



## SERVICE AGREEMENT

### Part A: Parties

SPREEDLY		CUSTOMER	
Name:	Spreedly, Inc.	Name:	SeatGeek, Inc.
Address:	733 Foster Street, Suite 100	Address:	400 Lafayette Street
City/State:	Durham, NC 27701	City/State:	New York, NY 10003
<b>PRIMARY SPREEDLY CONTACT</b>		<b>PRIMARY CUSTOMER CONTACT</b>	
Name:	Justin Benson	Name:	Eric Waller
Title:	CEO	Title:	CTO
Phone:	919-432-5008	Phone:	
Email:	sales@spreedly.com	Email:	eric@seatgeek.com

### Part B: Terms

1. This Service Agreement (including its exhibits, the "**Agreement**") is effective February 28, 2018 ("**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**") attached as Exhibit C hereto, and Spreedly Privacy Policy ("**Privacy Policy**") which is 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, revocable, 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 two years from the Effective Date (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 60 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, 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. You agree that, from the Effective Date, we may identify you as a customer of Spreadly and use your logo on our customers page (<https://spreadly.com/customers>) for the Term of this Agreement.
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 of this Agreement, Spreadly has complied with all applicable requirements to be considered compliant with PCI-DSS, and has performed 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 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.

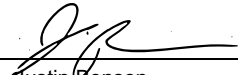
- e. Spreedly shall, with respect to the Customer's data, use only validated third-party payment applications that have been certified as compliant with the Council's Payment Application Data Security Standards ("**PA-DSS**"), as updated from time to time.
  - f. Customer may elect at any time to perform 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 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, Spreedly shall maintain (i) commercial general liability insurance with at least \$1,000,000 per occurrence and (ii) "errors and omission" (tech and cyber coverage) insurance in an amount not less than \$3,000,000.

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, in relation to any claim or action by a third party arising out of or related to any breach by Customer of any provision of this Agreement or the Terms of Service.
14. Limitation 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) ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
15. Miscellaneous. This Agreement shall be governed by the laws of the State of Delaware (without regard to its choice of law provisions). The parties agree that the exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or Federal court located in Wake County, North Carolina. 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: March 1st, 2018

**SeatGeek, Inc.**

By:   
Name: Brad Tacy  
Title: CFO  
Date: Mar 1, 2018

## **EXHIBIT A**

### **PRICING**

Customer shall pay Spreadly \$234,000 for 12 months of service ("**Base Annual Fee**"), which shall entitle Customer to the following for the duration of the Term:

<b>Platform Fee: [*]</b>	<b>\$150,000</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>\$84,000</b>
Included Non-partner API Calls	84,000,000
<b>Total Base Annual Fee</b>	<b>\$234,000</b>

The usage fees related to the following partner API calls will be waived 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

Customer will pay the Base Annual Fee for the first year of the Initial Term in full within 15 days of the Effective Date. Each subsequent annual payment shall be invoiced 30 days prior to the anniversary of the Effective Date ("**Annual Renewal Date**") and shall be due and payable prior to the Annual Renewal Date.

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 \$0.0025 per additional API call during months one through ten and at a rate of \$0.001 per additional API call during months eleven and twelve of an annual term.

Enterprise Account Management included: All enterprise accounts benefit from support prioritization and a named account manager

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 timezone). 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:

<b>Category</b>	<b>Definition</b>	<b>Spreadly Acknowledgement time</b>	<b>Resolution</b>
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

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.

## **EXHIBIT C**

### **Spreedly Terms of Service**

The Terms and Conditions described here constitute a legal agreement ("Agreement") between the sole proprietor or business organization listed as the "Organization" on the Service registration page (sometimes referred to as "you," "your," "user") and Spreedly, Inc. ("Spreedly").

#### **Part A: The Spreedly Service**

##### **1. Our Role**

Our service (the "Service") helps you validate, tokenize and vault credit cards (and other payment types) and then process charges against those payment methods against one or more of the payment gateways that are integrated to the Spreedly platform and/or third party payment method receivers that we support, and, where applicable, automatically update expired or lost credit cards. Spreedly is not a payment gateway or merchant account provider and we do not assume any direct or indirect liability or responsibility for your agreements with payment gateways or merchant account providers supported on our platform. You will be required to register with Spreedly to use the Spreedly Service.

##### **2. Our Software**

We provide the Spreedly API and other software to enable you to use the Service. We reserve the right to require you install or update any and all software updates to continue using the Service.

##### **3. Terms Applicable Only to the Card Account Updater Service**

Spreedly, via working with a third party, offers the optional account updater service. This allows for the updating of participating credit cards to be updated automatically, without any intervention required by the end user card holder. You must opt in to use this service via your account configuration on our pricing page. By electing to opt in to the service, you agree to pay any applicable fees and to conform with the following:

###### **3.1 Merchant Qualification**

- You acknowledge and confirm that you the merchant (or your merchants you submit as part of your platform) adhere to the following requirements:
  - Merchants designated by Visa as high-risk (High-Risk Acquirer Program with a condition of RED or higher) or on the MasterCard Alert to Control High-risk Merchants (MATCH) system may not participate in Account Updater.
  - Third party payment portfolios must not contain more than 20 percent High-Risk Merchant activity.
  - Merchant must not be under any special conditions imposed by Visa Corporate Risk Management.
  - Merchants must have been in business a minimum of six months.
  - Over the course of six months, the merchant must have at least 1,000 transactions a month or an average of 5,000 transactions over three months.
  - The merchant must maintain a chargeback ratio of less than 3 percent.
  - Merchants must meet the following risk management criteria:
    - Must not be engaged in business categorized by the following merchant category codes: 5962, 5966, 5967, or 7995.
    - Must not have sales transactions that are predominantly Quasi-Cash, Account Funding, or any combination thereof.

###### **3.2 Your Responsibilities**

- Protect the security of the information sent to or received from Account Updater.
- Use the same standard of care to protect and prevent misappropriation or improper disclosure of the confidential information as is used to protect its own confidential information, but in no event less than reasonable care.
- Be in compliance with the network operating regulations.
- Have a valid business need to receive updated account information, including but not limited to:
  - Subscription services
  - Express checkout services
  - Membership (club) services
  - Recurring payment services

- Restrict access to Account Updater data to business need-to-know.
- Request an Account Update for every participating cardholder account in merchant's customer database at least once every 180 calendar days for merchants that bill daily, weekly, monthly, quarterly or bi-annually or at least once every 365 calendar days for merchants that bill annually.
- Submit inquiries only for those customer accounts with which you have existing customer relationships and have their account information on file.
- Ensure that information received from Account Updater is properly, completely, and accurately incorporated into your customer database for utilization in future transactions.

### 3.3 Prohibited Activities

- You may not:
  - Request authorization on accounts that have returned a response of "Closed Account"
  - Submit inquiries to Account Updater on behalf of any other entity.
  - **If you have fraudulently misused the Account Updater program to obtain account updates, you will be removed from the Account Updater Program.**

### 3.4 Indemnification; Specific Disclaimers

- You agree to indemnify and hold Spreadly and its respective directors, officers, agents, and employees, harmless against any and all liability, costs, damages, and actions arising in connection with (a) your use of the Account Updater program, confidential information, and/or any associated written materials, and/or (b) any breach of its obligations as stated herein.
- You acknowledge and agree with the following:
  - The program contains confidential information of Spreadly and others that has been disclosed to the merchant or to which the merchant has been provided access
  - The merchant will not misappropriate confidential information of Spreadly
  - The program contains Personal Data disclosed to Spreadly by the customer
  - You acknowledge and agree that any and all Confidential Transaction Data (as defined in the Card Network rules) or other Personal Data that you provide to the Card Networks in connection with the program may be used by them for the purposes described in their respective rules and for purposes of providing the program and other services as requested by you. For purposes of clarity, you represent and warrant that you will be solely responsible for providing notice to and obtaining any necessary consent from cardholders in connection with the processing of personal data by the Card Networks for the above purposes. You also represent and warrant that you will be solely responsible for handling requests from cardholders to access, correct, block or delete their Personal Data in connection with the Program.
  - SPREADLY DOES NOT REPRESENT OR WARRANT THAT THE PROGRAM IS FREE OF DEFECT AND/OR MISTAKE; AND IS PROVIDED ON AN "AS IS" BASIS, "WITH ALL FAULTS". SPREADLY AND ITS PROGRAM COMPONENT SUPPLIERS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO: THE PROGRAM, CONFIDENTIAL INFORMATION AND/OR ANY ASSOCIATED WRITTEN MATERIALS; THEIR USABILITY, CONDITION, OR OPERATION; THEIR MERCHANTABILITY; THEIR FITNESS FOR ANY PARTICULAR PURPOSE; OR NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL SPREADLY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF INCOME, USE, OR INFORMATION, NOR ANY OTHER COST OR EXPENSE INCURRED BY A MERCHANT OR ANY THIRD PARTY ARISING FROM OR RELATED TO USE OR RECEIPT OF THE PROGRAM, WHETHER IN AN ACTION IN CONTRACT OR IN TORT, AND EVEN IF THE MERCHANT OR THIRD PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH MERCHANT ASSUMES THE ENTIRE RISK OF USE OR RECEIPT OF THE PROGRAM OR CONFIDENTIAL INFORMATION.

Only in the event the limitation of liability set forth in the immediately preceding paragraph is deemed by a court of competent jurisdiction to be contrary to applicable law, the total liability, in the aggregate, of Spreadly to a Customer and anyone claiming by or through the Customer, for any claims, losses, costs, or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Program shall not exceed the total compensation received by Spreadly from the Customer for the use of the Program during the six months ending on the date that Spreadly was advised by the Customer of the Program concern. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, to the fullest extent permitted by law, unless otherwise prohibited by law.

## 4. Customer Service



We will provide you with customer service in accordance with Exhibit B to resolve any issues relating to your Spreadly account. You, and you alone, are responsible for providing service to your customers for any and all issues related to your products and services.

5. Security

Spreadly is responsible for protecting the security of Card Data (defined as a cardholder's account number, expiration date and CVV2) in our possession and will maintain commercially reasonable administrative, technical and physical procedures to protect all the personal information regarding you and your customers that is stored in our servers from unauthorized access and accidental loss or modification. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use such personal information for improper purposes.

6. Data Security

You are fully responsible for the security of data on your website or otherwise in your possession. You agree to comply with all applicable state and federal laws and rules in connection with your collection, security and dissemination of any personal, financial, card, or transaction information (defined as "Data") on your website. You agree that, to the extent that you possess or control Data prior to providing it to Spreadly for the Services, at all times you shall be compliant with the Payment Card Industry Data Security Standards (PCI-DSS) and the Payment Application Data Security Standards (PA-DSS), as applicable. The steps you will need to take to comply with PCI-DSS and PA-DSS when using Spreadly will vary based on your implementation. For more information about implementing Spreadly, please refer to our documentation on the Documentation page of our website. If we believe it is necessary based on your implementation and request it of you, you will promptly provide us with documentation evidencing your compliance with PCI DSS and/or PA DSS if requested by us. You also agree that you will use only PCI compliant service providers in connection with the storage, or transmission of Card Data. You must not store CVV2 data at any time. Information on the PCI DSS can be found on the PCI Council's website. For the avoidance of doubt, PCI-DSS compliance in the course of providing the Services is the sole responsibility of Spreadly as stated in the Agreement,

7. Privacy of Others

You represent to Spreadly that you are in compliance with all applicable privacy laws, you have obtained all necessary rights and consents under applicable law to disclose to Spreadly, or allow Spreadly to collect, use, retain and disclose any Card Data that you provide to us or authorize us to collect, including information that we may collect directly from your end users via cookies or other means. If you receive information about others, including cardholders, through the use of the Service, you must keep such information confidential and only use it in connection with the Service. You may not disclose or distribute any such information to a third party or use any such information for marketing purposes unless you receive the express consent of the user to do so. You may not disclose Card Data to any third party, other than in connection with processing a card transaction requested by your customer under the Service and in a manner consistent with PCI DSS and applicable law. You can also view Spreadly's Privacy Policy by clicking this [link](#).

8. Restricted Use

You are required to obey all laws, rules, and regulations applicable to your use of the Service and we reserve the right to restrict access to the Spreadly Service by any entity that is considered in violation of this requirement.

9. Suspicion of Unauthorized or Illegal Use

We reserve the right to not store or submit any transaction you submit which we believe is in violation of this Agreement, any other Spreadly agreement, or exposes you or other Spreadly users to harm, including but not limited to fraud and other criminal acts. You are hereby granting us authorization to share information with law enforcement about you, your transactions, or your Spreadly account if we reasonably suspect that your use of Spreadly has been for an unauthorized, illegal, or criminal purpose.

10. Disclosures and Notices

You agree that Spreadly can provide disclosures and notices regarding the Service to you by posting such notices on our website, emailing them to the email address listed in your Spreadly account, or mailing them to the address listed in your Spreadly account; provided that, an email or mail notice must be provided in the case of any legal notice under this Agreement or any material change to any aspect of the Service. You also agree that electronic disclosures and notices have the same meaning and effect as if we had provided you with a paper copy. Such disclosures and notices shall be considered to be received by you within 24 hours of the time it is posted to our website or emailed to you unless we receive notice that the email was not delivered.

11. References to Our Relationship

You agree that, from the time you activate a paying account with Spreadly until you terminate your account with us, we may identify you as a customer of Spreadly. Neither you nor we will imply any untrue sponsorship, endorsement or

affiliation between you and Spreadly.

## 12. Spreadly Fees

You agree to pay the fees ("Fees") assessed by us to you for providing the payment services described in this Agreement. These Fees will be calculated pursuant to the Pricing Page on our website, which is incorporated into this Agreement by reference, or any other agreement between you and us that is intended to supersede the published pricing. We reserve the right to revise our Fees at any time, subject to a thirty (30) day notice period to you.

## Part B: Termination and Other General Legal Terms

### 1. Term and Termination

The Agreement is effective as defined in Part B4 and Part B5 of the Service Agreement.

### 2. Effects of Termination

Upon termination and closing of your Spreadly account, we will immediately discontinue your access to the Service. You agree to complete all pending transactions and stop accepting new transactions through the Service. You will not be refunded the remainder of any fees that you have paid for the Service if your access to or use of the Service is terminated or suspended. Termination does not relieve you of your obligations as defined in this Agreement. Upon termination you agree: (i) to immediately cease your use of the Service (ii) discontinue use of any Spreadly trademarks and to immediately remove any Spreadly references and logos from your Site (iii) that we reserve the right (but have no obligation) to delete all of your information and account data stored on our servers, and (e) we will not be liable to you for compensation, reimbursement, or damages in connection with your use of the Service, or any termination or suspension of the Service or deletion of your information or account data. At any time within thirty (30) days after terminating your Spreadly account you may request in writing that we transfer Card Data associated with your account to an alternative PCI-DSS Level 1 certified payment processor that you identify to us. We will use commercially reasonable efforts to complete such transfer within ten (10) business days from receipt of your written request.

### 3. Your License; Our Trademarks

Spreadly grants you a personal, limited, non-exclusive, revocable, non-transferable license, without the right to sublicense, to electronically access and use the Service as described in Section 1 of Part A. The Service includes our website, any software, programs, documentation, tools, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) thereto provided to you by Spreadly. You will be entitled to download updates to the Service, subject to any additional terms made known to you at that time, when Spreadly makes these updates available.

### 4. Ownership

The Service is licensed and not sold. We reserve all rights not expressly granted to you in this Agreement. The Service is protected by copyright, trade secret and other intellectual property laws. We own the title, copyright and other worldwide Intellectual Property Rights (as defined below) in the Service and all copies of the Service. This Agreement does not grant you any rights to our trademarks or service marks.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Spreadly under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Spreadly does not waive any rights to use similar or related ideas previously known to Spreadly, or developed by its employees, or obtained from sources other than you.

### 5. Your Representation and Warranties

You represent and warrant that at all times during the term of this Agreement and any renewal thereof:

(i) all representations and statements made by you in this Agreement, or in any other document relating hereto by you or

on your behalf, are true, accurate and complete in all material respects; (ii) if you are a natural person, you are at least eighteen (18) years of age or, if you are under eighteen (18) years of age have obtained the consent of your parent or legal guardian to your execution of this Agreement and use of the Service in the manner prescribed by Spreadly; (iii) you are eligible to register and use the Service and have the right, power, and ability to enter into and perform under this Agreement; (iv) the name identified by you when you registered is your name or business name under which you sell goods and services; (v) you are engaged in a lawful business and have all necessary rights and authorizations to sell and distribute your products and/or services; (vi) any sales transaction submitted by you will represent a bona fide sale by you; (vii) any sales transactions submitted by you will accurately describe the goods and/or services sold and delivered to a purchaser; (viii) you will fulfill all of your obligations to each customer for which you submit a transaction and will resolve any consumer dispute or complaint directly with the purchaser; (ix) except in the ordinary course of business, no sales transaction submitted by you through the Service will represent a sale to any principal, partner, proprietor, or owner of your entity; (x) you will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; (xi) you will comply, at your own expense, with all laws, policies, guidelines, regulations, ordinances or rules applicable to you, this Agreement, your customer data and/or any card authorization, credit, ticket only, capture or settlement request, decline transaction, or other related transaction, completed or submitted under your account, including without limitation: (a) the terms of service of the payment gateways, merchant service providers and/or API endpoints you connect with on the Spreadly service; (b) the operating rules, bylaws, schedules, supplements and addenda, manuals, instructions, releases, specifications and other requirements, as may be amended from time to time, of any of the payment networks including Visa, MasterCard, American Express, Discover Financial Services, and any affiliates thereof or any other payment network applicable to this Agreement; (c) PCI-DSS and PA-DSS, if and only to the extent applicable; and (d) any regulatory body or agency having jurisdiction over your business.

#### 6. No Other Warranties

EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THE SERVICE AND ALL ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM OR THROUGH THE SERVICE OR FROM SPREEDLY OR ANY OF THE RESPECTIVE AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES OF SPREEDLY WILL CREATE ANY WARRANTY.

WITHOUT LIMITING THE FOREGOING, THE DISCLAIMING ENTITIES DO NOT WARRANT THAT THE INFORMATION THEY PROVIDE OR THAT IS PROVIDED THROUGH THE SERVICE IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, THAT THE SERVICE WILL FUNCTION IN AN UNINTERRUPTED MANNER OR BE SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE DISCLAIMING ENTITIES MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT HOW LONG WILL BE NEEDED TO COMPLETE THE PROCESSING OF A TRANSACTION.

THE DISCLAIMING ENTITIES DO NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE.

#### 7. Disputes; Choice of Law; Jurisdiction and Venue

You agree that any disputes arising out of or relating to this Agreement or the Service shall be resolved in accordance with this Section 7.

This Agreement is governed by the laws of the State of Delaware (without regard to its choice of law provisions). The exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or federal court located in Wake County, North Carolina. ALL PARTIES IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY CLAIM RELATING TO OR ARISING UNDER THIS AGREEMENT. Headings are included for convenience only, and shall not be considered in interpreting this Agreement. The Agreement does not limit any rights that we may have under trade secret, copyright, patent or other laws. Our failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

#### 8. Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you without our prior written consent, except that you may assign this Agreement without our consent in connection with an assignment to a successor by acquisition or otherwise to all or substantially all of your business assets related to this Agreement or a

holder of the majority of voting equity interests in your company. The Agreement may be assigned by us without consent or other restriction.

9. Parties

This Agreement binds you and your respective heirs, representatives, and permitted and approved successors (including those by merger and acquisition) or any permitted assigns.

10. Third Party Services and Links to Other Web Sites

You may be offered services, products and promotions provided by third parties and not by us ("Third Party Services"). If you decide to use these Third Party Services, you will be responsible for reviewing and understanding the terms and conditions associated with these services. You agree that we are not responsible for the performance of these services. The Spreadly website may contain links to third party websites as a convenience to you. The inclusion of any website link does imply an approval, endorsement, recommendation by us. You agree that you access any such website at your own risk, and that the site is not governed by the terms and conditions contained in this Agreement. We expressly disclaim any liability for these websites. Please remember that when you use a link to go from our website to another website, our Privacy Policy is no longer in effect. Your browsing and interaction on any other website, including those that have a link on our website, is subject to that website's own rules and policies.

11. Force Majeure

No party will be liable for delays in processing or other nonperformance caused by such events as fires, telecommunications failures, utility failures, power failures, equipment failures, labor strife, riots, war, terrorist attack, nonperformance of our vendors or suppliers, acts of God, or other causes over which the respective party has no reasonable control, except that nothing in this section will affect or excuse your liabilities and obligations under Section 10, including without limitation for Reversals, Chargebacks, Claims, fines, fees, refunds or unfulfilled products and services.