

# SPLASHDATA RESELLER SERVICES AGREEMENT

PLEASE READ VERY CAREFULLY THESE TERMS AND CONDITIONS BEFORE USING OR SELLING SPLASHDATA SERVICES. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE DO NOT PROCEED WITH ORDERING, USING, OR SELLING THE SERVICES. BY CLICKING "ACCEPT", ORDERING, USING, OR SELLING SPLASHDATA SERVICES, YOU, THE RESELLER, AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT, TERMS OF SERVICES AND PRIVACY POLICY, EACH OF WHICH HAVE BEEN READ AND ACCEPTED BY YOU, THE RESELLER.

This Reseller Services Agreement (the "Agreement") is entered into by and between Salexo Software, Inc., d/b/a SplashData, a Delaware corporation with offices at 201 Los Gatos-Saratoga Road, #210 Los Gatos, CA 95030 ("SplashData") and the entity agreeing to these terms ("Reseller"). This Agreement is effective as of the date Reseller clicks the "I Accept" button below (the "Effective Date"). If you are accepting on behalf of the Reseller, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to this Agreement; (ii) you have read and understood this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. If you do not have the legal authority to bind the Reseller, please do not click the "I Accept" button below.

## BACKGROUND:

A. SplashData offers certain password management, recovery and encrypted file storage services available as software-as-a-service ("SaaS") applications (the "SplashData Products"). Reseller can control the use of SplashData services by its End Users, whose use of the applications is paid for by annual or monthly subscription.

B. The Reseller desires, and SplashData is willing to grant the Reseller, the right to resell SplashData Products as SaaS accounts to its end customers in accordance with the terms and conditions of this Agreement. NOW, THEREFORE, in consideration of the promises, mutual covenants and

agreements set forth in this Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**1. Definitions.** All initialized capitalized words used herein, unless the context requires otherwise, shall have the following meanings:□

1.1. **“Customer”** or **“User”** means any individual person or entity or combination of individuals and entity who has (or have) paid the monthly or annual subscription fee to SplashData for using one or more SplashData Products and who receives a non-exclusive and non-transferable license as a registered User of SplashData Products in accordance with the Terms of Use found on one of SplashData’s websites, and Privacy Policy found one one of SplashData’s websites.

1.2. **“End user”** means any potential Customer of SplashData Products sourced by the Reseller.□

1.3. **“User Agreement”** means as a contract, agreement or any other act that a Customer agrees to pay the required monthly or annual subscription fee for the usage of a SplashData Product.□

1.4. **“Terms”** shall mean the terms, conditions, manuals, and procedures which identify the rights of the Parties which are a material and integral part of this Reseller Agreement.□

1.5. **“Term”** means the term of the Agreement, which will begin on the Effective Date and continue for as long as the Reseller is receiving Services from SplashData, unless terminated earlier pursuant to this Reseller Agreement.□

1.6. **“Commission”** means, unless otherwise specified, forty percent (40%) of the Price unconditionally paid to and received by SplashData from a Customer sourced by the Reseller in accordance with the User Agreement for the first year of product payment. In some cases the commission may vary and can be a subject of an additional agreement.□

1.7. **“Price”** means the amount of money paid by a Customer sourced by the Reseller and paid to SplashData to effectuate the User Agreement. Reseller’s commission shall be calculated based solely on payments associated with the unique Reseller Code which is provided by SplashData to each reseller. The

Price shall be determined on the basis of SplashData then current Price list as set forth on SplashData Web Site and does not include VAT/Sales tax, if applicable.

## **2. Reseller Services.**

2.1. **Efforts.** The Reseller shall use its good faith best efforts to solicit, promote and sell SplashData Products via the Reseller's website or web based presentations, social networks, face-to-face presentations and other marketing tools to potential Customers.□

2.2. **Publicity.** The Reseller agrees that SplashData may include Reseller's name, logo or Brand Features in a list of SplashData customers, online or in promotional materials. The Reseller also agrees that SplashData may verbally reference the Reseller as a customer of the SplashData Products or services that are the subject of this Agreement.□

2.3. **Marketing Standards.** At all times, the Reseller shall conduct its business in a manner that reflects favorably on SplashData and SplashData's good name, goodwill and reputation. The Reseller shall ensure that its employees and agents maintain the highest level of market standard, of integrity and professionalism in advertising SplashData Products.

## **3. Reseller Covenants.**

3.1. **Compliance With Laws.** The Reseller shall provide the Services in compliance with all applicable local, federal, state laws, regulations and ordinances.□

3.2. **Relationship With Customers.** The Reseller, including Reseller's employees, representative and agents, shall not (i) engage in deceptive, misleading or unethical practices that are or might be detrimental to SplashData or any SplashData Products, (ii) make false or misleading representations with regard to SplashData or any SplashData Product, (iii) publish or employ, or cooperate in the publication or employment of any misleading or deceptive advertising material with regard to SplashData or any SplashData Product, and (iv) make any representation, warranty or guarantee to Customers, potential Customers or individuals or entities within the industry with respect to the

specifications, features or capabilities of SplashData or any SplashData Product that are inconsistent with the representations made by SplashData.□

**3.3. Price to be Paid to SplashData.** The Reseller is not authorized to collect any price, fees, payments, reimbursements, refunds, or any monetary amount owed to or paid by or to SplashData or any Customer in any form and shall ensure that its employees, representatives and agents comply with all reseller covenants set forth herein.

**3.4. Notification of Events.** The Reseller shall promptly notify SplashData of any important circumstances or events that may affect the Reseller's marketing efforts and which may bear upon the potential negotiation and execution of the User Agreement.□

**3.5. Order Processing.** The Reseller shall process orders from end users in accordance with the provisions of section 4.

**3.6. Inspection and Audit.** SplashData shall have the right, from time to time, to physically inspect and audit the Services being performed by the Reseller and to inspect all books, records and other data or information, including electronic data, relevant to provision of Services or to the Reseller's compliance with the terms of this Reseller Agreement; provided, however, that any such inspections will be conducted upon reasonable prior notice to the Reseller.

#### **4. Pricing and Order Processing.**

**4.1. Customer Pricing.** All the subscriptions indicated at the official SplashData web sites may only be marketed by the Reseller on a monthly or annual price subscription in accordance with the terms and conditions set forth on the SplashData web sites.□

**4.2. End Users and Order Processing.** Purchases of SplashData Product or Services will be made solely through online web based domains maintained by SplashData, with unique reseller code generated by SplashData captured for sales recognition and tracking. The Reseller will get access to a unique reseller code which will be used to send out quarterly or more frequent reports to the reseller based upon volume and traction. Customers will not be authorized to use paid subscriptions at SplashData until after full payment is received by SplashData.□

**4.3. Procedural Changes.** The Reseller acknowledges that the Pricing, the content of the Usage Agreements and Privacy Policy are subject to change at the sole discretion of SplashData.

## **5. Payment.**

**5.1. Calculation of Commission to be paid to the Reseller.** SplashData shall owe the Commission to the Reseller upon receipt of an unconditional payment of the Price from a Customer sourced by the Reseller during the Term of this Reseller Agreement.□

**5.2. Price Adjustment by the Reseller.** The Reseller may propose to SplashData a reduction in price for a particular use case based solely on the Reseller's agreement to reduce the percentage of its commission. A written authorization by SplashData is required prior to the Reseller's communication of such price reduction to any End User or Customer.

**5.3. Reseller Sourced Large Customer.** When the Reseller sources an end user which could result in a User Agreement with a price of Ten Thousand Dollars per year (\$10,000) or more, e.g., a large corporation or educational organization or government organization (a "Large Customer"), the Reseller shall immediately inform SplashData of the name and address of the Large Customer. SplashData reserves the right to negotiate all Large Customer User Agreements on a case-by-case basis. The Reseller acknowledges and agrees that the price determined for any User Agreement shall be at the sole discretion of SplashData.□

**5.4. Timing of Payment of Commission.** Commission earned by the Reseller shall be calculated by SplashData on a quarterly calendar basis and paid to the Reseller within thirty (30) days of the end of the calendar quarter, subject to reduction for refunds, cancellations and adjustments in price whether or not arising during the calendar quarter for which the Commission is being calculated. Following the expiration or termination of the Reseller Agreement, the Reseller should be entitled to payment of any earned, but previously unpaid, Commission from User Agreements executed after the termination date of this Reseller Agreement.□

**5.5. Commission Disputes.** In the event of a dispute between the parties regarding entitlement to or payment of Commission, upon the written request of

the Reseller, SplashData agrees to make available to the Reseller those records and accounting regarding its calculation of the Commission. The Reseller shall bear the costs of such an audit should SplashData's determination of the Commission be shown to have been accurate.□

5.6. **Wire Fees.** SplashData is not obligated to pay local or international bank fees that may apply for wire transfer of the Reseller's Commission.

## 6. Support

6.1. **First tier of support.** The Reseller shall be responsible for providing the first tier of support to End-Users or sub-resellers. SplashData shall make available to the Reseller its then current standard technical, technical support, marketing support and other services related to the SplashData Product. All such services shall be made available in accordance with and shall be subject to SplashData's then current standard terms and conditions applicable to the services. SplashData's current technical support standard is phone, chat and email support. Some service offerings may require execution of an additional agreement and/or the payment of service fees.□

6.2. **Support request.** Each technical support request from the Reseller shall include the following information:

*Reseller name*

*End user name*

*Title of the issue*

*Date and time that the issue occurred:*

*Detailed description of the issue*

*Error messages (if applicable)*

*Screenshots or any other visual element that could help solve the issue*

## 7. Grant.

7.1. **License.** SplashData hereby grants to the Reseller a non-exclusive, non-transferable and terminable license to (i) distribute and market SplashData Products and Services to End Users and Customers, and (ii) maintain, support, use for demonstration purposes and display SplashData Products. Reseller shall

have no rights to change, modify, adapt, or improve any SplashData marketing materials or SplashData Products without the prior written consent of SplashData.□

**7.2. Grant of Trademark License.** SplashData hereby grants to the Reseller a non-exclusive, non-transferable, terminable, royalty-free right and license (the “Trademark License”) to use the name SplashData and all intangible proprietary assets of SplashData, including trademarks, trade names, logos, and color schemes (collectively, the “SplashData Marks”) solely during the Term of this Reseller Agreement in connection with the Reseller’s rights and obligations with respect to the promotion and sale of SplashData Products. Reseller shall not use the SplashData Marks for any purpose not specifically granted under this Reseller Agreement.□

**7.3. Ownership of SplashData Marks.** Reseller acknowledges that SplashData is the owner of the SplashData Marks and Reseller agrees that during the Term of this Reseller Agreement:□

(a) All use of the SplashData Marks by the Reseller shall insure the benefit of SplashData.□

(b) The Reseller shall not contest the ownership of the SplashData Marks by SplashData or the validity of any rights claimed by SplashData in the SplashData Marks or registrations thereof.□

(c) The Reseller shall not do or cause anything that might impair SplashData’s ownership or rights in the SplashData Marks.

(d) Nothing in this Reseller Agreement shall give the Reseller any right, title or interest in the SplashData Marks other than the right to use the SplashData Marks in accordance with this Reseller Agreement.□

(e) The Reseller will not enter into a sublicense agreement of the SplashData Marks or permit or authorize any other person or entity to use the SplashData Marks, without the prior written consent of SplashData, which consent may be withheld by SplashData, at SplashData’s sole discretion.□

**7.4. Form of Use of SplashData Marks.** The Reseller is authorized to use the SplashData Marks in marketing materials related to the SplashData Products, including the use of the SplashData Marks in publicity, web site advertising,

social networks advertising, signs, printing materials, and other forms of advertising, subject to the terms and conditions of this Reseller Agreement. The Reseller agrees to use the SplashData Marks only in the form and manner provided herein and shall include appropriate symbols in conjunction with all uses of the SplashData Marks. SplashData has the right to appropriate all advertising and other promotional materials on which any SplashData Mark appear, and Reseller specifically undertakes, prior to using of the SplashData Marks in connection therewith, to amend to the reasonable satisfaction of SplashData any materials that are not approved by SplashData.

## **8. DISCLAIMER OF WARRANTIES**

8.1. SPLASHDATA MAKES NO REPRESENTATIONS OR WARRANTIES OR CONDITIONS OF ANY KIND CONCERNING THE SPLASHDATA PRODUCTS OR THEIR USE, ACCURACY, FUNCTIONING OR OWNERSHIP AND SHALL NOT BE LIABLE IN ANY MANNER FOR ANY REPRESENTATION OR WARRANTY OR CONDITION OF ANY KIND WHETHER EXPRESSED OR IMPLIED OR COLLATERAL OR WHETHER ARISING FROM OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SOFTWARE WILL BE ERROR FREE.□

8.2. RESELLER ACKNOWLEDGES THAT PORTIONS OF THE SOFTWARE SERVICES AND PRODUCTS ARE PROVIDED BY THE THIRD PARTY SUPPLIERS, WHOSE PERFORMANCE IS NOT WARRANTED OR GUARANTEED BY SPLASHDATA. RESELLER SHALL NOT BE AUTHORIZED TO MAKE ANY WARRANTY, GUARANTEE, REPRESENTATION OR CONDITION, WHETHER WRITTEN OR ORAL, ON BEHALF OF SplashData. THE RESELLER SHALL BE SOLELY RESPONSIBLE FOR ANY WARRANTIES FOR THE SOFTWARE GIVEN BY THE RESELLER.

## **9. Indemnification.**

9.1. **Claim.** Claim. The Reseller hereby agrees to indemnify and hold harmless SplashData and its shareholders, parent and affiliated companies, and each of their respective officers, directors, employees and representatives, from any damage, liability, claim, cost, loss or expense (including court costs, litigation



expenses and attorneys fees) (collectively, without limitation, a “Claim”) which arises out of or relates in any manner to any act(s) or omission(s) by the Reseller or any of the Reseller’s employees, representative or agent that are (i) performed or omitted to be performed by the order and under control of the Reseller, (ii) performed or omitted to be performed pursuant to the direction or with the actual or implied consent of the Reseller or its representatives, employees or agents, and (iii) caused by the Reseller’s breach of this Reseller Agreement ( including the Trademark License), or caused by the Reseller’s violation of any federal, state, or local law, regulation or ordinance. The Reseller shall have the sole authority to conduct the defense of or settle any Claim with the understanding, however, that SplashData shall have the right to approve counsel selected by the Reseller for such defense, which approval shall not be unreasonably withheld and, further, SplashData may retain own counsel at its expense and participate in the defense of any such Claim.□

**9.2. No Consequential Damages; Limitation of Liability.** In no event shall SplashData be liable for any incidental, consequential, indirect, special, punitive or exemplary damages, or damages for loss of profits or revenues, business information or other pecuniary loss, arising under or in connection with this agreement and even if advised of the possibility of such damages. The foregoing disclaimer of liability shall apply regardless of whether such liability is based on breach of contract, contractual or extra-contractual liability, tort (including without limitation negligence), strict liability, breach of a fundamental term, fundamental breach, or otherwise. In no event shall SplashData’s liability under this Agreement exceed the amount paid, under this Agreement by Customer in the 12 month period immediately preceding the event giving rise to the Claim.

## **10. Term and Termination.**

**10.1. Term.** The initial term of this Reseller Agreement will one (1) year or as decided upon between the Reseller and SplashData in writing. This Reseller Agreement will automatically renew each year unless terminated by either party in writing. This Agreement will remain in effect for the Term.

**10.2. Termination for Breach.** Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receiving a written notice; (ii) the other party ceases its business operations or becomes subject to

insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

## **11. Non-Competition and Non-Solicitation.**

**11.1. Non-Competition and Non-Solicitation.** In consideration for the execution of this Reseller Agreement by SplashData, the Reseller agrees that for the Term of this Agreement and for the period of one year after its expiration or termination for any reason, the Reseller shall not, on its own behalf or on behalf of any person or entity, directly or indirectly, in any capacity whatsoever, including as an employer, employee, principal, agent, joint venture, partner, shareholder or other equity holder, independent contractor, licensor, licensee, franchisor or franchisee, distributor, reseller, supplier, vendor, trustee or by and through any corporation, company, cooperative partnership, trust, or other entity (i) carry on, be engaged in, have any financial or other interest in any operation providing the same or similar services as SplashData, and/or (ii) carry on, be engaged in, solicit, attempt to solicit or accept business from any Customer or End User for the provision of the same or similar services as those provided by SplashData.

## **12. Intellectual Property.**

**12.1. Intellectual Property.** Reseller acknowledges and agrees that all intellectual property rights, including, but not limited to, software, graphical and text copyrights in connection with SplashData, are owned by and vested in SplashData in their entirety.

## **13. Miscellaneous.**

**13.1. Independent Contractor.** Nothing contained in this Reseller Agreement shall be construed to place Reseller and SplashData in a relationship as partners, joint ventures, joint employers, employer and employee or principal and agent, nor shall the Reseller be considered in any sense to be an affiliate or subsidiary of SplashData. Reseller shall not have any authority to create or assume in SplashData's name or on its behalf any obligation, expressed or implied, or to act or purport to act as its agent or legally empowered representative for any purpose whatsoever. Neither party shall be liable to any third party in any way for any engagement, obligation, commitment, contract,

representation or transaction or for any negligent act or omission to act for the other party except as expressly provided for herein.□

13.2. **Notice.** All notices, requests, demands and other communications required under this Reseller Agreement shall be provided in writing and manually delivered or sent by registered or certified mail, return receipt requested, first class postage prepaid, or sent by nationally recognized overnight delivery service, in each case addressed to the party entitled to receive the same at the address specified below in the case of SplashData:□

SplashData, Inc.

201 Los Gatos-Saratoga Road, #210

Los Gatos, CA 95030

E-Mail: techsupport@splashdata.com

ATTN: Morgan Slain

and in case of the Reseller:□

To the Address set forth on the Registration Page

Any such notice, shall be effective upon receipt, unless received on a day which is not a Business Day in which event it shall be deemed to be received on the next Business Day. Either Party may change its address for service from time to time by notice given in accordance with the foregoing and any subsequent notice shall be sent to the Party at its changed address.

13.3. **Governing Law - Jurisdiction and Venue.** This Reseller Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of California, regardless of the contract of law principles and the parties further agree that any action or proceeding arising out of or in connection with this Reseller Agreement shall be venued in a federal or state court of appropriate venue and subject matter jurisdiction located in the State of California, and consent to the personal jurisdiction of each said courts. Each party hereby knowingly, voluntarily, and intentionally waives the right which either party may have to a trial by jury with respect to any litigation between the

parties hereto, including, but not limited to, with respect to any and all cause or causes of action, defenses, counterclaims, cross-claims, third party claims, and intervenor's claims, whether now existing or hereafter arising, and whether sounding in contract, tort, equity or otherwise, regardless of the cause or causes of action, defenses or counterclaims alleged or the connection with this Reseller Agreement or its subject matter, out of any alleged conduct or course of conduct, dealing or course of dealing, statements (whether verbal or written), or otherwise. Any party hereto may file a copy of this Agreement with any court as conclusive evidence of the consent of the parties hereto to the waiver of any right they may have to be tried by a jury.□

13.4. **Authority.** Each party warrants that it has the full right, power, and authority to enter into this Reseller Agreement, and that this Reseller Agreement is a legal, valid and binding obligation upon such party and enforceable in accordance with its terms.□

13.5. **No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.

13.6. **Refund for Paid Services.** If Customer disables an Additional Service for which Customer or End User has provided payment, SplashData and Reseller will not be obligated to refund Customer or any End User for unused paid services. Customer will indemnify, defend, and hold harmless SplashData and the Reseller from and against all liabilities, damages, losses and expenses, and costs (including settlement costs and reasonable attorneys' fees) arising out of an End User's claim concerning refunds for such paid services.□

13.7. **Severability.** If in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provision hereof and without affecting the validity or enforceability of such provision in any other jurisdiction or its application to other Parties or circumstances.□

13.8. **Modifications.** SplashData may modify these Terms from time to time.□

13.9. **Language.** The Parties have requested that this Agreement, together with any schedule, notice or other related document, be drawn up in the English language only.