

## VENDOR PASS-THROUGH TERMS

### Sophos Ltd.

<b>Vendor:</b>	<b>Sophos Ltd</b> , a company registered in England with registration number 2096520 with its registered office at The Pentagon, Abingdon Science Park, Abingdon, Oxfordshire, OX14 3YP, UK  <b>and its affiliates</b>
<b>Product(s):</b>	Products and/or services to be supplied by Sophos i.e. Appliances and Appliances' Licenses.
<b>Version:</b>	N/A
<b>TD SYNnex Entities</b>	<b>TD SYNnex Entities:</b> a respective TD SYNnex entity of the TD SYNnex group of companies (TD SYNnex Corporation and its affiliates and subsidiaries) contracting with the Reseller to sell services performed by TD SYNnex entity, as well as hardware, software and services of third party vendors that are not TD SYNnex entity. A list of all current TD SYNnex Entities may be found here <a href="#">TD SYNnex Entities.pdf</a>  TD SYNnex Entity hereinafter referred also as to <b>TD SYNnex</b> .
<b>Territories:</b>	<b>Territory:</b> the geographic area to which the Agreement between the respective TD SYNnex Entity and the Reseller and the appointment of the Reseller apply.

In addition to the Terms and Conditions (available at [Terms and Conditions \(tdsynnex.com\)](#)) and the Country Specific Terms (available at [Country Specifics Terms and Conditions \(tdsynnex.com\)](#)) these terms and conditions (“**Vendor Pass-Through Terms**”) apply to the purchase or licensing, as applicable, of Vendor Products (as set out above) by Buyer (hereinafter referred also as to the “**Reseller**”) from TD SYNnex.

By purchasing or licensing, as applicable, the Vendor Products from TD SYNnex, Buyer agrees to these Vendor Pass-Through Terms, which shall form a part of the Agreement between TD SYNnex and Buyer.

To the extent required under these Vendor Pass-Through Terms, Buyer will flow down such terms to its customer in its agreements with such customer.

Vendor may amend these Vendor Pass-Through Terms from time to time. In such case, TD SYNnex will publish the updated terms on its website at: [Vendor Pass-Through Terms and Conditions \(tdsynnex.com\)](#). Buyer agrees to be bound by such updated pass-through terms. It is Buyer’s responsibility to check such link from time to time.

In case of conflicts between these Vendor Pass-Through Terms and these Terms and Conditions or the Country Specific Terms, the Vendor Pass-Through Terms shall prevail.

Unless agreed otherwise in the following for the purposes of these Vendor Pass-Through Terms, capitalized terms shall have the meaning given in the Agreement.

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## 1. Definitions

**Appliance** means the Sophos appliance Product(s) listed in the Price List.

**Appliance License** means Sophos's then current standard Appliance License agreement under which the Appliances (and their related documentation and any updates to them) are licensed.

**Applicable Laws** means all statutes, codes, ordinances, decrees, rules, regulations, municipal by laws, judicial, administrative, ministerial, governmental or regulatory judgments, orders, decisions, rulings or awards and restraints, or any provisions of the same, including general principles of common and civil law binding on the parties.

**End User** means a third party customer of the Reseller who is a party to an End User License and to whom any Products 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.

**License** means the End User license(s), service agreement(s), or agreement(s) applicable to the Products which are either supplied with the Product in click wrap format or are otherwise posted at [www.sophos.com/legal](http://www.sophos.com/legal)

**Partner Program** - means the program provided by Sophos for its Resellers and TD SYNEX as amended by Sophos from time to time.

**Partner Portal** means the website for the Partner Program at (or such other URL as Sophos may advise from time to time).

**Price List** means the then current published Sophos price list posted on the Partner Portal and/or any subsequent amendments by Sophos.

**Products** means the products and/or services as listed in the Price List as such may be amended by Sophos from time to time together with the product documentation and any of the Upgrades and Updates to which the End User is entitled in accordance with the applicable License.

**Reseller** – means third party reseller who purchases Sophos Products from TD SYNEX and is authorized by Sophos to resell the Products and who has enrolled in the Sophos Partner Program via the Sophos Partner Portal website.

**Trade Marks** means any trade marks and service marks for which registrations have been filed, and registrations obtained in some cases, with the appropriate official industrial property registry, trade names, logos, emblems, trade dress and other insignias of origin, and other commercial symbols which Sophos now or hereafter uses or authorizes others to use to identify the Products.

**Update** 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 End Users by Sophos at its sole discretion from time to time automatically or otherwise, 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 End User by Sophos at its sole discretion from time to time automatically or otherwise but excluding any software and/or upgrades marketed and licensed by Sophos for a separate fee.

## **1. Reseller Appointment**

Resellers who are authorized by Sophos to resell the Products shall be enrolled in the Sophos Partner Program via the Sophos Partner Portal website.

## **2. Reseller Obligations**

The Reseller shall:

- 2.1. provide TD SYNEX with the required level of detail on all purchase orders, including without limitation complete and accurate End User identification information;
- 2.2. Use reasonable efforts to renew Sophos licenses in a timely fashion, and specifically (but without limitation) shall contact End User(s) who have not renewed their Sophos licenses prior to the expiry of the End User's License;
- 2.3. ensure (i) that it has in place a contract with the End User and (ii) that such contract (a) provides at least the level of protection to TD SYNEX and the Products as is provided in this Vendor Pass-Through Terms and places materially similar requirements and obligations on End Users as are undertaken by the Reseller hereunder (including without limitation reflecting the requirements of this Section 2 and (b) is enforced on a regular basis;
- 2.4. be wholly responsible for promoting sales of the Products within the Territory by services provided to the Resellers by TD SYNEX or Sophos, such as, without limitation, sales training, marketing support, inside sales / lead generation activities, web based seminars, web based sales presentations, sales training materials and sales collateral;
- 2.5. not make any promises or representations, or give any warranties, guarantees or indemnities in respect of the Products except such as are contained in the relevant License or as otherwise expressly authorized by Sophos in writing;
- 2.6. not hold itself out as having any authority whatsoever to agree to any changes of any kind to the terms of any other Sophos agreement or License;
- 2.7. use, or permit any End User to use Sophos' Trade Marks relating to the Products only in the registered form or style notified to the Reseller in writing and shall not use such Trade Marks in connection with any other products or services or as part of the corporate or any trade name or any Internet domain name of the Reseller and shall not alter, obscure, remove, interfere with or add to any of the Trade Marks, markings or notices affixed to, or contained in, the Products and the product documentation delivered to the Reseller;

- 2.8. not, or permit any End User to, duplicate or reproduce in any way any Sophos copyright material;
- 2.9. deal with any complaints, problems or other technical queries regarding the Products from End Users before making use of the Sophos telephone helpdesk.
- 2.10. not make or disseminate any disparaging comments and/or statements concerning the Products, or market, distribute, license or sell any Product in a manner that is likely to cause harm to, or diminish the value of, the Sophos brand;
- 2.11. not, or permit any End User to, incorporate or integrate the Products in or on any other hardware or software products without notifying its local Sophos representative and signing the appropriate Agreement; and
- 2.12. not, or permit any End User to, use the Products for the purposes of competing with Sophos, including without limitation the gathering of competitive intelligence:

RESELLER ACKNOWLEDGES AND AGREES THAT IF IT IS IN BREACH OF ANY OF ITS OBLIGATIONS SET OUT ABOVE IN THIS SECTION, TD SYNEX MAY, AT ITS SOLE OPTION AND WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO IT UNDER APPLICABLE LAW, UPON NOTICE TO THE RESELLER TERMINATE THE AGREEMENT CONCLUDED ON THE BASIS OF TERMS AND CONDITIONS OR WITHHOLD A SELL OF SOPHOS' PRODUCTS TO THE RESELLER.

### **3. Orders, Returns**

- 3.1. Certain Appliances may be available for a free trial for a maximum of thirty (30) days, or such other duration as specified by Sophos in writing in its sole discretion (“**Trial Period**”) as set forth in the applicable terms of the License. IF THE RESELLER REQUESTS AN APPLIANCE FOR A FREE TRIAL FOR AN END USER, AND SUCH END USER FAILS TO RETURN AN APPLIANCE AFTER THE TRIAL PERIOD HAS EXPIRED, IT IS DEEMED AS A PURCHASE OF THE APPLIANCE AND TD SYNEX SHALL ISSUE AN INVOICE TO THE RESELLER FOR THE PURCHASE OF THE HARDWARE AT LIST PRICE AND THE RESELLER SHALL PAY SUCH AMOUNT TO TD SYNEX.
- 3.2. If Reseller returns an Appliance to TD SYNEX, either post trial or where there is a valid warranty claim under the Sophos hardware warranty at <https://www.sophos.com/en-us/legal/hardware-warranty-policy>, Reseller shall insure and ship the Appliance by overnight delivery/carrier according to local Return Policy [Return Policies Terms and Conditions \(tdsynnex.com\)](#) and TD SYNEX Terms and Conditions [Terms and Conditions \(tdsynnex.com\)](#).

### **4. Warranty, Disclaimer of Warranties**

For Reseller's information:

Sophos warrants only that for a period of ninety (90) days from the date of License (the “Warranty Period”) that if properly installed and used the Products will perform substantially in accordance with the relevant product documentation.

Except for the express warranties and indemnities given by Sophos and without prejudicing Sophos's liability for fraud, to the maximum extent permitted by applicable laws, 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 Products including without limitation:

- i. as to their merchantability, satisfactory quality or fitness for a particular purpose or as to non infringement;
- ii. that the Products will detect, identify or disable all or any specific harmful programs, viruses or harmful components;
- iii. that the Products will not give false positive results;
- iv. that Updates will be provided for all harmful programs, viruses, or harmful components;
- v. that Updates will be provided for all forms of spam or spam campaigns;
- vi. that the Products will meet the Reseller's or the End User's requirements; or
- vii. that the Products will be error free and/or operate without interruption.

## **5. Compliance, Import/ Export Regulations, Sanctions**

### **5.1 Reseller shall comply with:**

- a) all Applicable Laws with respect to the access use, marketing, and distributing of the Products, in particular local import rules;
- b) all Sanctions and Export Control Laws as further described in Clause 5.2;
- c) any rules of fair competition;
- d) Applicable Laws concerning anti-bribery and anti-corruption, including but not limited to the United States Foreign Corrupt Practices Act 1977 with regard to all dealings, negotiations, solicitations or other contact with customers, potential customers, End Users or potential End Users (including but not limited to the employees, agents or sub contractors of the aforesaid entities); and the Reseller hereby acknowledges and agrees that failure to comply with applicable anti-bribery and anti-corruption legislation is expressly prohibited and that breach of this clause will be considered cause for immediate termination of the Agreement with TD SYNEX or withholding a sell of Sophos' Products and
- e) such training and certification requirements that Sophos or TD SYNEX may require from time to time for the distribution of Products.

### **5.2 The Reseller hereby:**

- 5.2.1 agrees that in connection with its sell of the Products it will comply, and will ensure that its relevant personnel comply with all Sanctions and Export Control Laws;
- 5.2.2 represents and warrants that neither Reseller nor any party that owns or controls, or is owned or controlled by, Reseller is (i) ordinarily resident in, located in, or organized under the laws of any country or region subject to economic or financial sanctions or trade embargoes imposed, administered, or enforced by the European Union, the United Kingdom, or the United States; (ii) an individual or entity on the Consolidated List of

Persons, Groups, and Entities Subject to European Union Financial Sanctions; the U.S. Department of the Treasury's List of Specially Designated Nationals and Blocked Persons or Foreign Sanctions Evaders List; the U.S. Department of Commerce's Denied Persons List or Entity List; or any other sanctions or restricted persons lists maintained by the European Union, the United Kingdom, or the United States; or (iii) otherwise the target or subject of any Sanctions and Export Control Laws;

- 5.2.3 represents and warrants that it will not export, re-export, transfer, or otherwise make available the Products, directly or indirectly, to any country, region, individual or entity described in Clause 5.2.2 or in violation of, or for purposes prohibited by, Sanctions and Export Control Laws, including for proliferation related end uses, and that it has adequate policies, procedures, and controls in place to comply with Clause 5.2.3;
- 5.2.4 understands and agrees that Sophos shall have no obligation to provide any Updates, Upgrades or services related to the Products where Sophos believes the provision of such Updates, Upgrades or services could violate Sanctions and Export Control Laws;
- 5.2.5 agrees to notify Sophos and TD SYNEX immediately if it becomes aware that it or any of its personnel may have breached any Sanctions and Export Control Laws in connection with its distribution of the Products or if it becomes aware that any Product that it sold, directly or indirectly, to an End User has been exported, re-exported, transferred, or otherwise made available in violation of Clause 5.2.3;
- 5.2.6 agrees to provide notice to Sophos and TD SYNEX in a commercially reasonable timeframe and manner (if not herein elsewhere stated with specificity) of any government action or communication that Reseller receives or becomes aware of concerning Sanctions and Export Control Laws relating to the Products, unless prohibited by law or compulsory governmental process;
- 5.2.7 agrees that while information about the classification of the Products for export purposes is available at <https://www.sophos.com/en-us/legal/export.aspx> and Sophos will use reasonable efforts to maintain the information on such webpage, Reseller will be responsible for seeking its own legal advice and ensuring its own compliance with all applicable Sanctions and Export Control Laws;
- 5.2.8 agrees that in the event that the sale, supply, export, re-export or transfer of all or part of the Product or any part thereof to be supplied under is subject to Sophos obtaining or using an export license, it will provide promptly upon request all assistance or documentation required by Sophos or TD SYNEX including, as appropriate, an accurately completed end user undertaking or consignee undertaking;
- 5.2.9 agrees that it will be solely responsible for fulfilling all the requirements of the authorities in all jurisdictions to which the Products will be supplied for the licensing, registration or other authorization for the sale, supply, import, re-export, transfer, use, disclosure or transport of the Products;
- 5.2.10 agrees that it is responsible for fulfilling any other Applicable Laws, in connection with any use, marketing distribution, transport and/or disposal of the Products, including safety, health, and environmental protection requirements mandated for CE marking; Low Voltage Directive (LVD) (2014/35/EU); Radio Equipment Directive 2014/53/EU; Directive 2014/30/EU on Electromagnetic Compatibility (EMC) (as amended); Waste Electrical and Electronic Directive; Directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment 2011/65/EU and the restriction of the use of certain hazardous substances in electrical and electronic equipment II (RoHS II); Directive 2006/66/EC of the European Parliament and of the

Council of 6th September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC and Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18th December 2006 concerning the registration, evaluation, authorization and restriction of chemicals and the national legal adoption of such directives/regulations.

5.2.11 agrees that it will be responsible for any claim, loss, liability or damage suffered or incurred by Sophos or TD SYNEX resulting from or related to Reseller's breach of this clause and that breach of this clause may be considered cause for immediate termination of the Agreement between the Reseller and TD SYNEX.

5.2.12 Further details are available at <https://www.sophos.com/en-us/legal/export.aspx>

## **6. Miscellaneous**

Reseller agrees to provide TD SYNEX with a certification as to its compliance with the requirements of these Pass-Through Terms, on TD SYNEX's request.

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