

Fenix Alliance Support Services Agreement

IF YOU LIVE IN (OR IF YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES, PLEASE READ THE BINDING ARBITRATION AND CLASS ACTION WAIVER SECTION AT THE END OF THIS SERVICE AGREEMENT. IT AFFECTS HOW DISPUTES ARE RESOLVED.

You should read and print this service agreement for your records.

This service agreement ("**Service Agreement**") applies to Support Services (defined below) and is entered into by and between the customer using the Support Services ("**you**" or "**your**") and Fenix Alliance ("**we**," "**us**" or "**our**") (**you** and **us**, each, a "**Party**" and, collectively, the "**Parties**"). This Service Agreement does not apply to any professional services (i.e., support or consulting) offered or provided to enterprise customers (e.g., subject to a Fenix Alliance Business Services Agreement, or other Fenix Alliance products or services for business agreement).

By purchasing or using the Support Services, you accept this Service Agreement. Your use of the Support Services, if provided on or in connection with a Fenix Alliance website, is also subject to that website's terms (e.g. Terms of Use, Privacy Statement, etc., collectively referred to as "**TOU**") and any other policies on that website. The Service Agreement and TOU, if applicable, constitute the entire agreement between you and Fenix Alliance with respect to the Support Services. These Service Agreement terms control in the event of conflict.

Fenix Alliance reserves the right at any time in its sole discretion to change the Support Services and this Service Agreement. If changes increase the price or materially decrease the level of Support Services purchased, 30 days' email notice will be provided. Your use of the Support Services after the effective date of any change constitutes your acceptance of the changed Support Services and Service Agreement.

ALL LIMITATIONS OF REMEDIES AND DISCLAIMERS OF WARRANTIES, CONDITIONS AND LIABILITY FORM AN ESSENTIAL BASIS OF THE PARTIES' AGREEMENT.

THE SUPPORT SERVICES ARE GOVERNED BY THIS SERVICE AGREEMENT AND ANY APPLICABLE TOU ONLY, AND NOT BY ANY OTHER SERVICE AGREEMENT WITH FENIX ALLIANCE. YOU REPRESENT THAT YOU HAVE REACHED THE AGE OF MAJORITY IN YOUR JURISDICTION OF RESIDENCE AND THAT YOU HAVE READ AND UNDERSTAND ALL THE PROVISIONS OF THIS SERVICE AGREEMENT.

Support Services

Fenix Alliance Customer Support Service connects you with support agents for help with a suite of Fenix Alliance support-related tasks ("**Support Services**"). Support Services may be included as part of your validly licensed Fenix Alliance product or purchased (e.g. as a one-time pay-per-incident service ("PPI Service"), or a subscription program), but exclude any professional services (i.e. support or consulting) offered or provided to enterprise customers (e.g. subject to a Fenix Alliance Enterprise Services Agreement, or other Fenix Alliance products or services for business agreement).

1. **Consent for Remotely Based or Data-Connected Services.** The software used with the Support Services may connect to Fenix Alliance and other service providers over a data connection (e.g. the internet or a wireless carrier). In some cases, you will not receive a separate notice when they connect. **By using the Support Services, you consent to the transmission of information via the Support Services.**
2. **Misuse of Remotely Based or Data-Connected Services.** You may not use the Support Services in any way that could harm Fenix Alliance, its affiliates or any other service provider or any computer network or system or impair anyone else's use thereof. You may not use the Support Services to try to gain unauthorized access to any service, data, account or network by any means.
3. **Cooperation and Supportability.** Fenix Alliance's ability to deliver the Support Services depends upon your full and timely cooperation as well as the accuracy and completeness of any information you provide. You must have an eligible device and validly licensed Fenix Alliance software that meet(s) the applicable minimum requirements for supportability described in the [Fenix Alliance Lifecycle Policy](#) before Fenix Alliance can provide the Support Services. Fenix Alliance reserves the right to cancel the Support Services and/or provide a refund due to problems with your device, your system requirements, or configuration, or for any other reason beyond our control that makes providing the Support Services impossible or impractical.
4. **Subscription.** The Support Services may be available through a subscription program in your region. If you enroll in a subscription program for the Support Services, the subscription is valid only under your Fenix Alliance account that is associated with the subscription for the Fenix Alliance software devices. To enroll in and use your Support Services subscription, you will be asked to validate your Fenix Alliance account ID (MSA). You may not share or sell your subscription. You are responsible for any activities that occur under your subscription.

5. **PPI Service.** Support Services may be available as a one-time pay-per-incident service ("PPI Service") for a one-time support service on an individual device for a fixed fee.
6. **Data Backup.** You understand that data can be inadvertently lost, corrupted or breached, and agree that you are wholly responsible for the backup of any and all data, software, information or other files stored on your device, including all disks and drives, or other associated devices (collectively, "Your Data") before receiving the Support Services. You further understand and agree that Fenix Alliance may need to transfer Your Data, including any confidential, proprietary and personal information stored on your device, to third party service providers in order to perform the Support Services. Any transfer will be done in accordance with our Privacy Statement. To the maximum extent permitted by law, Fenix Alliance is not responsible or liable for any disclosure, loss or corruption of Your Data.
7. **Remote Access.** To provide the Support Services, Fenix Alliance may be required to connect remotely to your device, which allows us to access and control your device, view your device screen, install software and change settings on your device. We may ask you to download or accept Fenix Alliance or third-party software licensing terms to establish the remote connection. You are responsible for any download charges that may apply and for paying the fees charged by your data connection provider(s) (e.g. via internet, or Wi-Fi or wireless carrier). Those fees are in addition to any fees you pay us for the Support Services and we will not reimburse you for them.

We may run diagnostic tools on your device to determine whether it meets the minimum system requirements for us to perform certain Support Services, such as upgrades. You must agree to this step for us to provide those Support Services. If we are unable to establish a remote access connection to your device or complete any of the above steps, we may not be able to provide Support Services.

8. **Software Installations/End User License Agreements/Authority.** If the Support Service includes software installations, regardless of whether the software is provided by Fenix Alliance or a third-party software provider, you must have your software and software product keys available before installation. By providing Fenix Alliance with information, software or applications to install or transfer on your behalf, you represent that you have the right to authorize Fenix Alliance to take such action. You understand and acknowledge that Fenix Alliance may need to accept End-User License Agreements ("EULAs") on your behalf for such software installations and you agree to comply with any EULAs. If you request installation of software from a third-party software provider in connection with the Support Services, we will give you the opportunity to review the corresponding EULA; you assume sole responsibility if you

decide not to review it. You understand and agree that Fenix Alliance does not control the terms of any third party EULAs and will not review such EULAs prior to accepting them on your behalf.

9. **Support Services Subscription Cancellation.** You may cancel your Support Services subscription by contacting a Fenix Alliance support agent or us <https://account.alliancepassport.com>. When your subscription is automatically near the end of its existing term, you must cancel the subscription at least 3 days before the billing date to avoid a charge for the next period. The billing date is the anniversary of your initial enrolment date. You may review your billing and initial enrolment dates at <https://account.alliancepassport.com>.

Fenix Alliance reserves the right, in its sole discretion, to terminate your subscription for Support Services without notice if your payment is not made on time, you violate this Service Agreement, or we determine that the subscription was used by someone else or for support on someone else's device. We may also terminate the Support Services or your subscription if we determine that you are ineligible to receive the Support Services.

Payment, Billing, Refund

1. **Payment and Account Information.** To purchase a PPI Service or a Support Service subscription, you must provide a payment method and necessary information (e.g. credit card or debit or check card number required to purchase the Support Services). We are not responsible for your card issuer or bank charging you as a result of our processing of your credit/debit card payment. If you purchase a Support Services subscription, you may have it billed to your credit/debit card monthly (if available in your region) or annually until cancelled.

You can manage your account online at <https://account.alliancepassport.com>. You agree to permit Fenix Alliance to use any updated card or account information your issuing bank or the payment network provides. You agree to keep your billing account and contact information current. Changes made to your billing account won't affect charges we submit to your billing account before we could reasonably act on those changes.

2. **Billing Information.** By providing Fenix Alliance with payment information, you (i) represent that you are authorized to use the payment method, (ii) represent that all payment information is accurate, and (iii) authorize Fenix Alliance to charge you for the Support Services using your payment method. We may bill you (a) in advance,

(b) at the time of purchase, (c) shortly after purchase, or (d) on a recurring basis, for your Support Services subscription. We may bill you at the same time for more than one of your prior billing periods for amounts that haven't previously been processed.

3. **Recurring Billing.** Your Support Services subscription will include recurring billing if it is available in your region. If you currently have a Support Services subscription, it will be upgraded to include recurring billing when that feature is made available in your region. But you may choose to 'turn off' recurring billing at any time by going to <https://account.alliancepassport.com>.

If your Support Services subscription includes annual recurring billing, we will inform you by email each year before your billing date. Once we have informed you that the subscription will be billed for the next period, we may charge you the then current price for the new subscription term. We will also remind you that we will bill your chosen payment method for the subscription, whether it was on file on the billing date or provided later.

4. **Payment History and Errors.** We will provide your payment history online on the Payment and Billing website (<https://account.alliancepassport.com>). It is your responsibility to review your payment history and notify us of any errors or unauthorized charges. You must contact us within 120 days after any erroneous or unauthorized charge first appears on your bill. We will then promptly investigate the charge. If you do not tell us within that time, you release us from all liability and claims of loss resulting from the erroneous or unauthorized charge and we won't be required to correct the error or provide a refund. If Fenix Alliance identifies a billing error, we will correct it within 90 days.
5. **Refund.** You may cancel your Support Services subscription within 30 days after initial subscription purchase and request a refund if we are unable to resolve your support issue. If you or Fenix Alliance cancels your Support Services subscription after the initial 30-day period, we will not refund the amount you paid. If you paid for a PPI Service (not a subscription), you may request a refund within 30 days after your purchase if we are unable to resolve your support issue.

Links to Third-Party Sites

If you are presented with a link to a third-party website while receiving the Support Services (whether the link is provided by Fenix Alliance or embedded in the website on which you receive the Support Services or otherwise), you acknowledge that these links are provided for your ease of reference and convenience only, that the linked sites are

not under Fenix Alliance's control and Fenix Alliance is not responsible for the contents of any link or linked site or any changes or updates to such sites, and provision of the linked sites does not constitute endorsement of any kind of material they contain or any association with their operators. Fenix Alliance is not responsible for webcasting or any other form of transmission received from any linked site.

Notices

When you sign up for Support Services and give your email address, you consent to Fenix Alliance providing you notifications about the Support Services or information the law requires us to provide to you via that address. Notices emailed to you will be deemed given and received when the email is sent.

No Warranty, Limitation of Remedies

1. **NO WARRANTY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SUPPORT SERVICES ARE PROVIDED "AS IS" AND FENIX ALLIANCE DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY CONDITION OR QUALITY, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SUPPORT SERVICES, SOFTWARE, DIAGNOSTICS, OR OTHER MATERIALS OR INFORMATION WE PROVIDE. YOU BEAR THE ENTIRE RISK OF THE SUPPORT SERVICES' QUALITY AND PERFORMANCE.
2. **LIMITATION OF REMEDIES.** If the law provides any implied warranties despite the exclusions and limitations in this Service Agreement, your remedies are limited as determined by us, in the case of Support Services, to either:
 - Re-performance of the Support Services, or
 - a refund of the price you paid (if any) for the Support Services.

This is your only remedy for a breach of warranty or condition, even if the remedy fails of its essential purpose.

Unless the law mandates otherwise, we will determine the order in which these limited remedies are provided. You may have additional consumer rights under the law which this Service Agreement cannot change.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES, YOU CAN RECOVER FROM FENIX ALLIANCE AND ITS VENDORS ONLY DIRECT DAMAGES UP TO THE AMOUNT YOU PAID FOR THE SUPPORT SERVICES (OR UP TO \$5.00 USD IF THE SUPPORT SERVICES WERE FREE); AND
- NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF YOUR DATA OR LOSS OF BUSINESS, FOR ANY MATTER RELATED TO THIS SERVICE AGREEMENT, ANY SUPPORT SERVICES OR ANY OTHER MATERIALS OR INFORMATION THAT FENIX ALLIANCE PROVIDES, EVEN IF FENIX ALLIANCE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY WERE FORESEEABLE.

THIS LIMITATION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION OR THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR FOR FRAUD, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY A PARTY OR FOR DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

YOU ARE RESPONSIBLE FOR YOUR USE OF THE SUPPORT SERVICES AND ARE LIABLE FOR ANY RESULTING DAMAGE THEREFROM TO THE MAXIMUM EXTENT THE LAW PERMITS.

Contracting Party, Governing Law, and Location for Resolving Disputes

- If you live in the **United States**, you are contracting with Fenix Alliance Inc., The laws of the state where you live govern the interpretation of this Service Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of laws principles except that the Federal Arbitration Act governs all provisions relating to arbitration. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in Sussex County, Delaware, for all disputes arising out of or relating to this Service Agreement or the Support Services that are heard in court (excluding arbitration and small claims court).

- If you live in **Canada**, you are contracting with Fenix Alliance Inc., 16192 Coastal Highway, Lewes, DE 19958, USA. The laws of the province where you live govern the interpretation of this Service Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of laws principles. You and we irrevocably consent to the exclusive jurisdiction and venue of the courts in Ontario for all disputes arising out of or relating to this Service Agreement or the Support Services.
- If you live in **North or South America outside the United States or Canada**, you are contracting with Fenix Alliance Inc, 16192 Coastal Highway, Lewes, DE 19958, USA. Delaware state law governs the interpretation of this Service Agreement and claims for breach of it, regardless of conflict of laws principles. The laws of the country where you live govern all other claims, including consumer protection, unfair competition, and tort claims.
- If you live in **Europe, the Middle East, or Africa** , you are contracting with Fenix Alliance Ireland Operations Limited, 8-9 Marino Mart, Ballybough, Dublin 3, D03 P590, Ireland and the laws of Ireland govern the interpretation of this Service Agreement and claims for breach of it, regardless of conflict of laws principles. The laws of the country where you live govern all other claims, including consumer protection, unfair competition, and tort claims. You and we irrevocably agree to the exclusive jurisdiction and venue of the Ireland courts for all disputes arising out of or relating to this Service Agreement or the Support Services.
- If you live in **Asia or the South Pacific (other than the countries called out below)**, you are contracting with Fenix Alliance (Singapore) Regional Sales Corp., Delaware state law governs this Service Agreement, regardless of conflict of laws principles. Any dispute arising out of or relating to this Service Agreement, the Support Services or the hardware or software will be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the Singapore International Arbitration Center ("SIAC"). These rules are incorporated by reference into this clause. The tribunal will consist of one arbitrator appointed by the Chairman of SIAC. The language of arbitration will be English. The decision of the arbitrator will be final, binding, and incontestable. The decision may be used as a basis for judgment in any country or region.
- If you live in the **People's Republic of China**, you are contracting with Fenix Alliance (China) Company Limited. The laws of the People's Republic of China govern this Service Agreement regardless of conflict of laws principles. You may submit any dispute arising out of or in relation to this Service Agreement for arbitration to the China International Economic and Trade Arbitration Commission (the "CIETAC") in accordance with the rules of arbitration of CIETAC in Beijing.

- If you live in **Japan**, you are contracting with Fenix Alliance Japan Co., Ltd. The laws of Japan govern this Service Agreement and any matters arising out of or relating to it or the Support Services. You and we irrevocably agree to the exclusive original jurisdiction and venue of the Tokyo District Court for all disputes arising out of or relating to this Service Agreement or the Support Services.
- If you live in the **Republic of Korea**, you are contracting with Fenix Alliance Korea, Inc., The laws of the Republic of Korea govern this Service Agreement. You and we irrevocably agree to exclusive original jurisdiction and venue of the Seoul District Court for all disputes arising out of or relating to this Service Agreement or the Support Services.
- If you live in **Taiwan**, you are contracting with Fenix Alliance Taiwan Corp., The laws of Taiwan govern the interpretation of this Service Agreement. You and we irrevocably designate the Taipei District Court as the court of first instance having jurisdiction over any disputes arising out of or in connection with this Service Agreement or the Support Services.

Binding Arbitration and Class Action Waiver (United States Only)

Binding Arbitration and Class Action Waiver If You Live In (or, if a Business, Your Principal Place of Business Is In) the United States. We hope we never have a dispute, but if we do, you and we agree to try for 60 days to resolve it informally. If we can't, you and we agree to **binding individual arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury.** Instead, a neutral arbitrator will decide and the arbitrator's decision will be final except for a limited right of review under the FAA. **Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity aren't allowed. Nor is combining individual proceedings without the consent of all parties.**

1. **Disputes Covered—Everything Except IP.** The term "dispute" is as broad as it can be. It includes any claim or controversy between you and us concerning this Service Agreement, the Support Services, your subscription or account, their price, advertising, marketing, communications, your purchase transaction, billing, or your Data, under any legal theory including contract, warranty, tort, statute, or regulation, **except disputes relating to the enforcement or validity of your, your licensors', our, or our licensors' intellectual property rights.**
2. **Mail a Notice of Dispute First.** If you have a dispute and our customer service representatives can't resolve it, send a Notice of Dispute by U.S. Mail to **Fenix Alliance Inc., ATTN: CELA ARBITRATION, 16192 Coastal Highway, Lewes, DE 19958, USA.** Tell

us your name, address, how to contact you, what the problem is, and what you want. A form is available at <https://bit.ly/2FT8kQM>. We'll do the same if we have a dispute with you. After 60 days, you or we may start an arbitration if the dispute is unresolved.

3. **Small Claims Court Option.** Instead of mailing a Notice of Dispute, you may sue us in small claims court in your county of residence (or, if a business, your principal place of business) or Sussex County, Delaware, if you meet the court's requirements.
4. **Arbitration Procedure.** The AAA will conduct any arbitration under its Commercial Arbitration Rules (or if you are an individual and use the Support Services for personal or household use, or if the value of the dispute is \$75,000 or less whether or not you are an individual or how you use the Support Services, its Consumer Arbitration Rules). For more information, see www.adr.org or call 1-800-778-7879. To start an arbitration, submit the form available at <https://bit.ly/2FT8kQM> and to the AAA and mail a copy to us. In a dispute involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in your county of residence (or, if a business, your principal place of business) or Sussex County, Delaware. You choose. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually to satisfy your individual claim. Under AAA rules, the arbitrator rules on his or her own jurisdiction, including the arbitrability of any claim. But a court has exclusive authority to enforce the prohibition on arbitration on a class-wide basis or in a representative capacity.
5. **Arbitration Fees and Payments.**
 1. **Disputes Involving \$75,000 or Less.** We will promptly reimburse your filing fees and pay the AAA's and arbitrator's fees and expenses. If you reject our last written settlement offer made before the arbitrator was appointed, your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than this last written offer, we will: (i) pay the greater of the award or \$1,000; (ii) pay your reasonable attorney's fees, if any; and (iii) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration.
 2. **Disputes Involving More than \$75,000.** The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.
6. **Conflict with AAA Rules.** This Service Agreement governs to the extent it conflicts with the AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.
7. **Must File Within One Year.** You and we must file in small claims court or arbitration any claim or dispute (except intellectual property disputes—see paragraph 1 above) within one year from when it first could be filed. Otherwise, it's permanently barred.

8. **Rejecting Future Arbitration Changes.** You may reject any change we make to the Binding Arbitration and Class Action Waiver section (except address changes) by sending us notice within 30 days of the change by U.S. Mail to the address in paragraph 2 above. If you do, the most recent version of the section before the change you rejected will apply.
9. **Severability.** If any part of the Binding Arbitration and Class Action Waiver section is found to be illegal or unenforceable, the remainder will remain in effect (with an arbitration award issued before any court proceeding begins), except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, the Binding Arbitration and Class Action Waiver section will be unenforceable in its entirety.