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Comodo Endpoint Security Manager 3.4 - Professional Edition

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- 6.4 **Additional Liability.** The indemnification obligations herein are not Comodo's sole remedy for your breach and are in addition to any other remedies Comodo may have against you under this agreement. Your indemnification obligations survive the termination of this agreement.

7. Warranty Disclaimers.

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- 7.6 **Damage Limitation.** YOU WAIVE ALL LIABILITY OF COMODO AND ITS AFFILIATES, AND EACH OF THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND CONTRACTORS, RESULTING FROM OR CONNECTED TO THIS AGREEMENT. YOU WAIVE ALL LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THIS WAIVER INCLUDES ALL DAMAGES FOR LOST PROFITS, REVENUE, USE, OR DATA AND APPLIES EVEN IF COMODO IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. These limitations apply to the maximum extent permitted by law regardless of 1) the reason for or nature of the liability, including tort claims, 2) the number of claims, 3) the extent or nature of the damages, and 4) whether any other provisions of this agreement have been breached or proven ineffective.
- 7.7 **Exceptions.** If any legal right disallows an exclusion of warranties or disallows limiting certain damages, then the disclaimers of warranty and limitations on liability herein apply to the maximum extent allowed by law.

8. Remedy.

- 8.1 **Injunctive Relief.** You acknowledge that a breach of this agreement will result in irreparable harm to Comodo that cannot adequately be redressed by compensatory damages. Accordingly, in addition to any other legal remedies which may be available, Comodo may seek and obtain an injunctive order against a breach or threatened breach of the agreement.
- 8.2 **Limitation on Actions.** Except for actions and claims related to a party's indemnification and confidentiality obligations, all claims and actions arising from this agreement must be brought within one (1) year from the date when the cause of action occurred.
- 8.3 **Remedy.** Your sole remedy for a defect in the Software is to have Comodo attempt to cure the defect. Comodo is not obligated to correct a defect if (i) the Software was misused, damaged, or modified, (ii) you did not promptly report the defect to Comodo, or (iii) you have breached any provision of this agreement.

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- 9.2 **Communication.** Comodo may send you communications regarding your account, the Software, or its other products and services. By accepting this agreement, you consent to receiving marketing material from Comodo and its affiliates. You may withdraw this consent later and opt-out of receiving communication not directly related to the Software by emailing optout@comodo.com.
- 9.3 **Data Collection.** Comodo may collect any information necessary to ensure your compliance with this agreement. Comodo may also collect non-personally identifiable information about your use of the Software, which Comodo may use without restriction.
- 9.4 **Compliance.** You and your organization shall be responsible for complying with any and all necessary privacy laws and regulations in any applicable jurisdiction(s). This includes all local, state, and Federal laws in the United States, all European Union laws or directives, and any other laws throughout the world. You and your organization shall make the appropriate and required disclosures to individuals. Pursuant to Section 6, you and your organization shall indemnify Comodo for any alleged privacy or data security violation.

10. Arbitration. To the extent permitted by law, you shall notify Comodo of any dispute arising under this agreement before seeking dispute resolution. If dispute is not resolved within sixty (60) days after initial notice, then a party may proceed as follows:

- (i) The parties shall resolve the dispute by arbitration conducted through the services of the American Arbitration Association (“AAA”). The party initiating the arbitration shall send notice to the other party. All arbitration hearings will be in Clifton, New Jersey.
- (ii) The parties shall appoint a panel of three possible arbitrators to hear the matter and then each party shall name one Arbitrator to be dropped from the panel, leaving one arbitrator. The party giving notice of the arbitration shall select the first dropped arbitrator.
- (iii) The parties shall split the costs of the arbitrator equally regardless of the final decision. The party found in default of this agreement by the arbitrator shall pay all costs of the other party that are incurred in enforcing its rights under this agreement (including attorney's fees).

11. Miscellaneous.

- 11.1 Independent Contractors. The parties are acting as independent contractors and not as agents or employees of each other. Neither party has the power to bind or obligate the other, and each party is responsible for its own expenses and employees.
- 11.2 Notices. You shall send all notices to Comodo by first class mail, return receipt requested, in English writing to 1255 Broad Street, Suite 100, Clifton, NJ 07013. Comodo shall send all notices to the email address listed in your account.
- 11.3 Entire Agreement. With respect to the Software, this agreement is the entire understanding of the parties and supersedes all other agreements that may exist between the parties. The parties may execute one or more counterparts of the agreement, each of which will be deemed an original copy of the agreement. Section headings in this agreement are for reference and convenience only and are not part of the interpretation of the agreement.
- 11.4 Modifications. Comodo may modify this agreement by posting an updated copy of the agreement on its website. Comodo may also amend its website and pricing without notice. You may not modify this agreement unless the modification is signed by Comodo. Comodo may modify, supplement, or discontinue the Software, in whole or in part, without notice.
- 11.5 Waiver. A party's failure to enforce a provision of this agreement will not waive the party's right to enforce the same provision later or right to enforce any other provision of this agreement. To be effective, all waivers must be both in writing and signed by the party benefiting from the waived provision.
- 11.6 Force Majeure and Internet Frailties. Other than for payment obligations by you, neither party will be liable for a delay or failure to perform an obligation to the extent that the delay or failure is caused by an occurrence beyond the party's reasonable control. Each party acknowledges that the operation of the Internet is beyond the other party's reasonable control, and neither party will be liable for a delay or failure caused by an interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, or other such transmission failure.
- 11.7 Governing Law and Venue. The laws of New Jersey, U.S. govern the interpretation, construction, and enforcement of this agreement and all proceedings arising out of it, including tort claims, without regard to any conflicts of law principles. All proceedings or legal action arising from this agreement must be commenced in the state or federal courts of New Jersey. Both parties agree to the exclusive venue and jurisdiction of these courts.
- 11.8 Assignment. You may not assign any of your rights or obligations under this agreement. Any transfer without consent is void. Comodo may assign its rights and obligations without your consent.
- 11.9 Severability. Any provision determined invalid or unenforceable by rule of law will be reformed to the minimum extent necessary to make the provision valid and enforceable. If reformation is not possible, the provision is deemed omitted and the balance of the agreement remains valid and enforceable.
- 11.10 Survival. All provisions of the agreement relating to confidentiality, proprietary rights, indemnification, and limitations of liability survive the termination of the agreement.
- 11.11 Rights of Third Parties. There are no third party beneficiaries under the agreement.
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- 11.13 Other Comodo Products. Your use of Comodo Antivirus for Servers (CAS), Comodo Antivirus for Mac (CAVM), and Comodo Antivirus for Linux (CAVL) is bound by the terms of this agreement.

Acceptance

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Comodo Endpoint Security Manager 3.4
Professional Edition
EXHIBIT A

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