

FENIX TERMS OF USE

Effective Date: 31 May 2019

Please read these Terms of Use (this "Agreement" or the "Terms of Use") carefully before using services offered by FENIX.CASH Limited (the "Company," "we," "us," or "our"). This agreement sets forth the legally binding terms and conditions for your use of the websites at <https://fenix.band> and at <https://fenix.cash> (collectively, the "FENIX websites") and FENIX-branded properties owned and operated by the Company, including any mobile software applications offered or published by the Company (collectively with the FENIX websites, "FENIX").

By using the FENIX websites or FENIX in any manner, including but not limited to visiting or browsing the FENIX websites or FENIX, you agree to be bound by these Terms of Use.

These Terms of Use apply to all users of the FENIX websites or FENIX, including users who are also contributors of content, information, and other materials or services on the FENIX websites.

Acceptance of Terms

The websites at <https://fenix.band> and at <https://fenix.cash> (collectively, the "FENIX websites") and FENIX-branded properties owned and operated by the Company, including any mobile software applications offered or published by the Company (collectively with the FENIX websites, "FENIX") are offered subject to acceptance without modification of all of the terms and conditions contained in this document (the "**Terms of Use**"), which Terms of Use also incorporate:

- The Privacy Policy available at [.];
- The Copyright Policy available at [.]; and
- all other operating rules, policies and procedures that may be published from time to time on the FENIX websites by the Company,

each of which is incorporated by reference into these Terms of Use and each of which may be updated by the Company from time to time without prior notice to you.

In addition, some services offered through FENIX may be subject to additional terms and conditions implemented by the Company from time to time. Your use of any such services is subject to those additional terms and conditions, which are deemed to be incorporated into these Terms of Use.

If you are using or opening an account on behalf of a company, entity or organization (including, but not limited to, a recording label) (each an "**Artist Entity**"), then you represent and warrant that you:

- (i) are an authorized representative of that Artist Entity and any recording artists represented by such Artist Entity (a "**Represented Artist**") with the authority to bind such Artist Entity or Represented Artist to these Terms of Use; and
- (ii) agree to be bound by these Terms of Use on behalf of such Artist Entity and/or Represented Artist.

Minimum Age to Access FENIX.

FENIX is available only to individuals who are at least 16 years old.

You represent and warrant that if you are an individual, then you are of legal age to form a binding contract, and that all registration information you submit is accurate and truthful.

The Company may, in its sole discretion, refuse to offer FENIX to any person or entity and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access FENIX is revoked in such jurisdictions.

Modification of Terms of Use.

The Company reserves the right, at its sole discretion, to modify or replace any of the terms in these Terms of Use, or change, suspend, or discontinue FENIX (including without limitation, the availability of any feature, database, or content) at any time by posting a notice on either or both of the FENIX websites or by sending you an e-mail or other online message within FENIX.

The Company may also impose limits on certain features and services or restrict your access to parts or all of FENIX without notice or liability.

It is your responsibility to check these Terms of Use periodically for changes. Your continued use of FENIX following the posting of any changes to these Terms of Use constitutes acceptance of those changes. Notwithstanding the preceding sentences of this section, no modifications to these Terms of Use will apply to any dispute between you and the Company that arose prior to the date of such modification.

Rules and Conduct.

As a condition of use, you promise not to use FENIX for any purpose that is prohibited by these Terms of Use.

FENIX (including, without limitation, any Content, as defined below) is provided only for your own personal, non-commercial use (except with respect to individual recording artists, collections of recording artists, Artist Entities or Represented Artists (each, an "**Artist**") selling Music, Merchandise or other Content (each as defined below) as authorized through FENIX).

You are responsible for all of your activity in connection with FENIX.

For purposes of these Terms of Use, the term "**Content**" includes, without limitation, any User Submissions, videos, audio clips, written forum comments, information, data, text, photographs, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible by the Company or its partners on or through FENIX.

By way of example, and not as a limitation, you shall not (nor permit any third party to) either (a) take any action, or (b) upload, download, post, submit, or otherwise distribute or facilitate distribution of any content on or through FENIX, including without limitation any User Submission, that:

- infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty;
- you know is false, misleading, untruthful or inaccurate;

- is unlawful, threatening, abusive, harassing, defamatory, libellous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("**spamming**");
- involves commercial activities and/or sales without the Company's prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- exploits people in a sexual, racist or violent manner;
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of the Company or any third party; or
- impersonates any person or entity, including any employee or representative of the Company.

Additionally, you shall not:

- (i) take any action that imposes or may impose (as determined by the Company, in its sole discretion) an unreasonable or disproportionately large load on the Company's (or its third party providers') infrastructure;
- (ii) interfere or attempt to interfere with the proper working of FENIX or any activities conducted on FENIX;
- (iii) bypass any measures that the Company may use to prevent or restrict access to FENIX (or other accounts, computer systems or networks connected to FENIX);
- (iv) run Maillist, Listserv, any form of auto-responder or spamming on FENIX; or
- (v) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the FENIX website.

You shall not (directly or indirectly):

- (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of FENIX, except to the limited extent applicable laws specifically prohibit such restriction;
- (ii) modify, translate, or otherwise create derivative works of any part of FENIX; or
- (iii) copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder. You shall abide by all applicable local, state, national and international laws and regulations.

The Company does not guarantee that any Content or User Submissions (as defined below) will be made available on the FENIX website or through FENIX.

The Company has no obligation to monitor the FENIX website, FENIX, Content, or User Submissions. However, the Company reserves the right to

- (i) remove, edit or modify any Content in its sole discretion, including without limitation, any User Submissions, from the FENIX website or FENIX at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if the Company is concerned that you may have violated these Terms of Use), or for no reason at all; and
- (ii) to remove or block any User Submissions from FENIX.

The Company reserves the right to investigate and take appropriate legal action against anyone who, in the Company's sole discretion, violates this provision, including, without limitation, terminating your account and/or reporting such activity or Content to law enforcement authorities.

Fan Personal Information – Fans.

As a condition to using certain features of FENIX (including, without limitation, the free download feature, or making a purchase from an Artist or, as the case may be, the Company), you may be required to provide certain personal information to the Company or relevant Artists, such as your e-mail address, country of residence and zip/postal code (together, "**Fan Information**").

You may register with the Company as a fan and create a user account ("**Fan Account**"), which will allow you to access certain features of FENIX that are only available through Fan Accounts.

Following an Artist or purchasing something from an Artist (an "**Artist Purchase**") gives that Artist access to your email address. Your history of purchases of Music, and any information you provide for your profile page will be available to other users of FENIX, including Artists, by default, subject to our Privacy Policy.

As a condition to each such Artist's right to receive such Fan Information, the Company requires each Artist to agree to the terms set forth in the next section of this Agreement.

However, you acknowledge that the Company has no control over the use of any Fan Information by Artists, and you further acknowledge and agree that FENIX shall not be responsible or held liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the Artists' use of your or another's Fan Information.

Fan Information – Artists.

In connection with certain features of FENIX, including by requiring that fans provide you with their e-mail addresses and other personal information in order to access the free download option, you may collect certain types of Fan Information.

As a condition to receiving such Fan Information, you acknowledge and agree that you will not disclose, rent, or sell any Fan Information to any third party, and you will use the Fan Information only in connection with the Artist's mailing list or Artist Purchase, in order to provide fans with general information and news about the Artist, such as upcoming shows, new Music or other Content delivered in connection with Artist Purchases.

You further agree that any e-mail or other communication sent to the Artist's mailing list, or sent in connection with an Artist Purchase, will comply with e-mail marketing laws and include a mechanism by which the recipient can unsubscribe from the mailing list,

along with clear instructions on how to do so (i.e. a functioning "opt-out" mechanism). You will promptly implement a recipient's request to opt-out of receiving e-mails from you and will not send any further e-mails to any such recipient who elects to opt-out.

Registration.

You may browse the FENIX website and view Content without registering, but as a condition to using certain aspects of FENIX, you may be required to register with the Company and select a password and screen name ("**User ID**").

You shall provide the Company with accurate, complete, and updated registration information. Failure to do so shall constitute a breach of these Terms of Use, which may result in immediate termination of your Company account.

You shall not use any of the following as a User ID:

- (i) the name of another person with the intent to impersonate that person;
- (ii) a name subject to any rights of a person, other than you, without appropriate authorization; or
- (iii) a name that is otherwise offensive, vulgar or obscene.

The Company reserves the right to refuse registration of, or cancel a User ID and any corresponding domain in its sole discretion.

You are solely responsible for activity that occurs on your account and shall be responsible for maintaining the confidentiality of your User ID password. You shall never use another user's account without such other user's express permission. You will immediately notify the Company in writing of any unauthorized use of your account, or other account related security breach of which you are aware.

Fees and Payments – General

FENIX facilitates payments for purchases of Content including:

- Digital Content made available via download and streaming through FENIX ("**Digital Content**");
- Physical merchandise ("**Merchandise**");
- Experiences involving an Artist or specified by an Artist ("**Experiences**"); and
- Purchases of a subscription or recurring payment nature from Artists ("**Artist Purchases**")

(Together, "**Products**").

The purchase of Digital Content is a "**Digital Transaction**", and the purchase of Merchandise and/or an Experience is a "**Physical Transaction**" and together with Digital Transactions, collectively referred to as "**Transactions**".

Transactions will be made using FENIX Tokens, either from FENIX Tokens stored in a user's wallet within FENIX (a "**FENIX Wallet**") or acquired for the purpose of completing an acquisition of Digital Content, Merchandise and / or Artist Purchases.

Fees and Payments – Fans.

- **What can you buy?** You may purchase Products from an Artist through the FENIX website, including, without limitation, purchases of Digital Content, Merchandise, Experiences and Artist Purchases.

- **Artist responsible for sales:** All inquiries regarding Products, including Physical Transactions and/or Digital Transactions, will be directed to the relevant Artist.

You understand and agree that FENIX is a decentralised platform that Artists use to sell their products directly to new and existing fans and the sales contract in relation to any Products that you may wish to acquire shall be between you and the Artist. However, you understand and agree that any Digital Content that you may use or acquire is derived from files provided by the relevant Artist and the relevant Artist is solely responsible for such files.

- **All sales are final, unless prohibited:** All sales are final (except where prohibited by law), unless otherwise determined by FENIX. If you do not receive the Merchandise, Experience and/or the Digital Content or otherwise have an issue with the Merchandise, Experience and/or the Digital Content delivered, you may contact FENIX, or the Artist directly, with your request and proof of payment.
- **Company not responsible for refunds:** The Company is not responsible for refunds for any Products purchased through FENIX, except as provided in this Agreement. To the extent that you notify us of any issues or of your desire for a refund, we will notify the relevant Artist and work with them to resolve your issue. At the sole discretion of the Artist and/or FENIX, you may be credited or refunded for all or part of the purchase of the Product.
- **Sales Tax:** The total price that you pay for any Products will, unless otherwise specified, include the price of the Product plus any applicable sales tax. Such sales tax is based on your location and the sales tax rate in effect at the time you purchase the product. The determination of such sales tax shall be made by the Artist themselves, on the understanding that they will only charge tax in states or countries where Products are taxable.
- **Recurring fees:** If you purchase an Artist Purchase that requires a recurring payment, or subscription, any such subscription will automatically renew at the end of the applicable subscription period, unless you cancel such subscription before the end of the current subscription period. The cancellation will take effect the day after the last day of the current subscription period. In the event of any dispute about the cancellation of a recurring fee, the final decision shall be made by FENIX, and you agree to accept such decision.
- **No guarantee of perpetual access:** Content you purchase in a Transaction cannot be guaranteed to be available to you perpetually. For example, if we receive a notification of claimed infringement from a copyright owner or its agent with respect to specific Content, then local law may require us to remove that Content from FENIX and not make it available for future sale. In such a case, we may also have to deny continued access to anyone who previously purchased such Content. This means that you may lose access to purchased Content previously available to you through FENIX.

If we are required by law to deny access through FENIX to previously purchased Content, including by removing access to Content from a user's personal collection through any mobile application, then the Company and Artists will not provide the user who purchased that Content with a refund, except as required by applicable law.

Users bear all risk from the denial of access to any Content purchased through FENIX.

- **Your warranty to make payment:** You warrant that if you enter into a Transaction, then you shall be able to make full and immediate payment for the requested products or services.

Fees and Payments – Artists.

You will set the prices for your Products that are charged through Transactions (the “**Prices**”) through FENIX, and you may change the Prices at your sole discretion.

Revenue from Products shall be paid directly to you, or as you have specified through the account that you establish on signing up with FENIX as a band, (your “**FENIX Band Account**”) upon completion of sale in FENIX Tokens by way of smart contract.

Notwithstanding the preceding sentence, FENIX may redistribute previously purchased copies of your products to users who have, in FENIX’s sole determination, received a corrupted copy of your product, an incorrect file format version of your product, an incomplete copy of your product, or suffered a loss of your product through hard drive failure, damage, theft or destruction, on a no-fee basis to the user (i.e., the user is not charged a new fee for the redistribution). Such redistribution may be effectuated by allowing a user to redownload a replacement copy themselves.

A user that has a Fan Account will also be permitted to redownload any previously purchased Content from an Artist. In the event of any of the foregoing redistributions, no additional payments shall be made to you for such redistributions.

- **Fees paid to FENIX:** The Company shall be entitled to a share of the revenue you receive from Transactions (the “**Revenue Share**”), which shall be calculated on your gross revenue from Transactions, not including any Transactions for which you or we provide a refund, in accordance with the rate schedule set forth at [.]

Our Revenue Share shall be paid to FENIX through the smart contract by which revenue is sent to you from the Fan.

- **Third party Fees:** You shall be solely responsible and liable for, and the Company shall have no responsibility or liability for, any [.] fees, credit card transaction fees (together, “**Fees**”), bad debts (such as credit card returns or fraud), disputed payments, and refunds, except as provided in this Agreement.

- **[Withholdings:** FENIX may withhold any taxes, duties, charges or levies on payments by FENIX to you pursuant to this Agreement as may be required by applicable law, rule or regulation. FENIX shall remit any such withheld taxes, duties, charges or levies to the appropriate tax authority.]

For Merchandise Transactions, Digital Content and/or Artist Purchases, payments shall be delivered to you directly by smart contract, less the Revenue Share (and where applicable, any Fees) which shall be paid directly to the Company.

When you receive a payment for a Merchandise Transaction, Digital Content or an Artist Purchase, you are liable to FENIX for the full amount of the payment sent to you plus any Fees if the payment is later invalidated for any reason. This means that, in addition to any other liability, you will be responsible for the amount of the payment

sent by the sender, plus the applicable Fees if there is a chargeback, a dispute, or if there is a reversal of the payment.

The Company retains the right, but does not have the obligation, to:

- immediately halt the offering or sale of any goods or services;
- prevent or restrict access to the FENIX website or FENIX; or
- take any other action,

in case of technical problems, objectionable material, inaccurate listings, or actions otherwise prohibited by the procedures and guidelines contained on the FENIX website, or for any other reason in the sole and absolute discretion of the Company, and to correct any inaccurate listing or technical problems on the FENIX website.

The Company may immediately halt the offering or sale of any goods or services by you upon:

- receipt of notifications of claimed infringement;
- acquiring knowledge of actual infringement; or
- becoming aware of facts or circumstances from which infringing material is apparent with respect to any goods or services.

Additional Fees.

In addition to the Revenue Share and Fees set forth above, the Company reserves the right to require payment of fees for certain additional features of FENIX, including but not limited to [.] ("**Premium Services**"). Should you elect to subscribe to such features, you shall pay all applicable fees, as described on the FENIX website in connection with such features.

The Company reserves the right to change its price list and to institute new charges at any time, upon ten (10) days prior notice to you, which may be sent by e-mail or posted on the FENIX website.

Use of FENIX by you following such notification constitutes your acceptance of any new or increased charges.

Cancellation and Termination of Payments for Premium Services.

If you sign up for one or more Premium Services on a subscription basis, you can cancel your subscription at any time by going to the relevant section of your profile page and clicking "Cancel subscription to Premium Services", as applicable.

Once you cancel, your FENIX Premium Service(s) will continue for the duration of the monthly billing cycle for which you have already paid. We do not issue partial refunds for unused time for a Premium Service in a monthly billing cycle for which you have already paid, but you will not be charged for any following monthly billing cycles.

For more information, see [.]

Third Party Service websites.

FENIX may permit you to link to other third party websites or resources on the Internet, and other third party websites or resources may contain links to the FENIX website.

When you access third party websites, you do so at your own risk. These other websites are not under the Company's control, and you acknowledge that the Company is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources.

The inclusion of any such link does not imply endorsement by the Company or any association with its operators. You further acknowledge and agree that the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such Content, goods or services available on or through any such FENIX website or resource.

Content and License.

You agree that FENIX contains Content specifically provided by the Company or its partners and that such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through FENIX.

The Company grants each user of the FENIX website and/or FENIX a worldwide, non-exclusive, non-sublicensable and non-transferable license to use, modify and reproduce the Content, solely for personal, non-commercial use.

Use, reproduction, modification, distribution or storage of any Content for other than personal, non-commercial use is expressly prohibited without prior written permission from the Company, or from the copyright holder identified in such Content's copyright notice. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third party right.

Intellectual Property Rights – Artists.

FENIX provides Artists with the ability to upload Digital Content owned or controlled by such Artists to the FENIX website, including but not limited to sound recordings ("**Sound Recordings**"), videos synchronized with Sound Recordings and other audio-visual works (collectively, "**Music Videos**"), and the musical works embodied within Sound Recordings and Music Videos ("**Musical Works**" and, collectively with Sound Recordings and Music Videos, the Artist's "**Music**").

The Company will not have any ownership rights in any elements of an Artist's Music, however, the Company needs the following license to permit the services provided through the FENIX ecosystem.

Each Artist uploading Music to FENIX grants the Company and its authorized sublicensees and distributors, if any, the worldwide, non-exclusive, royalty-free, right and license to:

- Reproduce, distribute, publicly perform (including on a through-to-the-audience basis and by means of a digital audio transmission), publicly display, create derivative works of, communicate to the public, synchronize and otherwise exploit (collectively, "**Exploit**")
 - The Artist's Music on the Artist's behalf (e.g., reproduce, transcode, copy and store the Artist's Music on computer servers owned and/or operated by or on behalf of the Company or its authorized sublicensees and distributors, and publicly perform, transmit, synchronize, stream,

distribute, and playback the Artist's Music) using any technologies or methodologies now known or hereafter developed; and

- All associated copyrightable works or metadata, including, without limitation, song lyrics and musical notations, album cover artwork, photographs, graphics, and descriptive text ("**Artworks**") in connection with FENIX);
- Allow users of FENIX to receive public performances and public displays of the Artist's Music and Artworks and to reproduce the Artist's Music and Artworks on any and all devices owned or controlled by the user for non-commercial purposes and receive performances and displays of same; and
- Reproduce, use, and publish, and to permit others to reproduce, use and publish, the name(s), trademarks, likenesses, and personal and biographical materials of the Artist, in connection with the provision of the services provided through the FENIX ecosystem.

To enable the Company to Exploit your Music pursuant to the above provisions, you hereby grant to the Company the worldwide, non-exclusive, royalty-free, sublicensable, and transferable right to use, distribute, reproduce, copy, and display your trademarks, service marks, slogans, logos or similar proprietary rights (collectively, the "**Trademarks**") solely in connection with FENIX or in the marketing, promotion or advertising of FENIX, including in all forms of marketing, promotion, and advertising materials now known or hereafter created.

By uploading any Music or Artworks to the FENIX website:

- You represent and warrant, and can demonstrate to the Company's full satisfaction upon request, that:
 - You own or otherwise control all rights to your Music and Artworks (or that such Music and Artworks are in the public domain or have otherwise been directly licensed to the Artist in writing with a grant of rights sufficient to permit the Artist to enter into this Agreement and to grant all of the rights with respect to the Artist's Music or Artworks as set forth in this Agreement (hereinafter "**Direct Licensed**");
 - You have full authority to act on behalf of any and all owners of any right, title or interest in and to any Music you upload to FENIX and to the Artworks;
 - You have permission to use the name and likeness of each identifiable individual person whose name or likeness is contained or used within the Music and/or Artworks, and to use such individual's identifying or personal information (to the extent such information is used or contained in the Music and/or Artworks) as contemplated by these Terms of Use; and
 - You are authorized to grant all of the aforementioned rights to the Music and/or Artworks to the Company and all users of FENIX and the FENIX website.
- You represent and warrant that the use or other exploitation of your Music and/or Artworks by the Company and its authorized sublicensees and

distributors and/or by users of the FENIX website as contemplated by this Agreement will not infringe or violate the rights of any third party, including, without limitation, any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights.

- You represent and warrant, to the extent that you are the songwriter of any or all of the Musical Works embodied in your Sound Recordings or Music Videos, whether in whole or in part (e.g., as a co-writer), that:
 - You have the full right, power, and authority to grant the rights set forth in this Agreement notwithstanding the provisions of any agreement you may have entered into with any performing rights organization (“PRO”), whether based in the United States (e.g., ASCAP, BMI or SESAC) or elsewhere, or any music publisher;
 - You are solely responsible for taking all steps necessary to inform such PRO or music publisher of your grant of a royalty free license to the Company for the public performances and communications to the public of your Musical Works; and
 - No fees or payments of any kind whatsoever shall be due to any PRO or music publisher for the public performance or communication to the public of your Musical Works.
- You represent and warrant that no fees of any kind shall be due to any third party, including, but not limited to, any union, guild, non-featured vocalist or musician, engineer or producer, for the use or re-use of your Music as authorized under this Agreement.

If any agreement you have entered into with any third party, including, but not limited to a PRO, music publisher, union or guild, whether by law or contract, prohibits you from granting FENIX the right and license set forth in this Agreement and making the representations and warranties set forth in the four paragraphs immediately above, then you are prohibited from uploading your music to FENIX and shall be responsible for indemnifying and holding the Company harmless from and against any and all claims arising from the exploitation of your music on FENIX, including all court costs and legal fees.

Intellectual Property Rights – Fans.

FENIX provides users with the ability to add, create, upload, submit, distribute or post (“**Submitting**” or “**Submission**”) content, videos (including Music Videos), audio clips (including Music), written forum comments, data, text, photographs, software, scripts, graphics, or other information to the FENIX website (collectively, “**User Submissions**”).

By Submitting User Submissions on the FENIX website or otherwise through FENIX, you:

- acknowledge that by Submitting any User Submission to the FENIX website, you are publishing that User Submission, and that you may be identified publicly by your User ID in association with any such User Submission;
- by Submitting any User Submissions through the FENIX website or FENIX, you hereby grant the Company a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, edit, modify, reproduce, distribute, prepare derivative works of, publicly

display, publicly perform (including on a through-to-the-audience basis and by means of a digital audio transmission), communicate to the public, synchronize and otherwise fully exploit the User Submissions in connection with the FENIX website, FENIX and the Company's (and its successors and assigns') business, including without limitation for promoting and redistributing part or all of the FENIX website (and derivative works thereof) or FENIX in any media formats and through any media channels (including, without limitation, third party webFENIX websites), whether now known or hereafter developed.

You also hereby do and shall grant each user of the FENIX website and/or FENIX a non-exclusive license to access your User Submissions through the FENIX website and FENIX, and to use, edit, modify, reproduce (on any and all devices owned or controlled by the user), distribute, prepare derivative works of, display and perform such User Submissions solely for personal, non-commercial use.

For clarity, the foregoing license grant to the Company does not affect your other ownership or license rights in your User Submission(s), including the right to grant additional licenses to the material in your User Submission(s), unless otherwise agreed in writing;

- represent and warrant, and can demonstrate to the Company's full satisfaction upon request that you:
 - Own or otherwise control all rights to all content in your User Submissions, or that the content in such User Submissions is in the public domain or Direct Licensed;
 - You have full authority to act on behalf of any and all owners of any right, title or interest in and to any content in your User Submissions to use such content as contemplated by these Terms of Use and to grant the license rights set forth above;
 - You have the permission to use the name and likeness of each identifiable individual person and to use such individual's identifying or personal information as contemplated by these Terms of Use; and
 - You are authorized to grant all of the aforementioned rights to the User Submissions to the Company and all users of FENIX;
- Agree to pay all royalties and other amounts owed to any person or entity, including any PROs, due to your Submission of any User Submissions to FENIX;
- Agree that the use or other exploitation of such User Submissions by the Company and use or other exploitation by users of the FENIX website and FENIX as contemplated by this Agreement will not infringe or violate the rights of any third party, including without limitation any privacy rights, publicity rights, copyrights, contract rights, or any other intellectual property or proprietary rights; and
- Understand that:
 - The Company shall have the right to delete, edit, modify, reformat, excerpt, or translate any materials, content or information submitted by you;

- All information publicly posted or privately transmitted through the FENIX website is the sole responsibility of the person from which such content originated;
- The Company will not be liable for any errors or omissions in any content; and
- The Company cannot guarantee the identity of any other users with whom you may interact in the course of using FENIX.

The Company does not endorse and has no control over any User Submission.

The Company cannot guarantee the authenticity of any data which users may provide about themselves.

You acknowledge that all Content accessed by you using FENIX is at your own risk and you will be solely responsible for any damage or loss to any party resulting therefrom.

Termination.

The Company may terminate your access to all or any part of FENIX at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership, including, without limitation, any access to any Music or other Content that you may have purchased through FENIX.

If you wish to terminate your account, then you may do so by following the instructions on the FENIX website.

Any fees paid hereunder are non-refundable, except as provided in this Agreement.

All provisions of these Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

Warranty Disclaimer.

The Company has no special relationship with or fiduciary duty to you.

You acknowledge that the Company has no control over, and no duty to take any action regarding:

- Which users gains access to the FENIX website; what Content you access via the FENIX website;
- What effects the Content may have on you;
- How you may interpret or use the Content; or
- What actions you may take as a result of having been exposed to the Content.

You release the Company from all liability for you having acquired or not acquired Content through the FENIX website.

The FENIX website may contain, or direct you to websites containing, information that some people may find offensive or inappropriate.

The Company makes no representations concerning any Content contained in or accessed through the FENIX website, and the Company will not be responsible or liable for the accuracy, copyright compliance, legality or decency of material contained in or accessed through the FENIX website or FENIX.

FENIX is provided "as is" and "as available" and is without warranty of any kind, express or implied, including, but not limited to, the implied warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties implied by any course of performance or usage of trade, all of which are expressly disclaimed.

In particular the Company, and its directors, employees, agents, suppliers, partners and content providers do not warrant that:

- **FENIX will be secure or available at any particular time or location;**
- **any defects or errors will be corrected;**
- **any content or software available at or through FENIX is free of viruses or other harmful components; or**
- **the results of using FENIX will meet your requirements. Your use of FENIX is solely at your own risk.**

Some states do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you.

No guarantee of confidentiality or privacy.

The Company makes no guaranty of confidentiality or privacy of any communication or information transmitted on the FENIX website or any webFENIX website linked to the FENIX website.

The Company will not be liable for the privacy of e-mail addresses, registration and identification information, disk space, communications, confidential or trade-secret information, or any other Content stored on the Company's equipment, transmitted over networks accessed by the FENIX website, or otherwise connected with your use of FENIX.

Indemnification.

You shall defend, indemnify, and hold harmless the Company and its affiliates, authorized sublicensees and distributors, and each of their employees, contractors, directors, suppliers and representatives, from any and all liabilities, claims, and expenses, including reasonable attorneys' fees and court costs, that arise from or relate to your use or misuse of, or access to, the FENIX website, FENIX, Content or otherwise from your User Submissions, violation of these Terms of Use, or infringement by you, or any third party using your account, of any intellectual property or other right of any person or entity, and for breach of any of your representations and warranties in these Terms of Use.

For the avoidance of doubt, you hereby agree to defend, indemnify, and hold harmless the Company from any and all claims by a third party owning, controlling or claiming any right in or to your Music, including claims for performance royalties, synchronization royalties, mechanical royalties, and use or re-use fees.

The Company reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with the Company in asserting any available defenses at your sole expense.

Limitation of Liability.

In no event shall the Company, nor its directors, employees, agents, partners, suppliers or content providers, be liable under contract, tort, strict liability, negligence or any other legal or equitable theory with respect to FENIX:

- For any lost profits, data loss, cost of procurement of substitute goods or services, or special, indirect, incidental, punitive, or consequential damages of any kind whatsoever, substitute goods or services (however arising);
- For any bugs, viruses, trojan horses, or the like (regardless of the source of origination); or
- For any direct damages in excess of (in the aggregate) one-hundred U.S. dollars (\$100.00).

In the event that your country of residence does not allow the exclusion or limitation of incidental or consequential damages, the above limitations and exclusions may not apply to you.

Because the Company is not the buyer or seller in any Merchandise Transaction, if a dispute arises between one or more participants in a Merchandise Transaction, then you release the Company (and its affiliates, agents and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

You acknowledge and agree that this waiver is an essential and material term of this Agreement, and that without such waiver, this Agreement would not have been entered into by Company.

Because the Company is not the buyer or seller in any actual Merchandise Transaction between Artists and fans and is not the agent of either for any purpose, the Company does not have the duty to resolve and will not be involved in resolving any disputes between participants related to or arising out of any such Merchandise Transaction.

Artists are individually responsible for compliance with all consumer rights laws applicable to their Merchandise Transactions, including EU Consumer Rights Laws.

International/Non-California Use.

The Company makes no representation that the Content is appropriate or available for use in any location, and accessing FENIX is prohibited from territories where such Content is illegal.

You access FENIX at your own initiative and are responsible for compliance with local laws.

Dispute Resolution.

A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these

Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

You and the Company agree that any cause of action arising out of or related to FENIX must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

These Terms of Use shall be governed by and construed in accordance with the laws of [.]. Any dispute arising from or relating to the subject matter of this Agreement shall be finally settled by arbitration in [.], using the English language in accordance with the Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS.

The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith.

Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be.

Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for injunctive or other equitable relief pending a final decision by the arbitrator.

For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in [.]

The use of FENIX is not authorized in any jurisdiction that does not give effect to all provisions of these Terms of Use, including without limitation, this section.

Integration and Severability.

These Terms of Use are the entire agreement between you and Company with respect to FENIX and use of the FENIX website, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and Company with respect to the FENIX website.

If any provision of these Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Use will otherwise remain in full force and effect and enforceable.

The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

Miscellaneous.

The Company shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond the Company's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including 'line-noise' interference).

These Terms of Use are personal to you, and are not assignable, transferable or sublicensable by you except with the Company's prior written consent.

The Company may assign, transfer or delegate any of its rights and obligations hereunder without consent.

No agency, partnership, joint venture, or employment relationship is created as a result of these Terms of Use and neither party has any authority of any kind to bind the other in any respect.

In any action or proceeding to enforce rights under these Terms of Use, the prevailing party will be entitled to recover costs and attorneys' fees.

All notices under these Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

The captions and headings in this Agreement are intended only for convenience, and will in no event be construed to define, limit or describe the scope or intent of this Agreement, or of any provision of this Agreement, nor in any way affect the interpretation of this Agreement.

Contact.

You may contact Company at the following address: [.]