 may be used for the purposes of:

11.3.1 providing the Products and performing this Schedule 3.6(B);

11.3.2 verifying your compliance with this Schedule 3.6(B);

11.3.3 evaluating and improving the performance of the Products;

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- 11.3.4 preparing statistical analysis (such as malware infection rates and the usage of Products);
 - 11.3.5 planning development roadmaps and product lifecycle strategies, and;
 - 11.3.6 issuing alerts and notices about incidents and product lifecycle changes which affect the Products being used.
- 11.4 The Supplier and Sophos may also require contact details and (where applicable) payment information for the purposes of:
- 11.4.1 providing technical support;
 - 11.4.2 billing;
 - 11.4.3 verifying Credentials;
 - 11.4.4 issuing license expiry and renewal notices, and
 - 11.4.5 providing account management.
- 11.5 In the case of personal data processed on behalf of the Customer, the Supplier acts as a Data Processor. In the case of personal data used for the Supplier or Sophos business purposes under paragraphs 11.3 and 11.4, the Supplier or Sophos is the Data Controller, as applicable.
- 11.6 The terms “Processor” and “Controller” shall have the meanings defined in the General Data Protection Regulation (“GDPR”). The Supplier will process any personal data in accordance with the provisions of GDPR and its Privacy Notice. As a global organization, the group companies, subcontractors, suppliers and third-party licensors of Sophos may be located anywhere in the world. Sophos will process any personal data in accordance with the provisions of GDPR and the Sophos Privacy Policy.
- 11.7 The Customer hereby acknowledges and provides its consent for the Licensed Products to intercept, access, monitor, log, store, transfer, export, block access to, and/or delete the Customer’s communications or the communications of its Users.
- 11.8 The Customer expressly confirms its consent to the use of data and information as set forth herein and in the Privacy Notice and Sophos Privacy Policy, and further warrant that the Customer has obtained all necessary consents and provided all necessary notifications to share such data and information with the Supplier and Sophos for the purposes described above.
- 11.9 Each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of personal data or its accidental loss, destruction or damage.
- 11.10 The Customer agrees to indemnify and hold the Supplier harmless from and against any liability that arises in relation to the Customer’s failure to comply with this paragraph 11.

12. GENERAL

- 12.1 The Customer acknowledges and agrees that Sophos may vary, Update or discontinue Products, Product versions, Product features, Product support, Product Maintenance, and support for third party products (including without limitation operating systems and platforms) from time to time for reasons including but not limited to changes in demand, security and technology.
- 12.2 The Supplier recommends that the Customer uses the latest Product, Product version and/or third party product, as applicable.

ANNEX 1 - DEFINITIONS

“Credentials” means a system to restrict access including usernames and passwords;

“Documentation” means the formal Product documentation (whether electronic or printed) published by Sophos for each Product;

“Hardware” means the hardware product itself, together with any related components (including but not limited to power supply modules, disk drives in carriers, ship kits and rack mount kits);

“Internal Business Purposes” means the internal business purpose(s) relating specifically to the integrity of its systems, networks, documents, emails and other data;

“Licensed Products” means all or each (as the context so allows) of those software programs which are issued to the Customer (including without limitation software programs which are installed on the Hardware), together with the Documentation and any of the Upgrades and Updates to those software programs;

“Maintenance” means collectively (i) Upgrades and/or Updates (where applicable to the Product) and (ii) SMS message processing (where applicable to the Product);

“Privacy Notice” means the Supplier’s Privacy Notice which can be found on its website at <http://chessict.co.uk/terms-and-conditions/>;

“Products” means the Licensed Products and the Hardware;

“Sophos” means Sophos Limited, a company registered in England and Wales, registered number 2096520, with its registered office at The Pentagon, Abingdon Science Park, Abingdon, Oxfordshire, OX14 3YP, UK;

“Update” means an update of the library of rules and/or identities and/or other updates to the detection data or software (excluding Upgrades) made available by Sophos at its sole discretion from time to time, but excluding any updates marketed and licensed by Sophos for a separate fee;

“Upgrade” means any enhancement or improvement to the functionality of the Product, Product version or Product feature made available to the Supplier by Sophos at its sole discretion from time to time, but excluding any software and/or upgrades marketed and licensed by Sophos for a separate fee, and;

“User” means an employee, consultant or other individual who benefits from the Product sub-licensed to the Customer.

This Annex 2 only applies if you purchase Hardware from the Supplier.

1. The Supplier retains title to the Hardware until such time as the Supplier receives the Hardware fee in full. Unless and until title to the Hardware has transferred to the Customer in accordance with this paragraph, the Customer agrees to keep the Hardware free and clear of all claims, liens, and encumbrances, and any act by the Customer, either voluntary or involuntary, purporting to create a claim, lien or encumbrance on the Hardware shall be void. The Customer own only the Hardware or media, if applicable, on which the Licensed Product is installed. The Customer do not own the Licensed Product itself.
2. In the event that the Customer fails to pay, or the Supplier does not receive the fee for the Hardware, the Supplier may require you to return the Hardware, securely and properly packaged, with carriage (and insurance at our option) prepaid. If the Customer fails to return the Hardware to the indicated location promptly, upon written notice the Supplier will be entitled to enter the Customer's premises during normal business hours to repossess such Hardware.
3. Risk of loss passes to the Customer upon shipment of the Hardware to the Customer.
4. The Customer acknowledges that the Hardware is sold hereunder solely as the medium for delivery and operation of the Licensed Products and, unless otherwise agreed by the parties in writing, the Supplier at its option may provide Hardware that is either new or refurbished.
5. The Customer is solely responsible for complying with any applicable governmental regulations relating to waste, health and safety, including without limitation those that relate to the EC Directive on Waste Electrical and Electronic Equipment (2002/96/EC) ("WEEE") and The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations (2002/95/EC) ("RoHS") (as amended) in connection with the Customer's use, transport and/or disposal of the Hardware.

This Annex 3 only applies to Cloud Products.

1. The Customer shall not and shall ensure that the Users shall not store or transmit any content through the Cloud Products that:
 - (i) is unlawful, pornographic, obscene, indecent, harassing, racially or ethnically offensive, harmful, threatening, discriminatory or defamatory;
 - (ii) facilitates or promotes illegal activity;
 - (iii) infringes any third party intellectual property rights, or;
 - (iv) is otherwise inappropriate (“**Prohibited Content**”).
2. The Customer acknowledges that the Supplier has no control over any content stored or transmitted by the Customer and its Users, does not monitor such content and accordingly the Product acts as a mere conduit. The Supplier reserves the right to remove content from the Cloud Products immediately without prior notice, where it reasonably suspects that such content is Prohibited Content. The Customer shall indemnify and hold the Supplier harmless from and against all damages, losses and expenses arising as a result of any third party action or claim relating to the Customer’s or its Users content.
3. The Sophos Cloud Products are not designed for the storage of regulated health or payment card data, and the Customer may only store or transmit such information through Cloud Products if the Customer has entered a separate written agreement with the Supplier expressly permitting such purpose.
4. If the Customer ceases to use Cloud Products, the Supplier will:
 - (i) remove all Product settings from servers and other devices, and
 - (ii) remove all custom settings, software and data from the Sophos network.

For certain Products, the Supplier may download and return the data upon request and for a reasonable fee to be agreed in writing in advance. The Supplier reserves the right to delete data that has not been removed.
5. With respect to the Mobile Control as a Service Advanced Product, cloud storage is limited to 5MB per User. In the event that the Customer exceeds the storage allowance, the Customer must purchase additional User licenses.

FEES

1. Actual usage may vary from month to month. The Supplier reserves the right to charge the Customer a minimum fee of £50 each calendar month, regardless of the actual usage.
2. Where there are volume bands applicable to the Products, the band shall be determined by the Customer's total usage for the product category.
3. All payments, fees and other charges payable under this Schedule 3.6(B) are exclusive of all taxes, levies and assessments.
4. The Customer agrees to bear and be responsible for the payment of all such taxes, levies and assessments imposed on the Supplier arising out of this Schedule 3.6(B), excluding any tax based on the Supplier's net income.
5. If the Customer is required to pay a lower amount under this Schedule 3.6(B) because of any withholding or tax, the Customer shall pay such grossed-up amount as would be necessary to provide the Supplier the full amount of the payment due after the deduction of any such withholding or tax imposed.