

Retailer License Agreement

THIS IS A BINDING LEGAL CONTRACT. THE USER (“USER”) SHOULD CAREFULLY READ THIS SOFTWARE LICENSE AGREEMENT (THE “AGREEMENT”) BEFORE DOWNLOADING AND USING THE PROPRIETARY FINDNEARME® SOFTWARE APPLICATION (THE “APPLICATION”) OF SPLICE TECHNOLOGY, LLC (THE “COMPANY”). THE USER MUST AGREE TO THIS AGREEMENT BY CLICKING ON THE “I ACCEPT” BUTTON. BY CLICKING ON THE “I ACCEPT” BUTTON, THE USER AGREES TO BE BOUND BY THIS AGREEMENT, AND BE LIABLE TO THE COMPANY FOR ANY NONCOMPLIANCE WITH THIS AGREEMENT. IF THE USER DOES NOT AGREE TO THIS AGREEMENT, SUCH USER SHOULD NOT CLICK ON THE “I ACCEPT” BUTTON AND MAY NOT USE THE APPLICATION.

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the User hereby agree as follows:

1. **License.**

(a) The Company has developed the Application, which is a system that connects customers (“Customers”) searching for products manufactured, sold, distributed, or supplied or services provided by a company (“Supplier”) to one or more retailers (“Retailer”) that sells such products or provides such services. User acknowledges it is a Retailer and that it desires to use the Application pursuant to the terms set forth in this Agreement.

(b) The Company hereby grants to the User a limited, non-exclusive, non-transferable license (the “License”) to download, install, and use the Application and related documentation, if any, describing the Application which is delivered or made available to the User by the Company (the “Documentation”), solely for connecting potential Customers to User with respect to certain products or services provided by User, and only for the purposes for which the Application is intended and designed.

(c) The License does not include the right to and User agrees to not (i) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Application or Documentation; (ii) sell, sublicense to third parties or affiliates, rent, lease, grant a security interest in, or otherwise transfer rights to the Application or Documentation; (iii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Application or Documentation; (iv) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Application; (v) upload, post, email, or otherwise transmit any viruses or other computer code that may interrupt, destroy, limit the functionality of the Application, or interfere with the access of any user of the Application; or (vi) use or install the Application in locations other than those contemplated under this Agreement and for which User has paid the appropriate license fees.

(d) As between the Company and the User, title, ownership rights, and intellectual property rights in the Application and Documentation belong to and shall remain in the Company. The User acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with the

Company's ownership of or rights with respect to the Application and Documentation. The Application and Documentation are protected by copyright and other intellectual property laws and by international treaties.

2. **Collection and Use of Information.** User acknowledges that the Application will provide the Company the means to access and collect various information, which may include but not be limited to, the buying habits of Customers, product or service search history, inventory levels of User, conversations between Customers and User, and other information related to User's products or services. The Company may place cookies, or may use web analytics services from third-party service providers who may place cookies, in Supplier's, Customer's, or User's browser, as applicable, to help collect such information. This information will help the Company to better serve the User and Supplier by providing User and Supplier with more personalized information about buying and searching habits of Customers and market trends. User agrees that the Company may use any information that it obtains through the use of the Application, whether it is from the Customer, the Supplier, or the User, for its own commercial purposes.

3. **Interruption of Services.** The User acknowledges that use of the Application may from time-to-time be unavailable to the User, whether because of technical failures or interruptions, intentional downtime for service or changes to the Application, or otherwise. The User agrees that any modification to the Application and any interruption or unavailability of use of the Application shall not constitute a default under this Agreement, and that the Company shall have no liability of any nature to the User for any such modifications, interruptions, unavailability, or failure of use.

4. **Minimum Requirements.** The User shall maintain any hardware and software required by the Company in order to properly use the Application, including but not limited to, access to the internet ("User Requirements"). The User Requirements as of the date of this Agreement and as modified from time-to-time by the Company are set forth on the respective schedule posted on the Company's website.

5. **Updates.** The Company may from time to time in its sole discretion develop and provide updates to the Application, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, including related documentation, the "Updates"). Updates may also modify or delete in their entirety certain features and functionality of the Application. The User agrees that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality of the Application. The Company may provide to the User notice of Updates and require the User to download and install the available Updates before User may use the Application. User agrees to promptly download and install all Updates. User further acknowledges and agrees that the Application or portions thereof may not properly operate if it fails to download and install the Updates. The User further agrees that all Updates are deemed part of the Application and are subject to all terms and conditions of this Agreement.

6. **Intellectual Property.** The User acknowledges and agrees that the Application and Documentation consist of proprietary, unpublished works of the Company or its assignor, protected under United States copyright, patent, trademark, and trade secret laws of general applicability. The User further acknowledges and agrees that all right, title, and interest in and to the Application and Documentation, together with all modifications, enhancements, copies, and derivative works, including all copyright rights, and all other intellectual property rights, are and

shall remain with the Company. Additionally, the User acknowledges and agrees that the Company owns all right, title, and interest in and to the Company's trademarks, including but not limited to the mark FINDNEARME®, together with all goodwill associated with such trademarks, and User shall not take any action inconsistent with the Company's ownership of such trademarks. User agrees that any goodwill arising from the User's use of the Company's trademarks, regardless of whether User has a license to use such marks, shall inure solely to the benefit of the Company. Except as provided in this Agreement, this Agreement does not convey to the User an interest in or to the Application or the Documentation or any other intellectual property of the Company.

7. **Proprietary and Other Notices.** The User agrees that it will not alter or remove any trademarks or copyright notices or other notices and disclaimers located or used on, or in connection with, the Application, or any reports generated by or in connection with the Application.

8. **Confidential Information.** The User acknowledges that it may have access to and will have disclosed to it confidential information of the Company ("Confidential Information"). The User agrees to maintain as confidential and not disclose Confidential Information disclosed to it in connection with this Agreement. The User shall use commercially reasonable efforts to maintain the confidentiality of all Confidential Information but shall at least use such efforts as the User uses for its own confidential information. Notwithstanding the foregoing, the User may disclose Confidential Information as ordered by a court of competent jurisdiction or as otherwise required by law. No disclosure pursuant to court order or as required by law shall be made until the User has given the Company ten (10) days prior written notice and an opportunity to oppose such disclosure.

9. **Term; Termination.** This Agreement shall commence on the Effective Date and shall continue until terminated. Either party may terminate this Agreement by delivering thirty (30) days' prior written notice of such termination to the other party. Notwithstanding the foregoing, the Company may immediately terminate this Agreement upon the occurrence of any material default by the User of any term of this Agreement, including, without limitation, the use or attempted use of the Application beyond the use allowed under this Agreement or the misuse or abuse of the Application, or the disclosure of any Confidential Information. Upon termination of this Agreement, for any reason, the User agrees to immediately terminate any use of the Application.

10. **Payment of Sales and Other Taxes.** The User agrees to pay and be responsible for all sales and other taxes imposed by any governmental authority applicable to this Agreement, except income taxes of the Company, including all applicable excise, property, value-added, sales or use, or similar taxes, any withholding taxes, national pension or other welfare taxes, customs, import, export, or other duties, levies, tariffs, taxes, or other similar charges.

11. **Disclaimer.** User agrees and acknowledges that the Company is only a conduit to connect a Customer to User for the purchase of goods or services provided by User and that the Company does not make any representations about connecting Customers to User who actually purchase goods or services provided by the User. ACCORDINGLY, THE APPLICATION IS PROVIDED ON AN "AS IS" BASIS AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. THE COMPANY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET USER'S REQUIREMENTS; ACHIEVE ANY INTENDED RESULTS; BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES; OPERATE WITHOUT INTERRUPTION; MEET ANY PERFORMANCE OR RELIABILITY STANDARDS; BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED; OR WILL ACTUALLY CONNECT CUSTOMERS TO USER OR RESULT IN INCREASED CLOSED SALES FOR USER. FURTHERMORE, USER ACKNOWLEDGES THAT THE COMPANY IS NOT RESPONSIBLE FOR FINDING CUSTOMERS OR ASSISTING IN THE CLOSING OF ANY SALES OF PRODUCTS OR SERVICES. THE COMPANY SHALL ALSO NOT INVESTIGATE, SCREEN, OR OTHERWISE VET ANY CUSTOMER OR SUPPLIER.

12. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COMPANY, OR ANY OF ITS RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO THE USE OF OR INABILITY TO USE THE APPLICATION OR THE CONTENT AND SERVICES FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES

(b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, PRODUCT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The Company and the User agree that the limitations of liability set forth in this Agreement represent bargained for allocations of risk, and that the mutual promises and covenants under this Agreement represent the allocations of such risk.

13. **Representations, Warranties, and Covenants of User.** User represents, warrants, and covenants to the Company that:

(a) User shall not submit any content through the Application that violates or infringes any copyright, trademark, trade secret, patent, statutory, common law, or other proprietary right of others;

(b) User shall not use the Application for any purpose that is prohibited by this Agreement, including without limitation, the posting or transmitting of any harassing, threatening, infringing, libelous, defamatory, obscene, scandalous, inflammatory,

pornographic, or profane material, or is otherwise in violation of any federal, state, or local laws or regulations;

(c) User shall not use the Application to post or transmit unsolicited email or spam to anyone;

(d) User shall not knowingly submit any information that is false or misleading;

(e) This Agreement will be valid, binding and enforceable with respect to the User in accordance with its terms; and

(f) Entering into this Agreement and/or the performance of the User's obligations under this Agreement will not constitute a default, or an event which with the passage of time, the giving of notice, or both, would constitute a default, under any other agreement by which the User is bound.

14. **Indemnification.** The User agrees to indemnify, hold harmless, and defend the Company and its officers, directors, shareholders, members, managers, employees, agents, and affiliates from and against any and all loss, liability, damage, claims, demands or suits and related costs and expenses, including attorneys' fees, that arise, directly or indirectly, from any abuse, misuse, or misapplication of the Application or any inappropriate or unacceptable interaction, as determined by the Company in its sole discretion, with any Customer or Supplier. The Company shall have the right to reasonably control the defense of any claims under this Section 14 of this Agreement, and to engage its own legal counsel.

15. **Injunction.** The Company and the User agree that a breach or violation of Sections 1, 6, 7, 8, or 16 of this Agreement will result in immediate and irreparable injury and harm to the non-defaulting party. In such event, the non-defaulting party shall have, in addition to any and all remedies of law and other consequences under this Agreement, the right to an injunction, specific performance or other equitable relief to prevent the violation of the obligation under this Agreement; provided, however, that, this shall in no way limit any other remedies which the non-defaulting may have, including, without limitation, the right to seek monetary damages as provided under this Agreement.

16. **Export Regulation.** The Application may be subject to United States export control laws, including the US Export Administration Act and its associated regulations. The User shall not, directly or indirectly, export, re-export, or release the Application or any product to, or make the Application or any product accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. The User shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings, including but not limited to, obtaining any necessary export license or other governmental approval, prior to exporting, re-exporting, releasing, or otherwise making the Application or any product available outside the United States.

17. **Limitation of Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM USER MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APPLICATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

18. **General.**

(a) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Utah, without giving effect to any conflicts or choice of laws provisions. The User acknowledges that by obtaining the rights to use the Application set forth in this Agreement and using the Application, the User has transacted business in the State of Utah. The User hereby voluntarily submits to, consents to, and waives any defense to the jurisdiction of courts located in the State of Utah as to all matters relating to or arising from this Agreement.

(b) **Attorneys' Fees.** If any action is brought by either party to this Agreement against the other party regarding the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorney fees, costs, and expenses of litigation. The User agrees to pay all costs of collection, including reasonable attorney's fees and costs, of any amounts owing under this Agreement which are not paid when due.

(c) **Notices.** All notices, demands, or consents required or permitted under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, certified mail, return receipt requested, or by a reputable overnight courier service, to the appropriate party at the following addresses:

If to the Company:

Splice Technology, LLC
11069 North Yarrow Circle
Highland, Utah 84003
Attention: Manager

If to User:

At User's street address maintained by the Company.

All notices which are hand-delivered shall be effective upon delivery and notices delivered by mail shall be effective one (1) day after the notice is deposited in the mail in accordance with the provisions of this Section. The foregoing addresses may be changed from time-to-time by delivering notice of such change to the parties to this Agreement.

(d) **Severability.** Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable shall not invalidate or make unenforceable any other provision of this Agreement.

(e) **No Waiver.** The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach under this Agreement shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

(f) **No Assignment.** The User agrees that it will not assign, sublicense, transfer, pledge, lease, rent, or share the Application or Documentation, this Agreement, or

any of the User's rights under this Agreement without the prior written consent of the Company, which may be withheld in the Company's sole discretion. The Company may assign this Agreement at any time, including an assignment in connection with a merger, sale of assets, or otherwise.

(g) **No Modification of Agreement.** This Agreement may not be modified or amended, except in writing signed by the parties to this Agreement.

(h) **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the Company and the User and is not intended to benefit any third party. No third party may claim any right or benefit under or seek to enforce any of the terms and conditions of this Agreement. Notwithstanding the foregoing, the Company shall be a third party beneficiary to this Agreement and shall have the right to enforce any of the provisions of this Agreement in order to protect its intellectual property rights in the Application and its trademarks.

(i) **Effective Date.** This Agreement shall be dated effective as of the date (the "Effective Date") User clicks on the "I Accept" button.

(j) **Electronic Transaction.** The parties expressly agree to conduct this transaction electronically pursuant to the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001.

(k) **Entire Agreement.** This Agreement, together with any other document contemplated under this Agreement, constitutes the entire agreement between the Company and the User concerning the Application and all other subject matter of this Agreement. This Agreement supersedes any contemporaneous or prior proposal, representation, agreement, or understanding between the parties. This Agreement may not be amended except in writing signed by the Company and the User.

(l) **Ancillary License Agreements.** This Agreement is part of a set of related license agreements, including a Web Service End User License Agreement, a Supplier License Agreement and a Customer License Agreement, each of which may be found on the Company's website. By accepting the terms of this Agreement, User accepts the terms of the Web Service End User License Agreement, the Supplier License Agreement and the Customer License Agreement as such agreements may be applicable to User.

(m) **Survival.** The provisions of Sections 2, 6, 7, 8, 10, 11, 12, 13, 14, 15, 18, 16, and 17 shall survive the termination of this Agreement.