



## DATA TRANSFER AGREEMENT – EWAY

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### Parties:

**Web Active Corporation Pty Ltd** (ACN 086 209 403) of Level 9, 2 King Street, Bowen Hills QLD 4006 Australia (**Eway**)

**AND Blake elearning Pty Limited** (ACN 140 998 821) of 655 Parramatta Rd, Leichhardt NSW 2040 Australia (**Client**)

**AND Spreedly, Inc, a United States company incorporated in the state of North Carolina** (**Payment Processor**)  
Delaware

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**Commencement Date:** 14/04/2022

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### BACKGROUND:

- A. Eway maintains and stores in a secure area of its computer system (**Eway's Vault**) credit and debit cardholder information, including the cardholder's name, primary account number (**PAN**), issuing bank (**BIN**), card expiration date and any payment schedules set up by Eway against the cardholder (together, the **Cardholder Data**).
- B. Client has decided to use the services of the Payment Processor and discontinue the use of some of Eway's services. The Client will continue to use Eway's payment gateway.
- C. The Client and the Payment Processor have requested that Eway transfer the Cardholder Data to the Payment Processor on the terms and conditions of this Agreement.

### THE PARTIES AGREE AS FOLLOWS:

#### 1 DEFINITIONS

**Confidential Information** means:

- a. the Client Cardholder Data which is disclosed to, or which the Client or Payment Processor otherwise obtains, in connection with this Deed; and
- b. any information:
  - a. in relation to the existence and terms of this Deed, including (without limitation) the fact that the Client Cardholder Data has been transferred to the Payment Processor or that the Client has decided to use the services of the Payment Processor instead of Eway regarding the business or affairs of a Party;
  - b. which is by its nature confidential or which is designated as confidential by a Party; and/or
  - c. which Recipient knows, or ought to know, is confidential.

**Law and Rules** means applicable legislation, statutory instruments and orders and rules and codes issued by regulatory bodies, the rules and regulations of the applicable credit card associations (including, without limitation, Visa, Mastercard, AMEX, JCB, Discover and Diners) or of any similar person (including a bank or financial institution or association) that operates a national or international credit card system and including the requirements of the Payment Card Industry Data Security Standard (**PCI DSS**);

**Personnel** means officers, directors, partners, members, employees, agents, representatives, contractors and consultants; and a reference to a person includes the person's successors and assigns.



## 2 FEE

- 2.1 The Client will pay a fee of \$1,250 to Eway as consideration for the data transfer (Agreed Fee).
- 2.2 Eway will issue the Client an invoice for the amount of the Agreed Fee and the Client must pay the Agreed Fee to Eway within 21 days of receipt of the invoice.

## 3 DATA TRANSFER

- 3.1 Following receipt of the Agreed Fee, Eway will promptly transfer the Cardholder Data from Eway's Vault to the secure computer system managed and controlled by the Payment Processor (**Payment Processor's Cardholder Data Environment**) by the process outlined in Schedule A.

## 4 REPRESENTATIONS AND WARRANTIES

- 4.1 The Payment Processor warrants to the Indemnified Parties that, at all times in respect of the transfer and receipt of Client Cardholder Data under this Agreement, the Payment Processor will comply with the requirements of the Law and Rules, including but not limited to:
  - 4.1.1 masking the PAN when displayed in the use of the Client Cardholder Data; and
  - 4.1.2 storing the Client Cardholder Data in the Payment Processor's Cardholder Data Environment, owned and controlled by the Payment Processor, in a secure fashion that meets PCI DSS requirements.

## 5 INDEMNITY

- 5.1 The Client (**Indemnitor**) agrees to and will indemnify and release Eway and each member of Global Payments Australia 1 Pty Ltd and its subsidiaries (**Global Payments Group**) and their respective affiliates, including their respective officers, directors, partners, members, employees, agents, representatives, successors and permitted assigns (**Indemnified Parties**) against any loss, liability, cost, damage, charge, expense, claim, outgoing, proceeding, action or demand (including any reasonable legal and professional costs) (**Loss or Losses**) which any one of the Indemnified Parties may suffer or sustain, as a result of:
  - 5.1.1 any non-fulfilment or breach of any covenant, obligation, agreement or other provision of this Agreement (including any representation or warranty) by the Indemnitor;
  - 5.1.2 any breach or non-compliance with the Law by the Indemnitor or any of its Personnel; or
  - 5.1.3 any claim, proceeding, investigation or suit brought against any of the Indemnified Parties by any third party at any time after the date of this Agreement to the extent arising from any act or omission of the Client or Payment Processor relating to the transfer of the Client Cardholder Data or the use of the Client Cardholder Data post-transfer (**Third Party Claim**),

each an **Indemnified Action**, except to the extent that such Loss is due to Eway's material breach of this Deed, negligence or unlawful misconduct.

### Mitigation Obligation

- 5.2 Each of the Parties will use best efforts to mitigate all Losses after becoming aware of any event which could reasonably be expected to give rise to any Loss that is indemnifiable or recoverable under this Agreement.

### Defence of Third Party Claim



- 5.3 After receiving notice of a Third Party Claim, an Indemnified Party making a claim for indemnification under this Agreement must notify the Indemnitor in writing. The Indemnified Party must describe the Third Party Claim, including the amount (if known and quantifiable) and the basis. The Indemnified Party must provide all evidence reasonably required by the Indemnitor to verify the claim for indemnification.
- 5.4 The Indemnitor will assume the defence of the Third Party Claim at the expense of the Indemnitor, including at the Indemnitors discretion, appointing reputable counsel reasonably acceptable to the Indemnified Party to be the lead counsel in connection with such defence.
- 5.5 Any Indemnified Party is entitled to assert any reasonable limitation on any Third Party Claim, and to participate in the defence of the Third Party Claim and employ reputable counsel reasonably acceptable to the Indemnitor for such purpose at the their own expense.
- 5.6 The Indemnitor will be entitled to settle or otherwise discontinue the defence of the Third Party Claim, provided that the Indemnitor obtains prior written consent from the Indemnified Party (not to be unreasonably withheld or delayed) if, pursuant to or as a result of such settlement or cessation:
  - 5.6.1 the Indemnified Party would suffer any Loss which is not the subject of the indemnity provided in clause 5.1;
  - 5.6.2 injunctive or other equitable relief will be imposed on the Indemnified Party; or
  - 5.6.3 the settlement or cessation does not expressly and unconditionally release the Indemnified Party from all liabilities and obligations with respect to such Third Party Claim, without prejudice.

#### **Determination of Loss Amount**

- 5.7 The amount of any Loss subject to indemnification under this Agreement will be calculated net of any insurance proceeds or any indemnity, contribution or other payment actually received by the Indemnified Party from any third party with respect to that Loss, provided that no Indemnified Party has an obligation to seek recovery under any insurance policy issued to that Indemnified Party or any of its affiliates.

#### **6 DATA RETENTION**

- 6.1 Subject to clause 7, Eway may retain the Client Cardholder Data as is reasonably required to comply with any legal, accounting and other record keeping requirements in accordance with law or prudent industry practice, provided that it will not use the Client Cardholder Data for any other purpose and will take all reasonable steps to ensure that no unauthorised persons have access to the records.

#### **7 CONFIDENTIALITY**

- 7.1 Each of the Parties (each a **Recipient**) undertakes to treat as confidential all Confidential Information and must not use or disclose it to any third party, except as set out in this clause 7.
- 7.2 Each Recipient may only use the Confidential Information for the purposes of performing its obligations under this Agreement (**Permitted Purpose**). Each Recipient may provide its employees, officers, contractors, agents and professional advisors with access to the Confidential Information (**Permitted Users**) only to the extent required for the Permitted Purpose or to receive advice, provided that those Permitted Users are bound by the same obligations of confidence as under this clause 7.
- 7.3 This clause 7 will not apply to any information which:
  - 7.3.1 the disclosing Party consents in writing to the use or disclosure of;
  - 7.3.2 enters the public domain other than through breach of this Agreement;



7.3.3 is received from a third party which is not known to the Recipient to be under a confidentiality obligation in relation to the information;

7.3.4 is independently developed by the Recipient without the use of another Party's Confidential Information; or

7.3.5 was lawfully in the possession of the Recipient prior to disclosure to the Recipient, as evidenced by the records of the Recipient.

7.4 The Recipient may disclose Confidential Information where required to do so by any Law or the listing rules of any stock exchange, subject to the Recipient providing the disclosing Party with prompt advance notice of the disclosure (where lawful to do so).

## **8 BENEFIT FOR EWAY**

8.1 The Client and Payment Processor acknowledge and agree that the promises, undertakings and warranties in this Agreement are for the benefit of Eway and are held by Eway on its own behalf and on trust for each of the members of the Global Payments Group (including the benefit of any right of or benefit to Eway, obligation of Client or Payment Processor, any indemnity provided by the Indemnitor and the representations given by Client or Payment Processor).

## **9 GST**

9.1 All consideration provided under this Agreement is stated exclusive of GST, unless it is expressed to be GST-inclusive. Where a Party (**Supplier**) makes a taxable supply to another Party (**Recipient**) under or in connection with this Deed, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply. The additional amount must be paid by the Recipient at the later of:

9.1.1 the date when any consideration for the taxable supply is first paid or provided; and

9.1.2 the date when the Supplier issues a tax invoice to the Recipient.

9.2 In this clause 9 "GST" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **10 GENERAL**

### **Notices**

10.1 Any notice, instruction or communication required or permitted to be given under this Agreement to any Party must be in writing (which may include email) and will be deemed given:

10.1.1 if delivered in person, at the time it is delivered;

10.1.2 if delivered by post, five (5) business days after the date of posting; or

10.1.3 if sent by email, upon successful delivery of that email to the recipient before 5pm on a business day at the local time of the recipient, and if after 5pm, then deemed to be delivered at 9am the next business day.

10.2 The notice must be addressed to the office, address or email address of the Party as indicated in this Agreement or other such address as the Party may authorise in writing.

### **Entire Agreement**

10.3 This Agreement supersedes and replaces any and all prior and contemporaneous agreements, either oral or in writing, between the Parties with respect to the subject matter it deals with, and contains all the covenants and agreements between the Parties in respect of the subject matter.

### **Amendments**



10.4 This Agreement may not be amended except in writing and signed by all Parties. No Party may rely on the words or conduct of another Party as a waiver of any right, or evincing any consent, unless the waiver or consent is in writing and signed by an authorised person of the Party granting the waiver or consent.

#### **Governing law**

10.5 This Agreement is governed by the laws of the state of Queensland, Australia. The Parties submit to the non-exclusive jurisdiction of courts in Queensland.

#### **Successors and Assigns**

10.6 Eway may assign or novate this Agreement and its rights and obligations under this Agreement at any time upon the prior written consent of the other Parties whose interests will be affected by the assignment or novation. However, Eway may assign this Agreement to another member of the Global Payments Group without the consent of the other Parties.

10.7 The Client and Payment Processor may not novate or assign their rights, benefits or obligations under this Agreement without the prior written consent of Eway.

#### **Injunctive relief**

10.8 The obligations set out under clauses 5 and 7 of this Deed are necessary and reasonable in order to protect the Parties and their respective businesses, and the Parties expressly agree that monetary damages would be inadequate to compensate them for the breach thereof. Accordingly, the Parties agree and acknowledge that any violation or threatened violation of those provisions will cause irreparable injury to the other Party and that, in addition to any other remedies that may be available, in law, in equity, or otherwise, the harmed Party is entitled to obtain injunctive relief by court action against the breach or threatened breach by the other Party without the necessity of proving actual damages. A Party substantially obtaining the relief sought under this clause is entitled to reimbursement by the other Party for reasonable legal costs and court expenses incurred in an action brought under this clause.

10.9



**Executed by the Parties as an Agreement:**

**EWAY**

Signed by **Web Active Corporation Pty Ltd ABN 32 086 209 403** by its authorised representative:

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Signature of authorised representative

Name of authorised representative

Address: Level 9, 2 King Street, Bowen Hills QLD 4006

Email address:

**CLIENT**

Signed by **Blake elearning Pty Limited ABN 64 140 998 821** by its authorised representative:

.....

... Anton Clowes, Director .....

Signature of authorised representative

Name of authorised representative

Address: [655 Parramatta Road, Leichhardt NSW 2040, Australia](#)

Email address: [Accountspayable@3plearning.com](mailto:Accountspayable@3plearning.com)

**PAYMENT PROCESSOR**

Signed by **Spreadly, Inc, a United States company incorporated in the state of ~~North Carolina~~** by its authorised representative: Delaware

DocuSigned by:

BE108849DB824F9...  
3/6/2023

Nellie Vail

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Signature of authorised representative

Name of authorised representative

Address: 300 Morris St., Ste 400, Durham, NC 27701

Email address: [support@spreadly.com](mailto:support@spreadly.com)



## **SCHEDULE A: DATA TRANSFER PROCESS**

- A. Payment Processor shall send to Eway a public PGP (Pretty Good Privacy) key with which Eway will encrypt Client Cardholder Data that Eway shall send to Payment Processor once SFTP site and credentials have been established.
- B. Credentials and access control on Payment Processor's SFTP server will be created and shared with Eway.
- C. Eway shall generate a file, and decrypt the data (which is encrypted in Eway's Vault), and create a plain text file containing the PAN, expiration date information, and, any other data agreed between the parties to be transferred for each entry.
- D. Eway will encrypt this plain text file using the Payment Processor's public PGP key.
- E. Eway will make the encrypted file available to Payment Processor via Payment Processor's SFTP server.
- F. Payment Processor shall then decrypt the Client Cardholder Data and related information into its secure system from Payment Processor and thereby upload such information to Payment Processor's Vault.
- G. Payment Processor and Eway shall then destroy each version of the plain text file appropriately via PGP "Shred" or similar method.