Spreedly

ENTERPRISE SERVICE AGREEMENT

Part A: Parties

SPREEDLY		CUSTOMER	
Name:	Spreedly, Inc.	Name:	Priceline.com LLC
Address:	733 Foster Street, Suite 100	Address:	800 Connecticut Ave
City/State:	Durham, NC 27701	City/Country:	Norwalk, CT 06854
PRIMARY SPREEDLY CONTACT		**PRIMARY CUSTOMER CONTACT**	
Name:	Daniel Scagnelli	Name:	Martin Brodbeck
Title:	Sr. Enterprise Account Executive	Title:	Chief Technology Officer
Phone:	888-727-7750	Phone:	203-299-8000
Email:	dscagnelli@spreedly.com	Email:	marty.brodbeck@priceline.com
SPREEDLY FINANCE CONTACT		**CUSTOMER BILLING CONTACT**	
Name:	Spreedly Accounting Department	Name:	Priceline Accounts Payable Team
Phone:	888-727-7750	Phone:	203-299-8000
Email:	accounting@spreedly.com	Email:	accountspayable@priceline.com

Part B: Terms

1. This Enterprise 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**"), and the customer listed above (the "**Customer**"). Except as otherwise provided herein, this Agreement is subject to the Spreedly Privacy Policy ("**Privacy Policy**"), which is incorporated herein by reference, and which can be viewed at https://spreedly.com/. To the extent that any term in the Privacy Policy conflicts with the terms of this Agreement or any inconsistency between the Privacy Policy and this Agreement exists, the terms of this Agreement shall prevail. For clarity, to the extent any term in this Part B, Terms (or the Privacy Policy), conflicts with the Data Security Addendum attached hereto as Exhibit D ("**Data Security Addendum**"), or any inconsistency between the Terms (or Privacy Policy) and the Data Security Addendum exists, the terms of the Data Security Addendum shall prevail.

2. Provision and Use of Service.

    a. Spreedly hereby grants the Customer a worldwide, limited, non-exclusive, non-transferable license, without the right to sublicense, during the Term, to electronically access and use the Spreedly API (the "**Service**") to 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 Service and/or third-party payment method receivers that Spreedly supports, and, where applicable, automatically update expired or lost credit cards. Spreedly is not a payment gateway or merchant account provider and Spreedly does not assume any direct or indirect liability or responsibility for Customer's agreements with payment gateways or merchant account providers supported on our Service. The foregoing license includes Customer's right to access and use Spreedly's website and any software programs, documentation, tools, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) provided to Customer by Spreedly in connection with the Service.

    b. Customer shall comply with all laws, directives, rules and regulations (collectively, "Laws") applicable to its use of the Service and Spreedly reserves the right to restrict access to the Service if it determines, in its sole discretion, that Customer is in violation of this requirement. Customer hereby grants Spreedly authorization to share information with law enforcement about Customer, with at least five (5) business days' notice unless prohibited by law, Customer's transactions and Customer's Spreedly account, in each case if Spreedly reasonably suspects that Customer's use of the Service has been for an, illegal, or criminal purpose.

    c. Spreedly reserves the right to not store or submit any transaction Customer submits that Spreedly reasonably and after conducting due diligence believes is in violation of this Agreement or applicable Law or otherwise would expose Customer or other Spreedly users to harm, including but not limited to, fraud and other criminal acts.

3.   Intellectual Property Rights.

   a.   The Service is licensed and not sold. Spreedly reserves all rights in the Service not expressly granted to Customer in this Agreement. The Service is protected by copyright, trade secret and other intellectual property laws. Spreedly owns 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 either party any rights to the other party's 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.

   b.   Customer may in its own discretion submit comments or ideas about how to improve the Service or other Spreedly products ("**Ideas**"). By submitting any Idea, Customer agrees that its disclosure is gratuitous, unsolicited and without restriction and will not place Spreedly under any fiduciary or other obligation, and that Spreedly is free to use the Idea without any additional compensation to Customer, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone; provided that Spreedly shall not use any such Idea or any other information if such Idea or information includes the Confidential Information, Personal Information and/or Intellectual Property of Customer unless such use is in connection with the provision of the Service without the consent of Customer.. Customer further acknowledges that, by acceptance of its submission, Spreedly does not waive any rights to use similar or related ideas previously known to Spreedly, or developed by its employees, or obtained from sources other than Customer.

   c.   Other than: (1) Spreedly's right to use data provided by Customer solely for provision of the Service; and (2) Ideas, Customer does not transfer, assign, or license any other Intellectual Property Rights to Spreedly.

4.   Term and Termination.

   a.   Unless otherwise terminated in accordance with this Agreement, the initial term of this Agreement shall be for a period of two (2) year from the Effective Date (the "**Initial Term**"). Thereafter, this Agreement shall automatically renew for successive one year periods (each, a "**Renewal Term**" and, together with the Initial Term, the "**Term**") unless either party has provided written notice of its intent to not renew this Agreement not less than thirty (30) days prior to the expiration of the then-current Initial or Renewal Term.

   b.   Either party may terminate this Agreement, by written notice to the other party at least fourteen (14) days prior to the effective date as specified in such notice, if the other party materially breaches this Agreement and such breach: (i) cannot be cured; or (ii) being capable of cure, remains uncured thirty (30) days after the breaching party receives written notice thereof. Without limiting the foregoing, in the event of a breach that gives rise to the right by Spreedly or Customer to terminate this Agreement in accordance with this Section 4, Spreedly or Customer (as applicable) may elect, as an interim measure, to suspend the Service, immediately upon notice to the other party, until the breach is cured. In the event that Spreedly elects to suspend the Service, all obligations to pay fees that would otherwise be payable by Customer but for such suspension of the Service shall be suspended for the same duration of any such suspension of the Service by Spreedly. Either party's election to exercise of its right to suspend performance shall be without prejudice to its right to terminate this Agreement upon written notice to the other party.

   c.   Customer may also immediately terminate this Agreement upon written notice to Spreedly in the event that: (i) Customer becomes aware that Spreedly has become subject to a Breach of Security that is caused by Spreedly's breach of its security obligations set forth in Section 10, (ii) as provided in the Service Level Agreement attached hereto as Exhibit B, (iii) if Spreedly is no longer in compliance with PCI-DSS, or (iv) Spreedly is unable to meet SOC-2 Type II Certification by December 31, 2020 ("SOC-2 Termination"); provided that Customer must exercise its right to terminate this Agreement pursuant to any of the foregoing clauses within thirty (30) days after the latter of: (x) Customer having actual knowledge of the occurrence of, or (y) the written notification by Spreedly to Customer of, the event triggering such right otherwise Customer shall be deemed to have waived such right to terminate.

   d.   Upon termination of this Agreement and any applicable Transition Period, (i) subject to Sections 4.d(ii) and 4.e, Spreedly will immediately discontinue Customer's access to the Service; provided that Customer shall continue to have access to its data contained in the Service during the applicable Transition Period; (ii) Customer shall continue to have access to the Service to complete all pending transactions and stop accepting new transactions through the Service; (iii) Customer will discontinue use of any Spreedly trademarks and as soon as practicable, remove any Spreedly references and logos from Customer's website; and (iv) each party promptly destroys all originals and copies of any Confidential Information of the other party (including all notes, records and materials developed therefrom).

   e.   If either party elects not to renew this Agreement, then upon request by Customer made 15 or more days before the expiration date, or upon notice to Spreedly upon termination, Spreedly shall continue to provide the Service [and provide reasonable cooperation to Customer] in order for Customer to export or arrange export of its card data or other credit card or user information associated with Customer's account and/or other services necessary for such export in connection with Section 9.f, for a 90 day period after the expiration or termination date (the "**Transition Period**") as follows (the "**Transition Services**"):

(1) In the event that Customer terminates this Agreement in accordance with Section 4.b (material breach by Spreedly) or Section 4.c, notwithstanding the last sentence of Section 9.f, Spreedly will provide the Transition Services under the same terms, free of charge for the Transition Period.

(2) In the event that Spreedly terminates this Agreement in accordance with Section 4.b, notwithstanding the last sentence of Section 9.f, Spreedly will provide the Transition Services under the same terms and subject to the prorated Base Annual Fee (as determined in accordance with Exhibit A of this Agreement) [plus a 10% price increase to such prorated amount.

(3) In the event that this Agreement expires, or this Agreement is terminated for any reason other than as contemplated in clauses (1) and (2) of this Section 4.f, Spreedly will provide the Transition Services under the same terms and subject to the prorated Base Annual Fee as determined in accordance with Exhibit A of this Agreement.

Notwithstanding any expiration of this Agreement under this Section, the terms of this Agreement shall continue to govern Spreedly's provision of the Service during the Transition Period as if it had not been terminated.

5. Representations.

a. 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.

b. Customer warrants to Spreedly that: (i) it will not knowingly use the Service for any fraudulent undertaking or in any manner so as to knowingly or intentionally interfere with the use of the Service; and (ii) it will use its reasonably best efforts to comply, at its own expense, with all applicable Card Rules (as defined in Section 9.a below), and all applicable terms of service of the payment gateways, merchant service providers and/or API endpoints Customer connects with on the Service.

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, labeled or marked as "Confidential," "Proprietary" or with a similar proprietary legend, or that ought reasonably to be understood as confidential or proprietary, given the nature of the information or the circumstances surrounding its disclosure, to be confidential, 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 and without breaching this Agreement.

b. Each party shall: (i) only disclose Confidential Information to any of its and/or its parent companies' or subsidiaries' employees, officers, directors, partners, consultants, contractors, agents and representatives (collectively, its "**Representatives**") that have a need to know such Confidential Information and who have been informed of the confidential nature of the information and are bound by obligations of confidentiality substantively similar to those provided herein and/or who have a confidentiality obligation, whether through contract or other legally enforceable confidentiality obligation (e.g., attorneys' duty of confidentiality), at least as protective as the obligations set forth herein; (ii) hold in strict confidence and not disclose any Confidential Information to any third party, except as permitted herein; (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. Each party shall be liable for any failure of its Representatives to abide by the provisions of this Agreement as if such failure was the act or omission of such party.

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 required by applicable Laws; or (ii) on a "need-to-know" basis to its legal counsel, accountants, banks and other financing sources and their advisors, or to a Qualified Security Assessor ("**QSA**") [or other similar advisor] 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, at its election (a) return such materials to the disclosing party (which may be by way of redaction); or (b) certify in writing as to the destruction thereof.

8.   <u>References to Relationship</u>. Customer agrees that, from the Effective Date, Spreedly may, upon Customer's prior written approval, identify Customer as a customer of Spreedly and use Customer's logo on our customers page (https://spreedly.com/customers) for the Term of this Agreement.

9.   <u>PCI-DSS</u>. Spreedly represents and warrants that, at all times during the Term 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.   Spreedly covenants, represents and warrants that, at all times during the duration of this Agreement, it complies with and will comply with all Laws applicable to providing the Service as contemplated under this Agreement, and additionally, 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 Spreedly 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), or any information which is compiled or derived from any of the foregoing.

       b.   Spreedly 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, Spreedly 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, Spreedly 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.   Spreedly 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 a Scan; or (iv) is no longer in compliance with PCI-DSS.

       d.   Spreedly agrees to supply Customer with evidence of its most recent Annual Assessment prior to or upon execution of this Agreement. Thereafter, Spreedly shall annually supply to Customer, or make available on www.spreedly.com, evidence of Spreedly'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.   Spreedly represents and warrants it will not knowingly use the Service and or any data or other information provided by Customer hereunder, whether directly or indirectly, for any fraudulent undertaking or in any manner to knowingly or intentionally interfere with Customer's use of the Service or otherwise violate any applicable laws;

       g.   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 Term, of any card data or other credit card or user information associated with Customer's account to a recipient designated by Customer, <u>provided</u> the recipient has proven that it is PCI-DSS compliant and the transfer is not in violation of any applicable Laws. If Customer requires additional manual exports during the 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 effective date of termination of this Agreement and expiration of any applicable Transition Period (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 90 day periods by paying the prorated Base Annual Fee as determined in accordance with <u>Exhibit A</u> of this Agreement.

10.   <u>Security</u>. 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 and will comply in all material respects with 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 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 and provide a report of such assessment upon written request by Customer.

    c.   Customer may, upon prior written notice of at least thirty (30) days, commence a Security Audit one (1) time per year. Each such Security Audit shall be conducted during Spreedly's normal business hours, in a manner that does not unreasonably disrupt Spreedly's business operations, and at Customer's sole expense.

    d.   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.   <u>Breaches of Security</u>.

    a.   "**Breach of Security**" means (i) any loss, misuse, compromise, or unauthorized access to Personal Information that Spreedly collects, generates, or obtains from or on behalf of Customer, or (ii) any other act or omission that compromises or undermines the physical, technical, or organizational safeguards put in place by Spreedly in Processing such information, other data,or otherwise providing services under this Agreement.

    b.   If there is a Breach of Security, Spreedly will (i) 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, (ii) promptly investigate the Breach of Security to attempt to determine the root cause, (iii) consult with Customer in good faith about remediation and mitigation plans, and (iv) take all steps reasonably necessary to promptly 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. In the event that (i) Spreedly is required to cooperate with a third party forensics investigation as a result of such events, whether required under applicable Law or by a governing authority that has the legal authority to compel such a third party forensics investigation ("**Mandatory 3rd Party Forensics Investigation**"), or (ii) Priceline is required to cooperate in a Mandatory 3rd Party Forensics Investigation, then Spreedly will cooperate with any such requirements and requests, and provide a summary report of the results of such investigation no later than thirty (30) days after the completion of any such investigation.

    c.   Spreedly will, at its own cost, make all notifications, including to data subjects, regulatory authorities and credit reporting agencies that are required by applicable Law or any Card Association. Spreedly shall not inform any third party of any Breach of Security, except other affected Spreedly customers or as may be required by applicable Law, without first obtaining Customer's prior written consent, which shall not be unreasonably withheld.

12.   <u>Insurance</u>. At all times during the Term, Spreedly will maintain (i) general commercial liability, workers compensation, employers liability and any other insurance required by law or appropriate to operation of its business and (ii) errors and omissions/professional liability and cyber liability/computer crimes liability insurance which expressly (i) covers breach, loss of or unauthorized access to data or systems and other computer or employee crimes and (ii) applies to Customer's data and any other property of Customer under Spreedly's control. All insurance will be rated A-VII or higher and will have commercially reasonable limits commensurate with industry practices (but in any event no less than Two Million Dollars ($2,000,000) per claim and Five Million Dollars ($5,000,000) aggregate for the liability policies). Provider will provide certificates of insurance and add Customer as an additional and Spreedly shall provide Customer with copies of such certificates of insurance no later than 30 days after the Effective Date.

13. Indemnification.

    a. Spreedly shall indemnify, defend and hold harmless the Customer Parties and their respective officers, directors, employees, successors and assigns (collectively, the "**Customer Indemnified Parties**") against any loss or damage that the Customer Indemnified Parties may sustain or incur (including reasonable attorneys' fees and costs), in relation to any claim or action by a third party (including, without limitation, any regulatory or government authority) (each a "**Claim**"), arising out of or related to any of the following: (i) any claim that the Service infringes, violates or misappropriates a patent, copyright, trademark, trade secret or other intellectual property right of any third party (collectively, "**Third-Party IP Rights**"); (ii) any breach by Spreedly of Section 7 (Confidential Information), Section 9 (PCI-DSS) or Section 10 (Security); (iii) any Breach of Security that is caused by Spreedly's breach of its security obligations set forth in Section 10; or (iv) Spreedly's (or its subcontractors' or Personnel's) gross negligence, fraud, or willful misconduct.

    b. Customer shall indemnify, defend and hold harmless Spreedly against any loss or damage that Spreedly may sustain or incur (including reasonable attorneys' fees and costs), in relation to any Claim arising out of or related to any of the following (i) any claims of infringement of any patent, copyright, trademark, or other proprietary or intellectual property right to which Spreedly becomes subject due to data Customer provides to Spreedly for provision of the Service and Spreedly's use thereof in accordance with the terms of this Agreement and/or (ii) any product or service delivered by Customer in connection with the Service (excluding the Service itself or any third-party products or services incorporated or embedded in the Service delivered by Spreedly).

    c. Each party shall promptly notify the other party in writing of any Claim for which such party believes it is entitled to be indemnified pursuant to Section 13.a or 13.b. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 13.c will not relieve the Indemnitor of its obligations under this Section 13, (except to the extent that the Indemnitor can demonstrate it has been materially prejudiced as a result of such failure; any such relief of indemnification obligations, if any, shall be limited solely to and in connection with such demonstrable material prejudice and all other indemnification obligations shall remain in full force and effect). The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not enter into any settlement that imposes any liability or obligation on the Indemnitee without the Indemnitee's prior written consent.

14. Limitation of Liability.

    a. EXCEPT AS SET FORTH IN SECTION 14.d, 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.

    b. EXCEPT AS SET FORTH IN SECTION 14.c or 14.d, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT FOR DIRECT DAMAGES EXCEED THE AMOUNT OF FEES PAID AND/OR OTHERWISE DUE AND PAYABLE) TO SPREEDLY BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM (THE "**GENERAL LIABILITY CAP**").

    c. NOTWITHSTANDING THE FOREGOING, EACH PARTY'S AGGREGATE LIABILITY FOR LIABILITIES RESULTING FROM: (1) A BREACH OF SECURITY, SECURITY INCIDENT (AS DEFINED IN THE DATA SECURITY ADDENDUM) AND/OR REMEDIAL ACTIONS (AS DEFINED IN THE DATA SECURITY ADDENDUM), (2) A BREACH OF SECTION 7 (CONFIDENTIAL INFORMATION), (3) A BREACH OF SECTION 10 (SECURITY), OR (4) INDEMNIFICATION (SECTION 13), SHALL NOT EXCEED THE GREATER OF: (X) $5,000,000 OR (Y) 10X THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM (THE "**SUPER LIABILITY CAP**"). THE SUPER LIABILITY CAP SHALL BE IN LIEU OF, AND NOT IN ADDITION TO, THE GENERAL LIABILITY CAP AND SHALL APPLY SOLELY TO THE CLAIMS DESCRIBED UNDER THIS SECTION 14.c. FOR AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT THE FOLLOWING LIABILITIES SHALL BE DEEMED DIRECT DAMAGES THAT ARE RECOVERABLE UNDER THIS SECTION 14.c.: (I) ANY SETTLEMENT AMOUNTS ARISING FROM SPREEDLY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 13; (II) ANY DAMAGES FINALLY AWARDED BY A COURT OF COMPETENT JURISDICTION AND ARISING FROM SPREEDLY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 13; (III) THE REMEDIATION COSTS (AS DEFINED IN THE DATA SECURITY ADDENDUM); AND (III) ANY FINES, PENALTIES, NON-COMPLIANCE FEES OR SIMILAR AMOUNTS ASSESSED OR IMPOSED BY A GOVERNMENTAL AUTHORITY OR CARD ASSOCIATION IN CONNECTION WITH BREACH OF SECURITY OR SECURITY INCIDENT.

    d. NOTWITHSTANDING THE FOREGOING, (1) THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN SECTION 14.a, 14.b AND 14.c DO NOT APPLY TO THE FRAUDULENT, CRIMINAL OR GROSSLY NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF A PARTY.

15. <u>Assignment</u>. The parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors and permitted assigns. Neither party shall assign or delegate its obligations under this Agreement either in whole or in part without the prior written consent of the other party; <u>provided</u>, <u>however</u>, that either party may assign this Agreement in its entirety, without the other party's consent, to an entity that acquires all or substantially all of the business or assets of the assigning party relating to the subject matter of this Agreement, whether by merger, reorganization, acquisition, sale or otherwise.

16. <u>Notices</u>. Any notices required to be delivered in writing hereunder shall be sent to the party's address set forth in Part A and shall be deemed delivered when (i) by personal delivery (when actually delivered); (ii) by overnight courier (upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (upon verification of receipt). Either party may change its address at any time by giving written notice of the change to the other party.

17. <u>Force Majeure</u>. Neither party will be liable for failure or delay in performance due to causes beyond its reasonable control, including without limitation acts of God, terrorism, war, riots, fire, earthquake, flood, epidemics and/or pandemics as designated by governing authorities, or failure of internet or communications infrastructure. Notwithstanding the foregoing, if any force majeure event results in Spreedly's failure to provide the Services in accordance with the terms of this Agreement for more than thirty (30) days, Customer will have the right to terminate the Agreement and shall not have (i) any payment obligations to Spreedly as it relates to any suspension of Spreedly's performance hereunder or the Service; and/or (ii) any future payment obligations to Spreedly after the effective date of any such termination .

18. <u>Survival</u>. Sections 3.a (Ownership), 4.c and 14.d (Effect of Termination), 4.e (Transition), 7 (Confidential Information), 13 (Indemnification), 14 (Limitation of Liability), 18 (Survival) and 19 (Miscellaneous) will survive expiration or termination of this Agreement.

19. <u>Miscellaneous</u>. 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. The parties are independent contractors and this Agreement does not create an agency, partnership, joint venture, employee/employer or other similar relationship between them. The failure to require performance of any provision shall not affect a party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

20. <u>Notification of Material Change</u>.

    a. If Spreedly undergoes a Change in Control, it shall provide Customer with written notice thereof within thirty (30) days after Spreedly has consummated such Change in Control transaction. For purposes hereof, "Change in Control" means the acquisition of Spreedly by a third party entity of fifty percent (50%) or more of the outstanding voting securities of Spreedly by means of any transaction or series of related transactions (including, without limitation, any stock acquisition, merger or consolidation, but excluding any sale of stock for capital raising purposes) other than a transaction or series of related transactions in which the holders of the voting securities of Spreedly outstanding immediately prior to such transaction or series of related transactions retain at least a majority of the total voting power represented by the outstanding voting securities.

    b. Spreedly shall notify Customer as soon as reasonably practicable of any of the following and provide Customer with any and all relevant information with respect to whether any such change is likely to have a material or significant impact on the Service or Spreedly's ability to perform any of its obligations under this Agreement: financial difficulty, insolvency event, third-party service or system interruption, PCI-DSS compliance lapse, or enforcement, litigation or other regulatory action against Spreedly. In the event of such a Change in Control, Spreedly must provide a written agreement signed by the then-controlling entity that it assumes and will comply with all of the obligations under this Agreement and provided further that Spreedly shall remain liable for any and all obligations under this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

Spreedly, Inc.		**Customer: Priceline.com LLC**	
By:	*Justin Benson*	By:	*Martin Brodbeck*
	C9132810B2F044A...		61CD1EFA609F4C1...
Name:	Justin Benson	Name:	Martin Brodbeck
Title:	CEO	Title:	Chief Technology Officer
Date:	5/8/2020	Date:	5/8/2020

EXHIBIT A

PRICING

The initial term of this agreement is 24 months. Customer shall pay Spreedly a "**Total Base Annual Fee**" for each Contract Year of the Initial Term (in the amount specified in the table below), which shall entitle Customer to the following for the duration of the Term:

Enterprise Annual Fee Pricing		
	Year 1	Year 2
Enterprise Platform Fee:	**$150,000**	**$150,000**
Enterprise Assurance Agreement & SLAs	Included	Included
Existing Spreedly Standard Gateway & Processor Integrations/Endpoints	Unlimited	Unlimited
PCI Compliant Card Storage Limit	Unlimited	Unlimited
Add New Payment Method Distribution (PMD) Endpoints	Included	Included
Add New Gateway Specific Fields, Merchant Soft Descriptors, Level 2 & 3 Data	Included	Included
Intelligent Routing Service	Included	Included
Dedicated Account Management	Included	Included
Access to Spreedly Enterprise Teams & Prioritized Support	Included	Included
API Usage Fee:	**$100,000**	**$150,000**
Included API Calls	40,000,000	60,000,000*
Cost per API Call	$.0025	$.0025
Total Base Annual Fee	**$250,000**	**$300,000**

In the event Customer's actual API usage exceeds the included volumes used to determine the Base Annual Fee, Spreedly will bill Customer monthly in arrears at a rate determined by the contract month in which the Customer first exceeds the included API volume.

- If the overage first occurs in Months 1 through 10: billed at $.005 per API call for the remainder of the contract term.
- If the overage first occurs in Month 11 or 12: billed at $.00375 per API call for the remainder of the contract term.

Customer may also or instead elect to purchase additional blocks of 5,000,000 API calls at the contract rate of $0.0025 per API call OR may elect to purchase additional blocks of 100,000,000 at a rate of $.00175 per API call any time during the Initial or Renewal Term. *Notwithstanding the foregoing, Customer shall have the one-time option to increase the amount of Included API Calls in Year 2 from 60,000,000 to 100,000,000 at the rate of $.00175 within the first ninety (90) days of Year 2 ("Year 2 Increase Right"). Each additional block of API calls purchased will conform with the current term and will be added to the API usage allotment and expire at the end of that term.

Renewal Term API Call Pricing: If the Agreement is renewed for a Renewal Term, the parties agree that: (1) if the volume of Included API calls remains the same during any Renewal Term, then the Cost per API Call fee shall remain the same as during the Initial Term, but in no event shall the Cost per API Call be greater than five (5%) percent of the Cost per API Call in the Initial Term; and (2) if the volume of Included API Calls increases in a Renewal Term, then the parties will work in good faith to negotiate mutually agreed upon rates for Included API Calls; provided however, that the Cost per API Call fee for Included API Calls during the Initial Term shall serve as a cap for the Cost per API Call fee for Included API Calls during any Renewal Term. For the avoidance of doubt, if Customer exercises the Year 2 Increase Right, then the Included API Calls for Year 2 shall be deemed to be 100,000,000 for the purposes of determining Included API Call volumes under this Renewal Term API Call Pricing section.

One-Time Fee Pricing	
Implementation Fee:	**Waived**
Implementation Project Management	Included
Solutions Architecture	Included
Migration assistance/card imports	Included
Professional Services Fee:	**Waived**
Military Star Card / AAFES Custom Integration	Included

In the event Customer and Spreedly mutually agree to add support for additional new Standard Gateway/Processor Integrations,, Spreedly will bill the Customer a one-time fixed fee of $10,000 per new Standard Gateway Integration/Endpoint. There shall be no fee for Spreedly to support existing gateway/processor integrations, which as of the Effective Date, include but are not limited to, Orbital, Paymentech, and Paypal.

In addition to the foregoing, Spreedly will make commercially reasonable efforts to deliver support for Union Pay on Priceline's primary gateways, Chase Paymentech and FirstData, as well as SSO support via Okta by or before the end of the 2020 calendar year. Immediately upon release, these enhancements will be provided at no additional cost to Priceline.

Enterprise Account Management & Executive Sponsorship
All enterprise accounts benefit from support prioritization and a named account manager and an executive sponsor, Spreedly's VP of Customer Success.

Payment
Upon receipt of an invoice from Spreedly, Customer will pay the Base Annual Fee for each year of the Initial Term quarterly in four (4) equal payments for the respective year of the Initial Term, with the first payment with respect to Year 1 being due and payable in full within 45 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 quarterly in four (4) equal payments with the first payment being due and payable in full within 45 days of 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 government, fiscal or other authority, save as required by law. If Customer is compelled to make any such deduction, it will pay Spreedly such additional amounts as are necessary to ensure receipt by Spreedly of the full amount which Spreedly would have received but for the deduction.

Total fees owed under this contract:
- Year 1: $250,000
- Year 2: $300,000

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

(a)   ACH payment or wire transfer to the following account:

Receiver:	Silicon Valley Bank
ABA/Routing #:	121140399
SWIFT Code:	SVBKUS6S
Beneficiary:	3301451580
	Spreedly, Inc.
	733 Foster Street, Suite 100
	Durham, NC 27701
	USA

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

EXHIBIT B

SERVICE LEVEL AGREEMENT

Service Level Agreement

The Transaction Processing Service (as defined below) shall be available 99.99%, measured monthly, excluding scheduled maintenance. For purposes hereof, "**Transaction Processing Service**" means Spreedly's core API responsible for processing Customer's payment transaction requests, and does not include any beta features or non-payment transaction Spreedly services such as dashboard reporting. For purposes of calculations, the following shall apply:

- 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 Spreedly's control will be excluded from any such calculation.

- Any unavailability resulting from Spreedly's right to suspend the Service in accordance with the terms of the Agreement shall be excluded from any such calculation.

- 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.

- Spreedly shall give no less than 5 business days' prior written notice to Customer of all scheduled maintenance. Spreedly 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).

Remedies

In the event of a failure to comply with foregoing service level for a given calendar month (a "Service Level Failure"), Spreedly shall issue a credit to Customer (each, a "Service Credit") in the following amounts based on the availability for the applicable calendar month (as follows):

Monthly Availability Percentage	Credit Percentage
Less than 99.99% but greater than or equal to 99.90%	5% of 1/12th of Base Annual Fee
Less than 99.90% but greater than or equal to 99.80%	10% of 1/12th of Base Annual Fee
Less than 99.80% but greater than or equal to 99.70%	15% of 1/12th of Base Annual Fee
Less than 99.70%	20% of 1/12th of Base Annual Fee

Service Credits may not be redeemed for cash and shall be applied to Customer's next applicable payment of Base Annual Fee. Notwithstanding the foregoing, Spreedly shall automatically issue the applicable Service Credits to Customer. Customer shall also have to right to request unapplied Service Credits at any time during the Term.

Service-Related Termination Right: Customer shall also have the right to terminate the Agreement upon written notice if: (a) the Transaction Processing Service availability in any given calendar month is less than 98%; and/or (b) a Service Failure occurs in any three (3) calendar months within any five (5) consecutive calendar month period

Reporting: Spreedly will provide a quarterly report for presentation during regular account management QBR's detailing the prior quarter's system availability measurements. Spreedly will also maintain real-time availability of status.spreedly.com for continuous public reporting of system availability measurements.

EXHIBIT C

Support

Spreedly will provide email support between 8.30 am and 8.30 pm (US Eastern timezone). Customer and its employees and consultants can contact Spreedly at support@spreedly.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. Spreedly will maintain a sufficient number of Spreedly Support Contacts to ensure timely responses to emails from Customer and to otherwise satisfy Spreedly's obligations under this Exhibit C.

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

Priority	Category	Definition	Spreedly Acknowledgement Time	Resolution
P3	Low	Routine support requests and general inquiries regarding End-user or Customer complaints that requires investigation by Spreedly (including bugs not impacting API uptime). Includes all non-critical issues that are not resulting in service impairment.	Up to 48 hours	Next update
P2	Serious	Customer's use of Transaction Processing Service is impaired due to Spreedly-side issue. Issue is not critical, services are operational; however, the issue may be degrading the performance and reliability of the Spreedly service.	Up to 4 hours	Within 3 days
P1	High	Significant issue that is severely impaired and degrading the performance and reliability of Customer's use of Transaction Processing Service.	Up to 60 minutes	Within 1 day
PO	Critical	Transaction Processing Service (e.g. validation, tokenizing, vaulting, processing) is unavailable due to Spreedly-side issue. Issue is critical and impacts a significant group of Users or any mission critical issue affecting. Customer may escalate Critical issues via Red Alert service (email, phone, text) which will immediately invoke Spreedly incident response teams and procedures.	Up to 30 minutes	As soon as commercially reasonable with the highest level of urgency

Spreedly 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.

Priceline will be assigned a dedicated Enterprise Account Manager and executive sponsor, included with this agreement, and will be the primary point of contact and escalation points in the event of a critical issue/request.

Priceline will be given access to Spreedly's Red Alert system, which will allow Customer to also or instead escalate Critical issues via Red Alert service (email, phone, text) which will immediately invoke Spreedly incident response teams and procedures. Service should be reserved explicitly for Critical issues that are resulting in severe degradation of the Spreedly Service or if the service is down and/or unavailable.

Post Mortems

As soon as commercially practicable after resolutions of a P0 or P1 Issue, Spreedly will publicly publish a post-mortem report at status.spreedly.com detailing the incident, root cause analysis, and resulting steps taken. The post mortem (or Root Cause Analysis, (RCA)) will include the timeline of events related to the outage, emergency corrective actions taken, documentation (internal monitoring or collaboration) of any third parties that were complicit to the outage, the root cause of the outage, and future steps that will be taken to avoid any similar incidents. Upon Customers request, Spreedly and Customer will review the details of the Issue and together.

Notification

Spreedly is considered to have delivered the notification when it was transmitted to the Priceline Authorized Representative (via e-mail) and the notification was acknowledged by the latter.

Downtime notification

Spreedly shall notify Priceline of any outage (where all services are unavailable due to a shutdown of main and backup environments) at least 14 business days in advance and shall also notify Priceline of any scheduled single environment downtime at least 7 business days in advance.

EXHIBIT D

SPREEDLY PARTNER GDPR ANNEX
COMPLIANCE WITH THE EU GENERAL DATA PROTECTION REGULATION

Recitals:

Spreedly, Inc. (the "Processor") and the company to whom this GDPR Annex has been sent (the "Controller") have one or more written agreements (collectively, "the Agreements") pursuant to which the Processor provides services to the Controller (collectively, the "Services") that may entail the Processing of Personal Data (as defined below).

The European General Data Protection Regulation (GDPR) imposes specific obligations on controllers and processors with regard to their vendor relationships. The GDPR requires companies to conduct appropriate due diligence and to have contracts containing specific provisions relating to data protection.

Each of the Agreements contains provisions requiring each party to comply with all applicable laws. This GDPR Annex documents the data protection requirements imposed upon the parties by the GDPR. To the extent applicable, this GDPR Annex is hereby incorporated by reference into each Agreement in order to demonstrate the parties' compliance with the GDPR.

1. For purposes of this Annex, "GDPR" means Regulation (EU) 2016/679, the General Data Protection Regulation, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities. Words and phrases in this Annex shall, to the greatest extent possible, have the meanings given to them in Article 4 of the GDPR. In particular:

   (a) "Controller' has the meaning given to it in Article 4(7) of the GDPR: "means the natural of legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data."

   (b) "Personal Data" has the meaning given to it in Article 4(1) of the GDPR: "any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person," but only to the extent such personal data pertains to residents of the European Economic Area (EEA) or are otherwise subject to the GDPR.

   (c) "Personal Data Breach" has the meaning given to it in Article 4(12) of the GDPR: "[any] breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed."

   (d) "Processing" has the meaning given to it in Article 4(2) of the GDPR: "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction."

   (e) "Subprocessor" means any processor as defined in Article 4(8) of the GDPR: "[any] natural or legal person, public authority, agency or other body which processes personal data" on behalf of the Processor (including any affiliate of the Processor).

   (f) "Transfer" means to disclose or otherwise make Personal Data available to a third party (including to any affiliate or Subprocessor), either by physical movement of the Personal Data to such third party or by enabling access to the Personal Data by other means. Transfer also includes moving the Personal Data within a single party from an EU member State to a country not within the EU, or otherwise making such data accessible outside the EU.

2. In accordance with GDPR Article 28(1), Processor represents that it has implemented appropriate technical and organizational measures in such a manner that its Processing of Personal Data will meet the requirements of the GDPR and ensure the protection of the rights of the data subjects.

3. The Processor will maintain a current list of Subprocessors used throughout the service, including the Subprocessor's name and purpose of their processing. This list will be accessible via http://www.spreedly.com/gdpr/subprocessors. Controllers may receive notifications of new Subprocessors by emailing subprocessor@spreedly.com with the subject "Subscribe" and once subscribed in this manner that Controller will receive notification of new Subprocessors before those Subprocessors are authorized to process Personal Data on behalf of the Processor.

   The controller may reasonably object to the Processor's use of new a Subprocessor by notifying the Processor in writing within ten business days of receiving the notice of intent to authorize via the mechanism specified in Section 3 above. This notice shall explain the reasonable grounds for objection (e.g., if the use of this Subprocessor would violate applicable laws or weaken protections for the applicable Personal Data). The Processor will make commercially reasonable efforts to resolve the objection by the Controller. If the Processor is unable to resolve the objection within a reasonable period of time, not to exceed 30 days, then either party many terminate the agreements without penalty.

4. In accordance with GDPR Article 28(3), the following terms are incorporated by reference into the Agreements:

   (a) The Processor shall only process the Personal Data (i) as needed to provide the Services, (ii) in accordance with the specific instructions that it has received from the Controller, including with regard to any Transfers, and (iii) as needed to comply with law (in which case, the Processor shall provide prior notice to the Controller of such legal requirement, unless that law prohibits this disclosure);

   (b) Processor shall ensure that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

   (c) Processor shall take all security measures required by GDPR Article 32, namely:
      i. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (a) the pseudonymisation and encryption of Personal Data; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.

      ii. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.

      iii. The Processor shall take steps to ensure that any natural person acting under the authority of the Processor who has access to Personal Data does not process such Personal Data except upon instructions from the Controller, unless the Processor is required to do so by EEA Member State law.

   (d) Taking into account the nature of the processing, Processor shall reasonably assist the Controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the data subject's rights;

   (e) Taking into account the nature of processing and the information available to the Processor, Processor shall comply with (and shall reasonably assist the Controller to comply with) the

obligations regarding Personal Data Breaches (as set forth in GDPR Articles 33 and 34), data protection impact assessments (as set forth in GDPR Article 35), and prior consultation (as set forth in GDPR Article 36);

(f)   At the Controller's discretion, the Processor shall delete or return all the Personal Data to The Controller after the end of the provision of services relating to Processing, and delete existing copies unless applicable EEA member state law requires storage of the Personal Data;

(g)   The Processor shall provide the Controller with all information necessary to demonstrate compliance with the obligations laid down in the GDPR, and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller; and

(h)   The Processor shall immediately inform The Controller if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.

5. The Processor shall not Transfer any Personal Data (and shall not permit its Subprocessors to Transfer any Personal Data) without the prior consent of the Controller. The Processor understands that the Controller must approve and document that adequate protection for the Personal Data will exist after the Transfer, using contracts that provide sufficient guarantees (such as standard contractual clauses) unless another legal basis for the Transfer exists.

6. The Processor will promptly and thoroughly investigate all allegations of unauthorized access to, use or disclosure of the Personal Data. Processor will notify The Controller without undue delay in the event of any Personal Data Breach.

7. The Processor shall maintain all records required by Article 30(2) of the GDPR, and (to the extent they are applicable to Processor's activities for the Controller) Processor shall make them available to the Controller upon request.

8. The Processor will allow the Controller, or a third-party appointed by the Controller, to conduct audits (including inspections) to verify the Processor's compliance with the Agreements described in this document.

(a) The Controller may request an audit by emailing success@spreedly.com.

(b) Following receipt of this request, the Processor and Controller will discuss and agree in advance on the reasonable scope, start date and duration of this audit, as well as any applicable security and confidentiality controls that may be required.

(c) The Processor may charge a fee (based on the Processor's reasonable costs) for any such audit. The Processor will provide the Controller with additional details of this fee including the basis of its calculation, in advance of the audit. Additionally, the Controller will be responsible for any fees charged by any third-party auditor appointed by the Controller for this audit.

9.   In Accordance with GDPR Article 24(1), the following terms are incorporated by reference into the Agreements:

Controller and Processor acknowledge that the Controller may engage a third-party payment gateway service provider and/or a third-party payment processing service provider to facilitate payment transactions in connection with the Agreements ("Third Party Gateway or Payment Service"). Any such Third Party Gateway or Payment Service engaged by the Controller shall not be deemed a Subprocessor of the Processor for purposes of this DPA. Accordingly, nothing in this DPA obligates the Processor to enter into a data protection agreement with such Third Party Gateway or Payment Service or to be responsible or liable for such Third Party Gateway or Payment Provider's acts or omissions.