

LIMITED WARRANTY

A. WARRANTIES.

1. Express Warranty. Subject to the terms and conditions of this Limited Warranty and in lieu of any other (if any) express warranties, Fiddlehead™ warrants that under normal use and service and use in compliance with all instructions provided to You, on the date of acquisition as shown on Your receipt or similar proof of payment and for the next i) 90 days for the SOFTWARE and ii) 1 year for the Hardware Device (hereafter each defined as the "Warranty Period"), that the SOFTWARE and Hardware Device will substantially conform with the accompanying Fiddlehead™ packaging and documentation. As to any defects discovered after the Warranty Period, there is no warranty or condition of any kind.

Fiddlehead™ is not intended for use in the operation of Nuclear Facilities, Aircraft Navigation, communication systems or air traffic control machines in which case the failure of the SOFTWARE could lead to death, personal injury, or severe physical or environmental damage.

This Limited Warranty does not cover, and no warranty of any kind is provided with respect to any subjective or aesthetic aspects of the Hardware Device or SOFTWARE. The express warranty stated above is the only express warranty made to You and is provided in lieu of all other express or implied warranties and conditions (except for any non-disclaimable implied warranties that exist), including any created by any other documentation or packaging. No information or suggestions (oral or in a record) given by Fiddlehead™, its agents, affiliates or suppliers or its or their employees or agents, shall create a warranty or condition or expand the scope of this Limited Warranty. The "Governing Law; Exclusive Forum" provision of Part 2 of the Agreement applies to this Limited Warranty and is incorporated herein by this reference.

2. Limitation on Duration of Implied Warranties. If You are a consumer, You may also have an implied warranty and/or condition under the laws of some jurisdictions, which is hereby limited to the duration of the Warranty Period. Some jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the foregoing limitation may not apply to You.

B. EXCLUSIVE REMEDY. Subject to applicable law and the following, and provided that You return the SOFTWARE and Hardware Device to Your place of acquisition (or, if that place will not accept the return, to C&S Operations, 499 Col. Eileen Collins Blvd. Syracuse, NY 13212) with a copy of Your receipt or other bona fide proof of payment during the Warranty Period, Fiddlehead™ will, at its option and as Your exclusive remedy for breach of this Limited Warranty and any implied warranties:

repair or replace all or part of the defective SOFTWARE or the defective Hardware Device; or

make payment to You for the allowable damages that You incurred in reasonable reliance, but only up to the amount You paid (if any) for the SOFTWARE and/or the Hardware Device less reasonable depreciation based on actual use.

The above remedy is subject to the following:

Any repaired or replaced SOFTWARE or Hardware Device will be new or refurbished or serviceably used, comparable in function and performance to the original Hardware Device (or SOFTWARE), and may include third party items;

Any SOFTWARE or Hardware Device repaired or replaced under this Limited Warranty will be warranted for the remainder of the original Warranty Period or 30 days from the date of shipment of the item back to You, whichever is longer. If an upgrade to SOFTWARE is delivered with a new limited warranty, then the terms of that new limited warranty will apply only to the SOFTWARE as upgraded, but will not apply to the original Hardware Device;

Except as otherwise required by legislation in Your jurisdiction, costs associated with transport (including packaging) for warranty service shall be at Your expense; and

Fiddlehead™ does not provide any warranties regarding any other services provided under this Limited Warranty and disclaims all duties (if any) of workmanlike effort or of lack of negligence regarding such services.

C. EXCLUSION OF OTHER DAMAGES. TO THE FULL EXTENT ALLOWED BY LAW, FIDDLEHEAD™ AND ITS SUPPLIERS, AFFILIATES AND AGENTS ARE NOT LIABLE FOR ANY:

(i) CONSEQUENTIAL OR INCIDENTAL DAMAGES;

(ii) DAMAGES OR LOSS OF ANY NATURE WHATSOEVER RELATING TO LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR PRIVACY OR CONFIDENTIALITY, ANY INABILITY TO USE ALL OR PART OF THE HARDWARE DEVICE OR SOFTWARE, PERSONAL INJURY, OR ANY FAILURE TO MEET ANY DUTY (INCLUDING BUT NOT LIMITED TO ANY DUTY OF NEGLIGENCE, GOOD FAITH OR OF WORKMANLIKE EFFORT); OR

(iii) INDIRECT, SPECIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THE SOFTWARE OR HARDWARE DEVICE. THE FOREGOING APPLIES EVEN IF FIDDLEHEAD™ OR ANY SUPPLIER, AFFILIATE OR AGENT HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES; AND EVEN IN THE EVENT OF FAULT, TORT (INCLUDING NEGLIGENCE), STRICT OR PRODUCT LIABILITY, MISREPRESENTATION OR OTHER REASON.

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusions may not apply to You.

D. **EXCLUSIONS FROM COVERAGE.** This Limited Warranty shall not apply and Fiddlehead™ has no liability under this Limited Warranty if the SOFTWARE or Hardware Device:

- is used for commercial purposes (including rental or lease) or purposes beyond the scope of the SOFTWARE license;
- is modified or tampered with;
- is damaged by Acts of God, power surge, misuse, abuse, negligence, accident, wear and tear, mishandling, misapplication, or other causes unrelated to defects in the Hardware Device or the SOFTWARE;
- is damaged by programs, data, viruses, or files, or during shipments or transmissions;
- is not used in accordance with the accompanying documentation and use instructions; or
- is repaired, modified or altered by other than Fiddlehead™.

This Limited Warranty does not include any warranty regarding legal rights or abilities, such as any warranty regarding title, quiet enjoyment or lack of infringement.

E. **REGISTRATION.** You need not register Your acquisition of the SOFTWARE and Hardware Device for the Limited Warranty to be effective.

F. **BENEFICIARY.** To the extent allowed by applicable law, the Limited Warranty is only made to You, the first licensed user of the SOFTWARE or purchaser of the Hardware Device, and there are no third party beneficiaries of the Limited Warranty. Except as required by law, this Limited Warranty is not intended for and does not apply to anyone else, including anyone to whom You make any transfer as authorized in the Agreement.

To Exercise Warranty:

1. Submit proof of payment in the form of a bona fide, dated receipt, or invoice (or a copy) evidencing that You are the beneficiary of this Limited Warranty and that Your request for a remedy is made within the Warranty Period;
2. Follow Fiddlehead™'s shipping and other instructions if it determines that all or part of Your Hardware Device or SOFTWARE requires return. To obtain the Limited Warranty performance, You must take or deliver the item in either its original packaging or packaging that provides an equal degree of protection to the location specified by Fiddlehead™. Except as otherwise required by legislation in Your jurisdiction, costs associated with transport (including packaging) for warranty service shall be at Your expense.
3. Delete or remove any files or data You consider private or confidential prior to sending the item to Fiddlehead™.

Failure to follow the above instructions may result in delays, cause You to incur additional charges, or may void Your warranty.

This Limited Warranty gives You specific legal rights and You may also have other rights which vary from jurisdiction to jurisdiction. Where any term of this Limited Warranty is prohibited by such laws, it shall be null and void, but the remainder of the Limited Warranty shall remain in full force and effect if its allocation of risks is not materially disturbed.