

INTERCEPTX AND ANTI-VIRUS PRODUCT AND SUPPORT SERVICE TERMS AND CONDITIONS

Your agreement with us (this “Agreement”) is made up of the following documents:

- (i) The Order Form;
- (ii) These Terms and Conditions;
- (iii) Chess’ General Terms and Conditions;
- (iv) any further conditions relating to specific services (where applicable); and
- (v) any policies referred to in these Terms and Conditions or Chess’ General Terms and Conditions (where applicable).

The documents are listed in order of precedence. In the event of an express conflict between the documents above whichever is higher on the list will take precedence. All Terms and Conditions are available at <http://chessict.co.uk/terms-and-conditions/>.

These Terms and Conditions set out the specific terms that apply to this service. They are intended to be read alongside the documents above which set out additional rights and obligations in relation to the service.

In this document references to “Us”, “We” and “Chess” shall mean Chess ICT Limited. References to “You”, “Your” and “Customer” shall mean the customer entering into this agreement. References to “Both of us” or “the Parties” shall mean both Us and You.

1. DEFINITIONS

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

‘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).

‘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 Chess’ Privacy Notice which can be found on its website at <http://chessict.co.uk/terms-and-conditions/>.

‘Products’ means the Licensed Products and Hardware.

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

'Update' means an update to the library of rules and/or identities and/or other updates to the detection data or software (excluding Upgrades) made available to us 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 us 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.

'User' means an employee, consultant or other individual who benefits from the Product sub-licensed to you.

2. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

2.1 We are a Sophos Managed Services Provider and are authorised to sub-license the Licensed Products. Licensed Products are licensed, not sold. Except as expressly stated in this Agreement, 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. 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. No license, right or interest in Sophos's logos or trademarks is granted to the Customer under this Agreement.

3. RIGHTS AND RESTRICTIONS

3.1 Where we provide you with a Product for evaluation purposes, you may use the Product in a test environment only and for the duration specified by us. The Product is provided "AS IS" during such evaluation period and Clauses 3.2 and 5 below do not apply to such evaluation.

3.2 In consideration for receipt by us of the fees due and subject to you meeting the obligations set forth in this Agreement, we hereby grant you a sub-license to use the Product for your Internal Business Purposes subject to the terms and conditions contained within this Agreement.

3.3 Usage

3.3.1 The Products are licensed by User, or other applicable units, as specified in the Order Form. You agree to pay the fees as detailed in the Order Form.

3.3.2 You are liable to pay for your 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 you fail to pay us by the due date, in addition to our other rights, we may require you to purchase an advance subscription service.

3.3.3 You may not assign or transfer the licenses without our prior written consent.

3.3.4 If an audit reveals that you have underpaid fees, you shall be invoiced for and shall pay to us within 30 days of the date of invoice an amount equal to the shortfall between the fees due and those paid.

3.4 You may make a reasonable number of copies of the Licensed Products or any part thereof for backup or disaster recovery purposes, provided you reproduce Sophos's proprietary notices on any such copies. Such restriction shall not prevent you from backing up or archiving your data.

3.5 Restrictions.

You are NOT permitted to:

3.5.1 use the Products for the provision of any service for the benefit of third parties or other than for Internal Business Purposes;

3.5.2 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;

3.5.3 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;

3.5.4 transmit or provide access to the Products save as provided in this Agreement;

3.5.5 use Products for which Chess has not received the applicable fees;

3.5.6 sub-license, rent, sell, lease, distribute or otherwise transfer the Products;

3.5.7 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

3.5.8 use or allow use of the Products for the purposes of competing with us or Sophos, including without limitation competitive intelligence (except to the extent that this restriction is prohibited by applicable law).

3.6 You acknowledge and agree that the functionality of the Sophos UTM 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, you expressly agree that it is your 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 we expressly exclude any liability for losses of any kind related to your failure to comply with this warning.

4. MAINTENANCE AND SUPPORT

4.1 We shall provide Maintenance support Monday to Friday between 9am to 5pm during the term of this Agreement.

4.2 All requests for technical support should be made directly to us and not Sophos. You can request technical support by contacting Chess' support desk.

4.3 Any custom or sample code, files or scripts ("Fixes") provided by us as part of the provision of technical support which do not form part of its standard commercial offering 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 Agreement, we warrant that: (i) if properly used and installed, the Licensed Products will perform substantially 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 you notify us of a breach of the warranty described in Clause 5.1 above during the applicable warranty period, our entire liability and your sole remedy shall be (at our 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 Clause 5.1 shall not apply if (i) the Licensed Product has not been used in accordance with the terms and conditions of this Agreement and the Documentation, (ii) the issue has been caused by failure to apply Updates, Upgrades or take any recommended action, (iii) the issue has been caused by the act or omission of, or by any materials supplied by you or any third party, or (iv) 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 Clause 5 are personal to you and are not transferable.

6. INDEMNITY

6.1 Subject to Clauses 6.2 to 6.4 inclusive below, we shall defend, indemnify, and hold you harmless from any claim or proceeding alleging that your use of the Licensed Product in accordance with the terms and conditions of this Agreement infringes any third party patent, trademark or copyright.

6.2 You shall not be entitled to the benefit of the indemnity in Clause 6.1 if (i) you fail to notify us in writing within seven (7) days of being notified of any such claim or proceeding, (ii) you do not at our written request immediately cease to use or possess the Product on any such claim being made, (iii) you, without the prior our written consent, acknowledge the validity of or take any action which might impair the ability of us or Sophos to contest the claim or proceedings if we so elect, (iv) the infringement arises due to modification of the Product by anyone other than us 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 us, and the infringement would not have arisen without such use or modification, or (v) 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 Clause 6.1 is made against you, we 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 you to join and co-operate with the defence, settlement and/or counter-proceedings at our reasonable cost. If we elect to not assume the defence of, settle such claims and/or initiate counter-proceedings, you may proceed with defending the claim in good faith and we will reimburse all claims, damages, charges, expenses and liabilities (including reasonable counsel fees and costs) finally awarded or agreed to in a monetary settlement. We shall have the right to approve your chosen counsel under this Clause 6.3.1, such approval not to be unreasonably withheld.

6.3.2 to (i) procure a license so that your use of the Product in accordance with the terms and conditions of this Agreement 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. If we cannot achieve Clause 6.3.2 (i) or (ii) above on a commercially reasonable basis, we may terminate the license to use the Product upon notice to you 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 CLAUSES 6.1, 6.2 AND 6.3 SET OUT YOUR SOLE REMEDY AND OUR WHOLE LIABILITY IN THE EVENT THAT THE PRODUCTS INFRINGE THE PATENTS, TRADEMARKS, COPYRIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. YOU WILL IN ANY EVENT MITIGATE YOUR LOSSES AS FAR AS POSSIBLE.

7. DISCLAIMER OF WARRANTIES

7.1 EXCEPT FOR THE EXPRESS WARRANTIES FOR THE LICENSED PRODUCTS AND HARDWARE CONTAINED IN CLAUSE 5 ABOVE, CHESS 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, CHESS 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. CHESS 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, CHESS DOES NOT WARRANT OR REPRESENT THAT YOU ARE ENTITLED TO BLOCK ANY THIRD PARTY APPLICATIONS OR THAT YOU ARE ENTITLED TO ENCRYPT OR DECRYPT ANY THIRD PARTY INFORMATION.

7.3 YOU FURTHER ACKNOWLEDGE AND AGREE THAT YOU SHALL BE SOLELY RESPONSIBLE FOR PROPER BACK-UP OF ALL DATA AND THAT YOU SHALL TAKE APPROPRIATE MEASURES TO PROTECT SUCH DATA. CHESS ASSUMES NO LIABILITY OR RESPONSIBILITY WHATSOEVER IF DATA IS LOST OR CORRUPTED.

8. LIMITATION OF LIABILITY

8.1 YOU ACCEPT THAT USE OF THE PRODUCT IS AT YOUR OWN RISK. SUBJECT TO CLAUSE 8.4 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CHESS 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 CHESS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 IF ANY LIMITATION, EXCLUSION, DISCLAIMER OR OTHER PROVISION CONTAINED IN THIS AGREEMENT IS HELD TO BE INVALID FOR ANY REASON BY A COURT OF COMPETENT JURISDICTION AND CHESS 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 CLAUSE 8.4, IN NO EVENT SHALL CHESS' AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT, FROM ALL CAUSES OF ACTION AND THEORIES OF LIABILITY (INCLUDING WITHOUT LIMITATION NEGLIGENCE), EXCEED A SUM EQUAL TO THE FEES PAID BY YOU FOR ANY 12 MONTH PERIOD.

8.4 CHESS 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

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 Chess has the necessary rights to license ("Third Party Software"). You agree that (a) to use such Third Party Software in accordance with this Agreement, (b) 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, (c) no Third Party Licensor will have any obligation or liability as a result of this Agreement or use of such Third Party Software, (d) 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 Agreement, 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

12.1 This Agreement shall commence upon execution of the Order Form and continue unless and until terminated in accordance with the provisions set out herein or as set out in Chess' General Terms and Conditions.

12.3 Chess may terminate this Agreement immediately upon written notice if: (i) it does not receive the fees (in whole or in part) in accordance with the agreed payment terms, or (ii) you fail to comply

with any of the terms and conditions of this Agreement, or (iii) you take or suffer any action on account of debt or become insolvent.

12.4 Effects of Termination.

12.4.1 Your obligations under this Agreement in respect of the intellectual property and confidential information of shall survive any expiry or termination of this Agreement.

12.4.2 Termination of this Agreement shall not relieve you of your 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.

12.4.4 All rights to use the Licensed Products will automatically cease upon termination of this Agreement.

13. CONFIDENTIALITY AND DATA PROTECTION

13.1 You agree that we may send promotional emails to you to provide information about other goods and services which may be of interest. You may notify us that you wish to withdraw permission for such promotional emails at any time by sending an email to marketing@chessICT.co.uk.

13.5 You acknowledge and agree that Chess 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: (i) Products, Product versions, Product features and operating systems being used, (ii) processing times taken by the Product, (iii) customer identification code and company name, and (iv) 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").

13.6 The information collected under Clause 13.5 may be used for the purposes of (i) providing the Products and performing this Agreement, (ii) verifying your compliance with this Agreement, (iii) evaluating and improving the performance of the Products, (iv) preparing statistical analysis (such as malware infection rates and the usage of Products), (v) planning development roadmaps and product lifecycle strategies, (vi) issuing alerts and notices about incidents and product lifecycle changes which affect the Products being used by you.

13.7 Chess and Sophos may also require contact details and (where applicable) payment information for the purposes of (i) providing technical support, (ii) billing, (iii) verifying Credentials, (iv) issuing license expiry and renewal notices, and (v) providing account management.

13.9 In the case of personal data processed on your behalf, Chess acts as a Data Processor. In the case of personal data used for Chess or Sophos business purposes under Clauses 13.6 and 13.7, Chess or Sophos is the Data Controller, as applicable. The terms "Processor" and "Controller" shall have the meanings defined in the General Data Protection Regulation ("GDPR"). Chess 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.

13.10 You hereby acknowledge and provide your consent for the Licensed Products to intercept, access, monitor, log, store, transfer, export, block access to, and/or delete your communications or the communications of your Users.

13.11 You expressly confirm your 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 you have obtained all necessary consents and provided all necessary notifications to share such data and information with Chess and Sophos for the purposes described above.

13.12 Each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of personal data or its accidental loss, destruction or damage.

13.13 You agree to indemnify and hold Chess harmless from and against any liability that arises in relation to your failure to comply with this Clause 13.

14. GENERAL

14.1 You acknowledge and agree 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. Chess recommends that you use the latest Product, Product version and/or third party product, as applicable.

Appendix 1

Hardware

This Appendix 1 only applies if you purchase Hardware from Chess.

1. Chess retains title to the Hardware until such time as Chess receives the Hardware fee in full. Unless and until title to the Hardware has transferred to you in accordance with this Clause, you agree to keep the Hardware free and clear of all claims, liens, and encumbrances, and any act by you, either voluntary or involuntary, purporting to create a claim, lien or encumbrance on the Hardware shall be void. You own only the Hardware or media, if applicable, on which the Licensed Product is installed. You do not own the Licensed Product itself.
2. In the event that you we do not receive the fee for the Hardware, we may require you to return the Hardware, securely and properly packaged, with carriage (and insurance at our option) prepaid. If you fail to return the Hardware to the indicated location promptly, upon written notice we will be entitled to enter your premises during normal business hours to repossess such Hardware.
3. Risk of loss passes to you upon shipment of the Hardware to you.
4. You acknowledge 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, Chess at its option may provide Hardware that is either new or refurbished.
5. You are 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 your use, transport and/or disposal of the Hardware.

Appendix 2

Cloud Products

This Appendix 2 only applies to Cloud Products.

1. You 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. You acknowledge that Chess has no control over any content stored or transmitted by you and your Users, does not monitor such content and accordingly the Product acts as a mere conduit. Chess reserves the right to remove content from the Cloud Products immediately without prior notice where it reasonably suspects that such content is Prohibited Content. You shall indemnify and hold Chess harmless from and against all damages, losses and expenses arising as a result of any third party action or claim relating to your or your Users content.
3. The Sophos Cloud Products are not designed for the storage of regulated health or payment card data, and you may only store or transmit such information through Cloud Products if you has entered a separate written agreement with us expressly permitting such purpose.
4. If you ceases to use Cloud Products, we 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, Chess may download and return the data upon request and for a reasonable fee to be agreed in writing in advance. Chess 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 you exceed the storage allowance, you must purchase additional User licenses.

Appendix 3

Fees

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