

Terms of Use for DSDLink

These Terms of Use for DSDLink ("TOU") govern your access to and use of the Platform (defined below) offered by Encompass Technologies Development, LLC ("Encompass").

Prior to your use of the Platform as defined below, you must indicate your acceptance of these TOU. By using the Platform, or by clicking "Agree", you indicate that you have read, understand, and agree to these TOU. If you use the Platform on behalf of an organization, you agree to these TOU on behalf of that organization and you represent that you have the authority to legally bind such organization to these TOU. In such case, "you" and "your" will refer to that organization. Encompass and you are sometimes individually referred to as a "Party" and collectively referred to as the "Parties."

Background

1. Encompass operates an e-commerce platform called DSDLink ("Platform") that allows distributors ("Distributors") to offer certain third party provided products ("Products") for sale to you directly through the Platform.
2. You desire to place orders for Products through the Platform, as well as receive analytic reports regarding your purchases ("Reports").
3. Encompass desires to offer you the opportunity to purchase Products from Distributors through the Platform.

Accordingly, the Parties agree as follows:

1. Access to the Platform.

- a. Encompass hereby grants you a non-exclusive, revocable, nontransferable (except in accordance with Section 13) license to access and use the Platform during the Term (defined in Section 8) to purchase Products from Distributors through the Platform, subject to these TOU.
- b. Encompass may publish or amend policies further governing your access to or use of the Platform ("Policies"). If you purchase Products through the Platform, then you will be bound by the Platform's then-current Policies. Encompass will post all updates or amendments to Policies and your continued use of the Platform one (1) month after such updates or amendments will constitute your: (i) acknowledgment of the modified Policies; and (ii) agreement to abide and be bound by the new Policies.
- c. Encompass reserves the right to change any aspect of the Platform without notice to you.

2. Use of Platform.

- a. You shall maintain the security of your log-in credentials to the Platform. You are responsible for any expense, loss, or liability caused by the loss or breach of those credentials.
- b. You shall not use the Platform or any of its systems, code, or APIs to: (i) violate the security of, or gain unauthorized access to, any computer, computer network, or other device or system; (ii) discover passwords or security encryption codes; (iii) use any robot, spider, site search or retrieval application, or other device to retrieve or index any portion of the Platform; (iv) attempt to duplicate all or any part of the Platform or its code, or to attempt to

reverse engineer or decompile any code, or to attempt to create a substitute or competing Platform service; (v) disrupt the functionality of the Platform or disrupt another user's use of or access to the Platform; or (vi) violate any law or regulation.

- c. You acknowledge and agree that Encompass is not providing archive services and that the Platform is not intended to function as an archive. You are responsible for maintaining independent archival and backup copies of your information and data.

3. Product Listings on the Platform.

- a. The Parties agree that Encompass does not manufacture, provide or endorse any Products that are listed on the Platform and Encompass is not affiliated with any parties offering the listed Products. Further, Encompass may modify, reject, or remove any Product listing on the Platform for any reason in its sole discretion.
- b. You shall ensure that all information and data you provide to Encompass is accurate, not misleading, and complies with applicable law. You shall ensure that all electronic information and Data (defined in Section 8.a) that you transmit to Encompass through the Platform does not contain any harmful code or other feature designed to obtain unauthorized access to or information from or damage or degrade in any manner any computer system, application, or code.

4. Payment.

- a. You shall pay all fees that you incur for purchases of Products through the Platform. You agree that you will be solely responsible for any such fees and any use, distribution or sale of the Products.
- b. The Platform may incorporate software and/or services (including payment processing services) provided by a third party ("Third-Party Software"). Encompass disclaims all liability for any failure in performance of or defect in your ability to use the Platform due to any errors with the Third-Party Software.
- c. You shall pay all applicable taxes arising out of your activities related to these TOU, including, but not limited to, federal, state, and local income taxes, applicable employment taxes for your employees, and any other taxes or business license fees as required. You are responsible for obtaining any and all necessary insurance, licenses, and supplies to be used in the course of purchasing Products on the Platform. The Parties agree that the Distributors are responsible for collecting all applicable taxes due when ordering Products.

5. Product Sale and Delivery.

- a. The Parties agree that Distributors have established all pricing for the Products, and the content of all listings that appear on the Platform. Encompass is not liable for any errors in any Product listings on the Platform. Encompass is not responsible in any way for the Products. Encompass is only providing the Platform.
- b. The Parties agree that the Distributors are responsible for sourcing, offering, selling, and fulfilling all orders of Products. Each Distributor may provide to Encompass information

regarding fulfillment and order status and tracking (to the extent available), and Encompass may retain any of this information for its internal purposes.

6. Customer Service.

- a. Encompass shall notify you of any recall affecting a Product that you have ordered.
- b. Encompass may ask you to rate or provide comments regarding the Products, and may post any resulting ratings or comments on the Platform for public display.
- c. If you have any concerns regarding the fulfillment of your order, you shall contact the Distributor. The parties agree that Encompass is not obligated to provide any customer service beyond the customer services listed in this Section.

7. Intellectual Property.

- a. In these TOU, "Data" means any information, data, and other content, in any form or medium, that is submitted, input, entered, stored, or otherwise transmitted through the Platform by you. As between Encompass and you, Encompass owns all right, title, and interest, including all intellectual property rights, in and to the Data and the Data remains the sole property of Encompass. Encompass may collect, analyze, use, and distribute the Data for any purpose.
- b. Encompass solely owns all right, title, and interest in the Platform and all associated intellectual property rights including, but not limited to, all software, source code, functionality, Encompass's domestic and foreign trademarks, service marks, trade names, logos, and domain names ("Marks"), and all Data collected, transmitted or stored in connection with the Platform, and will retain sole discretion and control over the operation, provision, maintenance, and management of the Platform. Except as expressly provided in these TOU, you will not have any ownership in or license to any such rights in the Platform or Encompass's Marks. If you are deemed to have any ownership interest or rights in all or any part of the foregoing, then you shall and hereby do assign all of those interests and rights solely to Encompass.
- c. Encompass may use any feedback received by you to create, develop, or modify the Platform or any other Encompass concept, brand, software, product, or feature ("Improvements"), and Encompass will solely own all intellectual property rights in such Improvements. If you are deemed to have any ownership interest or rights in an Improvement, then you shall and hereby do assign all of those interests and rights to Encompass.
- d. You own all right, title and interest in any and all intellectual property rights in the Reports. To the extent necessary, Encompass grants you a non-exclusive, revocable, nontransferable (except in accordance with Section 13) license to use the Data solely in conjunction with your use of the Reports.

8. Term and Termination.

- a. The term of these TOU commences on the earlier of (i) the day that you begin using the Platform, or (ii) the day that you click "Agree" or something similar, and continues, unless and until terminated ("Term").

- b. Either Party may terminate these TOU for any reason by giving the other Party thirty (30) days' advance written notice.
- c. Encompass may terminate these TOU immediately upon giving you notice if Encompass has reason to believe that you have breached or violated your obligations in Section 2.
- d. Upon termination of these TOU, all licenses granted to you under this Agreement shall immediately cease.
- e. Encompass may, with or without notice, suspend, terminate, or otherwise deny your, or any other person's access to or use of all or any part of the Platform, without incurring any resulting obligation or liability, if: (i) required by applicable law or valid legal or governmental order; (ii) Encompass becomes aware of or suspects that the Platform has a security deficiency; or (iii) Encompass believes, in its sole discretion, that you: (x) have failed to comply with any term of these TOU, or accessed or used the Platform beyond the scope of the rights granted or for a purpose not authorized under these TOU; or (y) are, have been, or are likely to be involved in any fraudulent, misleading, or unlawful activities, or engaged in any other activity that may threaten or damage the reputation of Encompass. This Section 8.e does not limit any of Encompass's other rights or remedies, whether at law, in equity, or under these TOU or otherwise.
- f. The terms and conditions of Sections 7 and 12-17 shall survive the expiration or termination of these TOU.

9. Disclaimer of Warranties. Encompass hereby disclaims all warranties, representations, or guarantees of any kind, arising from any source, related to the Platform or any Products available through the Platform. Further, Encompass does not make any representations or warranties, expressed or implied, regarding any Products or any Third-Party Software. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE PLATFORM, THIRD-PARTY SOFTWARE AND ANY PRODUCTS IS AT YOUR SOLE RISK AND THE PLATFORM, YOUR USE OF THIRD-PARTY SOFTWARE AND ANY PRODUCTS IS PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM ENCOMPASS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, COMPATIBILITY WITH THE PLATFORM, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ENCOMPASS WILL NOT BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER INDIRECT, OR CONSEQUENTIAL ARISING FROM YOUR USE OR INABILITY TO USE THE PLATFORM, ANY THIRD-PARTY SOFTWARE OR ANY PRODUCTS. YOU AGREE TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END-USER AGREEMENT FOR THIRD-PARTY SOFTWARE OR ANY TERMS AND CONDITIONS FOR ANY PRODUCTS AS APPLICABLE, AND YOU WILL BE FULLY LIABLE TO THIRD PARTY VENDORS, DISTRIBUTORS AND ENCOMPASS WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD-PARTY SOFTWARE OR ANY PRODUCTS OR VIOLATION OF LICENSE AGREEMENTS OR TERMS AND CONDITIONS WITH THEM AND/OR APPLICABLE END-USER AGREEMENTS. YOUR BREACH OF ANY LICENSE, TERMS AND CONDITIONS AND/OR APPLICABLE END-USER AGREEMENT FOR THIRD-PARTY SOFTWARE OR ANY PRODUCTS WILL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT. You shall not remove, modify or obscure any copyright, trademark or other intellectual property or proprietary rights notices that appear on any Third-Party Software or reverse engineer, decompile, or disassemble any Third-Party Software.

10. Limitation of Liability. ENCOMPASS WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHER THEORY), OR OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER, RECOVERY, OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THESE TERMS, OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA, OR PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF THE PLATFORM, ANY THIRD-PARTY SOFTWARE OR ANY PRODUCTS, EVEN IF ENCOMPASS HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, ENCOMPASS'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS WILL NOT EXCEED AT ANY TIME \$10,000 US DOLLARS.

11. Indemnification.

- a. You will defend, indemnify, and hold harmless Encompass, and its officers, directors, employees, and agents, against any third-party claim and any associated loss, damage, settlement, cost, expense, or other liability (including, without limitation, attorneys' fees) (each, a "Claim") arising from or related to: (i) your non-compliance with applicable laws, (ii) your actual or alleged breach or violation of these TOU, and (iii) any use, purchase, distribution or sale of any Products.
- b. Encompass will defend, indemnify, and hold harmless you and your officers, directors, employees, and agents against any third-party Claim arising from or related to (i) Encompass's non-compliance with applicable laws, and (ii) allegations that the operation of and your proper use of the Platform infringes or misappropriates any third party's intellectual property rights.
- c. In the event of an infringement or misappropriation Claim as detailed in Section 11.b, Encompass may, at its sole option and expense: (i) procure for you the right to continue use of the Platform or the infringing or misappropriating part thereof; or (ii) modify or amend the Platform or infringing or misappropriating part thereof, without impacting any material functionality, or replace the Platform or infringing or misappropriating part thereof with another platform having substantially the same or better capabilities. If neither (i) nor (ii) is commercially practicable, Encompass may terminate your use of the Platform without any liability to you. Encompass will have no obligation to indemnify and defend you against a Claim of infringement or misappropriation if the actual or alleged infringement or misappropriation results from (w) your breach of these TOU, or (x) any modification, alteration or addition made to the Platform by you or anyone on your behalf or any improper use thereof.
- d. If any Claim that you are obligated to defend might adversely affect Encompass, then Encompass may, to the extent permitted by applicable law, voluntarily intervene in the proceedings at Encompass's expense. No Party may consent to the entry of any judgment or enter into any settlement of a Claim without the prior written consent of the other Party, which may not be unreasonably withheld; except that a Party may settle any claim that is exclusively directed at and exclusively affects that Party.
- e. You acknowledge and agree that your breach of these TOU would result in harm to Encompass that could not be adequately remedied by payment of money damages, and that Encompass shall be entitled to equitable relief, including an injunction, to prevent such a breach without having to prove monetary damages or having to post bond.

12. Governing Law. These TOU and any dispute, proceeding, or claim of any nature arising out of or in any way relating to these TOU shall be governed by the laws of the State of Colorado, without regard to its choice of law rules, and the Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts sitting in Denver, Colorado, state and/or federal, in all matters arising out of or in any way relating to these TOU.

13. No Assignment. These TOU shall not be transferred or assigned, in whole or in part, by you without the prior written consent of Encompass. Encompass may transfer its rights and obligations under these TOU in Encompass's sole discretion. Any purported assignment in violation of this Section is void.

14. Severability. If any provision of these TOU is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by applicable law. Failure to enforce any provision of these TOU shall not constitute a waiver of any term hereof.

15. Notice. All notices must be in writing and sent to the other Party through the contact information provided in the Platform. Any notice shall be transmitted in person, by commercial overnight courier, or by registered or certified US mail, return receipt requested. Notices shall be deemed effective upon receipt.

16. Independent Contractor. Nothing shall be construed as creating a partnership, joint venture, agency or any other relationship. These TOU are not made for, and shall not benefit or create any right or cause of action in favor of or for the benefit of, any person or entity other than Encompass and you.

17. Entire Agreement. These TOU embodies the entire understanding between the Parties and supersedes any and all prior understandings, arrangements, and agreements, whether oral or written, relating to the subject matter hereof. These TOU shall not be modified or amended except by a written document executed by both Parties.