

End User Licence Agreement (EULA)

Exhibit A

This End User License Agreement (this "Agreement") is made by and between Fortanix, Inc., a Delaware corporation ("Fortanix"), with its principal address at 3910 Freedom Circle Drive, Suite 104, Santa Clara, CA 95051, and the person or legal entity accepting this Agreement Person or Entity Name, ("End User" or "Customer"), with its principal address at ADDRESS. This Agreement is a legal agreement between Fortanix and End User. IF END USER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, END USER MAY NOT USE THE SOFTWARE. ANY INDIVIDUAL ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY MUST HAVE THE AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT. IF THE INDIVIDUAL DOES NOT HAVE SUCH AUTHORITY, THE INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT. This Agreement is effective between Fortanix and End User as of the date End User accepts this Agreement (the "Effective Date"). Fortanix and End User are individually referred to as a "Party" and collectively as the "Parties."

1. Certain Definitions.

(a) "Software" means Fortanix key management software, in machine-readable object code format only, including any associated end user documentation, supplied by Fortanix to Customer under this Agreement.

2. Ownership

The Software consists of a combination of proprietary components that are owned by or licensed to Fortanix and some free or open source components ("Open Source") that are identified at <https://support.fortanix.com/hc/en-us/articles/360041034152-List-of-third-party-software-installed..> Only those terms and conditions specified for, or applicable to, each specific Open Source software component pursuant to its applicable governing license shall be applicable to such Open Source software. Each Open Source component is the copyright of its respective copyright owner.

The Software is licensed to End User and is not sold. End User has no ownership rights in the Software. Rather, End User is hereby granted a license to use the Software. The Software is copyrighted by Fortanix. End User hereby agrees to respect and not to remove or conceal from view any copyright or trademark notice appearing on the Software or any documentation, and to reproduce all copyright or trademark notices on any copy of the Software and documentation or any portion thereof and on all portions contained in or merged into other programs and documentation.

3. License to Use

(a) Subject to the terms and conditions of this Agreement, including, but not limited to, the payment of the annual licensing fee referenced in this Section 3 below, Fortanix grants to End User a worldwide, non-exclusive, non-transferable limited license to use the Software unmodified for the sole purpose of End User's internal use and to copy the Software

provided that such copies are made in machine readable form for backup purposes only.

b) End User shall pay Fortanix an annual licensing fee upon delivery of the Software. Thereafter, an annual licensing fee is due on each successive anniversary of the Effective Date, until this Agreement is terminated as provided in Section 5.

(c) The annual licensing fees due under this Agreement do not include any shipping, duties, bank fees, sales, use, excise or similar taxes. due. If Fortanix is required to pay any such amounts, End User shall reimburse Fortanix in full.

4. Maintenance, Support and Updates

(a) If End User notifies Fortanix of a substantial program error respecting the Software, or Fortanix has reason to believe that error exists in the Software and so notifies End User, Fortanix shall at its expense verify and attempt to correct such error within thirty (30) days after the date of notification. If End User is not satisfied with the correction, then End User may terminate this Agreement, but without refund of any amount paid to Fortanix.

(b) If End User desires to continue the Software support as specified in this Section, End User shall pay to Fortanix the annual licensing fee referenced in Section 3.

(c) Fortanix may update the Software at its convenience. Such updates shall be made available for End User at no additional cost. End User may at its own discretion use the updated Software or continue using the old Software; provided, however, that if End User elects to continue using the old Software, Fortanix shall have no further liability to support the Software as specified in this Section or to indemnify End User as provided under Section 7.

5. Termination

(a) This Agreement is effective until terminated. End User may terminate this Agreement at any time by notifying Fortanix in writing, sixty (60) days in advance of requested termination date. No refund of already paid annual licensing fees will be provided. Upon termination, End User shall stop using the Software and destroy any accompanying written materials in its possession or control.

(b) This Agreement shall terminate with thirty (30) days' prior written notice from Fortanix, if End User fails to comply with the terms and conditions of this Agreement. Upon such termination, End User shall stop using the Software and destroy any accompanying written materials in its possession or control.

(c) Fortanix shall provide End User with a one (1) month advance written notice of annual licensing fees due, prior to each anniversary date of the Effective Date. If annual licensing fees are not paid within one (1) month of the anniversary date of the Effective Date, Fortanix may terminate this Agreement without notice. Upon such termination, End User shall stop using the Software and destroy any accompanying written materials in its possession or control.

6. Restrictions

The Software is confidential and copyrighted by Fortanix. End User may not modify, decompile, or reverse engineer the Software. End User may not rent, lease or sublicense the Software. Any rights not expressly granted by Fortanix to End User hereunder are reserved by Fortanix and all implied licenses are disclaimed. Any other use of the Software by any other entity is strictly forbidden and in violation of this Agreement. The Software and any accompanying written materials are protected by international copyright and patent laws and international trade provisions. No right, title or interest is granted under this Agreement in or to any trademark, service mark, logo or trade name of Fortanix. End User may not create derivative works based on the Software except as may be necessary to permit integration with other technology, and only upon pre-approval by Fortanix.

7. Intellectual Property Indemnification

(a) **Indemnity.** Fortanix shall indemnify, defend and hold harmless End User, its affiliates and their respective officers, directors, employees and agents from and against any and all third party demands, claims, and investigations arising out of or related to any allegation that the Software infringes any third party's United States patent, copyright or trademark or misappropriates any trade secret.

(b) **Remedies.** In the event that any or all of the Software subject to an infringement claim under Section 7(a), Fortanix shall, at its cost and at End User's election: (a) modify the infringing Software so that it is non-infringing but otherwise meets the relevant requirements; (b) obtain for End User a license to continue using the same Software in the manner set forth in this Agreement; or (c) refund to End User any prepaid fees, prorated for the remaining portion of the then-current term.

(c) **Procedure.** End User shall notify Fortanix of any claim for which it seeks indemnification or defense under Section 7(a). If End User elects to have Fortanix indemnify defend any such claim, End User shall: (a) grant Fortanix sole control of such claim, (b) permit Fortanix, through counsel reasonably acceptable to End User, to defend the claim; (c) cooperate with Fortanix in such defense; and (d) have the right, (but not the obligation) to employ separate counsel (at End User's expense) in order to monitor or participate in the defense of such claim. Fortanix shall not settle any claim that imposes upon End User any liability, damages, restriction or obligation without End User's prior written consent, which consent will not be unreasonably withheld.

(d) **Notwithstanding the foregoing,** Fortanix will have no liability with respect to any infringement claims arising out of: (i) combination of any Software with any hardware, software, or services not provided by Fortanix, where the combination causes the infringement and not the Software standing alone; (ii) modification of the Software other than by Fortanix; or (iii) use of Software other than in accordance with this Agreement.

8. Limited Warranty

(a) Fortanix warrants that, for a period of ninety (90) days from the Effective Date, the Software will materially conform to all applicable specifications set forth in the documentation for the Software. If the Software fails to materially conform to its applicable specifications, Fortanix shall, at its option, repair or replace the affected Software, or refund the fees paid for the affected Software.

(b) Fortanix does not warrant that the Software will meet End User's requirements, that the operation of the Software will be error-free or uninterrupted or that all Software errors will be corrected. EXCEPT FOR THAT LIMITED WARRANTY, THE SOFTWARE IS PROVIDED BY FORTANIX "AS IS" WITHOUT WARRANTY OF ANY KIND. FORTANIX DOES NOT WARRANT THAT THE SOFTWARE WILL MEET END USER'S REQUIREMENTS, OR THAT THE SOFTWARE'S OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY ERRORS CAN OR WILL BE FIXED. FORTANIX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

9. Limitation of Liability.

NEITHER PARTY WILL BE LIABLE TO THE OTHER CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, OR COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, (B) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OR LOST, DESTROYED OR CORRUPTED DATA, USE, BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (C) DAMAGES, IN THE AGGREGATE, WHICH ARE GREATER THAN THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT FOR 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION FIRST ACCRUED, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITS OR EXCEPTIONS WILL NOT APPLY TO (I) EITHER PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, OR (II) FORTANIX'S INDEMNIFICATION OBLIGATIONS IN SECTION 7 (INDEMNIFICATION). THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY IN THIS AGREEMENT.

10. Export

End User will comply with all applicable international, national, state, regional and local laws and regulations, including, without limitation, (i) all applicable export laws regarding the export or re-export of the Software, including, without limitation, the U.S. Export Administration Regulations and other end-user, end-use and destination restrictions issued by U.S. and other governments, and (ii) all applicable privacy and data protection laws and regulations. Without limiting the generality of the foregoing, End User expressly agrees that it shall not, and shall cause its representatives not to, export, directly or indirectly, re-export, divert or transfer the Software, or any direct product or portion thereof, either directly or indirectly, including via remote access, (i) to any country so restricted by the U.S. Export Administration Regulations, to any person or entity controlled by any such country, or to any national or resident of any such country, other than nationals who are lawfully admitted permanent residents of countries not subject to such restrictions, (ii) to any person or entity on the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons List, (iii) to any person or entity on the U.S. Commerce Department's Denied Persons List, or (iv) to any person or entity to which sale is prohibited under the Enhanced Proliferation Control Initiative ("EPCI"). Fortanix shall be entitled to take all actions it deems necessary to ensure compliance with this Section, including, but not limited to, developing internal compliance practices such as performing checks and implementing use restrictions with respect to the Software. End user agrees to the foregoing and represents that End User is not located in, under the control of, a national or resident of any such country, on any such list, or subject to prohibition under EPCI.

11. Miscellaneous

This Agreement is governed in all respects by the laws of the State of California as such laws are applied to agreements entered into and to be performed entirely within California between California residents. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The Parties are independent contractors, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. End User may not assign, sublicense, or otherwise transfer this Agreement, by merger or operation of law or otherwise, without the prior written consent of Fortanix, not to be unreasonably withheld. If any provision of this Agreement is held illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected thereby. All notices permitted or required under this Agreement will be in writing and will be deemed given upon personal delivery or rejection. The failure or delay of any of the Parties to enforce any right, power or remedy under this Agreement will not constitute a waiver of such right, power or remedy. Neither Party is liable if its failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond that Party's reasonable control, including acts of God, civil commotion, war, strikes, labor disputes, Internet service interruptions or slowdowns, vandalism or "hacker" attacks, epidemics or pandemics, acts of terrorism or governmental demands or requirements. The prevailing Party in any action brought under this Agreement is entitled to an award of reasonable attorneys' fees and costs. This Agreement, together with any documents incorporated herein by reference, completely and exclusively state the agreement of the Parties regarding the subject matter hereof, and supersedes all prior and contemporaneous proposals, representations, agreements, or other communications between the Parties, oral or written, regarding such subject matter. This Agreement will only be modified by a subsequently dated written document signed by each Party's authorized representatives. The terms and conditions of this Agreement apply to all Purchase Orders and supersede any different or additional terms on Purchase Orders. The Parties agree that any preprinted terms and conditions on a Quotation or Purchase Order are null and void.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.