



## SERVICE AGREEMENT

### Part A: Parties

SPREEDLY		CUSTOMER	
Name:	Spreedly, Inc.	Name:	Environmental Systems Research Institute, Inc.
Address:	733 Foster Street, Suite 100	Address:	380 New York St.
City/State:	Durham, NC 27701	City/State:	Redlands, CA 92373
<b>PRIMARY SPREEDLY CONTACT</b>		<b>PRIMARY CUSTOMER CONTACT</b>	
Name:	Justin Benson	Name:	Colleen Friis
Title:	CEO	Title:	Senior Buyer / Team Lead
Phone:	919-432-5008	Phone:	909-793-2853
Email:	sales@spreedly.com	Email:	cfriis@esri.com

### Part B: Terms

1. This Service Agreement (including its exhibits, the "Agreement") is effective as of the last date of signing below ("Effective Date") and is between Spreedly, Inc. ("Spreedly", "we" or "us"), and the Customer listed above (the "Customer" or "you"). Except as otherwise provided herein, this Agreement is subject to the Spreedly Terms of Service ("Terms of Service") and Spreedly Privacy Policy ("Privacy Policy"), which are incorporated herein by reference, and which can be viewed at <https://spreedly.com/>. Together, this Agreement and the Terms of Service constitute a binding agreement between the Customer and Spreedly. To the extent that any term in the Terms of Service or Privacy Policy conflicts with the terms of this Agreement or any inconsistency between such Terms of Service and/or Privacy Policy and this Agreement exists, the terms of this Agreement shall prevail.
2. **Representations:** Each party to this Agreement represents and warrants to the other that (i) it possesses the legal right and corporate power and authority to enter into this Agreement and to fulfill its obligations hereunder; and (ii) its execution, delivery and performance of this Agreement will not violate the terms or provision of any other agreement, contract or other instrument, whether oral or written, to which it is a party.
3. **Provision of Services.** Spreedly hereby grants the Customer a worldwide, limited, non-exclusive, irrevocable (except in connection with termination or expiration of this Agreement), non-transferable license, without the right to sublicense, to electronically access and use the Spreedly API for the term of this Agreement. Spreedly shall provide to Customer access to Spreedly's website, any software, programs, documentation, tools, internet-based services, components and any updates thereto provided by Spreedly ("Services"). The foregoing shall include the right to permit Customer's employees, consultants, contractors, interns and outsourced workers to access and use the Spreedly API as set forth in this Agreement.
4. **Term:** The initial term of this Agreement shall be twelve (12) months from the date access to the Services is provided to Customer (the "Initial Term"), unless otherwise terminated in accordance with the provisions of Section 5. This Agreement shall automatically renew at the expiry of the Initial Term (and each successive Renewal Term) for future periods equal to one year (each a "Renewal Term"), unless either party gives written notice of its intent to terminate the Agreement no less than 45 days prior to the end of the then current term. The "Term" shall refer to the Initial Term and any Renewal Terms.
5. **Termination:** If either party (a) commits a material breach or material default in the performance or observance of any of its obligations under this Agreement, and (b) such breach or default continues for a period of 30 days after delivery by the other party of written notice reasonably detailing such breach or default, then (c) the non-breaching or non-defaulting party shall have the right to terminate this Agreement, with immediate effect, by giving written notice to the breaching or defaulting party. Upon termination for breach by Customer, Customer shall remain liable for fees owing through the effective date of termination.
6. **Pricing:** Spreedly will charge Customer the fees outlined on Exhibit A for use of the Services.
7. **Confidential Information.**
  - a. For the purposes of this Agreement, "Confidential Information" means any and all technical and non-technical information, whether in graphic, electronic, written or oral form, disclosed by either Spreedly or the Customer, including the Spreedly API or any API owned or otherwise controlled by the Customer, any ideas, techniques, drawings, designs, descriptions, specifications, works of authorship, patent applications or other filings, models, inventions, know-how, processes, algorithms, software source documents, and formulae related to the current, future, and proposed technologies, products and services of each of the parties, and also any information concerning research, experimental work, development, engineering, financial

information, purchasing, customer lists, pricing, investors, employees, business and contractual relationships, business forecasts, business plans, personally-identifiable information, sales and merchandising, marketing plans of or related to Spreadly or the Customer and information either party provides to the other regarding or belonging to third parties, whether or not labeled or marked as "Confidential," "Proprietary" or with a similar proprietary legend, and which may also be disclosed verbally. "Confidential Information" does not include any information which: (i) now or hereafter enters the public domain through no breach of an obligation of confidentiality or other fault of a party; (ii) the receiving party independently knows free of any obligation of confidentiality at the time of receiving such information; (iii) a third party hereafter furnishes to the receiving party without restriction on disclosure and without breach of any confidentiality obligations; or (iv) employees or agents of a receiving party have independently developed without any use of or reference to any Confidential Information or breaching this Agreement.

- b. Each party shall: (i) only disclose Confidential Information to those employees with a need to know and who have agreed to terms at least as restrictive as those stated in this Agreement; (ii) hold in strict confidence and not disclose any Confidential Information to any third party; (iii) protect and safeguard any and all Confidential Information using the same standard of care as it uses to protect and safeguard its own confidential and/or proprietary information, but in no event less than a reasonable standard of care; (iv) use such Confidential Information only to the extent required for the purposes of this Agreement; (v) not reproduce Confidential Information in any form except as required for the purposes of this Agreement; (vi) not reverse-engineer, decompile, or disassemble any software or devices disclosed by the other party; (vii) not directly or indirectly export or transmit any Confidential Information to any country to which such export or transmission is restricted by regulation or statute; and (viii) promptly provide the other party with notice upon discovery of any loss or unauthorized disclosure of the Confidential Information or any actual or threatened breach of the terms of this Agreement.
  - c. Notwithstanding the foregoing, either party may disclose Confidential Information (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as require by law; or (ii) on a "need-to-know" basis and under an obligation of confidentiality to its legal counsel, accountants, banks and other financing sources and their advisors, or to a Qualified Security Assessor ("QSA") for the purpose of assessing compliance with the Payment Card Industry Data Security Standards ("PCI-DSS").
  - d. All Confidential Information (including all copies thereof) shall remain the property of the disclosing party. Upon the request of the disclosing party, the receiving party shall either (a) return such materials to the disclosing party; or (b) certify in writing as to the destruction thereof.
8. References to Relationship. Any press release, public announcement or media communication regarding this Agreement may only be made with the written approval of both Parties.
9. PCI-DSS. Spreadly represents and warrants that, at all times during the duration of this Agreement, it shall be fully compliant with PCI-DSS and all other applicable standards and guidelines issued by the PCI Security Standards Council, LLC, (the "Council") as modified from time to time, and shall, on request or on a periodic basis in accordance with the Card Rules (as defined below), provide proof thereof. In addition:
- a. Spreadly covenants, represents and warrants that, at all times during the duration of this Agreement, it complies with and will comply with all applicable rules and guidelines regarding service providers, third-party agents and processors as issued by the Card Associations (the "Card Rules"), as updated from time to time, and including Card Rules applicable to U.S. and international credit card transactions. The term "Card Associations" means MasterCard, VISA, American Express, Discover, JCB or any other credit card brand or payment card network for or through which Spreadly Processes payment card transactions. "Processes," "Processed" or "Processing" shall mean any operation in relation to Personal Information irrespective of the purposes and means applied including, without limitation, access, collection, retention, storage, transfer, disclosure, use, erasure, destruction, and any other operation. "Personal Information" means any information that identifies or could reasonably be used to identify an individual person, including but not limited to names, cardholder data social security numbers, driver's license numbers, tax identification numbers, addresses and telephone numbers), any information that identifies characteristics (such as qualities, likes, dislikes, propensities or tendencies) of any person, or any information which is compiled or derived from any of the foregoing.
  - b. Spreadly represents and warrants that it validates its PCI-DSS compliance as required by the applicable Card Rules, and, as of the effective date and for the duration of this Agreement, Spreadly has and will remain compliant with all applicable requirements to be considered compliant with PCI-DSS, and has and will continue to perform all necessary steps to validate its compliance with the PCI-DSS. Without limiting the foregoing, Spreadly represents and warrants: (i) that it undergoes an Annual On-Site PCI Data Security Assessment ("Annual Assessment") by a QSA and pursuant to its most recent Assessment, it is currently certified as compliant with the current version of PCI-DSS by the QSA; (ii) that it undergoes a quarterly network scan ("Scan") by an approved scanning vendor ("ASV") and that it is has passed its most recent scan.
  - c. Spreadly will notify Customer within seven (7) days if it (i) receives a non-compliant Annual Assessment from a QSA; (ii) fails to undergo or complete any Annual Assessment prior to the expiration of the previous year's Annual Assessment; (iii) is unable to pass any of its Scans; or (iv) is no longer in compliance with PCI-DSS.
  - d. Spreadly agrees to supply evidence of its most recent Annual Assessment prior to or upon execution of this Agreement. Thereafter, Spreadly shall annually supply to Customer, or make available on [www.spreadly.com](http://www.spreadly.com), evidence of Spreadly's

successful completion of its Annual Assessment and will, upon reasonable request, supply Customer with additional evidence of its overall PCI-DSS compliance status.

- e. Spreedly shall, with respect to the Customer's data, use only validated third-party payment applications that have been certified as compliant with the Council's Payment Application Data Security Standards ("**PA-DSS**"), as updated from time to time.
  - f. Customer may elect at any time to perform an automatic export of any Card Data or other credit card or user information associated with Customer's account to a third-party endpoint for which Spreedly supports Third Party Vaulting (a "**Supported TPV Endpoint**") as set forth at: <https://docs.spreedly.com/guides/third-party-vaulting/>. For any endpoint that is not a Supported TPV Endpoint, Customer may request that Spreedly perform one (1) free-of-charge manual export during the Initial Term and each Renewal Term thereafter, of any Card Data or other credit card or user information associated with Customer's account to a recipient designated by Customer, provided the recipient has proven that it is PCI-DSS compliant and the transfer is not in violation of any applicable rules, laws or regulations. If Customer requires additional manual exports during a given contract term, each additional manual export shall incur a \$1,000 charge. Spreedly reserves the right to delete all of Customer's Card Data and any other account data stored on its servers 30 days after the termination of this Agreement (the "**Data Transfer Window**"). If Customer requires additional time to arrange the export of its Card Data to a PCI compliant third party, it may extend the Data Transfer Window for additional 30-day periods by paying the relevant storage fees determined in accordance with Exhibit A of this Agreement.
10. **Security.** Without limiting the requirements of this Agreement, Spreedly agrees that all Customer Confidential Information (including Personal Information) will be secured from unauthorized access, use, disclosure, loss, theft and Processing using industry standard security practices and technologies. Without limiting the foregoing, Spreedly represents and warrants the following:
- a. Spreedly has in place a comprehensive, written information security program designed to protect the information under its custody, management or control, including all Customer Confidential Information. Spreedly's information security program satisfies the requirements of all data security laws and regulations applicable to Spreedly, and includes the following safeguards: (i) secure business facilities, data centers, servers, back-up systems and computing equipment including, but not limited to, all mobile devices and other equipment with information storage capability; (ii) network, device application, database and platform security; (iii) secure transmission, storage and disposal; (iv) authentication and access controls within media, applications, operating systems and equipment; (v) encryption of Customer Confidential Information placed on any electronic notebook, portable hard drive or removable electronic media with information storage capability, such as compact discs, USB drives, flash drives, tapes; (vi) encryption of Personal Information in transit and at rest; (vii) Personal Information must not be Processed in test, development or non-production environments; and (viii) Personnel security and integrity including, but not limited to, background checks consistent with applicable law and the requirements of this Agreement. "**Personnel**" means a party's officers, directors, employees and authorized agents who contribute to the performance of such party's obligations under this Agreement. For purposes of the foregoing, a party and its officers, directors, employees and authorized agents shall not be deemed Personnel of the other party.
  - b. Spreedly shall regularly, but in no event less than annually, evaluate, test and monitor the effectiveness of its information security program and shall promptly adjust and/or update such programs as reasonably warranted by the results of such evaluation, testing, and monitoring.
  - c. All Spreedly Personnel with access to Customer Confidential Information are provided appropriate information security and privacy training to ensure their compliance with Spreedly's obligations and restrictions under this Agreement, with applicable laws and with Spreedly's information security program.
11. **Breaches of Security.**
- a. "**Breach of Security**" shall mean any loss, misuse, compromise, or unauthorized access to Customer systems, Personal Information or Confidential Information that Spreedly collects, generates, or obtains from or on behalf of Customer, or any act or omission that compromises or undermines the physical, technical, or organizational safeguards put in place by Spreedly in processing such information or otherwise providing services under this Agreement.
  - b. If there is an actual or suspected Breach of Security involving Personal Information that is stored, managed or received by, or transmitted to Spreedly, Spreedly will notify Customer within 24 hours of becoming aware of such occurrence and will provide such notice to Customer by contacting the primary Customer Contact set forth above.
  - c. In the event of an actual or suspected Breach of Security, Spreedly will cooperate with the Customer to mitigate any harm, will consult with Customer in good faith about remediation and mitigation plans, and will take all steps reasonably necessary to investigate and remediate the effects of such occurrence, ensure the protection of those data subjects that are affected or likely to be affected by such occurrence, prevent the re-occurrence, and comply with applicable laws. Spreedly will, at its own cost, make all notifications to data subjects that are required by law or any Card Association or Acquirer, subject to Customer's approval of the content, form and delivery of such notices to Customer's end users. Spreedly shall not inform any third party of any Breach of Security, except other affected Spreedly customers or as may be strictly required by applicable law, without first obtaining Customer's prior written consent.

12. Insurance. At all times during the Term, Spreadly shall maintain (i) commercial general liability insurance with at least \$1,000,000 per occurrence, (ii) "errors and omission" (tech and cyber coverage) insurance in an amount not less than \$5,000,000. Customer shall be named as an additional insured under each policy and, upon Customer's request, Spreadly shall provide Customer with a copy of such policy or policies or a certificate of insurance evidencing the same. Spreadly shall provide Customer with sixty (60) days advance notice of any material change in such policy or policies.
13. Indemnification. (a) Spreadly shall indemnify, defend and hold harmless Customer against any loss or damage that Customer may sustain or incur (including attorneys' fees and costs), in relation to any claim or action by third party (including, without limitation, any regulatory or government authority), arising out of or related to any breach by Spreadly of Section 7 (Confidential Information), Section 9 (PCI-DSS), Section 10 (Security), or Section 11 (Breach of Security) of this Agreement, or from any negligent or willful act or omission by Spreadly, or arising out of any claim of infringement or similar proprietary right violation; (b) Customer shall indemnify, defend and hold harmless Spreadly against any loss or damage that Spreadly may sustain or incur (including attorneys' fees and costs), in relation to any Claim arising out of or related to any of the following: (i) any grossly negligent act or omission or willful misconduct of Customer; (ii) any breach of Section 8 (Confidential Information) of this Agreement; and/or (iii) Customer's violation of any applicable federal, state and local Laws, including any data privacy laws.
14. Limitations of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, OR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS), LOSS OF SALES; LOSS OF GOODWILL ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR DAMAGES EXCEEDING THE APPLICABLE FEES PAID OR OWED TO SPREADLY OVER THE PAST TWELVE (12) MONTHS FOR THE SERVICES. THESE LIMITATIONS AND EXCLUSIONS OF LIABILITY DO NOT APPLY TO SPREADLY'S INDEMNIFICATION OBLIGATIONS, OR EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATIONS OF EXPORT LAWS.
15. Miscellaneous. This Agreement shall be governed by the laws of the State of Delaware (without regard to its choice of law provisions). Each party irrevocably waive any and all rights they may have to trial by jury in any judicial proceeding involving any claim relating to or arising under this Agreement. This Agreement contains the final, complete and exclusive agreement of the parties relative to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter and may not be changed, modified, amended or supplemented except by a written instrument signed by both parties. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or court decisions.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Agreement as of the last date of signature below:

**Spreadly, Inc.**

By:

Name:

Justin Benson

Title:

CEO

Date:

9/27/2018

**Environmental Systems Research Institute, Inc.**

By:

Name:

Chris Johnson

Title:

Manager, Commercial & Government Contracts

Date:

9/26/18

## EXHIBIT A

### PRICING

The initial term of this agreement is 12 months. Customer shall pay Spreadly a "Base Annual Fee" of \$52,500 for each 12 months of service, which shall entitle Customer to the following for the duration of the Term:

<b>Enterprise Platform Fee:</b>	<b>\$50,000</b>
Enterprise Assurance Agreement	Included
Existing Spreadly End Points	Unlimited
PCI Compliant Card Storage Limit	Unlimited
Add new standard PMD endpoint/s	Included
<b>API Usage Fee:</b>	<b>\$2,500</b>
Included Non-partner API Calls	500,000
Cost per API call	\$0.005
Partner API Usage Fee (cost per API call)	\$0.00
<b>Total Base Annual Fee</b>	<b>\$52,500</b>

#### API Usage Fees:

The API Usage Fee in the table above includes an initial allotment of 500,000 API calls. The following API calls made to partner gateways will not be counted against that allotment as long as partner remains in good standing in the Spreadly gateway partner program:

- A Purchase API call against the partner gateway
- A Capture API call against the partner gateway
- A Refund API call against the partner gateway
- A Void API call against the partner gateway
- An Authorization API call against the partner gateway

In the event Customer's actual API usage of the Service exceeds the included volumes used to determine the Base Annual Fee, Spreadly will bill Customer monthly in arrears for overages at a rate of \$0.2 cents per additional API call during months one through ten and at a rate of \$0.005 per additional API call during months eleven and twelve of an annual term.

#### Account Updater Service:

Customer has elected to participate in Spreadly's Account Updater program (see <https://www.spreadly.com/terms> Section 3 "The Card Account Updater" for terms), at a cost of \$0.18 per successfully updated card. Customer shall prepay \$9,000 (equivalent to 50,000 card updates) for use of the service, and that fee shall be debited each time the account updater service is performed and fees are accrued. Customer shall be invoiced an additional \$9,000 only when the existing balance falls below \$100. Upon expiration or termination of the main agreement, or cancellation of participation in the Account Updater Service (see below), any balance of prepaid account updater fees shall be returned within 30 days. Customer may elect to submit payment via ACH or wire transfer within 7-days of invoice receipt. Customer may cancel participation in the Account Updater program at any time via a written notification emailed to [enterprise@spreadly.com](mailto:enterprise@spreadly.com). Pricing for the Account Updater service may change at any time, based on the card networks and/or our third-party service provider. Should a price change occur, we will give you ninety days notification of the impending change, at which point you can opt out of the service by notifying Spreadly in writing. If you do not opt out, the price change will be automatically applied at the end of the time period.

#### Enterprise Account Management:

All enterprise accounts benefit from support prioritization and a named account manager.

#### Payment Terms:

Customer will pay the Base Annual Fee for the first year of the Initial Term in full within 30 days of the Effective Date. Each subsequent annual payment shall be at the Base Annual Fee and invoiced 30 days prior to the anniversary of the Effective Date ("Annual Renewal Date") due and payable prior to the Annual Renewal Date.

All payments to be made under this Agreement shall be made in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority save as required by law. If Customer is compelled to make any such deduction, it will pay Spreadly such additional amounts as are necessary to ensure receipt by Spreadly of the full amount which Spreadly would have received but for the deduction.

Customer may elect to pay all amounts due under this Agreement either by:

- (a) by wire transfer to the following account:

Receiver: Silicon Valley Bank  
ABA/Routing #: 121140399  
Beneficiary: 3301451580  
Spreadly, Inc.

733 Foster Street, Suite 100  
Durham, NC 27701  
USA

(b) by check delivered to the address specified in the relevant invoice.

## **EXHIBIT B**

### **SUPPORT; SERVICE LEVEL AGREEMENT**

The Transaction Processing Service (as defined below) shall be available 99.95%, measured monthly, excluding scheduled maintenance. Availability means that the services are up and running, accessible by Customer and its end users, without interruption or undue delay. Any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will be excluded from any such calculation. For each period of downtime lasting longer than 30 minutes, Company will credit Customer 5% of platform fees for each period of (i) 30 consecutive minutes of downtime, or (ii) 30 or more minutes of downtime in any 24-hour period; provided that no more than two such credits will accrue per day. "Transaction Processing Service" means Spreadly's core API responsible for processing Customer's payment transaction requests, and does not include any beta features or non-payment transaction Spreadly services such as dashboard reporting.

Downtime shall begin to accrue as soon as the Transaction Processing Service is unavailable to Customer and/or its end users, and continues until the availability of the Transaction Processing Service is restored. Credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

Spreadly shall give no less than 5 business days prior written notice to Customer of all scheduled maintenance. Spreadly shall perform scheduled maintenance in such a way that any interruption of the Transaction Processing Service is kept to a minimum and will provide a maintenance window during which the scheduled maintenance will be carried out (which shall not exceed 60 minutes individually or 24 hours in the aggregate in any month).

Spreadly will provide email support between 8.30 am and 8.00 pm (US Eastern time zone). Customer and its employees and consultants can contact Spreadly at support@spreadly.com with questions about the Transaction Processing Service, to report errors or other problems with the Transaction Processing Service, or to otherwise request support or assistance with respect to the Transaction Processing Service. Spreadly will maintain a sufficient number of Spreadly Support Contacts to ensure timely responses to emails from Customer and to otherwise satisfy Spreadly's obligations under this Exhibit B.

Spreadly shall make updates to the Transaction Processing Service available to Customer on a regular basis. In addition, Spreadly shall troubleshoot and resolve errors related to the Transaction Processing Service in accordance with the following table based on the severity of the issue:

Category	Definition	Spreadly Acknowledgement time	Issue Resolution
Low	End-user or Customer complaint that requires investigation by Company (including bugs not impacting API uptime)	Up to 48 hours	Next update
Serious	Customer's use of Transaction Processing Service is severely impaired due to Spreadly-side issue	Up to 4 hours	Within 3 days
Critical	Transaction Processing Service is unavailable due to Spreadly-side issue	Up to 60 minutes	Within 1 day

For the purposes of this table, the "Acknowledgement" shall mean the time at which Spreadly first learns that the Transaction Processing System is having a direct, negative impact on the Customer to the time of Spreadly initial contact to Customer by email or notification via the Spreadly Status Page (status.spreadly.com) acknowledging such reported issue; and "Issue Resolution" shall mean when Spreadly substantially resolves at its own cost for Serious and Critical issues or commences implementation of a project plan for Low issues to implement changes to functionality or systems to resolve the issue.

#### **Issue Resolution**

All reported issues are automatically classified as "Low" unless otherwise specified by Spreadly. In the event Customer disagrees with Spreadly's classification or reclassification, as appropriate, the Parties shall meet as soon as commercially feasible to discuss when a further reclassification of the issue is appropriate. Should the parties be unable to reach agreement on the classification of an issue in a timely manner, then the parties agree that they will promptly make available a member of their senior management team (e.g. Director or above) to discuss the matter in good faith to achieve consensus on the appropriate classification level for the issue.

Spreadly has internal systems and procedures in place to notify support personnel of critical issues with the Transaction Processing Service 24 hours a day, 7 days a week.