

Quick Heal Terminator (Unified Threat Management) UTM Agreement

PLEASE READ THIS Quick Heal Terminator- Unified Threat Management (UTM) Agreement (hereinafter referred to as the "Agreement") CAREFULLY BEFORE USING OR TRYING TO ATTEMPT TO USE THIS Quick Heal Terminator (hereinafter referred to as the "Terminator").

BY USING TERMINATOR OR BY CLICKING THE "I AGREE" BUTTON OR ATTEMPTING TO/CONSENTING TO INSTALL THE TERMINATOR IN ANY WAY, (SUCH ACTION WILL CONSTITUTE A SYMBOL OF YOUR SIGNATURE), YOU ACKNOWLEDGE AND ADMIT THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT ONCE ACCEPTED BY "YOU"[as an individual (assuming you are above 18 years and/or having legal capacity to enter into an agreement), or the Company or any legal entity that will be using the Terminator (hereinafter referred to as 'You' or 'Your' for the sake of brevity)] SHALL BE A LEGALLY ENFORCEABLE AGREEMENT BETWEEN YOU AND QUICK HEAL TECHNOLOGIES PRIVATE LIMITED, PUNE, INDIA (hereinafter referred to as "Quick Heal") AND YOU SHALL HAVE THE RIGHTS TO USE THE TERMINATOR SUBJECT TO THE TERMS AND CONDITIONS MENTIONED IN THIS AGREEMENT OR AS AMENDED BY Quick Heal FROM TIME TO TIME. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS BELOW, DO NOT USE TERMINATOR IN ANY WAY AND PROMPTLY RETURN THE SAME (WITHOUT USING THE SAME) IN YOUR POSSESSION.

In consideration of payment of the License Fee, evidenced by the Receipt, Quick Heal grants You, a non-exclusive and non-transferable right to intended use of Terminator, during the License Period (as stated in your Invoice) a Unified Threat Management solution detailed in the User Manual, according to the technical requirements which is subject to the terms and conditions of this Agreement.

1. DEFINITIONS

- a. "**Distributors**" means the authorized distributors, agents, sub-distributors of Quick Heal, selling Quick Heal range of products, including sales through Internet.
- b. "**License period**" means the period commencing from the date of installation of Terminator (Effective date) upto the period mentioned in the Invoice.
- c. "**Normal working hours**" shall mean 09:30 a.m. to 6:30 p.m. Indian Standard timing (IST) on Working Days and "Working Days" means Mondays to Fridays inclusive, but excluding bank and public holidays in the India.
- d. "**Support**" means the support provided by Quick Heal between Normal working hours which may or may not be chargeable to you.
- e. "**Terminator**" means Quick Heal Terminator- a Unified Threat Management (UTM), which also includes the present and future modifications, enhancements, improvements, updates, additions, derivative works, documentation and related material. Quick Heal Terminator consists of hardware device preloaded with Quick Heal's software ("the software") and all other related components including but not limited to rack mount kits, cabling, packaging, ship kits and all accompanying documentation.
- f. "**Upgrades**" means any correction, improvement, modification or yearly enhancements in the form of the new version of the Software/Terminator which Quick Heal generally releases once in a year.
- g. "**User Manual**" means the user guide, Help Guide, documentation provided with the Terminator, updated agreements provided on the website of Quick Heal (www.quickheal.com), explanatory or other materials as provided from time to time by Quick Heal.

- h. **“You”** means the **“End User”** means an Individual/organization who has purchased Terminator for his/her own use and not for resale or further distribution:
- (i) An individual (such an individual) using/legally acquiring the Terminator on his/her own behalf and every other person (whether authorized or not by such an individual) who uses/has the possession of the Terminator; or
 - (ii) An organization (including but not limited to a partnership, joint venture, Limited Liability partnership, Limited Liability Company, Company of any nature, Trust, Governmental Authority, Unincorporated Organization, Association of Persons) or any person (such person) who have been authorized by such an Organization to use the Terminator, accept the Agreement on behalf of the Organization and every other person (whether authorized or not by such person) who uses/has the possession of the Terminator.

2. RESTRICTIONS

You are liable for risk of loss or damage of the Terminator while it is in your possession or control. You (including your employees, agents, contractors not authorized by Quick Heal) agree not to:

- a. demonstrate, copy, sell the Terminator/software to any third party.
- b. publish or otherwise disclose information relating to the performance or quality of the Terminator/software to any third party.
- c. sublicense, rent or lease any/all portion of the Terminator/software.
- d. debug, decompile, modify, translate and reverse engineer the Terminator/software.
- e. try making an attempt to reveal/discover the source code of the software.
- f. use for unlicensed and illegal purpose.
- g. create derivative works based on the sub-license.
- h. assign or transfer any of your rights or obligations under this Agreement.
- i. remove any proprietary notice, labels, or marks of the Terminator, software.

3. INTELLECTUAL PROPERTY RIGHTS:

You understand and acknowledge that Quick Heal Terminator including all subsequent copies in any media is the sole proprietary of Quick Heal and Quick Heal does not grant any right, title and interest in Quick Heal Terminator or in any Intellectual Property of Quick Heal or third party licensor. Any error corrections, modification, enhancements, updates, upgrades made to software/Terminator by you or Quick Heal will be the sole and exclusive property of Quick Heal. Terminator/Software and the accompanying written materials are the property of Quick Heal and are copyrighted. Copying of the Terminator/Software or the written material is expressly forbidden. The Terminator, software, source code, activation code, license keys, documentation, systems, ideas, information, content, design and other matters related to the software, trademarks, are the sole proprietary and Intellectual Property rights of Quick Heal protected under the Intellectual property Laws and belong to Quick Heal. Title in the Terminator shall remain with Quick Heal unless and until full payment is received from you. No license, right or interest in Quick Heal's logos, trademarks is granted to You under this Agreement and you hereby agree not to remove any product identification or notices of proprietary restrictions.

4. YOUR RESPONSIBILITIES

You understand, agree, warrant and are responsible:

- a. to adhere and follow the User Manual provided alongwith the Terminator. Quick Heal has mentioned the user guidelines in the user manual. Any violation found in terms of usage not prescribed in the User manual, will result in void warranty with immediate effect.
- b. For any attempt found to open the Terminator. The Terminator comes duly sealed and in a tested condition, hence any attempt found to open the Terminator or if the security shield found to be broken will result in cancellation of hardware warranty.
- c. to immediately notify Quick Heal about the problems, if any arising in the Terminator and to request for the support services to the authorized agents, employees of Quick Heal in such format as notified by Quick Heal from time to time.
- d. to carry out all the recommendations of Quick Heal for determining the nature or cause of a problem and for the resolution of the same. You shall be solely responsible for maintenance and support of all the designated hardware, servers, networking products, other equipments and operating systems, database software on or which you operate the Terminator.
- e. for any loss of or damage to the Terminator including but not limited to mishandling, misuse, neglect, improper testing, unauthorized repair, or alteration of the Software or processing that alters physical or electrical properties of any Terminator and/or related components.

5. TERM

You are entitled to use Terminator only during the license period commencing from the date of activation of the Terminator upto the period mentioned in your invoice details. Except for evaluation and beta licenses or other licenses where the term of the license is limited per the evaluation/beta or other agreement, the term of the license is for the duration mentioned in your Invoice.

6. LIMITED WARRANTY AND DISCLAIMERS

- a. The Terminator provided by Quick Heal is “AS IS” and “AS AVAILABLE” without warranty of any kind, expressed or implied, including but not limited to the implied warranties of merchantability, fitness, usage, performance, satisfactory quality, integration, applicability for a particular use and any other warranties are disclaimed to the fullest extent permissible pursuant to the applicable law.
- b. Quick Heal does not warrant, make any representations that Terminator will work uninterrupted, timely, secure or error-free or shall meet any or all your requirements whether disclosed to Quick Heal or any of its directors, agents, distributors and employees. The entire risks, faults as to performance of the Terminator, to achieve your intended results, the results obtained from the Terminator shall be assumed by You.
- c. You understand and accept that the Terminator will substantially perform according to the specifications, descriptions stated in the User Manual, as updated from time to time, subject to the following and Quick Heal expressly disclaims any and all liabilities arising from the following circumstances:
 - (i) incompatibility caused by any software and/or hardware components installed on your Network/server where the Terminator will be/is installed;
 - (ii) Any actions initiated by You or by third parties which were beyond the reasonable control of Quick Heal;
 - (iii) Any failures, malfunctions, defects resulting from abuse, improper installation, theft, misuse, accident, operation or maintenance, acts of God, alteration, power failures, casualty, alterations, neglect, non-permitted modifications, acts of terrorism, vandalism and unauthorized repairs ;;
 - (iv) If the Terminator has been mishandled at your premises either purposefully and/or due to in-appropriate working conditions or due to your negligence and/or

- (v) Attempts have been made to re-install, repair modify etc. without the supervision of the Quick Heal.
 - (vi) Your violations of the terms and conditions described in the User manual or in this Agreement.
- d. Notwithstanding any other terms of this Agreement, the maximum liability of Quick Heal for any claims under this Agreement shall in no event exceed the amounts payable by You towards the purchase of Quick Heal Terminator. Claim would vary depending upon the assessment done by Quick Heal and would be subject to above.

7. INDEMNIFICATION

- a. You expressly understand, admit and warrant that in no event shall Quick Heal and/or any of its directors, employees, agents, partners, distributors be liable from any and against all claims, expenses, whatsoever made by you and/ or any third party for any direct, indirect, incidental, special, punitive, consequential and/or exemplary damages including, and loss of data or programs, or other intangible losses (even if Quick Heal has been advised of the possibility of such damages), to the fullest extent permissible by law because of :
- (i) your negligence or inability of using the Terminator or support;
 - (ii) any dispute between you and third party with respect to availing the Terminator;
 - (iii) your breach of the Agreement;
 - (iv) the failure of Quick Heal to provide Support Service or any other service/information.
- b. This limitation will apply to all causes of action whether arise in equity or tort, including but not limited to breach of contract, breach of warranty, negligence, strict liability, misrepresentations and You hereby release Quick Heal and/or its directors, employees, agents, distributors from any and all obligations, liabilities in excess of the limitation stated herein.

8. GENERAL

- a. **Force Majeure.** Quick Heal shall not be liable for any damages or penalty for delay of failure in performance of its obligations, pursuant to any accepted purchase order, or for failure to give notice of delay when such delay is caused by the elements, acts of God, delay in transportation, delay in delivery or performances by Quick Heal's vendors or other third parties, shortages of materials, or labor interruptions, or any other causes beyond the reasonable control of Quick Heal. Provided that Quick Heal shall Endeavour to complete the task within a reasonable period after happening of any event as covered under such force majeure.
- b. **Legal Jurisdiction.** This agreement and any matter relating thereto shall be subject only to jurisdiction of Courts at Pune, India and shall be interpreted as per the terms of the law/s for the time being in force in India. Any dispute which may arise out of this Agreement, breach of terms and conditions under this Agreement, shall be settled by direct negotiations between You and Quick Heal. In the case of failure to resolve the dispute in the manner set out above within 30 days from the date when the dispute arose, the dispute shall be referred to a panel of three arbitrators, with Quick Heal appointing one arbitrator, You appointing one arbitrator and the arbitrators so appointed jointly nominating a third presiding arbitrator. The venue of arbitration shall be Pune. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and Indian Laws and shall be conducted in the English language. The arbitrators shall also decide on the costs of the arbitration proceedings. To the extent possible, after the commencement of any arbitral proceedings the Parties shall continue to perform their respective obligations under this Agreement. The provisions of this Clause shall survive termination of this Agreement. Subject to the provisions of this Clause, the Courts in Pune, India shall have exclusive jurisdiction and the parties may pursue any remedy available to them at

law or equity. Notwithstanding this dispute resolution procedure, either party shall have the right to seek an injunction in a court of appropriate jurisdiction, in the event that it believes that its intellectual property rights are at risk.

- c. **Complete Agreement.** This Agreement comprises the entire agreement between the parties regarding its subject matter, and supersedes any proposals, negotiations, representations, advertisements, marketing materials or communications whether, oral or written, with respect to the Terminator or to subject matter of this Agreement. You shall be bound by any and all clauses of the Agreement updated and displayed by Quick Heal on the website www.quickheal.com from time to time. Any waiver by either party of any violation of any provision of this agreement by the other party will not be deemed to waive any other violation of the same or any other provision.
- d. **Severability.** If any of the provisions contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby and the balance of the Agreement will continue in full force and effect to the maximum extent permitted by law or equity while preserving, to the fullest extent possible, its original intent.
- e. **Survival.** The Clauses in this Agreement including not limited to rights to License fees receivable, "Indemnification", "Limited Warranties & Disclaimers" and "Intellectual Property" shall survive expiration or termination of this Agreement.
- f. You cannot assign your rights or delegate duties or obligations under this Agreement. The failure to exercise or delay in exercising a right or remedy by Quick Heal under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any prior, concurrent or subsequent right or remedy.
- g. The Section numbers and headings are included merely for the convenience of the parties and are not to be construed in interpreting this Agreement.
- h. Quick Heal reserves the right to co-operate with any legal process and may provide documents, information related to your use of the Terminator/Software.