



FORNETIX[®]

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KEY ORCHESTRATION | END USER LICENSE AGREEMENT & WARRANTY



End User License Agreement ("EULA")

This EULA governs the software contained in hardware products or as stand-alone software you license or purchase (such software, "Software" and such hardware products, "Fornetix Products") from Fornetix, Inc. a Delaware corporation ("Fornetix"), unless and until we enter into a new agreement that expressly replaces this EULA. If you use the Software as an employee of, or for the benefit of, your company ("you" or "Company"), you represent that you have the power and authority to accept this Agreement on behalf of your company and your company will be the licensee under this agreement. By downloading, installing or using the Software, you consent to the terms and conditions of this EULA on behalf of the company on whose behalf you will use the Software provided under this Agreement. The effective date of this Agreement is the date that you first download, install or use the Software. If you do not agree to the terms and conditions of this Agreement or if you do not have the power and authority to accept the terms and conditions of this Agreement on behalf of your company, you may not use the Software and Fornetix is unwilling to provide you with the Software.

1. APPLICATION

This EULA sets forth the terms and conditions according to which Fornetix grants to you the right to use the Software. Differing or contrary terms shall not apply.

2. GRANT AS RIGHTS

- a. As between Company and Fornetix, Fornetix retains all ownership and intellectual property rights in the Software, in particular all patent rights, copyrights, trademarks, trade names, trade secrets, technology, ideas, know-how, and other intellectual property rights pertaining thereto. Fornetix reserves all rights not expressly granted to you.
- b. Subject to the terms set forth in this Agreement, Fornetix grants you a non-exclusive, non-sublicensable, non-transferrable, fee-bearing, limited right to install and run the Software solely on the Fornetix Product with which it is included or which it is provided for use with. The foregoing license is limited to the right to use the Software on the number of computer systems or network servers indicated on applicable order confirmations, delivery notes and/or invoices. Any use going beyond these terms is expressly prohibited.
- c. Except as expressly provided herein or to the extent permitted under applicable law, you shall not, directly or indirectly: (i) copy, modify, translate, reverse compile, disassemble, reverse engineer or otherwise determine or attempt to determine the source code of the Software or to create any derivative works based on the Software or any documentation that may be provided with the Software; (ii) create any modifications, enhancements, updates, revisions and/or new releases of the Software; (iii) remove or modify any program markings or any notice of Fornetix's proprietary rights, make the Software available in any manner to any third party; (iv) distribute, sell, transfer, lend or otherwise make available, or disclose to third parties, the Software (other than as incorporated within a Fornetix Product which is transferred to a third party as specified in the next paragraph); or (v) use any Fornetix name, trademark or logo.
- d. You may not rent, lease, lend or provide commercial hosting services to third parties with the Fornetix Product without Fornetix's express written consent.

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3. UPDATE, MODIFICATION, RELEASE

- a. You agree that (i) any and all future modifications, enhancements, updates, revisions and/or new releases to the Software which may be provided by Fonetix shall be the sole property of Fonetix or its affiliates, and (ii) Fonetix may, but shall not be obligated to, provide any such modifications, enhancements, updates, revisions, and/or new releases.
- b. You may make a reasonable number of copies of the Software, solely for archival and backup purposes, provided that all of Fonetix's copyright notices or other proprietary or restrictive legends or notices are reproduced on all such copies.
- c. You further acknowledge and agree that you shall be solely responsible for proper backup of all data stored in connection with the Software and that you shall take measures to ensure such.

4. CONFIDENTIALITY

- a. You shall retain the Software in strict confidence and not disclose it to any third party without Fonetix's express written consent. Fonetix hereby consents to the disclosure of the Software to your employees and contractors

provided that such employee or contractor has a need to know in relation to your authorized use of a Fonetix Product.

5. WARRANTY

Warranty of all Fonetix hardware and software is covered in the Fonetix Consumer Limited Product Warranty.

6. THIRD-PARTY PROPRIETARY RIGHTS

- a. Fonetix shall defend or (at its option) settle a third-party claim, action or proceeding brought against you alleging that the Software as delivered to you and used as authorized in this Agreement infringes any copyright or constitutes misappropriation of a trade secret of a third party and Fonetix shall pay any final judgments awarded or settlement agreements agreed to by Fonetix with respect thereto; provided that you provide Fonetix with: (i) prompt written notice of such claim; (ii) sole control over the defense and settlement of such claim; and (iii) all necessary information and assistance (at Fonetix's expense) to defend and/or settle such claim. Fonetix shall not be liable for any costs or expenses incurred without its prior written authorization.

- b. Notwithstanding the foregoing, Fornetix will have no liability for claims arising from: (i) combination of the Software with other software or products not provided by Fornetix; (ii) the modification of the Software, in whole or in part, by anyone other than Fornetix; (iii) any use of the Software that is in breach of this EULA or any other agreement between you and Fornetix; or (iv) continued use by you of any specified release of the Software after Fornetix notifies you that continued use may subject you to such claim of infringement and Fornetix provides you with a replacement version which mitigates the infringement.
- c. If any portion of the Software is held, or in Fornetix's opinion is likely to be held, to infringe or misappropriate a third party's intellectual property rights, or use of the Software is otherwise enjoined, then Fornetix may at its sole option and expense, within a commercially reasonable period of time: (i) procure for you the right to continue using the Software; (ii) replace the Software with non-infringing software; or (iii) in the event that neither of the foregoing is reasonably practicable, terminate this Agreement.
- d. In the event that you should suspend the use of the Software to limit potential damage in connection with a third-party claim brought against you, you agree to inform the third party

that such suspension of use does not constitute admission to any allegation of infringement of any proprietary right.

- e. THIS SECTION 6 STATES THE ENTIRE LIABILITY AND OBLIGATION OF FORNETIX, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE.**

7. LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL FORNETIX OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER ARISING OUT OF OR RELATED TO THIS EULA OR YOUR USE OF THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, FAILURE OF SECURITY, COMPUTER FAILURE OR MALFUNCTION, AND LOSS OF DATA. IN NO EVENT SHALL FORNETIX'S LIABILITY UNDER OR ARISING OUT OF OR RELATING TO THIS EULA AND THE SOFTWARE EXCEED THE AMOUNTS PAID FOR THE SOFTWARE GIVING

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**RISE TO SUCH LIABILITY BY YOU TO FORNETIX
HEREUNDER DURING THE TWELVE (12)
MONTH PERIOD PRECEDING THE DATE THE
CAUSE OF ACTION AROSE.**

8. INDEMNIFICATION

You agree to defend, indemnify, and hold harmless Fornetix, its suppliers and its resellers from and against liabilities, costs, damages and expenses (including settlement costs and reasonable attorneys' fees) arising from any claims from anybody that result from or relate to your use, reproduction or distribution of the Software or your breach of any representation, warranty, or obligation under this Agreement.

9. MISCELLANEOUS

- a. This EULA is the entire agreement between the parties relating to the subject matter hereof and all other terms are rejected. No waiver or modification of this Agreement shall be valid unless in writing signed by each party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this Agreement shall remain in full force and effect.
- b. You understand that Fornetix is subject to regulation by the U.S. government and its agencies, which prohibit export or diversion of certain technical products and information to certain countries and individuals. You warrant that you will comply in all respects with all export and re-export restrictions applicable to the technology and documentation provided hereunder.
- c. You represent that you are not a Restricted Party, which shall be deemed to include any person or entity: (i) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; (ii) on the U.S. Department of Commerce Denied Persons List, Entity List, or Unverified List; U.S. Department of the Treasury list of Specially Designated Nationals and Blocked Persons; or U.S. Department of State List of Debarred Parties; (iii) engaged in activities involving nuclear materials or weapons, missile or rocket technologies, or proliferation of chemical or biological weapons; or (iv) affiliated with or a part of any non-U.S. military organization. You shall not sell, resell, loan, disclose, or otherwise transfer any Software or Fornetix Product to any Restricted Party without prior, express written authorization

- from Fornetix and the appropriate U.S. government agency. If you become a Restricted Party during the term of this Agreement, this Agreement shall automatically terminate and you shall immediately cease all use of the Software.
- d. The Software and any associated documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 2277202-1 through 2277202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the EULA may be incorporated, a U.S. government customer will acquire the Software and any documentation with only those rights set forth in this EULA. Use of either the Software or documentation or both constitutes agreement by the U.S. government customer that the Software and documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions herein.
- e. These terms and conditions and all disputes arising out of or in connection with this Agreement, including the making thereof, will be governed by and construed exclusively in accordance with Virginia law, without regard to conflicts of laws rules. The provisions of the United Nations Convention on the International Sale of Goods (CISG) of 11 April 1980 do not apply.
- f. The parties consent to the jurisdiction of the state and federal courts located in Virginia with respect to any case or controversy arising in connection with this EULA or the Software.
- g. The invalidity of any provision of the EULA terms will not otherwise affect the validity of the EULA terms. In the case of any dispute, any invalid provision will be replaced, insofar as legally permissible, by a provision that most closely approximates and most likely represents the well-understood economic interest of the Parties in the invalid provision. The above provisions will apply accordingly in the case of any omissions in this EULA.



Fornetix Consumer Limited Product Warranty

This Consumer Limited Product Warranty ("Product Warranty") applies to the software, hardware, and accessories ("Covered Products") provided by Fornetix, Inc. ("Fornetix").

1. COVERED PRODUCTS

Covered Products means the software, hardware, and accessories provided by Fornetix to a Customer in agreement with the Fornetix Terms and Conditions.

- a. **Software** — Fornetix warrants that, for a period of ninety (90) days from the date of shipment: (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. In no event does Fornetix warrant that the Software is error free, that the Product will operate with any software or hardware other than that provided by Fornetix or specified in the documentation, or that the Product will satisfy Customer's own specific requirements. Software corrections or upgrades do not extend the Software warranty. The Product is not for resale except by

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- b. **Hardware and Accessories** — Fornetix warrants that, for a period of three (3) years (the "Warranty Period"), all hardware components of the Product shall be free from faulty workmanship and defective materials under normal use and

service. The Warranty Period shall commence on the date of shipment by Fornetix.

c. Third Party Products and Warranties —

Fornetix's warranty does not apply to: (i) products manufactured by third parties and resold by Fornetix without re-marking under Fornetix's trademarks; (ii) software products that are not developed by Fornetix, and; (iii) consumable items (e.g. batteries). To the extent permitted by the supplier, the original manufacturer's warranty shall be assigned by Fornetix to Customer and is in lieu of any warranty by Fornetix, express or implied.

2. CUSTOMER RESPONSIBILITIES

a. Tamper Seals — Fornetix hardware "Appliance"

Products are provided with tamper-evident seals. Removal of, or damage to, seals by unauthorized parties voids the Warranty and all Maintenance and Support of the Appliance. Fornetix is not responsible for any data accessed from any system where the tamper-evident seals have been removed or damaged. For FIPS enabled systems, if a tamper-evident seal is removed or damaged, the system will be considered breached and proper notifications of breach of the system must be made immediately by the Customer.

b. Conditions — Fornetix's warranty is contingent upon Customer's proper use of the Product, in accordance with any instructions or manuals provided by or available from Fornetix. Fornetix shall have no obligation under this warranty unless Customer promptly reports the claim. Fornetix's obligations under this warranty are subject to Fornetix's examination of the Product and Fornetix's determination to its reasonable satisfaction that the claimed defect or fault actually exists and is not excluded from Fornetix's warranty. If Fornetix determines that the Product is not defective or faulty within the terms of the warranty, Customer shall pay for all costs of handling, transportation and repairs at Fornetix's then prevailing repair rates.

3. EXCLUSIONS AND LIMITATIONS

a. Exclusions — Fornetix's warranty shall not apply if the defect or fault is caused by any of the following after delivery by Fornetix: accident, unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power or environmental controls, rough handling during transportation, fire or other act of God, Customer's failure to maintain the Product in accordance with Fornetix's specifications, abuses to the Product other than ordinary use, modifications by Customer, alterations or repairs by a party other than Fornetix (unless

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specifically authorized by Fonetix in writing). This warranty will be rendered void if Fonetix's serial numbers, warranty data, tamper-proof seals or quality assurance decals on the Product are removed or altered. Software corrections or upgrades do not extend the Software warranty. The Product is not for resale. Customer may not copy or reproduce the Software, and may not copy or translate the written materials without Fonetix's prior, written consent. Customer may not copy, modify, reverse compile or reverse engineer the Product, or sell, sub-license, rent or transfer any Products or any associated documentation to any third party.

- b. Limitations** — Fonetix's warranty is strictly for the benefit of Customer and does not extend to any third party. Fonetix's warranty does not apply to any software Product, or software component of a Product, which is sold or licensed subject to a separate license agreement (including without limitation a "shrink wrap" license agreement), which provides a different warranty than that stated herein.

4. REMEDY

If a hardware Product or component fails under normal use and service during the Warranty Period due to a defect in materials or faulty

workmanship, Fonetix's sole obligation shall be to repair or replace the Product or component, at Fonetix's option. Following a repair or replacement, the Warranty Period shall expire at the end of the original period. All Products and components that are replaced by Fonetix shall become Fonetix's property. Fonetix will replace defective media or documentation.

- a. Replacement Hardware** — In the event that Fonetix determines that a full hardware replacement is required, Fonetix reserves the right to replace the existing hardware with a product of comparable functionality if the original product is no longer available.
- b. Returned Merchandise** — Fonetix will accept returns for defective Covered Products which are available upon request to rma@fonetix.com. Any returns received by Fonetix without a Fonetix provided Return Merchandise Authorization (RMA) number will not be accepted.

5. DISCLAIMER

THE WARRANTIES OF FORNETIX STATED HEREIN ARE IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND

NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE EXPRESS OBLIGATION OF FORNETIX STATED HEREIN REPLACES ANY OTHER LIABILITY OR OBLIGATION OF FORNETIX ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE PRODUCTS. FORNETIX DOES NOT INSURE THE SECURITY PROVIDED BY THE PRODUCTS, NOR DOES IT WARRANT AGAINST IMPROVEMENTS IN THE TECHNICAL ARTS THAT MAY RENDER THE PRODUCTS INEFFECTIVE OR OBSOLETE.

6. LIMITATION OF LIABILITY

Notwithstanding anything herein to the contrary, Fornetix shall not be liable to Customer, or to any third party claiming through Customer, for the failure of performance of any obligation of Fornetix except as specifically set forth herein. Additionally, Fornetix's aggregate liability arising out of the sale of Products to Customer, regardless of the form of action giving rise to such liability (whether in contract, tort or otherwise, including negligence), shall not exceed the aggregate purchase price for Products paid by Customer to Fornetix pursuant to any applicable purchase order. Fornetix shall not, under any circumstances, be liable for indirect, special, incidental, consequential or punitive damages resulting from its failure of

performance. Any failures to perform any obligation under any applicable purchase order except payment of monies due, shall be excused if such failure is caused by acts of God, acts of public authorities, wars or war measures, fires, casualties, labor difficulties or strikes, shortages of material or fuel, failure or delays of suppliers or carriers, shortages of transportation, problem with any network (including telecommunications) other than that under Fornetix's control, denial of service attack, or any causes beyond the failing party's control. Fornetix shall not be liable for any claims of third parties relating to the Products. The limitations of liability contained herein are a fundamental part of the bargain, and Customer acknowledges that Fornetix would not sell the Products absent these limitations.

7. GOVERNING LAW, JURISDICTION AND ARBITRATION

This Product Warranty shall be governed in accordance with the laws of the Commonwealth of Virginia, U.S.A. In the event of any controversy, dispute or difference between the parties hereto, with respect to the interpretation of the provisions of this Agreement or to the breach or termination thereof or to the determination of the rights and obligations of the parties hereunder, either party may give

notice to the other in writing of the existence of such controversy, dispute or difference specifying its nature and the points at issue. If the same shall not be amicably resolved within thirty (30) days from the receipt of such notice, either party shall be entitled to have such controversy, dispute or difference finally settled by arbitration, in accordance with the rules of the International Chamber of Commerce (ICC) in effect on the commencement of the Warranty Period. The arbitration shall be conducted in Fairfax, Virginia, U.S.A. in the English language by a Tribunal of three (3) arbitrators appointed in accordance with such rules. The decision of the arbitrators shall be based upon the rights and obligations of the parties set forth in this Agreement and shall be binding on the parties to the arbitration proceeding and may be entered as a judgment in any court in any country having jurisdiction. Notwithstanding the

fact that this Agreement may be translated into a language other than English for the convenience of the parties or otherwise, any dispute or controversy arising from the Agreement shall be determined solely from the English language version of this Agreement.

8. ENTIRE AGREEMENT

This Product Warranty constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all proposals, understandings, or discussions, whether written or oral, relating to the subject matter of this Product Warranty and all past dealing or industry custom. No modification of this Product Warranty shall be effected by the Customer's use of any order form, purchase order, acknowledgement or other form containing additional or different terms.

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