

DNAML DISTRIBUTOR AGREEMENT

1. Your relationship with DNAML

- 1.1 Your use of DNAML's Titles, software, services and websites (referred to collectively as the **DNAML System** in this document and excluding any services provided to You by DNAML under a separate written agreement) is subject to the terms of a legal agreement between You and DNAML. **DNAML** means DNAML Pty Ltd, ABN 65 095 281 173, an Australian corporation, whose principal place of business is Suite 4, Level 4, 189 Kent Street, Sydney, New South Wales 2000 Australia. This [DNAML Legal Department](#) document explains how the agreement is made up, and sets out some of the terms of that agreement.
- 1.2 Unless otherwise agreed in writing with DNAML, your agreement with DNAML will always include, at a minimum, the terms and conditions set out in this document, including the Schedule. These are referred to below as the "Universal Terms".
- 1.3 Your agreement with DNAML will also include the terms of any legal notices applicable to the DNAML System, in addition to the Universal Terms. All of these are referred to below as the "Additional Terms". Where Additional Terms apply to the DNAML System, these will be accessible for You to read either within, or through Your use of, the DNAML System.
- 1.4 The Universal Terms, together with the Additional Terms, form a legally binding agreement between You and DNAML in relation to Your use of the DNAML System. It is important that You take the time to read them carefully. Collectively, this legal agreement is referred to below as the **Terms**.

2. Accepting the Terms

- 2.1 In order to use the DNAML System, You must first agree to the Terms. You may not use the DNAML System if You do not accept the Terms.
- 2.2 You can accept the Terms by:
 - (a) clicking to accept or agree to the Terms, where this option is made available to You by DNAML in the user interface for any DNAML System and submitting an application for approval by DNAML; or
 - (b) by actually using the DNAML System. In this case, You understand and agree that DNAML will treat Your use of the DNAML System as acceptance of the Terms from that point onwards; and
 - (c) in either instance, providing to DNAML on request any additional information in any media and receiving from DNAML email notice of its acceptance of Your application.
- 2.3 You may not use the DNAML System and may not accept the Terms if:
 - (a) You are not of legal age to form a binding contract with DNAML in the country in which You are resident or located; or
 - (b) You are a person barred from receiving the DNAML System under any relevant laws of any country including the country in which You are resident or located.

3. Definitions and Interpretation

3.1 In these Terms the following words have the meaning next to them.

Charge-back has the meaning in clause 8.1.

Collateral Materials means Seller's advertising, marketing or promotional materials made available by the Seller to use within the DNAML System.

Compensation means monetary payments that a Distributor earns from a Seller in connection with Sales made in accordance with the Terms.

Distributor means You and DNAML resellers, distributors, subsidiaries and affiliated legal entities around the world including those specified in the DNL DRM Administration System.

DNAML Software has the meaning in clause 4.1.

DNAML System has the meaning in clauses 1.1 and 4.1.

DNL DRM Administration System means an online administration system which allows Sellers and Distributors to manage Titles within the DNAML System using the features provided

eBook Services has the meaning in clause 4.2.

End User means all actual or prospective purchasers who acquire use and possession of the Titles through the DNAML System from any of DNAML's publishers, authors or licensees or any other legal person claiming a licence in the Titles pursuant to an End User Licence Agreement.

Link means an Internet hyperlink provided by You or DNAML that takes an End User to a Seller's Online Marketplace or the DNL DRM Administration System and identifies You as the referral source for that End User's presence on the DNL DRM Administration System.

Market means to advertise, promote, sell and distribute.

Online Author/Publisher Licence Agreement means the agreement between DNAML and Seller for provision of eBook use of the DNAML System for the Seller's Titles, which may impose on you Seller-specific special terms.

Online Marketplace means the eCommerce platform of Sellers.

Password is a combination of alphanumeric and keyboard symbols known only to a Distributor and DNAML which DNAML uses in combination with a User Name to identify a Distributor and prevent unauthorised access to the DNL DRM Administration System.

Proprietary Information means software, technology and documentation that contain confidential, trade secret information, copyright and other intellectual property.

Sale is the sale of a Seller's Titles to an End User where the End User was referred to that Seller through a Link.

Seller means a publisher or owner of content and other intellectual property or Titles who uses the DNAML System.

Seller's Payment means the Digital List Price specified in the DNL DRM Administration System for Titles sold by You after deduction of agreed commissions and expenses. DNAML may add to the Digital List Price and charge to End Users, and may pay to the relevant taxing authority, any applicable sales or transaction taxes and charges chargeable with respect to the sales of Sellers' Titles.

Titles means Seller's content or other intellectual property converted into eBooks using the DNAML Software.

User Name is a shortened alphabetical means of identifying a Distributor where DNAML uses in combination with a Password to identify a Distributor and prevent unauthorised access to the DNAML Online Marketplace.

3.2 In the Terms, unless a contrary intention appears:

- (a) All capitalised words in Terms are defined terms;
- (b) Payments are to be calculated using the currency or currencies nominated in the DNL DRM Administration System unless specified otherwise in the Terms;
- (c) The headings or lack of headings of the sections and subsections of the Terms have been assigned for convenience only and do not limit, define or affect the Terms;
- (d) Singular words include the plural and the other way round;
- (e) A reference to a person includes a natural person, corporation, incorporated association, statutory corporation, and any other type of legal entity;
- (f) The word "including" means "including but not limited to";
- (g) Words and expressions defined in the Copyright Act and not separately defined in this Agreement have the meaning given to them in that Act;
- (h) Schedules and Annexures to the Terms form a part of the Terms; and
- (i) The order of priority of documents is:
 - (i) Online Author/Publisher Licence Agreement;
 - (ii) Additional Terms; and
 - (iii) Universal Terms.

4. The DNAML System

4.1 DNAML owns proprietary eBook software solutions, eBook security software, an eCommerce system, a distribution system and other associated digital products, the **DNAML System**, which:

- (a) use the DNL file format or **DNAML Software**, that is powered by the DNL Reader produced using Desktop Author or other software or upgrades
- (b) offers a protection and security system employed within the DNL format designed to secure the eBook content called the DNL Digital Rights Management or **DNL DRM**;
- (c) within the DNL DRM, allows an End User to activate the eBook using the DNL DRM eCommerce module or through key activation; and

- (d) provides an online administration system and a digital warehouse, the **DNL DRM Administration System**, which allows You to manage and sell Your Titles within the DNL DRM System using the features provided.

4.2 DNAML provides the **eBook Services** to Sellers to:

- (a) allow Sellers or other third parties to convert content or other intellectual property into eBooks and related services;
- (b) register and electronically control the use of the Titles including to protect against unauthorised access to or use of the Titles;
- (c) market and sell the Titles directly on its Internet website known as www.dnaml.com and www.eBook.com (or other websites) or by appointing Distributors such as You;
- (d) enable the sale of the Titles through an eCommerce system or activation keys and to fulfil the sales by distribution of the Titles to End Users by the Internet or other similar electronic distribution platform; and
- (e) pay Sellers' Payment from the sales of Titles according to DNAML's fees posted on the DNL DRM Administration System.

4.3 DNAML manages the DNAML System and the Marketing process in relation to the eBook Services and:

- (a) assists Sellers and You to Market and sell the Titles and DNAML System;
- (b) processes compensation to You and Seller Payments to Sellers.

5. Your appointment as a Distributor

5.1 To be a Seller's Distributor You must be accepted by that Seller to Market its Titles by the following process:

- (a) You press the "Titles/Services" button or equivalent, search for and review the Seller's Titles You wish to sell, and then press the "Sell" button or equivalent.
- (b) If Your application is approved by a Seller, then DNAML will notify You by any means authorised by the Terms, or postings on the DNL DRM Administration System.
- (c) Seller will agree to You Marketing its Titles as its agent according to the Terms.
- (d) DNAML may provide Seller with Your contact and basic account information, including email and mailing addresses, URL, telephone and fax number.
- (e) Seller may terminate Your right to Market one or more of its Titles by notifying DNAML through the DNL DRM Administration System, or if you breach the Terms, or if Seller or DNAML terminates the Online Author/Publisher Licence Agreement.

5.2 DNAML grants to You, solely for the purpose of Marketing the Seller, its Titles and the DNAML System, a limited, revocable, non-exclusive, non-transferable, non-assignable:

- (a) licence to utilise DNAML's System solely for the purposes of the Terms; and

- (b) licence to communicate and display the Links and any applicable Collateral Materials in relation to the Titles of each Seller that appoints You as its Distributor.

5.3 DNAML and Seller reserve all rights in their Proprietary Information not expressly granted under the Terms. No right or licence is deemed to be granted to You by implication, estoppel, waiver, course of conduct or otherwise. You acknowledge that:

- (a) all of DNAML's System including software and technology is Proprietary Information of DNAML; and
- (b) Seller's Titles are Proprietary Information of Seller.

5.4 Subject to the Terms and a valid and concurrently existing Online Publisher Agreement between DNAML and the Seller of each Title, DNAML will provide You access to the DNL DRM Administration System to facilitate the Marketing of Seller's Titles to End Users via the DNAML System by providing You with:

- (a) real-time online access to the DNAML System for managing Seller Titles via the DNL DRM Administration System;
- (b) access to a secure, online eCommerce system for Title order and purchase capabilities for End Users;
- (c) End User credit card transaction processing via the eCommerce system for purchase of Titles;
- (d) electronic (only) fulfilment of Seller Titles to End Users via provision of activation keys for eBooks;
- (e) processing of transaction payments to You and Seller via the eCommerce system;
- (f) providing You (and Seller) online daily, weekly and monthly sales and distribution reports, and real-time reports of individual Titles and services sales in standardised report formats only.
- (g) End User technical support directly related to the DNAML System which includes online order, purchase and fulfilment of Seller Titles only. DNAML does not provide End User support to You or directly for Seller's Titles; and
- (h) technical support to You will be provided during DNAML's normal business hours, from Monday to Friday, 9am to 5pm eastern Australian time.

5.5 In exercising Your rights under the Terms:

- (a) You will use commercially reasonable efforts to Market the Seller's Titles and DNAML's Services and to promote the DNAML System at Your sole expense.
- (b) You may Market Seller's Titles subject to any restrictions in the Online Author/Publisher Licence Agreement or these Terms or notified to You on the DNL DRM Administration System.
- (c) You may post Links on the Seller's Online Marketplace to direct an End User to the DNAML System or Seller's Online Marketplace so long as You comply with any restrictions and guidelines that a Seller imposes on the use of Links or Collateral Materials specified on the DNL DRM Administration System.
- (d) You may provide links to the DNAML websites in newsgroups, message boards, banner networks, counters, chat rooms, guest books, Internet relay

chat channels, social networking sites or through similar Internet resources provided You comply with the Terms and any terms and conditions imposed by those sites.

- (e) You must ensure that all End Users sign the DNAML End User Agreement, attached as the Annexure.
- (f) Unless expressly prohibited by the Online Author/Publisher Licence Agreement, these Terms or the DNL DRM Administration System, You may identify Yourself as representing the Seller to Market the Titles.
- (g) You will receive Compensation from Sales that are completed via Your Link to Seller's Online Marketplace or to the DNL DRM Administration System on the basis of Sales commissions determined by Sellers and specified in the DNL DRM Administration System.

5.6 Each of DNAML and the Seller may modify the Online Author/Publisher Licence Agreement by posting new terms on the DNL DRM Administration System. The new terms will be effective immediately and will bind You.

5.7 The Titles and the DNAML System contain the Proprietary Information of DNAML. You agree not to:

- (a) disclose the Proprietary Information;
- (b) directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed, reverse engineer or otherwise transfer DNAML's Proprietary Information to any third party;
- (c) make use of the Proprietary Information other than for the permitted purposes under the Terms; and,
- (d) disclose DNAML's Proprietary Information to anyone other than their respective representatives who require this material for effective performance of the Terms and who have agreed to be bound by the Terms.

This obligation survives termination of the Terms.

5.8 You will have access to the DNL DRM Administration System for tracking and reporting tools in relation to each Seller's Titles You Market and Your Compensation.

5.9 DNAML will issue a User Name and Password to You to access password protected portions of the DNL DRM Administration System. You are responsible for:

- (a) all activities conducted and charges made under its User Name account and Password;
- (b) any unauthorised disclosure, theft or loss of Your Password.

DNAML excludes any liability for Your Password and User Name being misused or compromised. If You know or suspect that anyone is using Your User Name or Password, You must give immediate written notice to DNAML and promptly change both the User Name and Password on the DNL DRM Administration System.

5.10 You must comply with the privacy policies posted by both:

- (a) a Seller in its Online Marketplace; and
- (b) DNAML on the DNAML System.

You must develop and post a privacy policy on its own Online Marketplace which policy is consistent with the Seller and DNAML policies and compliant with laws in the jurisdiction in which it operates.

- 5.11 Distributor will provide DNAML and DNAML may provide Sellers with the non-personally identifiable demographic information of visitors to Distributor's Online Marketplace.

6. Distributor Representations and Warranties

- 6.1 You represent, warrant and covenant to DNAML that in performing the Terms You will comply with all laws, rules and regulations applicable to Your business, and You will not:

- (a) make any representations or warranties regarding Sellers' Titles beyond those representations or warranties published by the Sellers;
- (b) interfere with the access of any End User to the Your website, the Link, or a Sellers' Online Marketplace or any part of the DNAML System technology or software, nor copy, modify, distribute, display the foregoing, or engage in any other activities unless permitted under the Terms;
- (c) grant a sub-licence to any person of the rights granted to You under the Terms;
- (d) use DNAML's or any Seller's trade names, marks or URLs in any way that would likely cause confusion or an actual or prospective End User to reasonably believe that You are a Seller or DNAML or You has any relationship with Seller or DNAML except under the Terms;
- (e) alter any Collateral Materials or other materials provided to You in connection with the DNAML System without DNAML's consent; and must not alter or remove any proprietary notices on these materials; and
- (f) infringe the intellectual property or other rights of DNAML, a Seller, or any third party, including removing or altering any intellectual property or other proprietary notices of a Seller from its Titles.

- 6.2 In Marketing the Titles and performing the Terms You must not:

- (a) engage in deceptive trade practices;
- (b) engage in spamming, indiscriminate advertising or sending of unsolicited commercial email or in any unfair, fraudulent or deceptive trade practices or false advertising including but not limited to using any device, robot, in-line frame, hidden frame or redirect;
- (c) use third party pop-up or pop-under systems or services to promote the Titles, Seller or the DNAML System;
- (d) replace, intercept, interfere with, hinder, disrupt or otherwise alter a End User's access, view or usage of DNAML's Online Marketplace, a Link or a Seller's Online Marketplace, including without limitation any click-through or traffic-based transaction;
- (e) auto-set cookies on a End User's browser;
- (f) collect personally identifiable information concerning End Users if this collection is not fully disclosed in Your Privacy Policy;

- (g) perform any activity that involves, facilitates, advocates or promotes:
 - (i) discrimination on the basis of race, ethnicity, gender, religion, sexual orientation, age or disability;
 - (ii) libelous, defamatory, obscene, pornographic, sexually explicit or abusive activities or materials;
 - (iii) gambling or illegal substances;
 - (iv) pornography including child pornography;
 - (v) sedition, unauthorised copying or distribution of copyrighted materials (e.g. music, videos, books etc) or any other illegal activities; or
 - (vi) any violation of law or breach of the intellectual property or other rights of any other person, entity or organisation;
- (h) violate the reasonable standards of doing business on the Internet (as determined by DNAML in its sole discretion); and
- (i) any other activity that may expose DNAML or any Seller to increased business risk or legal liability.

6.3 You will not enter into any agreement with any Seller in relation to referral of potential End Users of Seller's Titles or to circumvent or compete against the DNAML System. You acknowledge and agree that:

- (a) Your breach of clause 6.3 will result in irreparable injury to DNAML for which monetary damages alone would not be an adequate remedy;
- (b) in the event of a breach or threatened breach of clause 6.3, DNAML will be entitled to seek injunctive or other equitable relief without the necessity of posting a bond;
- (c) DNAML may present this Agreement to the court as a plea in abatement; and
- (d) any relief under clause 6.3 will be in addition to and not in lieu of any appropriate relief such as monetary damages.

7. DNAML Rights

7.1 You grant DNAML and each applicable Seller a non-exclusive, worldwide, transferable, assignable and royalty free right and licence, to use Your name, trademarks and service marks (including logos) to Market:

- (a) Your relationship with Seller;
- (b) Your use of the DNAML System; and
- (c) for any other purposes under the Terms.

7.2 Sellers may design, provide and administer Links and Collateral Materials for Seller's Titles.

7.3 Either DNAML or a Seller will own and license Links and Collateral Materials and You must not claim ownership of or otherwise dispute these proprietary or intellectual property rights. Upon DNAML's request through the DNL DRM Administration System, You must promptly cease or modify all of Your uses of the

Links or Collateral Materials that either DNAML or a Seller, in its sole discretion, requires.

- 7.4 DNAML may from time to time and without notice in the DNL DRM Administration System or any other individual, place restrictions on sales in the DNL DRM Administration System, including limiting the number or dollar amount of purchases on a credit card, or setting minimum or maximum prices. DNAML may also refuse to process transactions via the DNL DRM Administration System for certain End Users, Sellers or Distributors in its sole discretion.
- 7.5 DNAML owns and may use any data from the use of the Links or Sales for analysis purposes, and to maintain the DNAML System and Links.
- 7.6 DNAML may enter into Distributor Agreements with other entities including Your competitors.
- 7.7 DNAML is not liable or responsible for Your or Seller's business activities including:
- (a) the content of the Seller's Titles that may be available through the DNAML System;
 - (b) any Compensation that Seller must pay to You; and
 - (c) any claim, loss or damage arising out of the Titles sold by the Seller.

8. Payment Terms

- 8.1 Compensation paid to You is paid to You by DNAML through the DNL DRM Administration System on behalf of the Seller from payments received from End Users. If at any time the payments from Sales in DNAML's possession are insufficient to satisfy any of Seller's Compensation obligations to You or if DNAML does not make payment of earned Compensation to You for any other reason, then Your sole and exclusive remedy shall be directly against the relevant Seller.
- 8.2 If a Seller requires Your Compensation to be based on net receipts, there may be global charge-backs that increase after You have received Compensation. DNAML will compute these Charge-backs as charges against any future Compensation owed to You. You must pay DNAML any outstanding negative balances that may arise out of Charge-backs related to Your Sales. **Charge-backs** are sums of money that have been:
- (a) deemed to have been refunded by or returned by a Seller or DNAML to a End User based on a Sale that has been voided, retracted, subject to returns, been reversed due to fraud, or otherwise rescinded for any reason under the End User Licence Agreement;
 - (b) retrieved from, reserved against and/or charged against DNAML, DNAML's accounts under the terms of any applicable agreements or arrangements with a third party with an eCommerce system or payment gateway; or
 - (c) retrieved from, reserved against and/or charged against DNAML, DNAML's bank accounts or DNAML's eCommerce system or other accounts because of government actions including but not limited to embargo, court order, levy, security interest or other form of lien, reclamation, escheat or civil forfeiture.
- 8.3 You will not be entitled to receive Compensation until End User's payment has cleared or funds have been transferred into the eCommerce system. Your account will not accrue interest. If Your account has a negative balance for any period of 45 days or more, then the account is subject to a charge of 1.5% interest per

month, compounded monthly. The Terms may be terminated for Your non-payment of the negative balance and any interest. Your accounts not registering Sales for six (6) concurrent months may be terminated and Your pending Compensation forfeited at the sole discretion of DNAML.

- 8.4 DNAML may retain some or all of any Compensation that may be owed to You as a reserve against possible Charge-backs in the future that may accrue against Affiliate's prior Sales, or other financial obligations of You ("**Reserve**"). Any Reserve will be paid to You within one year of the time it was initially retained. You will compensate DNAML for any debt owed to DNAML including debts due to Charge-backs. DNAML shall have no liability to You in connection with any damages that You may sustain as a result of DNAML retaining a Reserve.
- 8.5 DNAML will calculate the Compensation owed to You by Sellers, and pay this Compensation to You, so long as the applicable Seller has deposited sufficient funds with DNAML for this purpose ("**Seller Funds**"). If Seller fails to pay sufficient Seller Funds to DNAML, then You are not entitled to Compensation until Seller deposits with DNAML sufficient Seller Funds for DNAML to pay You. Unless otherwise agreed to by DNAML in writing, Your first Compensation payment will be made in the month sixty (60) days following Your first, non-refunded sale.
- 8.6 To the extent that the total amount of Compensation owed to You in any one month is less than USD\$50, DNAML shall withhold the payment if Compensation for that month until the total Compensation reaches the USD \$50 minimum. The parties agree Compensation, if any, will be paid to You in Australian Dollars.
- 8.7 For each payment made to You by DNAML You will pay a payment processing fee of USD \$10 for payments to the United States and United Kingdom and US\$20 payments to all other countries. This fee is deducted from any payment to be made to You in addition to any other applicable fees to be deducted and specified in the DNL DRM Administration System.

9. EXCLUSION OF WARRANTIES

- 9.1 NOTHING IN THESE TERMS, INCLUDING CLAUSES 9 AND 10 EXCLUDES OR LIMIT DNAML'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND DNAML'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 9.2 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE DNAML SYSTEM IS AT YOUR SOLE RISK AND THAT THE DNAML SYSTEM IS PROVIDED "AS IS" AND "AS AVAILABLE."
- 9.3 IN PARTICULAR, DNAML, ITS SELLERS, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT:
- (a) YOUR USE OF THE DNAML SYSTEM WILL MEET YOUR REQUIREMENTS;
 - (b) YOUR USE OF THE DNAML SYSTEM WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR;
 - (c) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE DNAML SYSTEM WILL BE ACCURATE OR RELIABLE; AND

- (d) DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE DNAML SYSTEM WILL BE CORRECTED.
- 9.4 ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE DNAML SYSTEM IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- 9.5 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM DNAML OR THROUGH OR FROM THE DNAML SYSTEM CREATES ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.
- 9.6 DNAML FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10. LIMITATION OF LIABILITY

- 10.1 SUBJECT TO THE OVERALL PROVISIONS IN CLAUSE 9.1 ABOVE, YOU EXPRESSLY UNDERSTAND AND AGREE THAT DNAML, ITS SELLERS, AND ITS LICENSORS WILL NOT BE LIABLE TO YOU FOR:
 - (a) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS; AND
 - (b) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:
 - (i) ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE DNAML SYSTEM;
 - (ii) ANY CHANGES WHICH DNAML MAY MAKE TO THE DNAML SYSTEM, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE DNAML SYSTEM (OR ANY FEATURES WITHIN THE DNAML SYSTEM);
 - (iii) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE DNAML SYSTEM;
 - (iv) YOUR FAILURE TO PROVIDE DNAML WITH ACCURATE ACCOUNT INFORMATION;
 - (v) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.
- 10.2 THE LIMITATIONS ON DNAML'S LIABILITY TO YOU IN CLAUSE 10.1 WILL APPLY WHETHER OR NOT DNAML HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

11. Indemnification

- 11.1 You will unconditionally defend, indemnify, and hold harmless Sellers, End Users, DNAML, their subsidiaries, parent companies, affiliated companies, successors, assigns, distributors, agents, suppliers and their employees, contractors, officers, agents, attorneys and directors from all liabilities, claims, losses and expenses, including attorney's fees and costs in connection with any claim, demand, allegation, accusation or action based upon whether founded in good faith or not, resulting from or related to Your alleged:
- (a) intentional act, omission or misrepresentation;
 - (b) violation of law;
 - (c) breach of its obligations, representations or warranties under the Terms; or
 - (d) that arise from Your activities under the Terms or participation in the DNAML System,
- and you will pay this indemnity on demand.

- 11.2 DNAML may, at its own expense, assume the exclusive defence and control of any matter otherwise subject Your indemnity, in which event You will cooperate with DNAML. If You fail to undertake Your obligations under this clause 11, then DNAML will have the right, but not the obligation, to undertake the defence and You will pay for the attorneys' fees and costs of this defence. You also unconditionally indemnify DNAML for its actual attorneys' fees and other costs in investigating or enforcing its rights under this Agreement, including all appeals, and pay this indemnity on demand.

12. Term and Termination

12.1 Termination of Agreement

- (a) DNAML may terminate the Terms at any time without cause, upon giving You written notice, which may be given through the DNL DRM Administration System.
- (b) DNAML or a Seller may terminate Your right to participate in the DNAML System with respect to any or all Titles of a particular Seller without cause, upon giving You written notice, which may be given through the DNL DRM Administration System.

12.2 Breach of Agreement

If You are in breach of the Terms, then DNAML may terminate the Terms upon giving you written notice, in addition to any other rights or remedies available to DNAML.

12.3 Effect of Termination

If the Terms are terminated in whole or with respect to a particular Seller or certain Titles of a particular Seller for any reason, then:

- (a) upon termination, all applicable rights, authorisations, licences and sub-licences that were granted to You by Seller or DNAML will terminate, and You will promptly cease to use any Links and Collateral Materials and any applicable references to the identities of Seller, DNAML and Titles and services of Seller;

- (b) You will receive Compensation under the terms of this Agreement for those terminated Seller Titles and services that accrued prior, but not after, the date of the termination;
- (c) any liability for amounts owed by You to DNAML or Seller (for Charge-backs or otherwise) will survive the termination of the Agreement. You will pay these amounts in full no later than sixty (60) days from the termination date.
- (d) these remedies are non-exclusive and DNAML reserves its right to pursue any other remedies that may be available to it at law or equity. All other provisions of this Agreement that are intended to survive the termination of this Agreement in whole or with respect to a particular Seller or certain Titles of a particular Seller, will survive.

13. General Legal Terms

- 13.1 Sometimes when You use the DNAML System, You may (as a result of, or through Your use of the DNAML System) use a service or download a piece of software, or purchase goods, which are provided by another person or company. Your use of these other services, software or goods may be subject to separate terms between You and the company or person concerned. If so, the Terms do not affect Your legal relationship with these other companies or individuals.
- 13.2 Neither You nor DNAML will be liable for any delay in or failure to perform if such delay or failure arises from any event beyond its reasonable control including any Act of God, civil commotion, fire, explosion, lightning, storm, flood, earthquake, accident, rebellion, insurrection, riot, industrial dispute or lock-out, or act of government. If such an event prevents or delays one party from performing the Terms, it must notify the other party as soon as reasonably practicable, and must recover from such position as soon as possible.
- 13.3 The Terms constitute the whole legal agreement between You and DNAML and govern Your use of the DNAML System (but excluding any services which DNAML may provide to You under a separate written agreement), and completely replace any prior agreements between You and DNAML in relation to the DNAML System.
- 13.4 DNAML may assign all or part of its rights under these Terms.
- 13.5 You agree that DNAML may provide You with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the DNAML System. You agree that the Terms may specify the form of some notices and that any written notice to DNAML must be sent by email to [DNAML Legal Department](#) as well as by express mail delivery to:

Attention: Legal Department, DNAML
Suite 4, Level 4, 189 Kent Street
Sydney NSW 2000 Australia
- 13.6 You and DNAML must do anything (including sign any document) and must ensure that You do everything (including sign any document) to give full effect to the Terms.
- 13.7 You agree that if DNAML does not exercise or enforce any legal right or remedy which is contained in the Terms (or which DNAML has the benefit of under any applicable law), this will not be taken to be a formal waiver of DNAML's rights and that those rights or remedies will still be available to DNAML.

- 13.8 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.
- 13.9 You acknowledge and agree that each member of the group of companies of which DNAML is a member and Sellers and End Users will be third party beneficiaries to the Terms and that such other companies will be entitled to directly enforce, and rely upon, any provision of the Terms which confers a benefit on (or rights in favour of) them. Other than this, no other person or company will be third party beneficiaries to the Terms
- 13.10 The Terms, and Your relationship with DNAML under the Terms, will be governed by the laws of the State of New South Wales, Australia without regard to its conflict of law provisions. You and DNAML agree to submit to the exclusive jurisdiction of the courts located within that State to resolve any legal matter arising from the Terms. Notwithstanding this, You agree that DNAML will still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction. You agree that the Terms are deemed to have been entered into in New South Wales, Australia, regardless of the location of the parties executing this Agreement. Reasonable attorneys' fees and costs shall be awarded to the substantially prevailing party.
- 13.11 You agree that no money or other thing of value (including any part of any amount payable to or by it pursuant to these Terms) shall be offered, paid or promised, directly or indirectly, to any governmental official or political party or official of such party, or any candidate for political office, or any person or entity for the purpose of:
- (a) influencing any act or decision of such person, entity or party; or
 - (b) inducing such person, entity or party to influence any act or decision of any national, state or local government or instrumentality thereof.

For the purpose of this clause 13.11, "governmental official" shall include any officer or employee of a national, state or local government or any department, agency or instrumentality, or any person acting in an official capacity for or on behalf of such government or department, agency or instrumentality.

You represent and warrant that you have reviewed and are familiar with the provisions of the United States Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**") and that You have taken no action that if taken by a United States company would constitute a violation of the FCPA. DNAML shall have the right to terminate this Agreement upon any breach (or if DNAML reasonably believes that there has been a breach) of this provision.