

## SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (together with Exhibits, the “**Agreement**”) is made as of December 19, 2022 (the “**Effective Date**”), by and between The New York Times Company with its principal place of business at 620 Eighth Avenue, New York, NY 10018 (“**Company**”) and Spreadly, Inc., with its principal place of business at 300 Morris Street, Suite 400, Durham, NC 27701 (“**Vendor**” or “**Spreadly**”). Company and Vendor are referred to herein collectively as the “**Parties**,” and each as a “**Party**.”

It is agreed that the following terms and conditions shall govern with respect to the software services and related services, deliverables, and documentation to be provided to Company by or on behalf of Vendor in accordance with each Service Order (as defined below) and each Task Order (as defined below) executed by the Parties and referencing this Agreement.

**1. Definitions.** The following definitions apply:

**1.1. “Accept” or “Acceptance”** means the first to occur of the date on which (a) Company notifies Vendor that certain Software Services, Professional Services, or Work Product have satisfactorily been performed or provided and meet the relevant Acceptance Criteria, or (b) Company accepts the Services or deliverables as non-conforming to the Acceptance Criteria (each in accordance with **Section 2.3** below).

**1.2. “Acceptance Criteria”** means, as to any Professional Services, and Work Product, compliance with the specifications in this Agreement, the applicable Exhibit, Documentation, and Task Order.

**1.3. “Affiliate”** means, with respect to a Party, any present or future entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with that Party.

**1.4. “Aggregated, Anonymized, and De-Identified”** means information or data that (a) does not identify, is not capable of identifying, and cannot reasonably be used to infer information about, or otherwise be linked to, a user, household, browser, application, computer, or device; (b) is anonymous, de-identified, and aggregated under Applicable Laws, (c) is non-attributable to an individual or Company; and (d) is not be capable of being reverse-engineered. Vendor shall to the extent required under Applicable Laws for Vendor to exercise its rights under Section 8.5 below (x) take reasonable measures to ensure that the Aggregated, Anonymized, and De-Identified information or data cannot be associated with an individual, household, or device, (y) publicly commit to maintain and use that information or data in aggregated, anonymized, and de-identified form and not to attempt to reidentify the information, and (z) contractually obligate any recipients of the information or data to comply with all provisions of this paragraph; provided that the requirements set forth in (y) and (z) above will not apply to Vendor until January 1, 2023.

**1.5. “Applicable Laws”** means any and all applicable laws, regulations, rules, ordinances, guidelines or judicial or administrative orders now in effect or hereinafter enacted or adopted, as amended from time to time, in any jurisdiction.

**1.6. “Authorized Users”** means the Company and Company Affiliate and Representative personnel who are authorized to use the Software Services and Documentation and have been supplied user identifications and passwords, or other means of accessing the Software Services, by Company (or by Vendor at Company’s request).

**1.7. “Change Request”** has the meaning set forth in **Section 2.2**.

**1.8. “Company Data”** means any or all of the following, and all copies thereof, regardless of the form or media in which such items are held: (a) content, data and information (including Personal Information (as defined below)) provided or submitted by or on behalf of Company or any Company Affiliate to the Software Services or to Vendor or its Affiliates or Representatives; (b) any content, data, information or other output created, collected, generated, Processed, or stored by the Software Services or in connection with use of the Software Services or delivery or receipt of any other Services (including Personal Information, SLA measurements, reports, and metadata); and (c) any content, data, or information provided to Company or any Company Affiliate by or on behalf of Vendor. For clarity, Company Data does not include data or information that is Aggregated, Anonymized, and De-Identified.

**1.9. “Computer Environment”** means the networks, servers, systems, computers, databases and applications of a Party, including any such assets owned, licensed, leased or subscribed to by a Party, including, with respect to Vendor’s Computer Environment, the Software Services and associated systems.

**1.10. “Confidential Information”** means all proprietary or confidential information, including: Personal Information, technical data, trade secrets or know-how, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) either directly, indirectly, in writing, orally or by drawings or inspection of parts and equipment. It may include information proprietary to a third party, including the Disclosing Party’s Subcontractors or third-party software suppliers. In addition, any and all information related to the Disclosing Party’s business which is labeled or identified as “confidential” or “proprietary” or that the Receiving Party otherwise knows, or would reasonably be expected to know, that the Disclosing Party considers to be confidential or proprietary or the Disclosing Party has a duty to treat as confidential shall be deemed Confidential Information. Company’s Confidential Information includes Company Data and all Work Product. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is publicly available through means other than a breach of this Agreement (with the exception of Personal Information, which shall always be Confidential Information even if publicly available); (b) is already in the Receiving Party’s possession on the Effective Date of this Agreement and was not obtained from the Disclosing Party; (c) is developed by the Receiving Party outside the scope of any agreement with the Disclosing Party, and without reference to or use of the Disclosing Party’s Confidential Information; (d) is obtained lawfully from third parties free to disclose the information without confidentiality obligations to the Disclosing Party; or (e) is independently obtained or developed in the conduct of Company’s newsgathering operations.

**1.11. “Documentation”** means (a) the user and technical documentation relating to the installation, configuration, use and functionality of the Software Services, as updated by Vendor from time to time, and (b) any written requirements of Company agreed by the Parties with written acceptance by Vendor (email is sufficient).

**1.12. “Fees”** has the meaning set forth in **Section 4**.

**1.13. “Force Majeure Event”** means an unforeseeable condition beyond the reasonable control of the Party experiencing such condition, including fire, explosion, epidemic which significantly puts at risk and endangers the health of the affected Party’s Representatives, cyclone, acts of government, acts of public enemies, acts of terrorism, war, legally binding demand or requirement of any government or any subdivision authority or representative of any such government, which condition (a) could not have been prevented, avoided or remedied by the affected Party taking reasonable precautions, incurring reasonable expenditure or using alternate resources or means; (b) has not been caused by or contributed to in any way by the affected Party, including any of its Representatives; and (c) makes the performance of the obligations

under this Agreement by the affected Party impossible or unreasonably onerous or uneconomic, not merely somewhat onerous or uneconomic.

**1.14. “Intellectual Property Rights”** means all forms of intellectual property and proprietary rights and protections throughout the world, whether currently existing or hereafter developed or acquired and whether now known or hereafter recognized, including all right, title and interest arising under any Applicable Laws in and to all (a) patents, patent applications, and related filings and rights; (b) trade secrets, rights in know-how, rights in technical information, rights in databases, and equivalent rights; (c) copyrights, copyright registrations, design registrations and applications therefor, moral rights, other literary property or author rights, whether or not protected by copyright or as a mask work; and (d) proprietary indicia, trademarks, service marks, trade names, brand names, trade dress, logos, symbols, domain names, and all goodwill associated therewith.

**1.15. “Other Products”** means content, software, materials or other items, including open source, “free,” or publicly available software or middleware that is owned or controlled by a person or entity other than Vendor or Company.

**1.16. “Payment Schedule”** means the payment schedule contained in a Service Order or a Task Order.

**1.17. “Personal Information”** means any information owned or provided by or on behalf of Company, in any form, format or media (including paper, electronic and other records), that Vendor has access to, creates, collects, obtains, uses, maintains or otherwise Processes or handles in connection with the performance of Services, including partial copies thereof, that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, household, or device, including, without limitation, any inferences drawn or derivatives thereof, or that is otherwise defined or regulated as personal information, personally identifiable information, personal data or otherwise under Applicable Laws.

**1.18. “Policies”** means any Company policies communicated to Vendor, and any updated versions thereof communicated to Vendor, including Company’s Employees and Non-Employees Responsibilities to Protect Information Policy, attached hereto as **Exhibit D**.

**1.19. “Process” or “Processing”** means any operation or set of operations that is performed upon Company Data, whether or not by automatic means, including, without limitation, acquiring, accessing, collecting, consulting, recording, copying, organizing, storing, maintaining, preserving, structuring, transferring, adapting, altering, developing, creating, modifying, retrieving, restricting, searching, consulting, using, transmitting, messaging (including “texting,” emailing and chatting), disclosing, disseminating, making available, aligning, combining, blocking, deleting, erasing, discarding, disposing of or destroying Company Data.

**1.20. “Professional Services”** means consulting, installation, implementation, configuration, Work Product development, and/or training services provided by Vendor under this Agreement, as documented in a Task Order. For the avoidance of doubt, all Professional Services unrelated to the Software Services provided under this Agreement shall be governed by a separate, stand-alone agreement executed by the Parties.

**1.21. “Representatives”** means officers, directors, employees, consultants, contractors, Subcontractors, suppliers, service providers, agents, successors and assigns of a Party.

**1.22. “Security Incident”** has the meaning set forth in the Security Exhibit.

**1.23. “Services”** means the Software Services, Professional Services, Support Services, and the Termination Assistance Services, as well as all Work Product, Documentation, and any other deliverables provided as part of such services.

**1.24. “Service Order”** means an order for Software Services, in a form substantially similar to **Exhibit A**, executed by Company and Vendor, and is sometimes also referred as an “Order Form”.

**1.25. “SLAs”** means the service level standards and requirements specified in **Exhibit C**.

**1.26. “Software Services”** means: (a) the software products provided on a hosted or software-as-a-service basis to Company or its Affiliates, including all Updates thereto (the “Platform”); and (b) Vendor’s proprietary API integration (“API”).

**1.27. “Subcontractor”** includes Vendor’s subcontractors used to facilitate the performance of this Agreement (including any third-party hosting services provider), and the subcontractors of such Vendor subcontractors.

**1.28. “Support Services”** means the maintenance and support services for the Software Services, as described in **Exhibit C**.

**1.29. “Task Order”** means a task order, in a form substantially similar to **Exhibit B**, executed by Company and Vendor.

**1.30. “Term”** has the meaning set forth in **Section 3.1**.

**1.31. “Termination Assistance Services”** means the services described in subsection (b) of **Section 3.5**.

**1.32. “Treated”** means and includes the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

**1.33. “Updates”** means any and all modifications, additions, or updates to the Software Services that Vendor makes generally available to its customers, including those to correct bugs, deficiencies, or errors; to conform to regulatory or industry requirements; to perform required maintenance; or to incorporate product upgrades to improve operability or new functionalities, including any new version.

**1.34. “Vendor Reserved IP”** means content, software, materials, or other items, including all Intellectual Property Rights therein, that Vendor (a) owns or controls prior to performing the applicable Services, or (b) creates, or obtains the ownership or control of, outside the scope of the Services and this Agreement, and the derivative works of (a) and (b), as well as all: (i) processes, know-how, proprietary information and methodologies for delivery of the applicable Services, document templates, scripts and project tools used by Vendor to deliver the applicable Services; and (ii) any training materials created or prepared by Vendor at any time related to the Software Services (including Updates). Vendor Reserved IP expressly includes the Software Services (including Updates) and the Documentation.

**1.35. “Work Product”** means all inventions, concepts, ideas, improvements, modifications, processes, methods, designs, analysis, discoveries, and other creations conceived or made in the performance of Services under this Agreement, including any deliverables provided by Vendor to Company; provided that Work Product does not include any Vendor Reserved IP.

## 2. Services.

**2.1. Software Services.** Subject to the terms of this Agreement, Vendor hereby grants Company and its Affiliates and Representatives a non-exclusive, non-transferable (except as provided in Section 16), royalty-free, world-wide right and license to access and use the Software Services and Documentation during the Term for purpose of using the Services. Company shall ensure its Affiliates' and Representatives' compliance with the terms of this Agreement and each Service Order and Task Order. The Software Services may contain open source software components which are licensed under the terms of the applicable open source software licenses and not this Agreement. Except as otherwise provided in this Agreement or authorized by Vendor, Company shall not: (a) modify, copy, or make derivative works based on the Software Services or Documentation (except that Company is permitted to make a reasonable number of copies of the Documentation for its and its Affiliates' and Representatives' internal use); (b) decompile, disassemble, reverse-engineer or otherwise access any source code or underlying algorithms in the Software Services; (c) rent, lease, sell or otherwise transfer or distribute copies of the Software Services or Documentation; (d) negligently permit use of the Software Services by anyone other than Company and its Affiliates and Representatives; (e) input, upload, transmit or otherwise provide to or through the Software Services any information or materials that are unlawful or injurious, or contain, transmit or activate any virus, trap door, worm or any other device that is injurious or damaging to any hardware, software or systems; (f) remove Vendor's (and as applicable its licensors') copyright, trademark, trade name, and other proprietary rights notices from the Software Services and Documentation; (g) attempt to gain unauthorized access to, damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Software Services; (h) access or use the Software Services in a manner not permitted under this Agreement that infringes, misappropriates or otherwise violates any intellectual property right, privacy right or other right of any third party, or in a manner that violates any Applicable Laws; or (i) access or use the Software Services for purposes of (1) benchmarking or competitive analysis; provided that, subject to (2) and (3) below, this subsection (1) does not preclude Company from such activities solely for Company's internal use as long as the results of such activities are not disclosed outside of Company, (2) developing, producing, marketing, distributing, licensing or selling any product or service that may compete with the Software Services, or (3) disclosing to Vendor's competitors, for any purpose, otherwise non-public information about the Software Services. Vendor shall provide access to the Software Services and Documentation immediately upon execution of this Agreement and receipt of the applicable fees, including any required user identifications and passwords. Company acknowledges and agrees that Vendor is not a payment gateway or merchant account provider and Vendor does not assume any direct or indirect liability or responsibility for Company's agreements with payment gateways or merchant account providers supported on the Software Services. Company will access and use the Software Services solely for lawful purposes and will not use it for any fraudulent, illegal or criminal purposes.

**2.2. Professional Services.** The Professional Services to be performed by Vendor and its Vendor Representatives shall be described under "Scope of Work" on one or more Task Order(s) as requested by Company during the Term. Upon execution by Company and Vendor, each Task Order shall be subject to and governed by this Agreement. Company may request changes to the scope of Professional Services under any Task Order ("**Change Request**"), and in response to a Change Request, Vendor shall provide a written quotation including changes to scope, schedule, materials, prices and expenses in order to accommodate the Change Request. If accepted by Company, the Parties shall execute a new Task Order or an amendment to the existing Task Order, setting forth the terms of the Change Request, which shall become binding only upon execution by both Parties. Vendor is not the exclusive provider of any services to Company, and Company makes no commitment to use Vendor for any minimum amount or duration of services. Vendor shall engage Vendor Representatives with the proper skill, training, and experience to provide the Services, and shall at all times provide a sufficient number of Vendor Representatives to perform the Services in accordance with the terms of this Agreement and the applicable Task Order. In connection with Vendor's provision of the Professional Services, Company will: (a) reasonably cooperate

with Vendor in all matters relating to the performance of the Professional Services; (b) respond promptly to Vendor's requests to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Vendor to perform the Professional Services in accordance with the Service Order; (c) provide the content, data and materials that Company is required to provide as described in the Service Order; and (d) perform those additional tasks and assume those additional responsibilities specified in the applicable Service Order ("Company Responsibilities"). Company understands and agrees that Vendor's performance is dependent on Company's timely and effective satisfaction of Company Responsibilities. Company will be solely responsible for securing all rights, consents, licenses or approvals to grant Vendor access to or use of any third-party data, materials, software or technology necessary for Vendor's performance of the Professional Services, other than with respect to any third-party materials included as part of the Software Services or that Vendor has otherwise agreed to provide as described in the Service Order. Vendor will abide by the terms and conditions of such permissions, licenses or approvals, provided that Company has provided to Vendor written copies of such permissions, licenses or approvals. Vendor shall ensure that Vendor Representatives are not listed on the Office of Inspector General provider database, the Excluded Parties List System posted to SAM.gov, or the Office of Foreign Asset Control exclusion list. Vendor shall conduct such searches prior to such Representative performing Professional Services for Company. Vendor agrees to furnish the professional resumes of material Vendor Representatives to be assigned to Company projects upon request. Company shall have the right to interview all such Vendor-proposed Vendor Representatives prior to start of the Professional Services, and Company reserves the right to approve or request without cause the withdrawal or replacement of any such Vendor Representatives working under this Agreement. Before performing any Services (or receiving Company's Confidential Information, including Company Data) all Vendor Representatives must agree to complete confidentiality compliance training (if they will be receiving Company's Confidential Information, including Company Data) and undergo a criminal background check, in accordance with industry standards and to the extent permissible under Applicable Laws.

**2.3. Acceptance.** Vendor shall notify Company as soon as each Professional Service, including any Work Product is completed or available for use. If not otherwise specified in the applicable Task Order, Company shall have thirty (30) days after receipt of Vendor's notice to test and Accept or reject the Professional Service. If Company rejects the Professional Service, then Company shall reasonably detail the deficiencies so that Vendor is able to understand and correct the claimed deficiencies with respect to the Acceptance Criteria. Vendor shall re-perform the applicable Professional Service or correct the deficiencies within ten (10) days of Company's rejection notice at no additional charge. This process shall be repeated until all Professional Services in the relevant Task Order have been Accepted; provided that Company shall have the right at any time if Vendor has failed after two (2) attempts to re-perform or correct the Professional Service to: (a) issue a final rejection notice, in which case (i) Company may terminate the applicable Services or Task Order, and (ii) Vendor shall refund all amounts previously paid to Vendor by Company with respect to the rejected Professional Services (and, if the Task Order is terminated, any other prepaid amounts in that Task Order); or (b) Accept the Professional Service as nonconforming subject to an equitable reduction in price agreed upon by the Parties, considering the effect of such non-conformance on the overall value of the Professional Service to Company. Notwithstanding the foregoing, in the event Company does not Accept or reject any Professional Services in writing within thirty (30) days of receipt, such Professional Services and related Work Product shall be deemed to have been Accepted by Company.

**2.4. Service Levels.** Vendor shall provide the Software Services in accordance with the SLAs. Credits for failure to comply with the SLAs shall be as set forth in **Exhibit C**.

**2.5. Updates.** Vendor shall provide Updates at no additional charge to Company. Vendor shall not make any Update that decreases the features, security, and/or functions of the Software Services during the Term.

**2.6. Support Services.** As part of the Software Services, Vendor shall provide Support Services to Company, its Affiliates, and Authorized Users.

**2.7. Suspension.** Vendor may suspend or deny access to or use of all or any part of the Software Services and Support Services, if (a) Vendor is required to do so by Applicable Laws or court order; or (b) Company has (1) failed to comply with Section 2.1, or (2) otherwise breached a material term of this Agreement and has failed to cure such breach within thirty (30) days after Vendor provides written notice thereof to Company. Vendor's remedies in this Section 2.7 are in addition to, and not in lieu of, Vendor's termination rights in Section 3.

**2.8. Company Data Export; Company Data Retention.** Company may elect at any time to perform an automatic export of any Card Data and/or other Company Data to a third-party endpoint for which Vendor supports third-party vaulting as set forth at Vendor's website (currently: <https://docs.spreadly.com/guides/third-party-vaulting>). For any endpoint for which automatic export is not supported, Company may request that Vendor perform one (1) free-of-charge manual export during the Term, of any Card Data or other credit card or user information associated with Company's account to a recipient designated by Company, provided that the recipient has proven that it is PCI-DSS compliant, and the transfer is not in violation of any Applicable Laws. If Company requires additional manual exports during the Term, each additional manual export will incur an export charge at Vendor's then-current rates. "Card Data" means any credit card data uploaded or otherwise received from Company by or through the Software Services for the purposes of being processed within the Software Services.

**2.9 Beta Services.** Vendor may offer Company access to beta services that are being provided prior to general release ("Beta Services"). Beta Services will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a similar description. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Vendor may discontinue Beta Services at any time in its sole discretion and may never make them generally available. ALL BETA SERVICES ARE PROVIDED "AS-IS" AND "AS AVAILABLE," WITHOUT WARRANTIES OF ANY KIND. Vendor will have no liability for any harm or damage arising out of or in connection with the use of Beta Services. If Company provides feedback ("Feedback") about the Beta Services, Vendor will be free to use, disclose, reproduce, distribute, implement or otherwise commercialize all Feedback provided by Company without obligation or restriction. For the Beta Services only, the terms of this Section 2.9 supersede any conflicting terms and conditions in the Agreement, but only to the extent necessary to resolve conflict.

### **3. Term; Termination.**

**3.1. Term.** This Agreement commences on the Effective Date and continues for one (1) year from the Effective Date, unless earlier terminated in accordance with the terms of this Agreement ("**Initial Term**"). The Parties may mutually agree in writing to renew this Agreement for subsequent one-year renewal terms (each agreed-upon renewal term, a "**Renewal Term**"). "**Term**" means the Initial Term together with all Renewal Term(s). The term of each Task Order and Service Order shall be specified in such Task Order or Service Order and Task Orders and Service Orders executed before the end of the Term shall survive termination or expiration of this Agreement, unless the Service Order, Task Order or this Agreement is earlier terminated in accordance with the termination provisions of this Agreement, or such Service Order or Task Order (unless those termination rights have been exercised the terms of this Agreement shall survive throughout the term of such Task Orders and Service Orders, solely for purposes of applying to such Task Orders and Service Orders).

**3.2. Termination.** Either Party may terminate this Agreement (or any Task Order or Service Order) upon written notice if the other Party materially breaches this Agreement (or such Task Order or Service

Order) and fails to correct the breach (as reasonably determined by the non-breaching Party) within thirty (30) days following written notice specifying the breach. Either Party may terminate this Agreement immediately upon written notice if the other Party files a petition for bankruptcy or reorganization, or such petition is filed against it and is not dismissed within 60 days, or if it becomes insolvent or makes an assignment for the benefit of creditors.

**3.3. Effect of Termination.** In the event that this Agreement or any Task Order or Service Order is terminated before the end of the Term:

- 3.3.1. If payment has been made in excess of Services completed or provided and to the extent applicable Accepted under a terminating Task Order or Service Order, including but not limited to any advance deposits paid by Company to Vendor, then Vendor shall, within thirty (30) days of termination, refund to Company any amounts not earned through the date of termination; provided that in the event of termination by Vendor due to an uncured breach by Company regarding its payment obligations hereunder, Company must be current on payment of the applicable fees due through the effective date of termination before this right of refund applies;
- 3.3.2. If Services have been rendered and to the extent applicable Accepted without payment under a terminating Task Order or Service Order, and termination occurs for reasons other than Vendor's uncured breach, then Company shall, in accordance with Section 4 (Payment for Services), pay Vendor for all such Services completed through the date of termination;
- 3.3.3. Upon payment therefor, Vendor shall transfer to Company any Work Product or other material developed pursuant to this Agreement, including, but not limited to, working papers, narrative description, reports, data, etc.;
- 3.3.4. Vendor will immediately discontinue Company's access to the Software Services;
- 3.3.5. Company will complete all pending transactions and stop accepting new transactions through the Software Services; and
- 3.3.6. Company will discontinue use of any Vendor trademarks and immediately remove any Vendor references and logos from Company's website.

**3.4. Confidential Information and Company Data.** Upon termination or expiration of this Agreement, or otherwise upon Company's request, Vendor and Vendor Representatives shall promptly cease to use all Company's Confidential Information (including any Company Data) and shall promptly return or delete (at Company's option, and via secure method) all of Company's Confidential Information in its or any Vendor Representative's possession, certifying in writing that all Company Confidential Information has been returned or destroyed, as applicable; provided that in the event of such request during the Term, Vendor shall not be penalized for any inability or delay by Vendor in performing its obligations hereunder to the extent due to such a request. Notwithstanding the foregoing, if returning or destroying the Company's Confidential Information is not feasible, the protections of this Agreement shall extend to any of Company's Confidential Information that is retained by the Vendor or its Representatives, and Vendor shall limit further uses of such Company Confidential Information solely to those purposes that make the return or destruction of the Company Confidential Information infeasible.

**3.5. Termination Assistance.** After termination of this Agreement or any portion of the Software Services by either Party for any reason, upon Company's request and for thirty (30) days after such termination (or such longer period as may be agreed to in writing by the Parties): (a) Company may, at the rates set forth in the Task Order referenced below, access the Software Services for the sole purposes of extracting any Company Data from the Software; and (b) Vendor shall assist Company and its third party



service providers, if applicable, in transferring any Company Data to Company or such other service provider, together with any other reasonably requested services (“**Termination Assistance Services**”). The Termination Assistance Services shall be set forth in a Task Order. Company shall pay those hourly rates of Vendor set forth in the Service Order or Task Order (as applicable).

**4. Payment for Services.** Company agrees to pay Vendor all undisputed fees for Services performed or provided and to the extent applicable Accepted under a Task Order or Service Order, at the rates set forth in such Task Order or Service Order (“**Fees**”) and in accordance with the applicable Payment Schedule. Company may dispute any portion of an invoice in good faith by notifying Vendor in reasonable detail as to the basis for such dispute at any time prior to the due date of payment, and the Parties shall use commercially reasonable efforts to promptly resolve such dispute. If the Parties mutually determine that any portion of the disputed Fees are actually due to Vendor, Company shall pay Vendor such agreed upon Fees within forty-five (45) days following the resolution of such dispute. For clarity, Vendor shall continue to perform all Services in accordance with this Agreement during any such dispute.

## **5. Invoicing.**

**5.1. Fees; Payment.** Vendor shall invoice Company in accordance with the Payment Schedule. Each invoice shall reflect charges for the period being billed. Terms of payment are net forty-five (45) days. Invoices shall be submitted to the individual named in the Payment Schedule. If Company fails to make any payment when due then, in addition to all other remedies that may be available to Vendor, Vendor may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law. Except as expressly provided in this Agreement, all payment obligations are non-cancelable and all Fees once paid are non-refundable.

**5.2. Taxes.** The Fees set forth in a Task Order or Service Order do not include any amounts for sales, use or other similar taxes. If any such taxes are found at any time to be required, Vendor shall add such taxes to the amounts payable pursuant to the Agreement, and such taxes shall be set forth in the applicable invoice in order for Company to pay such taxes to Vendor. Notwithstanding the foregoing, Vendor shall be responsible for all taxes based on Vendor’s income or business operations generally (e.g., employee withholdings, unemployment, social security, workers’ compensation, etc.).

**5.3. Expenses.** Each invoice shall include any travel, living and related expenses incurred during the applicable invoicing period that were pre-approved in writing for payment by Company (both as to type and dollar amount). Concurrently with each applicable invoice, Vendor shall provide copies of receipts and other documentation reasonably evidencing its payment of such expenses. Any such expenses that are not invoiced to Company within one hundred twenty (120) days of accrual shall be payable by Vendor and not reimbursed by Company. In lieu of the approval process set forth above, Vendor may estimate the type and dollar amount of all such expenses in each Task Order. In no event shall such expenses exceed ten percent (10%) of the Fee payable for Services under the applicable Task Order without prior, written consent from Company. All other costs and expenses incurred by Vendor in performing the Services shall be Vendor’s sole responsibility.

**5.4. Records.** During the Term and for a period of two (2) years thereafter, Vendor shall maintain accurate and complete books and records regarding the Services (including Work Product), Fees, and expenses. No more than once annually during the Term and one year thereafter, Company or its designated third-party auditor may inspect, copy, verify, and audit such books and records during normal business hours, in a manner that does not unreasonably interrupt Vendor’s normal business activities, at any time upon not less than thirty (30) days’ prior notice to Vendor. Vendor shall reimburse Company for any reasonable expenses incurred by Company in connection with any audit that results in the correction of a billing error by Vendor that resulted in an overcharge to Company of five percent (5%) or more. In the

event that the audit reveals an overpayment by Company, Vendor shall promptly (but in no event later than sixty (60) days after the audit) remit to Company the amount of such overpayment.

## **6. Representations and Warranties; Indemnification.**

### **6.1. Vendor Representations and Warranties.** Vendor represents and warrants that:

- 6.1.1. Vendor has the right to: (a) enter into this Agreement and (b) to the best of its knowledge to provide the Services described herein and in the Task Orders and the Service Orders and grant all rights granted herein;
- 6.1.2. Vendor and its Representatives shall comply with all Applicable Laws, including in the provision of Services pursuant to this Agreement, and shall ensure all Services and Company's (and its Affiliates' and Representatives') use and receipt thereof, as contemplated in this Agreement, comply with Applicable Laws;
- 6.1.3. the Services shall comply with all Acceptance Criteria; provided that in the event of breach of this warranty in this Section 6.1.3, Company's sole remedy is set forth in Section 6.2 below;
- 6.1.4. it has taken, and will take during the Term, commercially reasonable measures to ensure that the Services shall not contain any virus, trap door, worm or any other device that is injurious or damaging to any hardware or software or systems;
- 6.1.5. the Services shall be performed in a timely, professional and workmanlike manner, in accordance with applicable industry standards; provided that in the event of breach of this warranty in this Section 6.1.5, Company's sole remedy is set forth in Section 6.2 below;
- 6.1.6. Vendor owns or has acquired rights to all Intellectual Property and other proprietary interests necessary to provide the Services (including the Software Services and Work Product), and convey the Intellectual Property Rights, licenses, and access rights set forth in this Agreement, and shall provide the Services to Company free of all liens, claims, encumbrances, and other restrictions (except any restrictions specifically set forth herein); provided that in the event of breach of the warranty given in this Section 6.1.6, Company's sole remedy shall be Vendor's obligations under Section 6.3(a)(vi) and 6.4 below; and
- 6.1.7. to the best of its knowledge, there are no threatened, pending, or actual suits, actions, proceedings or causes alleging that Vendor or its Affiliates or Subcontractors has infringed any third party's intellectual property, privacy, or proprietary rights.

**6.2. Vendor's Failure to Meet the Performance Warranties.** As its sole obligation in the event of breach of the warranties given in Sections 6.1.3 and 6.1.5 above (the "Performance Warranties"), Vendor, at its sole and exclusive expense, shall: (a) cure any failure to meet the Performance Warranties without undue delay, (b) provide Company with a reasonable procedure to circumvent the nonconformity; or (c) terminate the provision of the affected Services, and Vendor shall refund to Company any pre-paid fees for the applicable Services.

**6.3. Indemnification.** Vendor agrees to hold harmless, indemnify, and defend Company and its Representatives and Affiliates (collectively "**Company Indemnitees**") against any and all damages, liabilities, penalties, costs and expenses, including reasonable attorneys' fees, to the extent arising out of (a) third party claims, actions, disputes, demands, orders, suits, or other proceedings (collectively "**Claims**")

arising from or related to (i) death, bodily injury, or property damage caused by Vendor's or Vendor's Representative's negligent acts, or omissions; (ii) a breach of Vendor's representations or warranties under this Agreement (iii) a breach of Vendor's obligations under this Agreement regarding compliance with PCI-DSS or Applicable Laws in its performance hereunder; (iv) any grossly negligent or willful act or omission by Vendor or its Representatives in the performance of the Services; (v) the placement of any Vendor Representative with Company to perform the Professional Services on Company premises; (vi) any claim that the Services (including the Software Services and all Work Product), or use by Company as permitted in this Agreement and the applicable Task Order or Service Order, infringe or misappropriate any Intellectual Property Rights or other proprietary right (including right of publicity or privacy) of such third party; (vii) Vendor's violation of any Applicable Law in its provision of the Services; (viii) any breach of Vendor's privacy, security, or confidentiality obligations hereunder, including but not limited to breach of the Privacy Exhibit or Security Exhibit; and (ix) a Security Incident involving Customer Data in Vendor's possession that Vendor was Processing in connection with its performance under this Agreement (including reimbursement of any out-of-pocket costs related to any investigation and remediation of such Security Incident such as forensics, notifications, communications, and credit reporting services).

**6.4. Vendor's Mitigation.** In the event of a third-party allegation that the Services (including the Software Services and Work Product) infringe or otherwise violate such third party's Intellectual Property Rights or other proprietary right, Vendor, at its option and sole expense, in addition to fulfilling the indemnification obligation set forth above, shall (a) modify the infringing portion of the Services so as to make it non-infringing and non-violating, while maintaining equivalent functionality that is reasonably satisfactory to Company; (b) replace the infringing portion of the Services with a non-infringing and non-violating solution of equivalent functionality reasonably satisfactory to Company; (c) obtain the right for Company to continue using the infringing or violating portion of Services; or (d) if Vendor cannot provide Company with option (a), (b), or (c) above within a reasonable timeframe or on commercially reasonable terms, refund to Company any fees that Company has pre-paid for the affected Services.

**6.5. Indemnification Procedures.** After receipt of any written claim or notice of a Claim giving rise to a claim for indemnification, Company shall provide Vendor notice of the Claim (provided that failure to so notify Vendor shall not relieve Vendor of its indemnification obligations, except to the extent that the failure is prejudicial to Vendor's ability to defend such claim or action). Company shall, at Vendor's expense, provide reasonable cooperation and assistance in the defense or settlement of the Claim, and Vendor shall have control over the defense and settlement of the same (provided that Company shall be entitled to participate in the defense and settlement of the Claim and to employ counsel at its own expense to assist in the handling of the Claim, and provided further that Company does not invoke its right to defend pursuant to **Section 6.6**. Vendor shall not agree to any settlement or compromise affecting the financial or legal obligation of a Company Indemnitee (including a settlement or compromise that (a) results in any admission of guilt on the part of a Company Indemnitee; (b) imposes any obligation or liability on a Company Indemnitee for which it will not be indemnified by Vendor hereunder; or (c) has a judicially binding effect on any Company Indemnitee) without the Company's prior written consent.

**6.6. Company's Right to Defend.** If Company reasonably determines that Vendor has failed to diligently assume and maintain a prompt and vigorous defense of any Claim, Company will give Vendor notice of such failure, and the parties will work together in good faith to resolve the dispute. If Vendor does not implement the agreed resolution within the timeframe designated by the parties in such resolution, Company may, at its own expense, option, and discretion, assume sole control of the defense of any Claim and all related settlement negotiations with counsel of its own choosing and without waiving any other rights to indemnification. If Company provides evidence to support its right to defend pursuant to this **Section 6.6**, Vendor shall pay all costs and expenses (including reasonable attorneys' fees) incurred by Company in the defense.

**6.7. Limitation.** THIS SECTION 6 SETS FORTH THE COMPANY INDEMNITEES' EXCLUSIVE REMEDIES, AND VENDOR'S SOLE OBLIGATION AND LIABILITY TO THE COMPANY INDEMNITEES, FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE SOFTWARE SERVICES (INCLUDING COMPANY'S USE THEREOF) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

**6.8. Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS AGREEMENT, THE SOFTWARE SERVICES AND ALL SERVICES PROVIDED BY VENDOR HEREUNDER ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND VENDOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT (PROVIDED THAT ANY EXPRESS WARRANTIES BY VENDOR HEREUNDER ARE NOT AFFECTED BY THE FOREGOING DISCLAIMER). WITHOUT LIMITING THE FOREGOING, NEITHER VENDOR NOR ANYONE ASSOCIATED WITH SPREEDLY, INC. REPRESENTS OR WARRANTS THAT THE SOFTWARE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED.

**6.9. Company Warranties; Indemnification.** Company represents and warrants that: (a) it will not use the Software Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Software Services; (b) Company's use of the Software Services and its collection and use of all of Company Data (including Company's processing of Company Data and/or any card authorization, credit, ticket only, capture or settlement request, decline transaction, or other related transaction, completed or submitted under Company's account) will comply with (i) PCI-DSS, (ii) the terms of service of Company's selected payment gateways and merchant service providers and/or API endpoints Company connects with the Software Services, (iii) the rules of the applicable payment networks (including for example Visa, Mastercard, American Express and Discover Financial Services), and (iv) all Applicable Laws. Company will defend, indemnify and hold Vendor and Vendor's subcontractors and personnel harmless from any and all damages, liabilities, penalties, costs and expenses, including reasonable attorneys' fees, arising out of Claims based on (1) Company's use of the Software Services in violation of the terms of this Agreement or the applicable Service Order and/or any Applicable Laws, and/or (2) Company's breach of its privacy, security and confidentiality obligations hereunder, including but not limited to breach of the Privacy Exhibit or Security Exhibit.

## **7. Limitation of Liability.**

**7.1. LIMITATIONS.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY LOSS OF INCOME OR PROFITS, LOSS OF ANTICIPATED SAVINGS, WASTED EXPENDITURE, LOSS OF BUSINESS OPPORTUNITIES, REPUTATION OR GOODWILL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF, OR HAD REASON TO KNOW OF, THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AND CUMULATIVE LIABILITY OF VENDOR ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FEES PAID TO VENDOR BY COMPANY DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.

**7.2. EXCEPTIONS.** THE LIMITATIONS IN SECTION 7.1 (LIMITATIONS) DO NOT APPLY TO AND SHALL NOT LIMIT ANY LIABILITY WITH RESPECT TO: (i) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OTHER THAN AS REFERENCED IN SECTION 7.2(iv) BELOW REGARDING THIRD-PARTY INFRINGEMENT CLAIMS; (ii) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY IN THIS

AGREEMENT EXCEPT AS REFERENCED IN SECTION 7.2(iii) BELOW; (iii) A PARTY'S PRIVACY AND SECURITY OBLIGATIONS OR BREACH THEREOF OR VIOLATION OF APPLICABLE LAWS; (iv) VENDOR'S OBLIGATIONS, INCLUDING INDEMNIFICATION OBLIGATIONS IN THIS REGARD, UNDER SECTION 6.3(a)(vi) REGARDING THIRD-PARTY INFRINGEMENT CLAIMS; (v) A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD; OR (vi) A PARTY'S VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY; PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY UNDER THE FOREGOING (i) or (iii) EXCEED THE GREATER OF \$1 MILLION OR THREE TIMES THE AMOUNT OF FEES PAID TO VENDOR BY COMPANY DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM. THE LIMITATIONS IN THIS SECTION 7 WILL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT WILL THE SUPPLIERS OF VENDOR HAVE ANY LIABILITY UNDER THIS AGREEMENT.

## **8. Rights and Title.**

**8.1. Vendor's Proprietary Rights; Other Products.** Vendor Reserved IP, and (subject to any Company Data) any derivative works thereof and Intellectual Property Rights therein, are proprietary to Vendor and shall remain Vendor's exclusive property. Vendor reserves all rights not expressly granted to Company in this Agreement. To the extent Vendor makes any improvements to the Software Services based upon Company's use of or feedback regarding the Software Services, Company agrees that Vendor exclusively owns all right, title and interest in and to such improvements, including all related Intellectual Property Rights. If the parties agree that Vendor will provide Work Product, Vendor shall not use any Vendor Reserved IP or Other Products in connection with developing or providing Work Product without Company's prior, written approval or as specifically set forth in a Task Order. If Vendor is required to license or otherwise obtain the right to use or own any Other Products or other Intellectual Property Rights in connection with providing the Work Product, then Vendor shall obtain Company's prior, written approval of the financial, contractual, licensing and other terms relating to such use or ownership. Failure to obtain Company's prior review, consent, and written approval shall be a material breach of this Agreement and relieve Company from any obligation to make payment with respect to such items. Such review, consent or approval from Company shall in no way diminish any of Vendor's obligations under this Agreement, including its warranties and indemnification obligations. In addition, and notwithstanding anything to the contrary in a Task Order, Company reserves the right to negotiate directly with other vendors and third parties to obtain such rights. To the extent that any Vendor Reserved IP or Other Products are included in the Work Product, then Vendor shall grant to, or obtain the necessary rights to grant to, Company and its Affiliates, and Vendor does hereby grant to Company and its Affiliates, a nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable, worldwide license, with rights to sublicense to other parties, to reproduce, manufacture, modify, distribute, use, display, perform, import, create derivative works from, communicate to the public, and otherwise exploit such Vendor Reserved IP and Other Products solely in connection with Company's and its Affiliates' use of the Work Product without notice or payment to Vendor or any other person or entity.

**8.2. Work Product.** Except for Vendor Reserved IP and Other Products incorporated therein, Company is and shall be the sole and exclusive owner of all right, title, and interest in and to all Work Product. To the fullest extent not prohibited by Applicable Laws, any and all copyrightable aspects of the Work Product shall be considered "works made for hire" (as such term is used in Section 101 of the U.S. Copyright Act, as amended). To the extent any Work Product is not "works made for hire", Vendor hereby assigns (and shall cause its Representatives to assign) to Company all right, title, and interest that Vendor and such Representatives may now or hereafter possess in or to the Work Product, including all Intellectual Property Rights. Vendor hereby waives any and all claims that Vendor may now or hereafter have in any jurisdiction

to “moral rights” or other similar concepts with respect to the Work Product, Vendor shall take such actions and execute such instruments as Company reasonably may request to evidence, establish, maintain or protect Company’s rights in and ownership of the Work Product. Vendor shall obtain a written agreement from each individual or entity that is engaged for or on behalf of Vendor to perform any portion of the Services in the creation of Work Product prior to the commencement of such performance as shall be necessary to ensure that Company shall have the ownership rights in the Work Product as provided for in this Section. Notwithstanding any contrary term in this Agreement, unless otherwise expressly provided in a Task Order with specific reference to this Section 8.2 or to Work Product, all deliverables provided by Vendor shall be assumed to be provided as part of the Software Services and Documentation (and not as Work Product), and are therefore owned by Vendor as Vendor Reserved IP (pursuant to Section 8.1) and provided to Company (pursuant to Section 2.1 above) under the terms of this Agreement.

**8.3. Company Data.** Notwithstanding any provision of this Agreement to the contrary, Vendor acknowledges that Company is and shall be the sole and exclusive owner of all right, title, and interest in and to all Company Data and any derivative works thereof and Intellectual Property Rights therein. Vendor shall not claim or assert title in or to any Company Data, or attempt to transfer any rights or title to any Company Data to any other third party. Vendor may access, use or disclose the Company Data solely as necessary to provide the Services to Company and its Affiliates pursuant to the terms of this Agreement and to comply with Applicable Laws and for no other purpose. For the avoidance of doubt, Vendor shall not use any Company Data for aggregation or benchmarking purposes. Vendor is prohibited to use, retain or disclose the Company Data for any purpose other than for performing the Services for Company or complying with Applicable Laws. Vendor certifies that it understands these limitations and other restrictions contained in this **Section 8.3** and shall comply with them.

**8.4. No Implied Rights.** Except as expressly provided in this Agreement, the execution or performance of this Agreement does not provide either Party with any interest in, or right or license to use, any Intellectual Property Rights, logo, brand features, color combination, insignia, or device owned or used by the other Party.

**8.5. Usage Data.** Notwithstanding any provision of this Agreement to the contrary, Company acknowledges and agrees that Vendor may collect metadata and other statistical information regarding Company’s use of and the performance of the Software Services (“Usage Data”). All such Usage Data shall be Aggregated, Anonymized, and De-Identified to the extent required under Applicable Laws to permit its use as described in this Section 8.5. Usage Data does not contain Company Data that identifies an individual or Company. Company agrees that Vendor may use Usage Data in connection with providing Support Services to Company and for Vendor’s internal business purposes (such as monitoring, enhancing and improving the Software Services), and that Vendor may publish and share with third parties Usage Data that has been Aggregated, Anonymized and De-Identified with data from other customers of Vendor.

**9. Equal Opportunity.** Vendor shall not discriminate against any employee, applicant for employment, agent or Subcontractors, or in the selection thereof, because of race, religion, color, national origin, marital status, sex, disability, sexual orientation or age. Vendor shall take such actions as are reasonably necessary to ensure that employees, applicants for employment, agents or Subcontractors, are Treated without regard to their race, religion, color, national origin, marital status, sex, sexual orientation or age.

## **10. Confidentiality.**

**10.1. Ownership.** As between the Disclosing Party and the Receiving Party, the Disclosing Party shall solely and exclusively own the Confidential Information that it discloses under this Agreement. The Receiving Party shall only use Confidential Information disclosed by the Disclosing Party as is necessary

in connection with performing its obligations under this Agreement and the Task Orders and Service Orders. This Agreement and the existence of this Agreement or any Task Order and Service Order shall be considered the Confidential Information of both Parties. For avoidance of doubt, all non-public information related to the Software Services (including without limitation, pricing information (e.g., price quotes) and the source code for the Software Services and the methods, algorithms, structure and logic, technical infrastructure, techniques and processes used by Vendor in developing, producing, marketing and/or providing the Software Services) are Vendor's Confidential Information.

**10.2. Protection and Use.** The Receiving Party shall hold the Disclosing Party's Confidential Information in strict confidence, using the same safeguards that it uses to protect its own Confidential Information of a similar character, which in all cases shall be no less than reasonable safeguards and accepted industry practices. The Receiving Party shall not, without the prior consent of the Disclosing Party, disclose or allow the disclosure of any Confidential Information to any other person or entity or use any such Confidential Information for its own benefit (except for performing its obligations under this Agreement or a Task Order or Service Order) or for the benefit of any third party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the Receiving Party's Representatives and to third parties, in each case who have a need to know such information in connection with this Agreement; provided that the Receiving Party has imposed confidentiality obligations on such Representatives and third parties, including requiring such Representatives and third parties to enter into a written agreement or be under a professional obligation to protect all Confidential Information in a manner consistent with the requirements of this Agreement (including during the term of their employment or engagement and thereafter). The Receiving Party shall be and remain liable for any disclosure made by the Receiving Party to any of its Representatives or to any other third party, and for any such Representative's or third party's acts and omissions with respect to the Confidential Information.

**10.3. Disclosure Required by Law.** In the event the Receiving Party is required by Applicable Law or a valid and effective subpoena or order issued by either a court of competent jurisdiction or a governmental body to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall promptly notify the Disclosing Party in writing of the existence, terms and circumstances surrounding such required disclosure so that the Disclosing Party may seek a protective order or other appropriate relief from the proper authority. The Receiving Party shall cooperate with the Disclosing Party in seeking such order or other relief. If the Receiving Party is nonetheless required to disclose the Disclosing Party's Confidential Information, it shall furnish only that portion of the Confidential Information that is legally required and shall exercise all reasonable efforts to obtain reliable assurances that such Confidential Information shall be treated confidentially to the extent possible.

**10.4. Trade Secrets.** Notwithstanding any other provision of this Agreement, Vendor shall not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (a) is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If Vendor files a lawsuit for retaliation by Company for reporting a suspected violation of law, Vendor may disclose Company's trade secrets to Vendor's attorney and use the trade secret information in the court proceeding if Vendor: (c) files any document containing the trade secret under seal; and (d) does not disclose the trade secret, except pursuant to court order.

**10.5. Personal Information.** If Vendor or any Vendor Representative will have access to, or otherwise Process, any Personal Information in connection with the Services or this Agreement, Vendor shall comply with the terms of the Privacy Exhibit attached as Exhibit F (the "Privacy Exhibit"). This exhibit shall govern the Processing of Personal Information by Vendor on behalf of Company. The scope of the Vendor's and its approved Affiliates' or subcontractors' Processing or transfer of Personal Information is set forth in

Exhibit E attached hereto. Company may make reasonable amendments to Exhibit E by written notice to Vendor from time to time as Company reasonably considers necessary to meet those requirements or as otherwise mutually agreed by the parties.

**10.6. Security Requirements.** Vendor shall at all times comply with the measures set forth in the Security Exhibit attached as Exhibit G (the “Security Exhibit”).

**10.7. Remedies for Breach.** Each Party acknowledges that the breach of this **Section 10** will likely result in irreparable injury to the other Party, for which money damages alone would be an inadequate remedy and that, in addition to its other remedies, the non-breaching Party shall be entitled to seek equitable relief, including specific performance and an injunction to restrain any threatened or continued breach of this Agreement in any court of competent jurisdiction. No bond or other security shall be required in obtaining any equitable relief.

## **11. Independent Contractor.**

**11.1.** Vendor, in performance of its obligations under this Agreement, is acting as an independent contractor, and the personnel supplied to Company are engaged solely by Vendor and not by Company. Vendor Representatives are not employees or agents of Company, and neither Vendor nor its employees or agents shall be subject to the direction, control or supervision of Company with respect to that time spent or procedures followed in the performance of the Services hereunder, and has no right or power, express or implied to do any act or thing that would bind Company. Neither Vendor nor its Vendor Representatives are authorized to (and they shall not) make any agreements or representations on Company’s behalf.

**11.2.** Vendor acknowledges that Vendor is providing Services under this Agreement as an independent contractor and as such warrants that any individuals supplied by Vendor to provide Services shall not be eligible for any Company employee benefits including, but not limited to, medical coverage, life and disability insurance, retirement benefits or stock purchase program, nor be eligible for any fringe benefits nor be entitled to any rights that would otherwise accord to Company’s employees under the law, and Vendor shall defend and indemnify Company from any claims made in connection therewith.

**11.3.** Vendor shall provide for all necessary workmen’s compensation liability insurance for the period of service hereunder for damages caused (or contributed to) by Vendor, provide an opportunity for medical coverage for its qualified full time employees, collect, pay and be responsible for all payroll taxes, including, but not limited to being solely and directly responsible for all costs of self-employment, including federal, state and local income tax payments for Vendor and any employees Vendor deems necessary. Vendor also shall be directly responsible for all returns and reports required by any governmental body, including charges or premiums for F.I.C.A., workers compensation insurance, unemployment insurance and other taxes (including penalties and interest).

**11.4.** Vendor warrants that any personnel Vendor supplies to Company in connection with performing its obligations under this Agreement are employees of Vendor and not of Company, and that Vendor is fully responsible for and shall pay any and all payments, including, but not limited to any and all taxes, withholdings and insurance premiums required by law, regulation or employment agreement, in connection with such personnel; and that upon request, Vendor shall provide proof, to Company’s satisfaction, of such personnel’s employment status, and of Vendor’s fulfillment of its obligations regarding such payments. Vendor shall contractually require its Vendor Representatives who are not Vendor’s personnel to comply with this **Section 11**. Vendor agrees to defend and indemnify Company in connection with any and all claims against Company arising from Vendor’s breach of this Section 11.4, including but not limited to,



any claims regarding or relating to any claim of employment and/or the status and/or relationship of such personnel to Company.

**12. Subcontracting.** Upon the prior, written consent of Company, Vendor may use the services of Subcontractors in the performance of Services, provided that (a) Vendor shall ensure each Subcontractor complies with all relevant terms of this Agreement applicable to Vendor, (b) prior to rendering any Services, the Subcontractor must agree in writing to perform those Services in a manner consistent with the terms and conditions of this Agreement; (c) Vendor shall remain liable for (i) any and all performance required hereunder, and (ii) any liability incurred by Company resulting from the acts and omissions of each Subcontractor to the same extent as if such acts or omissions were by Vendor; and (d) Vendor shall only use Subcontractors who are qualified to perform the Services; provided that Company acknowledges and agrees that Vendor may not be able to ensure that each of its subcontractors enter into the agreement necessary for compliance with (a) and (b) above; however, in any case Vendor will remain responsible as provided in (c) and (d) regarding all of its subcontractors. Subcontractor may not perform Services outside of the United States of America without Company's express prior written consent. At Company's request, Vendor shall provide Company with a copy of Vendor's agreement with any such Subcontractor. Such copy may be redacted to eliminate any applicable financial information, and Company shall treat such agreement as Vendor's Confidential Information.

**13. Governing Law.** This Agreement has been made in and shall be construed and enforced in accordance with the laws of the State of New York applicable to agreements executed and wholly to be performed therein. Any action to enforce this Agreement shall be brought in the federal or state courts located in the City of New York, and each Party (a) submits to the exclusive jurisdiction of these courts; (b) agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum; and (c) waives any objection to venue in such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**14. Policy.** Vendor shall cause Vendor Representatives providing Services onsite on Company's premises to observe the working hours, working rules, security regulations and holiday schedules of Company's premises and the corresponding Policies, all of which will be provided to Vendor in writing in advance. Vendor agrees to perform such Services in accordance with these Policies. All Policies shall be considered the Confidential Information of Company.

**15. Supremacy of this Agreement.** The provisions, terms and conditions of this Agreement, including the Service Order and any Task Orders, represent the entire Agreement between the Parties and supersede and cancel any prior or contemporaneous written agreement or understanding not incorporated herein. This Agreement or any Task Orders or Service Orders may not be modified or extended except by a written agreement signed by an authorized representative of each Party. In the event that inconsistencies exist between this Agreement and any Task Order or Service Order, the terms of this Agreement shall prevail, except to the extent a Task Order or Service Order specifically references the section of this Agreement which such Task Order or Service Order intends to modify or amend (and any such modification or amendment in a Task Order or Service Order shall apply solely for purposes of such Task Order or Service Order). In the event that inconsistencies exist between the documents that make up this Agreement (including inconsistencies between any Exhibits), then the following order of precedence shall apply: (a) Privacy Exhibit, referenced above, shall prevail over this Software Services Agreement and any other Exhibits with respect to Personal Information, and (b) the Security Exhibit, referenced above, shall prevail over this Software Services Agreement.

**16. Right of Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party hereto without the consent of the other; provided, however, that each Party shall have the right to assign this Agreement without the other Party's consent in connection with the purchase

or sale of its business (and in the case of Vendor, Vendor shall provide Company with reasonable prior notice to the extent permissible under the purchase or sale agreement). This Agreement shall inure to the benefit of and be binding upon the Parties and their representative successors and assigns. Nothing shall prevent the use by or for sublicense to, or assignment, in whole or in part, of this Agreement to Company's parent company or to its (or Company's) subsidiaries or other Affiliates; provided that such sublicensees or assignees agree in writing to comply with the terms of this Agreement (including without limitation, any relevant usage limitations) in a form enforceable by Vendor and provided further that in no event will, without the prior written consent of Vendor, such sublicenses or assignments in the aggregate require Vendor to perform any additional obligations or enable use of the Services that exceeds such obligations and use rights before any such sublicense or assignment.

**17. Interpretation; Counterparts; Severability.** Unless otherwise specifically noted, the word "including" and its correlative terms means inclusion without limitation. This Agreement may be executed in counterparts. Exact copies of original signatures, or any electronic signature or mark intended as a signature, shall have the same effect as originals. If any provision of this Agreement is held by a governmental authority to be unenforceable, unreasonable, or overbroad, then (a) the Parties desire that such governmental authority enforce such provision to the maximum extent it is deemed to be reasonable and not overbroad; (b) the Parties desire that such governmental authority modify such provision so that it is enforceable as nearly as possible to the intent of the original provision; and (c) the remainder of this Agreement shall be unaffected and shall continue in full force.

**18. No Waiver.** No failure, delay, or omission by a Party to exercise any right, remedy or power it has under this Agreement shall impair, or be construed as a waiver of, such right, remedy, or power. A waiver by a Party of any breach of covenant shall not be construed to be a waiver of any succeeding breach of such covenant or a breach of any other covenant. Any valid waivers must be in writing and signed by an authorized representative of the waiving Party.

**19. Insurance.** During the Term and for three (3) years thereafter, Vendor shall purchase and maintain insurance of a form and with companies with an A.M. Best Rating of at least A- VII and who are authorized to do business in any state where Services are to be provided. Unless otherwise stated the required insurance shall be maintained at all times during the course of this Agreement. All policy forms must provide coverage at least as broad as the current form promulgated by the Insurance Services Office. If no such form is available, the policy is subject to approval by Company. In the event of a breach of the insurance procurement obligations by Vendor, it must pay for Company's attorney's fees, expenses and liability as a result of any claim or lawsuit. Vendor shall provide and maintain in effect the following types and minimum amounts of insurance:

**19.1.** Worker's Compensation Insurance, including Employer's Liability Insurance in the limit of not less than \$100,000 per person per accident, in compliance with all state statutory requirements, with a minimum of \$50,000 for any states or other locations requiring less than \$50,000.

**19.2.** Commercial General Liability Insurance ("CGL"), including contractual liability, insuring the indemnity agreement set forth in this Agreement, written on an occurrence basis with limits of \$1,000,000 per occurrence and \$5,000,000 aggregate utilizing standard unmodified coverage forms, applicable to the services contemplated under this Agreement. Company shall receive additional insured status under the CGL policy and this policy must also provide for a waiver of subrogation of the carrier's rights in favor of Company.

**19.3.** Errors & Omissions / Technology Professional Liability: Vendor shall maintain errors and omissions, or equivalent professional liability coverage, covering the Services to be performed in connection with this Agreement. The policy shall expressly provide, but not be limited to, coverage for the

following perils: (i) unauthorized use/access of a computer system or database (such as Vendor's Computer Environment); (ii) defense of any regulatory action involving a breach of privacy or similar rights; (iii) failure to protect from disclosure, information (including Company's Confidential Information) that is deemed confidential by law or agreement; (iv) notification and remedial action costs in the event of an actual or perceived Security Incident, whether or not required by statute; (v) damages arising out of erroneous acts, errors or omissions of any individual when acting under Vendor's supervision, direction, or control; and (vi) claims involving infringement of intellectual property (not including patent or trade secret infringement), including infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. Such policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations on a worldwide basis. The coverage shall respond on a claims-made basis and shall remain in effect for a period of three (3) years after completion of all Services under this Agreement. The coverage must provide minimum limits of \$5,000,000.00 per claim with a per project aggregate of no less than \$5,000,000.00 to respond to the subject matter of this Agreement. Company shall receive additional insured status under this policy and this policy must also provide for a waiver of subrogation of the carrier's rights in favor of Company. If such insurance is cancelled, appropriate tail coverage shall be purchased by Vendor.

**19.4.** General conditions applying to all insurance coverage are that: 1) no policy shall contain a self-insured retention; 2) satisfaction of any/all deductibles shall be the sole responsibility of Vendor; and 3) for any claims related to this Agreement Vendor's insurance coverage shall be primary insurance coverage.

**19.5.** Shortly after the full execution of the Agreement, Vendor shall furnish certificates of insurance to the applicable Company business owner of this Agreement as evidence of the above policies upon request. Such certificate(s) shall include a clause obligating the insurer(s) to give not less than thirty (30) days prior written notice of any material change in, cancellation of, or intent not to renew the insurance.

**20. Vendor Equipment.** Vendor shall bear the full and complete responsibility for risk of damage or loss of its equipment, products, or money due to its negligence. Company shall not be liable for any equipment, materials, supplies, temporary structures, or other property owned or rented by Vendor (or its Representatives). Vendor and its Representatives assume such risks of property damage or loss, and waive all rights of recovery they may have against Company for damage to such items, and any policy of insurance covering the Vendor's or its Representatives' own tools, equipment, facilities, and other property against loss by physical damage or theft.

**21. Force Majeure.** Neither Party shall be liable for any delay in the performance or non-performance of its obligations solely to the extent such delay or non-performance is caused by a Force Majeure Event; provided, however, that such excuse from liability shall be effective only to the extent and for the duration of the Force Majeure Event, and provided further that the affected Party shall continue to use diligent, good faith efforts to avoid the effects of the Force Majeure Event and to perform its obligations. In the event a Force Majeure Event is materially affecting a Party for at least thirty (30) continuous days, the other Party shall have the right to terminate this Agreement or any Task Order(s) or Service Order(s) (without penalty) by providing written notice to that effect and Company shall be released from its obligations under the Agreement or the Task Order(s) or Service Order(s) and shall not be obligated to make any further payments (and Vendor shall refund any advance payments) under this Agreement or the Task Order(s) or Service Order(s) (as applicable), all in accordance with **Section 3.3**.

**22. No Use of Company's Name.** Vendor agrees not to use Company's name in its publicity, advertising, mailings or any promotional activity and agrees not to indicate that its relationship with

Company is an endorsement of Vendor, Vendor's Representatives, or any services or equipment, without prior written approval of Company.

**23. Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be effective: (a) when personally delivered; (b) the next business day following deposit with a reputable courier service for overnight delivery; or (c) five (5) business days following deposit in the United States mail, first class postage prepaid, registered or certified. All notices shall be addressed as follows:

If to Company: ATTN: \_\_\_\_\_  
The New York Times Company  
620 8th Avenue  
New York, NY 10018

With a copy to: ATTN: General Counsel at the same address.

If to Vendor: ATTN: Corporate Counsel  
Spredly, Inc.  
300 Morris Street, Suite 400  
Durham, NC 27701

**24. Survival.** The following provisions and exhibits shall survive expiration or termination of the Agreement: 1 (Definitions), 3 (Term; Termination), 4 (Payment for Services), 5.4 (Records), 6 (Representations and Warranties; Indemnification), 7 (Limitation of Liability), 8 (Rights and Title), 10 (Confidentiality), 11 (Independent Contractor), 12 (Subcontracting), 13 (Governing Law), 15 (Supremacy of this Agreement), 16 (Right of Assignment), 17 (Interpretation; Counterparts; Severability), 18 (No Waiver), 19 (Insurance), 20 (Vendor Equipment), 22 (No Use of Company's Name), 23 (Notices), and 24 (Survival).

IN WITNESS WHEREOF the Parties hereto have signed this Agreement, effective as of the Effective Date written above.

**THE NEW YORK TIMES COMPANY**

DocuSigned by:  
  
9D34B7992A714F0...

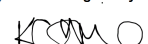
Signature

Name Vice President,  
Product

Title  
12/22/2022

Date

**SPREEDLY, INC.**

DocuSigned by:  
  
BE108849DB824F9...

Signature

Name Chief Financial  
Officer

Title  
12/21/2022

Date

**EXHIBIT A**

**ORDER FORM**

**Spredly, Inc.**  
300 Morris Street  
Suite 400  
Durham, NC 27701

**To:** *INSERT PRIMARY CUSTOMER  
CONTACT*

**Customer Legal Name:** *INSERT NAME*

**Tax ID:** *INSERT ID*

**Billing Address:** *INSERT ADDRESS*

**Sales Rep:** *INSERT NAME*

**Order Form Issued:**

**Offer Valid Until:**

**Support Level:** *INSERT LEVEL*

This Order Form is entered into between the entity identified above as “Customer” and Spredly, Inc. (each a “Party” and collectively, the “Parties”) as of the last day it is signed (the “Order Form Effective Date”) and is subject to the Agreement (defined below) which is hereby incorporated by reference. For purposes of this Order Form, “Agreement” means the Software Services Agreement (a “SSA”) between the Parties dated [\_\_\_\_\_].

Capitalized terms used but not defined in this Order Form have the meanings set forth in the Agreement or in the Documentation.

Description of the Software Services being provided under this Order Form:  
Initial Term of this Order Form:

**1) Order Form Term**

*Insert term of the Order Form*

**2) Platform Fees**

*Insert fees & description*

**3) API Usage Fees**

*Insert fees & description*

**4) Renewal Terms Fees**

*Insert fees & description*

**5) Support Services**

*Insert description and Support Level*

**6) Payments**

*Insert payment schedule*

[Signatures on Next Page]

The Parties have executed this Amendment by their duly authorized representatives in one or more counterparts, each of which will be deemed an original.

**THE NEW YORK TIMES COMPANY**

**SPREEDLY, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT B**

**Form Task Order**

**Task Order No. [ ]**

This Task Order No. [ ] (“**Task Order**”) to the Software Services Agreement (“**Agreement**”) dated as of [DATE] by and between The New York Times Company (“**Company**”) and [VENDOR] (“**Vendor**”) is entered into and made effective as of [DATE] (“**Task Order Effective Date**”) and shall be governed by the terms and conditions set forth in the Agreement. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the Agreement.

Project Name: [NAME] (the “**Project**”)

1. Scope of Work: The following Professional Services shall be provided by Vendor to Company for the Project:

[Provide scope, execution approach, assumption and dependencies, wherever applicable, quality assurances, requirements, and other components of the Project]

2. Key Vendor Representatives:

2.1 The following are key Vendor Representatives who have been assigned to perform the Professional Services as of this Task Order Effective Date:

Name	Title	Phone Number	Email Address
* [ ]	[ ]	[ ]	[ ]
* [ ]	[ ]	[ ]	[ ]
* [ ]	[ ]	[ ]	[ ]

\*The individuals listed above are employees of Vendor, unless otherwise indicated.

2.2 The following roles are assigned to perform the Professional Services as of the Task Order Effective Date: [Provide team structure, roles and responsibilities, wherever applicable]

Name	Role	Duration	Rate
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

2.3 Location of Key Vendor Representatives: All Key Vendor Representatives shall be assigned to the Professional Services during the term of this Task Order, and, unless otherwise approved in advance by Company, shall work primarily at Vendor’s facilities, unless otherwise directed by Company or mutually agreed upon by the Parties.

To the extent the Professional Services are performed by the key Vendor Representatives set forth above, such Professional Services will be performed at the location(s) set forth in the table below. For

clarification purposes, Vendor must list the location(s) where the key Vendor Representatives, if any, shall be physically located when performing the Professional Services – not just Vendor’s main office location or Company’s office location. For example, if an assigned key Vendor Representative is performing work from a home office, then that home office location must be listed below and indicated in the invoice when those Professional Services are billed to Company.

Owner / Operator & Type of Facility	Street Address	City, State, Country ZIP

Key Vendor Representatives may travel to Company’s offices as often as [Number] per calendar month for meetings as requested and scheduled by Company.

2.4 Permitted Subcontractors: In accordance with the Agreement, Company hereby approves the following Subcontractors (other than the ones listed above in this Section 2), for purposes of performing the Professional Services, in accordance with the Agreement, including all Exhibits, as applicable: **[IF NOT USING SUBCONTRACTORS, INDICATE “NONE”]**

2.5 Company Project Manager: **[At a minimum, list name, title, phone number, and email]**

2.6 Time Keeping: If requested by Company, for Professional Services provided on a time and materials basis, Vendor shall cause each of its personnel to enter time worked in connection with the Professional Services into Company’s time collection system in accordance with Company’s reasonable instructions.

3. Fee: In full consideration for the performance of Professional Services hereunder, and for any rights granted or relinquished by Vendor hereunder, Company shall pay to Vendor the following Fee, in accordance with the payment terms in the Agreement:

**[Provide the fee structure for the Services]**

4. Deliverables: Vendor shall provide the following deliverables created specifically for Company as part of the Project to Company:

**[NYT to provide acceptance criteria and/or acceptance test plan. If NYT would like different acceptance language, including a different acceptance timeline, than what is set forth in the SSA, please include that language here.]**

5. Schedule of Performance and/or Milestone Schedule: Vendor shall perform Professional Services in accordance with the following acceptance schedule and/or milestone schedule as long as Company performs its Company Responsibilities in a timely manner.

**[The parties shall identify the acceptance schedule and/or /milestone chart (or attach as Annex 1 hereto)]**

6. Term: The term of this Task Order shall commence on the Task Order Effective Date and continue until [DATE], unless otherwise terminated as provided in the Agreement.



7. Reporting: At a minimum, Vendor hereby agrees to give weekly status reports to the Company Project Manager, or anyone else whom Company may designate. In addition, Vendor shall provide Company with any other reports or information as the Company Project Manager shall reasonably deem necessary, in addition to any other reporting duties under the Agreement, to be delivered either pursuant to the Agreement or as the Company Project Manager prefers.

8. Other Terms: *The parties shall provide, if any*

This Task Order may be executed in counterparts. Exact copies of original signatures, or any electronic signature or mark intended as a signature, shall have the same effect as originals.

IN WITNESS WHEREOF the parties hereto have signed this Task Order, effective as of the Task Order Effective Date written above.

**The New York Times Company**

**Spreedly, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **EXHIBIT C**

### **Service Level Agreement**

#### **SUPPORT OPTIONS**

Our Support Services are designed to provide Spreadly customers and partners with world-class customer support from a global team committed to ensuring your success with our solutions.

Every Spreadly customer receives our base Business Support with 24x7 ticket submission and first response. Business Support ensures all customers have answers to product questions and troubleshooting guidance through email and our online ticketing system. Company has access to the Spreadly [Help Center and Knowledge Base](#) and to product [Documentation](#); and can enroll for status notifications at the Spreadly [API Status Page](#). Spreadly does not guarantee response, resolution, or uptime for the Business Support level.

In addition to our Business Support, three levels of additional support services are available under an annual subscription plan (a “Subscription Support Services Plan”).

**Advanced Support** includes the same services as Business Support and adds annual performance and business reviews and a leadership sponsor to supervise service delivery as well as guaranteed response and resolution times and an uptime SLA.

**Professional Support** includes the same services as Advanced Support and adds access to our Red Alert escalation system, implementation and project consulting during your onboarding phase, a technical account manager, gateway consultations, bi-annual business reviews, and quarterly performance check-ins.

**Premium Support** includes our Professional Support and adds critical case notification, shared Slack channel support, a dedicated Strategic Account Manager, monthly check-ins with your account team, executive sponsorship, consulting on implementation, project management and gateway integrations through a technical account manager.

Company will be provided with the Subscription Support Services Plan set forth in the applicable Service Order.

#### **CONTACTING SUPPORT**

Contact Spreadly’s technical support by emailing [support@spreadly.com](mailto:support@spreadly.com) or by submitting a request via our [intake form](#) at [support.spreadly.com](https://support.spreadly.com).

Please include the following information in all support requests:

- The organization name associated with the Spreadly account
- A detailed summary of the issue or question
- Troubleshooting information (if applicable) including:
  - Gateway/Endpoint being used
  - Transaction, Payment Method and/or Gateway Token(s)
  - Link to Spreadly Dashboard
  - Error code received (Transaction Error or HTTP Status Code)
  - Steps to recreate issue
- Priority/Severity Level/Business Impact (see below for Severity Level definitions)

For customers on a Subscription Support Services Plan, critical case notification and phone support contact information will be provided by your technical account manager.

**Support Hours**

Spredly's email support is available 24 hours a day, 7 days of the week, 365 days of the year. We may have reduced staffing during major holidays and we will advise through our [Support Page](#) if this is the case.

**Expanded Support Regions**

When submitting a new support ticket, you can optionally provide us more information on your preferred region for support. This helps us assign support staff from your region and means you'll be more likely to receive replies during your selected business hours. If you choose a preferred region, the support hours for your support ticket are as follows for all 7 days of the week:

Europe, Middle East, Africa (EMEA): 8am-6pm EET Cape Town (UTC+2)

Americas (AMER): 8am-9pm ET US+Canada (UTC-4)

Asia Pacific (APAC): 8am-6pm SGT (UTC+8)

**Self Help Resources**

Spredly customers can take full advantage of our self-help tools available within our [Help Center](#), our [API Status Page](#), and from there you can find [product Documentation](#), [technical Documentation](#), [Knowledge Base](#) articles, and access technical guides.

**RESPONSE AND RESOLUTION TIMES**

Spredly is committed to rapid response of each request for support. All requests can be logged with Spredly 24 hours-per-day, 7 days-per-week, 365 days-per-year via email at [support@spredly.com](mailto:support@spredly.com) or via our request [intake form](#) at [support.spredly.com](https://support.spredly.com).

Spredly will use commercially reasonable efforts to promptly respond to each support request. Spredly will provide continuous efforts (24x7x365) to resolve availability issues with the Transaction Processing Service until a workaround or resolution can be provided or until the incident can be downgraded to a lower priority.

**CUSTOMER SATISFACTION**

Your satisfaction is important to Spredly. After your case is resolved we may ask for your feedback via ZenDesk. Our support team regularly reviews responses, monitors customer satisfaction, and may contact customers where opportunities for improvement are identified.

We may also reach out via other mechanisms to inquire about your willingness to recommend Spredly and our services. We appreciate your responses and value your feedback in helping us to continuously enhance our services.

**SUBSCRIPTION SUPPORT LEVEL OBJECTIVES**

Subscription Support Services Plans come with guaranteed response and resolution times prioritized by the severity and the selected plan as presented in the following Table 1.

As used below, "Transaction Processing Service" means Spredly's core API responsible for processing customer's payment transaction requests and does not include any beta features or non-payment transaction Spredly services such as dashboard reporting.

Table 1

Severity	Definition	Speedly Acknowledgement Time			Resolution Time		
		Advanced	Professional	Premium	Advanced	Professional	Premium
Level 3 (Low)	Non-critical maintenance, configuration or troubleshooting requests not impacting Transaction Processing Service	Up to 72 hours	Up to 48 hours	Up to 24 hours	Next update	Next update	Next update
Level 2 (Serious)	Transaction Processing Service is severely impaired due to a Speedly issue	Up to 8 hours	Up to 4 hours	Up to 2 hours	Within 5 days	Within 3 days	Within 24 hours
Level 1 (Critical)	Transaction Processing Service is unavailable due to a Speedly issue	Up to 2 hours	Up to 1 hours	Up to 30 minutes	Within 2 days	Within 1 days	Within 8 hours

### Severity Level Definitions

Company should indicate a priority when submitting a support ticket based on the severity level of their issue, however, Speedly may adjust the priority if the request no longer fits the original severity level definition. Speedly is not responsible for any failure to meet performance standards caused by the misassignment of the priority in a support request. Support tickets submitted without a priority will default to Severity Level 3.

### Severity levels are defined as follows:

**Level 1 (Critical):** Transaction Processing Service is unavailable due to an issue under Speedly's control and no work around exists.

**Level 2 (Serious):** Transaction Processing Service is severely impaired due to an issue under Speedly's control although a workaround may exist.

**Level 3 (Low):** Non-critical maintenance, configuration or troubleshooting requests not impacting the Transaction Processing Service. Includes product questions, feature requests, bugs, and development issues that require investigation by Speedly.

Before submitting a support request, please first check the Speedly [API Status Page](#) to see if the outage has already been reported or if your issue is due to scheduled maintenance.

### Support Escalation

Speedly's support team works to ensure that the appropriate resources are focused to ensure a timely resolution. If you are not satisfied with the progress of your support request, you can request an escalation. Subscription Support Services Plans come with a dedicated escalation path and Speedly management supervision to oversee support procedures and resource prioritization to solve your support request.

### Availability Commitments

Subscription Support Services Plans come with guaranteed service levels and service credits based on the selected support plan as presented in the following Table 2.

Table 2

Uptime Availability Commitment		
Advanced	Professional	Premium
99.90%	99.95%	99.99%

The following conditions will apply to the calculation of uptime availability commitments in Table 2:

“Availability” means that the services are up and running, accessible by Company, without interruption or undue delay. Any downtime resulting from outages of third-party connections or utilities or other reasons beyond Spreedly’s control are excluded.

“Base Annual Fee” means the base annual fee set forth on the applicable Service Order for use of the Software Services, or if such fee is set forth on a monthly basis, then 12 times that monthly fee.

Downtime will begin to accrue as soon as the Transaction Processing Service is unavailable to Company and continues until the Transaction Processing Service is restored.

Spreedly will give no less than 5 business days’ prior written notice to Company of all scheduled maintenance. Spreedly will 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 that will not exceed 60 minutes individually or 24 hours in the aggregate in any month.

If Spreedly fails to meet or exceed the applicable service levels for Company’s given Subscription Support Services Plan, Spreedly will issue a credit to Company in the following amounts based on the actual Availability during the applicable calendar month and the Company’s selected Subscription Support Services Plan as presented in the following Table 3 and as further described below.

Table 3

Service Credits			
Monthly Availability Percentage			Credit
Advanced	Professional	Premium	
Less than 99.90% but greater than or equal to 99.80%	Less than 99.95% but greater than or equal to 99.90%	Less than 99.99% but greater than or equal to 99.95%	5% of 1/12th of Base Annual Fee
Less than 99.80% but greater than or equal to 99.70%	Less than 99.90% but greater than or equal to 99.80%	Less than 99.95% but greater than or equal to 99.80%	10% of 1/12th of Base Annual Fee
Less than 99.70% but greater than or equal to 99.60%	Less than 99.80% but greater than or equal to 99.70%	Less than 99.80% but greater than or equal to 99.70%	15% of 1/12th of Base Annual Fee
Less than 99.60%	Less than 99.70%	Less than 99.70%	20% of 1/12th of Base Annual Fee

## **CUSTOMER RESPONSIBILITIES**

### **Internal Help Desk**

Company must establish and maintain an internal help desk for its customers to act as first-line support. Your first-line support will at a minimum include:

1. a direct response to users with respect to inquiries concerning the performance, functionality or operation of the product,
2. a direct response to users with respect to problems or issues with the product,
3. a diagnosis of problems or issues of the product, and
4. a resolution of known problems or issues with the product with the help of technical knowledge base articles, repositories and experience.

If after reasonable efforts you are unable to diagnose or resolve the product problems or issues, and you have reason to believe the issue originates with Spreadly, please contact Spreadly for technical support by email at [support@spreadly.com](mailto:support@spreadly.com) or via our request [intake form](#) at [support.spreadly.com](https://support.spreadly.com)

### **TECHNICAL LEADS**

Company will establish a technical lead to manage troubleshooting and establish best practices. Your technical leader will be the liaison between Company and Spreadly for technical support. These persons must have sufficient knowledge of the Spreadly product and your own environment in order to work with Spreadly to analyze and resolve Support Requests. They are responsible for engaging Spreadly technical support and monitoring the resolution of all Support Requests and escalated support issues.

Your technical or project lead should be assigned to monitor and administer your integration with the Spreadly product and should have experience in network and third-party application troubleshooting as well as browser knowledge & debugging skills.

Technical Leads are responsible for checking Spreadly's online resources (e.g. website [product Documentation](#), [technical Documentation](#) and [Knowledge Base](#)) and the Spreadly [Status Page](#) before submitting a Support Request.

### **PROTECTION OF API KEYS AND CREDENTIALS**

Company must safeguard and protect unauthorized access to API keys and other credentials to access the Spreadly services. Spreadly will not issue credits or refunds for unauthorized use of Spreadly services through Company's issued API keys or other access credentials including compromises or abuse of Company's payment flows that subsequently interact with Spreadly services.

### **PRODUCT AND SUPPORT UPDATES**

#### **Updates to Spreadly Services**

Spreadly may release Updates to its products and services pursuant to Spreadly's standard release cycle. Spreadly will provide Updates at no additional charge. Spreadly may make changes to its products and services (including, without limitation, the design, look and feel, functionality, content, material, information) that Spreadly deems necessary or useful to improve the products or services or for any other reason and at any time, provided however Spreadly will not make any changes that will materially adversely affect its features or functionality without prior notice to and a reasonable opportunity to review and/or transition.

Where practical, Spreadly will schedule such Updates during non-business hours. Notice to Company will be sent via email or posted at the Spreadly [API Status Page](#).

**Updates to these Support Policies**

Company understands that these Support Services terms are subject to change at Spreadly's reasonable discretion upon posting to Spreadly's website at [www.spreadly.com/support-services-terms](http://www.spreadly.com/support-services-terms); provided that Spreadly will not materially degrade the Support Services provided to Company during the Term.

**Service Availability Remedies.** In the event Vendor fails to meet the required levels of Availability in any given calendar month, Company shall be entitled to a service level credit equal to the corresponding percentage noted above (each, a "**Service Availability Credit**") to be applied to Company's next applicable payment. Service Credits may not be redeemed for cash. These Service Availability Credits and the termination right set forth below are Vendor's sole obligations and Company's sole remedies for Vendor's failure to meet the required levels of Availability. Company shall have the right to terminate the Agreement for Vendor's material breach in the event of Service Availability Credits due to breach of this SLA for any three (3) consecutive months in a twelve (12) month period. Notwithstanding the foregoing, Spreadly has no obligation to issue any Service Availability Credit unless Customer requests such credit in writing within thirty (30) days.

**Remedies for Non-Compliance Regarding Reported Issues.** If, in any given month during the Term of the Agreement, Vendor is noncompliant on two (2) occasions in connection with a reported problem of Level 1 (Critical) Priority, or three (3) occasions in connection with a reported problem of Level 2 (Serious) Priority within any given month (each, a "**Service Level Failure**"), then Vendor, after receiving notification of noncompliance by Company, shall issue a credit to Company (each, a "**Service Credit**") in the amount of 5% of the base Software Services fee paid by Company for that calendar month. In addition, Company may terminate the Agreement for Vendor's material breach if, in any given six (6) month period during the Term, Vendor is noncompliant on four (4) or more occasions. Service Credits may not be redeemed for cash and will be applied to Company's next applicable payment.

**Reports.** Vendor shall give to Company, upon request, electronic or other written reports and updates of: (i) its service level performance, including without limitation, its response, resolution, restoration and Availability metrics as measured against the requirements herein; and (ii) any Service Credits to which Company has become entitled (and, with respect to (i) and (ii), a reliable manner in which Company may audit or confirm the same). Company may also self-service Spreadly Availability and restoration on demand via [status.spreadly.com](http://status.spreadly.com).

## **Exhibit D**

### **Company's Employees and Non-Employees Responsibilities to Protect Information Policy**

#### **HOW TO PROTECT COMPANY INFORMATION: YOUR RESPONSIBILITIES**

Every employee and those with whom we do business and who are given access to Company Information are responsible for helping to protect its security and confidentiality. "Company Information" includes:

- Confidential company information, such as business plans and strategies, financial data, customer data, and sensitive, non-public information, that could be harmful to us or others if disclosed; and
- Personal information that can identify an individual or relates to an identifiable individual (e.g., contact information, IP address, government ID, payment card details, race, or sexual orientation).

#### **Basic Safeguards**

- Secure Company Information physically (if it's in paper form) and electronically (by using passwords/encryption).
- Protect any laptops, phones or other devices containing Company Information from theft, damage and misuse and unauthorized access or acquisition.
- Comply with Company requirements for remote access (e.g., setting up and using the designated VPN).
- Only collect, access, use, maintain, transport or disclose the *minimum* amount of Company Information necessary to perform your job or engagement.
- Only disclose personal information to individuals who are authorized to access it.
- Dispose of Company Information securely, in accordance with Company policy.
- Hold Company Information in strict confidence, both during and after your employment or engagement.

#### **Report Security Incidents**

If you suspect or become aware that an information security incident has or may have occurred, you must not engage in your own investigation or other activities unless as required by Applicable Laws, PCI-DSS or agreements with card companies, but immediately report such incident within 48 hours to the **Information Security team** by:

- Emailing **security@nytimes.com**; or
- Calling **Help Desk**.

An information security incident includes any incident—large or small—in which the security of Company Information, a Company information system, or a Company facility may have been compromised.

For example, an incident might involve a lost/stolen laptop or mobile device, missing papers, a misdirected email, a phishing email, a facility break-in, or a compromised website or mobile application.



To ensure efficient handling of the incident, please limit your initial report to a description of the facts as you understand them, and a representative of the Information Security team will promptly follow up to gather more information.

Non-compliance with this may result in disciplinary action up to and including termination for employees and termination of your engagement for non-employees.

## **Exhibit E**

### **List of Parties.**

#### **Data exporter(s):**

- Name: The New York Times Company, for itself and on behalf of its subsidiaries
- Address: 620 Eighth Avenue, New York, NY 10018, USA
- Contact person's name, position and contact details: Patrick Presto, Technical Senior Product Manager, [patrick.presto@nytimes.com](mailto:patrick.presto@nytimes.com), and Pamela Della Motta, Executive Director of Product, [pamela.dellamotta@nytimes.com](mailto:pamela.dellamotta@nytimes.com)
- Activities relevant to the Personal Information Processed/transferred: All processing operations required to facilitate provision of software and services to the Controller in accordance with the Service Agreement
- Signature and date: as set forth in the Service Agreement.
- Role: Controller

#### **Data importers(s):**

- Name: Spreadly, Inc. on behalf of itself and its authorized Affiliates which act as data importers to the data exporter(s).
- Address: 300 Morris Street, Suite 400, Durham, NC 27701
- Contact person's name, position and contact details: Luke Evans; Director of Account Management; Telephone: 888-727-7750; [luke@spreadly.com](mailto:luke@spreadly.com) (or his designated replacement)
- Name, position and contact details of data protection officer, if any, or person responsible for data protection: Name: Jennifer Rosario; Telephone: 888-727-7750; Email: [security@spreadly.com](mailto:security@spreadly.com)
- Activities relevant to the Personal Information Processed/transferred: All processing operations required to facilitate provision of software and services to the Controller in accordance with the Service Agreement
- Signature and date: as set forth in the Service Agreement.
- Role: Processor

**Categories of Individuals whose Personal Information is Processed or transferred.** Personnel and customers of the Controller.

**Categories of Personal Information.** With respect to personnel of the Controller, personal details, including information that identifies the data subject such as name, employer, address, e-mail, telephone

number, location and other contact details. With respect to customers of the Controller, name, address, e-mail, telephone number, location, and billing and payment details such as bank account and credit or debit card numbers.

**Types of Sensitive Information and the applied restrictions or safeguards.** None

**Frequency of the transfer:** Continuous

**Nature and Purpose of the transfer and processing, including with respect to any subprocessors.** All processing operations required to facilitate provision of software and services to the Controller in accordance with the Service Agreement. The nature and purpose of the transfer and processing to each subprocessor is set forth at <https://www.spreadly.com/gdpr-subprocessors>.

**Maximum data retention periods, if applicable:** Except as otherwise provided in the Service Agreement or this Exhibit, in accordance with the retention policy of the Processor, provided that to the extent that any Personal Information is retained beyond the termination of the Service Agreement for legal or other permitted reasons, the Processor will continue to protect such Personal Information in accordance with the Service Agreement and this Exhibit.

## Exhibit F

### Privacy Exhibit

During the course of providing Services under the Service Agreement, Vendor may obtain, access or otherwise Process Personal Information from or on behalf of Company and/or its Affiliates (collectively referred to as Company herein). The parties agree that this Privacy Exhibit ("Exhibit") shall govern the Processing of Personal Information by Vendor on behalf of Company. Vendor agrees to protect all Personal Information as detailed in this Exhibit. This Exhibit is part of the Service Agreement, the obligations contained in this Exhibit supplement the ones contained in the Service Agreement, and this Exhibit supersedes all previous and contemporaneous agreements, proposals, and communications, written or oral, between Company and Vendor regarding the Processing of Personal Information by Vendor on behalf of Company. The terms and provisions attached, linked, referenced, or incorporated herein will be construed with, and as an integral part of, this Exhibit.

#### 1. DATA PROCESSING AND PROTECTION.

1.1 **Compliance with Law.** Vendor will comply with all Applicable Law with respect to Vendor's Processing of Personal Information and provide the same level of protection to Personal Information as required under Applicable Law.

1.2 **Limitations on Use.** Vendor will Process Personal Information only on behalf of Company to deliver Services in accordance with the Service Agreement or other documented instructions of Company, whether in written or electronic form, and as needed to comply with Applicable Law (in which case, Vendor shall provide prior notice to Company of such legal requirement, unless that law prohibits this disclosure). Company is a Business, Controller or equivalent term, and Vendor is a Service Provider, Contractor, Processor or equivalent term, under Applicable Law, respectively, with regard to Personal Information. Vendor is prohibited from: (a) Selling or sharing (as the term is defined in the California Privacy Rights Act) Personal Information, (b) retaining, using or disclosing Personal Information for any purpose, including but not limited to any Commercial Purpose or equivalent term under Applicable Law, or outside of the direct business relationship between Vendor and Company, other than (i) for the specific purpose of performing the Services for Company or (ii) for any other Business Purposes or equivalent term under Applicable Law; or (c) combining the Personal Information with information that Vendor receives from or on behalf of another Person or Persons, or collects from its own interaction with the individual. Vendor certifies that it understands these limitations and other restrictions contained in this paragraph and will comply with them. The duration of the Processing will be the same as the duration of the Service Agreement, except as otherwise agreed to in this Exhibit or in writing by the parties.

1.3 **Confidentiality.** Vendor will hold Personal Information in strict confidence and impose confidentiality obligations on Vendor personnel who will be provided access to, or will otherwise Process, Personal Information, including requiring personnel to protect all Personal Information in accordance with the requirements of this Exhibit (including during the term of their employment or engagement and thereafter).

1.4 **Information Security Program.** Vendor will implement, maintain, comply with, monitor and, where necessary, update (in a manner that does not reduce protection) a comprehensive written information security program that contains appropriate administrative, technical, and physical safeguards to protect Personal Information against anticipated threats or hazards to its security, confidentiality or integrity (such as unauthorized access, collection, use, copying, modification, disposal or disclosure, unauthorized, unlawful, or accidental loss, destruction, acquisition, or damage or any other unauthorized form of Processing) ("**Information Security Program**"). Vendor acknowledges that Company is relying on the information provided and the representations made by Vendor to Company in the Security and Data Questionnaire. Vendor hereby represents and warrants that Vendor has provided true, accurate, and complete information and representations to Company in such Security and Data Questionnaire. Information Security Program will include compliance with the measures set forth in the Security Exhibit.

Vendor shall also maintain a business continuity plan (for Personal Information and Cardholder Information) addressing the possibility of a potential disruption of service, disaster, failure or interruption of its ordinary business process, which business continuity plan provides for appropriate back-up facilities to ensure Vendor can continue to fulfill its obligations under the Service Agreement and this Exhibit.

## 1.5 **Cross-Border Transfers.**

1.5.1 Vendor and Company shall ensure that any international transfers of Personal Information between them are in compliance with all Applicable Law. Where Vendor engages in an onward transfer of Personal Information, Vendor shall ensure that a lawful data transfer mechanism is in place prior to transferring Personal Information from one country to another.

1.5.2 To the extent legally required, the signatories to the Service Agreement are deemed to have signed the SCCs, which form part of this Exhibit and will be deemed completed as follows:

1.5.2.1 Module 2 of the SCCs applies to transfers of Personal Information from Company to Vendor;

1.5.2.2 Clause 7 is not included;

1.5.2.3 Under Clause 9, the parties select Option 2 (General authorization). The contents of Annex III are set forth in Section 1.6 and the Security and Data Questionnaire and Vendor shall propose any updates to its Subprocessor list in accordance with Section 1.6 below;

1.5.2.4 Under Clause 11, the optional language requiring that data subjects be permitted to lodge a complaint with an independent dispute resolution body shall not be deemed to be included;

1.5.2.5 Under Clause 17, the parties choose Option 1 (the law of an EU Member State that allows for third-party beneficiary rights). The parties select the law of France;

1.5.2.6 Under Clause 18, the parties select the courts of France;

1.5.2.7 Annex I(A) and I(B) are completed as set forth in the Service Agreement;

1.5.2.8 Under Annex I(C), the parties shall follow the rules for identifying such authority under Clause 13 and, to the extent legally permissible, select the French Commission Nationale de l'Informatique et des Libertés;

1.5.2.9 Annex II is completed with Section 1.4 and the Security Exhibit; and

1.5.2.10 Annex III is completed as set forth in Section 1.6 and the Security and Data Questionnaire.

1.5.3 To the extent Personal Information is transferred to Vendor and Processed by or on behalf of Vendor outside the United Kingdom (except if in a country or territory recognised as providing an adequate level of protection for Personal Information under an adequacy decision made, from time to time, by (as applicable) (i) the Information Commissioner's Office and/or under applicable UK law (including the UK General Data Protection Regulation ("**GDPR**")), or (ii) the European Commission under the European Union ("**EU**") GDPR, or (iii) the Swiss Federal Data Protection and Information Commissioner under the Swiss Federal Act on Data Protection ("**FADP**")) in circumstances where such transfer would be prohibited by applicable UK law in the absence of a transfer mechanism, the parties agree that the SCCs subject to the template Addendum B.1.0 issued by the UK's Information Commissioner's Office and laid before Parliament in accordance with s119A of the Data Protection Act 2018 of the UK on 2 February 2022, and in force on 21 March 2022 (the "**UK Approved Addendum**") will apply. The UK Approved Addendum is incorporated into this Exhibit. Schedule 1 references the information required by Tables 1 to 4 inclusive of the UK Approved Addendum.

1.5.4 For transfers of Personal Information that are subject to the FADP, the SCCs form part of this Exhibit as set forth in Section 1.5.2 of this Exhibit, but with the following differences to the extent required by the FADP:

1.5.4.1 References to the EU GDPR in the SCCs are to be understood as references to the FADP insofar as the data transfers are subject exclusively to the FADP and not to the GDPR.

1.5.4.2 The term “member state” in the SCCs shall not be interpreted in such a way as to exclude data subjects in Switzerland from the possibility of suing for their rights in their place of habitual residence (Switzerland) in accordance with Clause 18(c) of the SCCs.

1.5.4.3 References to personal data in the SCCs also refer to data about identifiable legal entities until the entry into force of revisions to the FADP that eliminate this broader scope.

1.5.4.4 Under Annex I(C) of the SCCs:

1.5.4.4.1 Where the transfer is subject exclusively to the FADP and not the GDPR, the supervisory authority is the Swiss Federal Data Protection and Information Commissioner.

1.5.4.4.2 Where the transfer is subject to both the FADP and the GDPR, the supervisory authority is the Swiss Federal Data Protection and Information Commissioner insofar as the transfer is governed by the FADP, and the supervisory authority is as set forth in Section 1.5.2.8 of this Exhibit insofar as the transfer is governed by the GDPR.

1.5.5 To the extent the SCCs apply, nothing in this Exhibit or the Service Agreement shall be construed to prevail over any conflicting clause of the SCCs. Each party acknowledges that it has had the opportunity to review the SCCs.

1.5.6 **Supplementary Measures.** In addition to the obligations under Sections 1.5.1 - 1.5.5, if and to the extent that the parties will engage in transfers of Personal Information outside of the EEA, Switzerland or the UK, the parties agree to the following supplementary measures:

1.5.6.1 All Personal Information shall be encrypted both in transit and at rest using strong, public encryption technology that is robust against the performance of cryptanalysis and, wherever technically feasible, Company shall control the keys;

1.5.6.2 Vendor warrants and represents that, as of the date of the Service Agreement, it has not received any national security data production orders (e.g., pursuant to Section 702 of the Foreign Intelligence Surveillance Act (“**FISA Section 702**”) or U.S. Presidential Policy Directive 28).

1.5.6.3 Vendor will resist, to the extent permitted by Applicable Law, any request under FISA Section 702 for surveillance whereby a targeted account is not uniquely identified;

1.5.6.4 Vendor will either to the extent permissible under Applicable Laws: (a) publish, at six month intervals, a transparency report indicating the types of binding legal demands for the Personal Information it has received, including national security orders and directives, which shall encompass any process issued under FISA Section 702; or (b) notify Company of any binding legal demand for the Personal Information it receives, including national security orders and directives, which shall encompass any process issued under FISA Section 702.

1.5.6.5 Any additional supplementary measures checked and mentioned in the Data and Security Questionnaire.

1.5.7 **Changes in Laws.** If, due to a change in the Applicable Laws, the transfer of Personal Information under the SCCs or other lawful data transfer mechanism, approved by the relevant data protection authority,

ceases to be lawful, Vendor will cooperate with Company to facilitate use of an alternative lawful data transfer mechanism and alternative additional safeguards that will permit Company to continue to benefit from the Services in compliance with Applicable Law. If Company and Vendor are unable to promptly implement such an alternative data transfer mechanism or alternative additional safeguards, then Company may, at its option, upon written notice to Vendor terminate the Service Agreement without liability (other than payment for Services rendered up to the effective date of termination) or penalty of any kind, or Company and Vendor will work together in good faith to resolve the issue, including by suspending the transfer or reducing the scope of the Services.

**1.6 Subcontracting.** Vendor may disclose Personal Information to other Persons only for purposes of providing the Services to Company, subject to the following conditions: (a) at <https://www.spreadly.com/gdpr-subprocessors>, Vendor has provided a list of the Persons, including but not limited to any Affiliates and subcontractors, to which it will make such disclosures (“**Subprocessors**”); (b) Company may receive notifications of new Subprocessors by emailing [Subprocessor@spreadly.com](mailto:Subprocessor@spreadly.com) with the subject “Subscribe” and once subscribed in this manner that Company will receive notification via email of new Subprocessors at least 30 days’ prior to the addition of any Subprocessor to the list and Company has the opportunity to object to such addition(s); and (c) if Company makes such an objection in writing within 10 business days of receipt of the notice of new Subprocessor(s) on reasonable grounds (e.g., if the use of this Subprocessor would violate Applicable Laws or weaken protections for the applicable Personal Information) and Vendor is unable to modify the Services to prevent such disclosure of Personal Information through the use of commercially reasonable efforts to do so, Company and Vendor will have the right to terminate the Service Agreement without penalty upon notice given no more than 30 days after receipt of the notice of new Subprocessor(s). Vendor will, prior to any disclosure, use commercially reasonable efforts to enter into a written agreement with such Subprocessor that contains the same or substantially similar terms as this Exhibit and pursuant to which such entity shall be a Service Provider, Contractor or Processor or equivalent term for purposes of Applicable Law. Such agreement will be provided to Company promptly upon request (subject to redaction of any confidential financial terms). Vendor will be liable for all liability incurred by Company resulting from the actions and omissions by such Subprocessors to the same extent as if such acts or omissions were by Vendor. Company and Vendor acknowledge that Company may directly contract with a third-party payment gateway service provider and/or a third-party payment processing service provider to facilitate payment transactions (“Third Party Gateway or Payment Service”). Any such Third Party Gateway or Payment Service engaged directly by Company shall not be deemed a Subprocessor or subcontractor of Vendor for purposes of this Exhibit and the Service Agreement. Accordingly, nothing in this Exhibit or the Service Agreement obligates Vendor 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.

**1.7 Requests or Complaints from Individuals.** Vendor will promptly notify Company in writing, unless specifically prohibited by laws applicable to Vendor, if Vendor receives: (i) any requests from an individual with respect to Personal Information Processed, including but not limited to opt-out requests, requests for access and/or rectification, erasure, restriction, requests for data portability, and all similar requests; or (ii) any complaint relating to the Processing of Personal Information, including allegations that the Processing infringes on an individual’s rights. Vendor will not respond to any such request or complaint unless expressly authorized to do so by Company, will cooperate with Company with respect to any action taken relating to such request or complaint, and will seek to implement appropriate processes (including technical and organizational measures) to reasonably assist Company in responding to requests or complaints from individuals. In addition, Vendor will, at the direction of Company, seek to implement appropriate processes (including technical and organizational measures) to reasonably assist Company to (a) delete, access and correct Personal Information collected, used, Processed, or retained by Vendor, and (b) notify any Processors, Service Providers, Contractors, or Third Parties who access such Personal Information from or through Vendor to delete, correct, or make available to Company the Personal Information.

**1.8 Disclosure Requests.** If Vendor receives any order, demand, warrant, or any other document requesting or purporting to compel the production of Personal Information (including, for example, by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, national

security orders, civil investigative demands or other similar processes) (“**Disclosure Request**”), Vendor will immediately notify Company (except to the extent otherwise required by laws applicable to Vendor). If the Disclosure Request is not legally valid and binding, Vendor will not respond. If a Disclosure Request is legally valid and binding, to the extent permissible under Applicable Law, Vendor will provide Company at least 48 hours’ notice prior to the required disclosure, so that Company may, at its own expense, exercise such rights as it may have under Applicable Law to prevent or limit such disclosure. Notwithstanding the foregoing, Vendor will exercise commercially reasonable efforts to prevent and limit any such disclosure and to otherwise preserve the confidentiality of Personal Information and will reasonably cooperate with Company with respect to any action taken with respect to such request, complaint, order or other document, including to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to Personal Information.

1.9 **Audit.** Vendor agrees that Company shall be permitted to audit Vendor’s compliance with this Exhibit through audits no more than once every twelve (12) months; provided, however, that Company may conduct additional audit as Company reasonably deems appropriate in the event of a Security Incident. Company may request an audit by emailing [success@spreadly.com](mailto:success@spreadly.com). Following receipt of this request, Vendor and Company 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. Vendor may charge a fee (based on Vendor’s reasonable costs) for any such audit. Vendor will provide Company with additional details of this fee including the basis of its calculation, in advance of the audit. Additionally, Company will be responsible for any fees charged by any third-party auditor appointed by Company for this audit. Vendor will provide to Company, its authorized Representatives, and such independent inspection body as Company may appoint, on reasonable notice: (i) access to all information and records necessary to demonstrate compliance with Applicable Law relating to the protection of Personal Information; and (ii) reasonable assistance and cooperation of Vendor’s relevant staff. Vendor shall notify Company if it makes the determination that it can no longer meet its obligations under the Applicable Laws, and, once notified, grant Company rights to take reasonable and appropriate steps to stop and remediate unauthorized Processing of Personal Information.

1.10 **Regulatory Investigations.** Upon notice to Vendor, Vendor will assist and support Company in the event of an investigation by any regulator, including a data protection authority, or similar authority, if and to the extent that such investigation relates to Personal Information handled by Vendor on behalf of Company in accordance with this Exhibit. Such assistance will be at Company’s sole expense, except where investigation was required due to Vendor’s acts or omissions, in which case such assistance will be at Vendor’s sole expense.

1.11 **Cardholder Information.** The terms of this Section shall apply if and solely to the extent that Vendor will obtain, have access to or otherwise Process Cardholder Information on behalf of Company in connection with the Services. Capitalized terms used but not defined in this Section will have the meanings set forth in the PCI Security Standards Council Glossary.

1.11.1 Vendor represents and warrants that it is presently in compliance, and will remain in compliance, with the Payment Card Industry Data Security Standard (“**PCI Standard**”).

1.11.2 Vendor acknowledges that such Cardholder Information may be used solely to assist Company in completing a transaction, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law, the PCI Standard, the operating regulations of American Express, Discover, MasterCard and Visa (“**Payment Card Brands**”), or the Service Agreement.

1.11.3 Vendor must at all times comply with the security standards for the protection of Cardholder Information, with which Payment Card Brands require service providers, third-party agents and processors to comply, including, but not limited to, the PCI Standard currently in effect and as may be updated from time to time. Vendor acknowledges that it is solely responsible for the security of all Cardholder Data that it possesses, transmits, or otherwise Processes in connection with the Services contemplated by the Service Agreement, including but not limited to the security of any Sensitive Authentication Data in its



possession that could impact the security of Cardholder Information or the Cardholder Data Environment (as defined in the Payment Card Industry (PCI) Security Standards Council Glossary).

1.11.4 Vendor shall provide an Attestation of Compliance in the form specified in the PCI Standard to the [GRC@nytimes.com](mailto:GRC@nytimes.com) within 30 days of a request from Company and also upon request from Company within 30 days of the completion of Vendor's annual Report on Compliance as required by the PCI Standard.

1.11.5 Vendor shall provide a Qualified Security Assessor access as needed to conduct annual assessments of the Cardholder Data Environment.

1.11.6 Vendor will promptly provide, at Company's request, current certification of compliance with the PCI Standard by an authority recognized by the payment card industry for that purpose. If, during the term of a relevant agreement, Vendor undergoes, or has reason to believe that it will undergo, an adverse change in its certification or compliance status with the PCI Standard, Vendor will promptly notify Company of such circumstances. Vendor will not take any actions that will compromise Company's ability to comply with the PCI Standard.

1.12 **Return or Disposal.** Personal Information received from or on behalf of Company will be retained only for so long as may be reasonably required in connection with Vendor's performance of the Service Agreement or as otherwise required under Applicable Law. Vendor will, as appropriate and as directed by Company, regularly dispose of Personal Information that is maintained by Vendor but that is no longer necessary to provide the Services. Upon termination or expiration of this Exhibit for any reason or upon Company's request, Vendor will immediately cease handling Personal Information and will return in a manner and format reasonably requested by Company, or, if specifically directed by Company, will securely destroy, any or all Personal Information in Vendor's possession, power or control, except as otherwise required by Applicable Law applicable to Vendor. If Vendor disposes of any paper, electronic or other record containing Personal Information, Vendor will do so by taking all reasonable steps (based on the sensitivity of Personal Information) to destroy Personal Information by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying Personal Information in such records to make them permanently incapable of being deciphered, read, or reconstructed. Vendor shall certify in writing that all Personal Information has been returned or securely destroyed, as applicable, in accordance with this Exhibit. If Vendor has a legal obligation to retain Personal Information beyond the period otherwise specified by this Section, Vendor will notify Company in writing of that obligation, to the extent permitted by Applicable Law, will Process Personal Information solely to fulfill its legal obligation under such Applicable Law applicable to Vendor, and will return or securely destroy the Personal Information in accordance with this Section as soon as possible after that legally required retention period has ended.

1.13 **Tracking Technologies.** Vendor must seek advance written approval from Company prior to any implementation of tracking technologies or methods, including but not limited to any pixels, cookies, SDKs, or JavaScript (collectively, "**Tracking Technologies**"), in connection with the Services. In connection with such written request for approval, Vendor shall provide Company with all information about the Tracking Technologies and Vendor warrants and represents that such information is accurate and complete. If Company approves the use of Tracking Technologies, Vendor agrees to comply with the following requirements with respect to the use of those Tracking Technologies: (i) no Tracking Technologies shall be implemented with respect to visitors to or end users of Company's websites, applications, emails, or other digital properties (collectively, "**Digital Properties**") who are located outside of the United States; (ii) Vendor will set each Tracking Technology to expire at a date determined by Company; (iii) any identifier associated with a Tracking Technology shall be deemed Company's Personal Information; (iv) the Tracking Technologies will only collect those data elements disclosed in writing to and approved by Company in advance and, in any event, shall not collect any video viewing information or data elements that would be deemed Sensitive Information under Applicable Law; (v) the data collected through the Tracking Technologies shall only be used to render the Services and for no other purposes unless specifically approved in writing by Company; (vi) provided that Company does not load or call another tracker, neither Vendor nor its suppliers of Tracking Technologies will load or call any further Tracking Technologies from itself or other parties (i.e. no piggybacking is allowed); (vii) once a Tracking Technology is installed, implemented or used by Company, neither Vendor nor its suppliers of the Tracking Technology will change

or revise in any way such Tracking Technology without Company's prior written consent (except when required for security or debugging purposes); (viii) the Tracking Technologies comply with the AdChoices (or equivalent) consumer opt-out mechanism; and (ix) the Tracking Technologies will comply with and honor any opt-out signals or other directions to opt out of Sale, sharing, targeted advertising, or similar term, pursuant to the California Consumer Privacy Act, the California Privacy Rights Act, the Colorado Privacy Act, the Virginia Consumer Data Protection Act, the Utah Consumer Privacy Act, the Connecticut Data Privacy Act, or any other Applicable Laws. For the avoidance of doubt, Vendor understands and agrees that fingerprinting of visitors to or end users of Company Digital Properties is prohibited. Vendor will not directly or indirectly create or enhance targeting profiles or segments on the basis of Company's Digital Properties that a user has visited, the content on Company's Digital Properties, or the general interest area(s) covered by Company (e.g., Vendor may not create an "NYT audience" segment based on any information obtained from Tracking Technologies placed on Company's Digital Properties). Vendor shall comply with Company's Data Collection and Use Policy located at <https://advertising.nytimes.com/resources/>, as updated from time to time. Company agrees that this Section 1.13 (Tracking Technologies) does not apply to the use of tracking technologies or methods by Vendor in connection with its own website.

**1.14 Other Assistance.** Vendor will provide relevant information and reasonable assistance requested by Company to demonstrate Vendor's compliance with its obligations under this Exhibit and assist Company in meeting its obligations under Applicable Law, including but not limited to the conducting of privacy and data protection impact assessments and related consultations with data protection authorities. In addition, Vendor will inform Company if Vendor believes that any instructions of Company regarding the Processing of Personal Information would violate Applicable Law. Further, Vendor shall, upon Company's request, cooperate in good faith with Company to enter into additional or modified contract terms to address any modifications, amendments, or updates to Applicable Law.

**1.15 Adverse Changes.** Vendor will notify Company promptly if Vendor: (i) has reason to believe that it is unable to comply with any of its obligations under this Exhibit and it cannot cure this inability to comply within a reasonable timeframe; or (ii) becomes aware of any circumstances or change in Applicable Law that is likely to prevent it from fulfilling its obligations under this Exhibit. In the event Vendor provides such notice or in the event that the sharing, use, or Processing of Personal Information under this Exhibit is considered unlawful by a data protection or supervisory authority or a court with competent jurisdiction under Applicable Law, Company will have the right to temporarily suspend the relevant sharing, use, or Processing under this Exhibit until such time that the sharing, use or Processing is adjusted in such a manner that the noncompliance is remedied. To the extent such adjustment is not possible, Company will have the right to terminate this Exhibit and the Service Agreement, without penalty or liability to Company (except for payment of any fees for Services rendered through the effective date of such termination). Without limiting the foregoing and without limiting any of its other rights or remedies under the Service Agreement or at law, Company will have the right to terminate the Service Agreement upon written notice to Vendor in the event of material breach by Vendor (or a third party working on behalf of Vendor) of any of its obligations under this Exhibit.

**2. THIRD-PARTY BENEFICIARIES.** The parties agree that Company's Affiliates are intended third party beneficiaries of this Exhibit and that this Exhibit is intended to inure to the benefit of such Affiliates. Company may enforce the privacy and data security provisions on behalf of Company Affiliates. Vendor will be entitled to rely solely on Company's instructions relating to Personal Information.

**3. SURVIVAL.** The obligations of Vendor under this Exhibit will continue for so long as Vendor continues to have access to, is in possession of or acquires Personal Information, even if all agreements between Vendor and Company have expired or have been terminated.

#### **4. CHANGES.**

**4.1** Company may change this Exhibit at any time without notice to Vendor if the change:

**4.1.1** is expressly permitted by this Exhibit; or

4.1.2 reflects a change in the name or form of a Company legal entity.

4.2 If Company intends to otherwise change this Exhibit, Vendor agrees to work together in good faith with Company to reflect such changes in a mutually executed amendment to this Exhibit.

5. **CONFLICTS.** To the extent there is any conflict between the provisions of this Exhibit and the terms of the Service Agreement, the provisions of this Exhibit will prevail.

## 6. **DEFINITIONS.**

Capitalized terms used but not defined in this Exhibit will have the meanings set forth in the applicable Service Agreement.

**“Business,” “Business Purposes,” “Commercial Purposes,” “Contractor,” “Sale,” “Sell,” “Service Provider” and “Third Parties”** shall have the meanings ascribed to such terms by Applicable Law.

**“Cardholder Information”** is any information that includes either “Cardholder Data” or “Sensitive Authentication Data” as those terms are defined in the Payment Card Industry (PCI) Security Standards Council Glossary.

**“Controller”** shall have the meaning ascribed to it by Applicable Law or, if there is no such definition in Applicable Law, it means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Information.

**“Person”** means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

**“Personal Information”** means any information owned or provided by or on behalf of Company, in any form, format or media (including paper, electronic and other records), that Vendor has access to, creates, collects, obtains, uses, maintains or otherwise Processes or handles in connection with the performance of Services, including partial copies thereof, that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, household, or device, including, without limitation, any inferences drawn or derivatives thereof, or that is otherwise defined or regulated as personal information, personally identifiable information, personal data or similar term under Applicable Laws.

**“Processor”** shall have the meaning ascribed to it by Applicable Law and, if there is no such definition in Applicable Law, it means a natural or legal person, public authority, agency or other body which Processes Personal Information on behalf of the Controller.

**“Security and Data Questionnaire”** means the Third-Party Risk Assessment Questionnaire completed by Vendor for the Services and submitted to Company as part of Vendor’s engagement by Company (together with any supplemental responses or information provided to Company by or on behalf of Vendor in connection therewith), last delivered by Vendor to Company prior to the date on which Company notifies Vendor that Company has completed the vendor assessment process, if such notification was sent. Such Security and Data Questionnaire is incorporated into this Exhibit by reference.

**“Sensitive Information”** means any of the following types of Personal Information: (i) social security number, taxpayer identification number, passport number, driver’s license number or other government-issued identification number; (ii) credit or debit card details or financial account number, with or without any code or password that would permit access to the account including Cardholder Information or credit history; (iii) information on race, religion, ethnicity, sex life or practices or sexual orientation, medical or health information, genetic or biometric information, biometric templates, political or philosophical beliefs, political party or trade union membership; or judicial data such as criminal records or information on other

judicial or administrative proceedings; (iv) other background check information; (v) username or email address, in combination with a password or security question and answer that would permit access to an online account; or (vi) other information that is otherwise defined or regulated as special categories of personal data, sensitive personally identifiable information, sensitive personal information or similar term under Applicable Laws.

**“Service Agreement”** means the Professional Services Agreement, the Software Services Agreement, any other agreement in which this Exhibit is linked or incorporated by reference, or any other agreement in effect between Vendor and Company involving the Processing of Personal Information by Vendor, including any applicable statement of work, insertion order, or any other order or instrument approved or executed by Company in connection with any such agreement.

**“Standard Contractual Clauses”** (or **“SCCs”**) refers to the clauses issued pursuant to the EU Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council, available at [http://data.europa.eu/eli/dec\\_impl/2021/914/oj](http://data.europa.eu/eli/dec_impl/2021/914/oj).

## **Schedule 1**

### **UK transfers**

For the purposes of the UK Approved Addendum,

1. the information required for Table 1 is contained in Section 1.5.2 of this Exhibit, and the start date shall be deemed dated the same date as the SCCs;
2. in relation to Table 2, the version of the SCCs to which the UK Approved Addendum applies is Module Two for Controller to Processor;
3. in relation to Table 3, the list of parties and description of the transfer are as set out in Section 1.5.2 of this Exhibit, Vendor's technical and organizational measures are set in Section 1.4 of this Exhibit and the Security Exhibit, and the list of Vendor's sub-processors shall be provided pursuant to section 1.5.2.10 of this Exhibit; and
4. in relation to Table 4, neither party will be entitled to terminate the UK Approved Addendum in accordance with clause 19 of the UK Mandatory Clauses.

## Exhibit G

### Security Exhibit

During the course of providing Services under the Agreement in which this Exhibit is incorporated by reference, Vendor and Vendor Representatives may obtain, access, or otherwise Process the Confidential Information of Company. Prior to, and at all times during, Vendor's or Vendor Representatives' access to (or other Processing of) Company Confidential Information, Vendor shall implement the following core physical, technical, and organizational security measures as part of Vendor's Information Security Program (as defined below) and pursuant to the Agreement. The security standards contained in this exhibit represent the minimum security measures that shall be taken by Vendor. If any commercial agreement with Vendor requires a higher level or more extensive security measures, Vendor shall also abide by those terms. Capitalized terms used but not defined herein are defined as set forth in the Agreement.

**1. Information Security Principles.** Vendor shall implement security requirements, in accordance with the Agreement and this Exhibit, for Vendor and Vendor Representatives who have access to or otherwise Process Company Confidential Information, which security requirements are designed to:

**1.1** Prevent unauthorized persons from gaining access to Company Confidential Information Processing systems (physical access control);

**1.2** Prevent Company Confidential Information Processing systems from being used or accessed without authorization (logical access control);

**1.3** Ensure that persons entitled to use or access Company Confidential Information Processing systems gain access only to such Company Confidential Information as they are entitled to access in accordance with their access rights and that, in the course of Processing or use and after storage, Company Confidential Information cannot be read, copied, modified or deleted without authorization (data access control);

**1.4** Ensure that Company Confidential Information cannot be read, copied, modified or deleted or otherwise Processed without authorization during electronic transmission, transport or storage, and that the target entities for any transfer of Company Confidential Information by means of data transmission facilities can be established and verified (data transfer control);

**1.5** Ensure the establishment of an audit trail to document whether and by whom Company Confidential Information has been accessed, modified, or removed from Company Confidential Information Processing systems (entry control);

**1.6** Ensure that Company Confidential Information is Processed solely in accordance with the applicable instructions of Company (control of instructions);

**1.7** Ensure that Company Confidential Information is protected against accidental destruction or loss (availability control); and

**1.8** Ensure that security policies and procedures are in place to prevent, detect, contain, and correct security violations (including the application of appropriate disciplinary actions or sanctions to address a security violation), as well as to document the administrative, technical and physical controls in place to protect Company Confidential Information (policy control); and

**1.9** Ensure that Company Confidential Information collected for different purposes can be Processed separately (separation control).

**2. Information Security Program.** Vendor shall implement, maintain, monitor, and, where necessary, update, a comprehensive written information security program that contains appropriate administrative, technical, and physical safeguards to protect Company Confidential Information against anticipated threats or hazards to its security, confidentiality or integrity (such as unauthorized access, collection, use, copying, modification, disposal or disclosure, unauthorized, unlawful, or accidental loss, destruction, acquisition, or damage or any other unauthorized form of Processing) ("**Information Security Program**"). The safeguards shall meet or exceed prevailing industry standards or an applicable third-party security assurance standard such as Statement on Standards for Attestation Engagements No. 16 Type II ("**SSAE 16**") SOC 2, and shall be consistent with this Exhibit. The Information Security Program shall include, upon Company's reasonable request, the requirement for Vendor to complete, execute, and submit to Company: (a) Company's information gathering questionnaire, on an annual basis, or as otherwise determined by Company and Vendor; (b) an executive summary of Vendor's security assessments, including, without limitation, penetration tests and vulnerability scans conducted by a neutral party on Vendor's behalf, on an annual basis, or as otherwise reasonably determined by Vendor; (c) at Vendor's sole cost and expense, an independent SSAE 16 / SOC 2 Type II or comparable independent attestation, on an annual basis, to confirm Vendor's controls over Company's, or Company Representative's processes; and (d) at Vendor's sole cost and expense, a SOC 2 Type 2 or comparable independent attestation, on an annual basis, including at a minimum the security principle, twelve (12) month assessment of cybersecurity controls, and systems that maintain or touch Company Confidential Information.

### **3. Physical Security.**

**3.1 Facility and Workstation Security.** For any facility that houses Vendor Representatives or systems used for the Processing of Company Confidential Information, Vendor shall comply with the following security requirements:

3.1.1 Vendor shall maintain commercially reasonable and appropriate physical security standards designed to prohibit unauthorized physical access to the premises;

3.1.2 Physical access to the premises shall be limited to its Vendor Representatives and authorized visitors with a need for such access;

3.1.3 Vendor shall promptly terminate its Vendor Representatives' physical access to the premises in the event of the suspension, resignation, or termination of employment, engagement, or assignment, or death of such Vendor Representative; and

3.1.4 Vendor shall periodically review access accounts to verify that access permissions are up-to-date and that stale accounts are terminated.

**3.2 Company Security Regulations.** Vendor and Vendor Representatives shall comply with reasonable Company security regulations provided to Vendor, which may be particular to each location owned or operated by Company. Vendor or its Vendor Representatives, when deemed appropriate by Company, may be issued a visitor identification card. Such cards shall be surrendered upon demand by Company. Company agrees that this Section 3.2 is not intended to, and does not, include compliance with any Company security regulations which pose an unreasonable burden on Vendor or its Vendor Representatives; rather, the parties will address compliance with such regulations in a Service Order, Task Order or mutually executed amendment to this Exhibit.

### **4. Organizational Security.**

**4.1 Personnel.** Vendor shall implement the following requirements with respect to Vendor Representatives:

4.1.1 Prior to providing access to Company Confidential Information to Vendor Representatives, Vendor shall require Vendor Representatives to comply with its Information Security Program.

4.1.2 Vendor shall implement a security awareness program to train Vendor Representatives about their security obligations. This program shall include training about data classification obligations, physical security controls, security practices, and security incident reporting.

4.1.3 Vendor shall also implement a confidentiality compliance training program for its Vendor Representatives. Vendor Representatives assigned to Process Company Confidential Information shall undergo confidentiality compliance training prior to contact with such data or information.

4.1.4 If Vendor Representatives are involved with application development (or testing) on any Company Computer Environment, such Vendor Representatives shall follow Company's change management procedures. If the work is performed on any Vendor Computer Environment, Vendor shall have the appropriate change management procedures in place to prevent unauthorized activities from occurring in test, development, or production.

4.1.5 Vendor shall have clearly defined roles and responsibilities for Vendor's employees. Vendor shall implement screening before employment with terms and conditions of employment applied appropriately. Vendor's user administration procedures shall define user roles and their privileges and how access is granted, changed and terminated, address appropriate segregation of duties, and define logging/monitoring requirements and mechanisms.

4.1.6 Vendor's employees shall strictly follow established security policies and procedures. Disciplinary measures shall be applied if employees commit a security breach.

4.1.7 Only authorized staff of Vendor shall be permitted to grant, modify or revoke access to an information system that accesses or otherwise Processes Company Confidential Information. Access rights shall be implemented adhering to the "least privilege" approach.

4.1.8 All employees of Vendor shall be assigned unique user IDs.

**4.2 Primary Security Manager.** Vendor shall appoint individuals who are either formally designated as a privacy officer and chief information security officer or are responsible for compliance with (and enforcement of), applicable federal, state, and international data privacy laws and regulations and PCI Standard (if applicable). Vendor shall notify Company of its designated primary security manager. The security manager will be responsible for managing and coordinating the performance of Vendor's obligations set forth in its Information Security Program and in this Exhibit.

**4.3 Risk Assessments.** Vendor shall conduct periodic risk assessments and review and, as appropriate, revise its information security practices at least annually or whenever there is a material change in Vendor's business practices that may reasonably affect the security, confidentiality or integrity of Company Confidential Information, provided that Vendor shall not modify its information security practices in a manner that will weaken or compromise the confidentiality, availability, or integrity of Company Confidential Information.

**4.4 Business Continuity.** Vendor shall implement, review, and update periodically appropriate Business Continuity/Disaster Recovery ("**BC/DR**") plans and programs, including, but not limited to as follows:

4.4.1 Test the BC/DR plans, and programs, on a regular and periodic basis. Upon written request from Company, Vendor shall provide a summary of the results of those tests and



any associated remediation plans. Where testing identifies the need for the BC/DR plans to be updated or revised, Vendor shall update and revise the plans, as appropriate.

4.4.2 Maintain a crisis management process, designed to enable Vendor to address crises as they arise. The process shall require all sites and locations where Vendor Representatives are located, to have an emergency plan in place. The crisis management process shall be activated immediately when an actual or potential crisis situation arises.

4.4.3 Maintain backups, to occur regularly, for Vendor Computer Environment used for Processing Company Confidential Information. Vendor shall have a formal backup/recovery strategy. Backups must be encrypted and stored in an environmentally-protected, physically-secure, offsite facility.

4.4.4 Notify Company within forty-eight (48) hours of a declared disaster advising of the situation and any impact to Company Confidential Information.

## **5. Network Security.**

**5.1 Equipment and Techniques.** Vendor shall maintain network security using commercially-available equipment and industry-standard techniques, including firewalls, intrusion detection and prevention systems, access control lists, and routing protocols.

5.1.1 Vendor shall implement and maintain intrusion detection to monitor its Vendor Computer Environment and detect any anomalies to be addressed through a formal incident response process.

5.1.2 Vendor shall partition its infrastructure into security zones with flow-control devices, such as firewalls and routers, which govern the allowable flows between security zones, which enable Vendor to deploy a defense-in-depth architecture.

**5.2 Encryption.** Where encryption is necessary or required to secure Company Confidential Information, Vendor shall use encryption methods and technologies for data at rest and data in transit that comply with standards provided by the National Institute of Standards and Technology ("**NIST**"). Vendor shall use encryption technologies that comply with NIST Federal Information Processing 140-2 Security Requirements for Cryptographic Modules and applicable State and Federal regulations. All Security Incidents (as defined below) concerning Company Confidential Information shall be managed in accordance with appropriate incident response procedures. Vendor shall safeguard the security and confidentiality of all encryption keys associated with encrypted Company Confidential Information.

**5.3 Logical Separation of Company Confidential Information.** To the extent practicable, upon written request from Company, Company Confidential Information shall be logically separated from other Vendor or Vendor Representative data accounts.

**5.4 Non-Production Environments.** Company Confidential Information shall be De-identified before being migrated to a non-production environment (e.g., testing or development). "De-identified" means that the information cannot reasonably be used to infer information about, or otherwise be linked to, a particular individual, household, browser, application, computer, device or Company, provided that Vendor and any Vendor Representatives that possess the information: (i) take reasonable measures to ensure that the information cannot be associated with a particular individual, household, browser, application, computer, device or Company; (ii) publicly commit to maintain and use the information in deidentified form and not to attempt to reidentify the information, except that the business may attempt to re-identify the information solely for the purpose of determining whether its deidentification processes satisfy the requirements of this subdivision; and (iii) contractually obligates any recipients of the information to comply with all provisions of this subdivision. Where de-identification is not possible, Vendor warrants that any Company Confidential Information shall not be migrated into any non-production environment,

unless the non-production environment offers the same level of security controls used to safeguard the Company Confidential Information in the production environment, and in no event a lesser level of security than required under this Exhibit and the Agreement.

**5.5 Remote Access.** At any and all times during which Vendor or any Vendor Representative is Processing Company Confidential Information, Vendor shall ensure it uses one (or all) of the following: (a) technologies such as Secure Shell (“**SSH**”), SSH File Transfer Protocol (“**SFTP**”), Hypertext Transfer Protocol Secure (“**HTTPS**”), Virtual Private Network (“**VPN**”), Pretty Good Privacy (“**PGP**”), Secure Sockets Layer (“**SSL**”) and/or Transport Layer Security (“**TLS**”), as appropriate, and (b) strong authorization, such as dual authentication.

**5.6 Access to Company Confidential Information.** Vendor shall: (a) not Process (which includes, not access) Company Confidential Information, except necessary to perform its obligations under the Agreement, or as required by law; (b) limit the Processing of Company Confidential Information to its Vendor Representatives solely as required for such Vendor Representatives to perform their responsibilities under the Agreement; (c) not transfer any Processing rights to any other third-party without the prior, written approval of Company or as specified in Section 1.6 of the Privacy Exhibit; (d) except as otherwise permitted hereunder or under the Agreement, not Process Company Confidential Information for Vendor’s (or its Vendor Representative’s) own benefit, including, without limitation, any business or entity with which Vendor may be associated. Vendor warrants that requirements substantially similar to the requirements of this paragraph are included in its agreements with its Vendor Representatives.

5.6.1 Vendor shall manage an inventory of login credentials, such as user IDs, system IDs, personal identification numbers (“**PINs**”) and access codes (collectively hereafter “**System IDs**”) issued to Vendor Representatives requiring access to its Vendor Computer Environment to perform Vendor Representative’s responsibilities under the Agreement. Vendor shall promptly terminate all access to Company Confidential Information granted to its Vendor Representative when such Vendor Representative’s employment, engagement, or assignment ends, or when such Vendor Representative is no longer performing Services for Vendor under the Agreement (whichever occurs first).

5.6.2 Vendor shall maintain the following standards for passwords pertaining to System IDs for Company Confidential Information: (a) passwords will be communicated only to its Vendor Representatives, on a need-to-know basis; (b) its Vendor Representatives providing Services under this Agreement shall not have root/system administrator access, except as necessary to perform their function, as approved by Vendor; (c) Vendor shall not set default passwords for accounts and shall change factory-default passwords when applicable; (d) Vendor shall use passwords that conform to strong password guidelines (including complexity, expiration, duplicity and length); (e) Vendor shall adhere to a schedule for periodic password changes, no less frequently than every year; (f) Vendor shall set passwords (i) for first-time use and resets to a unique value for each user and (ii) to be changed promptly after the first use; (g) passwords shall not be written down; and (h) passwords must be encrypted in transit and in storage.

5.6.3 Vendor shall implement other commercially reasonable physical and electronic security to both create and protect passwords.

**5.7 Virus and Malware Controls.** Vendor agrees to protect Company Confidential Information with up-to-date anti-malware software. Vendor shall have a process in place for issuing regular updates to anti-malware software and conducting regular scans of its Vendor Computer Environments containing Company Confidential Information.

**5.8 Data Tokenization.** Tokenization is a process by which the primary account number (PAN) is replaced with a surrogate value called a token. Tokenization promotes security and efficiency between the Software Services and connected payment gateways. When available, Vendor may at its sole discretion tokenize applicable Company Confidential Information for use within the Software Services.

**6. Security Incident.** In addition to any other notification and Security Incident-related requirements under the Agreement, Vendor shall promptly notify Company (by contacting the applicable Company business owner for this Agreement and by emailing security@nytimes.com) (and in any event within forty-eight (48) hours) whenever Vendor reasonably believes that there has been any accidental or unauthorized access, acquisition, use, modification, disclosure, loss, destruction of, or damage to Company Confidential Information, or any other unauthorized Processing of Company Confidential Information ("**Security Incident**"). After providing notice, Vendor shall investigate the Security Incident, take all necessary steps to eliminate or contain the exposure of the Company Confidential Information, and keep Company informed of the status of the Security Incident and all related matters. Vendor further agrees to provide reasonable assistance and cooperation requested by Company and its designated Representatives, in the furtherance of any correction, remediation, or investigation of any Security Incident and the mitigation of any potential damage, including any notification that Company may determine appropriate to send to affected individuals, regulators or third parties, and the provision of any credit reporting service that Company deems appropriate to provide to affected individuals. Unless required by law applicable to Vendor, Vendor shall not notify any individual or any third party other than law enforcement of any potential Security Incident involving Company Confidential Information, in any manner that would identify, or is reasonably likely to identify or reveal the identity of Company, without first obtaining written permission of Company. In addition, within thirty (30) days of identifying or being informed of any Security Incident arising from any act or omission by Vendor, Vendor shall develop and execute a plan, subject to Company's approval, that reduces the likelihood of a recurrence of a Security Incident.

**7. Additional Controls.** Vendor may update its security controls from time to time upon notice to Company and implement and maintain additional security controls in the event of any material changes to the Software Services, available technology or systems, provided that such changes or additional controls will not materially reduce Vendor's obligations under this Security Exhibit. In the event of any material change (including changes due to a change in Applicable Laws) which requires a change to all or a significant part of the security controls, the parties agree to make appropriate adjustments to the terms of this Exhibit utilizing the amendment process.

**SERVICE ORDER #1**

**Spreedly, Inc.**  
300 Morris Street  
Suite 400  
Durham, NC 27701

**To:** Patrick Presto, NY Times  
**Customer Legal Name:** The New York Times Company  
**Billing Address:** 620 Eighth Avenue Manhattan, New York 10018  
**Sales Rep:** Shawn Curtis

**Order Form Issued:** December 19, 2022  
**Offer Valid Until:** December 23, 2022  
**Service Level:** Professional Tier

This Service Order is entered into between the entity identified above as "Customer" and Spreedly, Inc. (each a "Party" and collectively, the "Parties") as of **January 1, 2023** (the "Service Order Effective Date") and is subject to the Agreement (defined below) which is hereby incorporated by reference. For purposes of this Service Order, "Agreement" means the enterprise services agreement (an "ESA") currently in force between the Parties, or, in the absence of an ESA, the Spreedly Terms of Service located at <https://www.spreedly.com/terms-of-service>.

In the event of any conflict between the terms of the Agreement and this Service Order, this Service Order will govern. Capitalized terms used but not defined in this Service Order have the meanings set forth in the Agreement or in the Documentation.

**1) Service Order Term**

The initial term of this Service Order is one (1) month, after which this Service Order will automatically renew for successive 1-month periods (each, a "Renewal Term" and, together with the Initial Term, the "Term"). Customer may terminate this Service Order on thirty (30) days written notice to Spreedly. Spreedly may terminate this Service Order on ninety (90) days written notice to Customer.

**2) Platform Fees**

Each month, Customer will pay Spreedly a "Monthly Platform Fee" in the amount of \$10,000, which entitles Customer to the following Software Services:

- Universal Vaulting and Tokenization
- Security Suite (MFA, RBAC, SSO)
- Unlimited PCI Compliant Card Storage
- Access to all Spreedly gateway connectors
- Access to all Spreedly PMD Receiver endpoints
- Access to 3DS2 services, ApplePay, and GooglePay

**3) API Usage Fees**

Spreedly will invoice Customer monthly in arrears at the rate of \$0.01 for any API calls made during the previous month of service ("API Usage Fee").

**4) Minimum Fee Commitment**

The "Minimum Fee Commitment" under this Service Order is \$50,000. If at the time either party provides notice of non-renewal or otherwise terminates this Service Order, the total billable Fees have not reached \$50,000, Customer agrees to pay the difference between the Minimum Fee Commitment and the total billable Fees so that Spreedly receives no less than \$50,000 under this Service Order.

**5) Support Services**

Customer has selected Professional Tier Support Services and will pay Spreedly an "Annual Services Fee" of \$25,000 for 12 months of Professional Level Service. Upon payment of the applicable fees, Spreedly will provide the technical Support Services per the Support Service Terms posted at <https://www.spreedly.com/support-services-terms> at the Professional Tier level.

**6) Payments**

All payments are subject to the terms prescribed in Section 4 of the Agreement. Customer will pay the initial platform fee of \$10,000 for the first month of service and \$25,000 for the Professional Tier Support Services within 45 days of the Service Order Effective Date. Each subsequent monthly payment shall be invoiced 30 days prior to the anniversary of the Service Order



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Effective Date and will be due and payable 45 days after the applicable invoice date. If Customer fails to make any payment when due then, in addition to all other remedies that may be available to Spreedly in the Agreement, Spreedly may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law.

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

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

Receiver: Webster Bank  
ABA/Routing #: 211170101  
SWIFT Code: WENAUS31  
Beneficiary: 0024760830  
Spreedly, Inc.  
300 Morris Street, Suite 400  
Durham, NC 27701  
USA

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

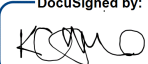
[Signatures on Next Page]



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The Parties have executed this Amendment by their duly authorized representatives in one or more counterparts, each of which will be deemed an original.

**Spreedly, Inc.**

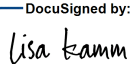
DocuSigned by:  
  
BE108849DB824F9...  
By: Nellie Vail

Name: \_\_\_\_\_

Title: Chief Financial  
OfficerDate: 12/21/2022

Date: \_\_\_\_\_

**The New York Times Company**

DocuSigned by:  
  
9D34B7992A714F0...  
By: Lisa Kamm

Name: \_\_\_\_\_

Title: Senior Vice President,  
ProductDate: 12/22/2022

Date: \_\_\_\_\_

# Restricted Cardholder Data Retention Policy

## Payment Methods

### Cached PANs

When the PAN is submitted to Spreedly Core it is stored up to 12 hours for use in a transaction. This is called the “cached” state and is the default for new payment methods.

Every hour of every day an [automated process](#) will be run which finds stored payment methods in the “cached” state and redacts sensitive information, changing the state to “redacted”. The payment method record will not be deleted, since it is recorded as part of any transactions which have been executed against it.

### Redacted PANs

Redacted payment methods cannot be un-redacted. The sensitive information that previously existed in the PAN record has been overwritten and cannot be restored.

### Retained PANs

If a customer specifically retains a payment method, its PAN data will be stored indefinitely, changing the state to “retained”. Retained payment methods in Core will never be redacted by any automated process maintained by Core, as these records are completely under the control of the customer. A customer may choose to redact their retained payment methods at any time, which will [remove all restricted cardholder data](#) from the record.

## CVV and Track Data

When cardholder data is submitted to Spreedly, the CVV and track data are stored up to 3 minutes or until used for a transaction, whichever comes first.

This constraint is implemented by:

- Encrypting the data ([CVV](#) or [track data](#))
- Storing it in the in-memory [storage of Redis](#) with a time-to-live (TTL) of [3 minutes](#)

On Redis expiration, the value will be purged from memory and the payment method model will no longer have access to it.

## Gateway Credentials

In order to provide the services Spreedly offers, we must securely store payment gateway credentials for our customers. This means that retention is controlled by the customer. When they no longer want to use a gateway, they will [redact the information](#), which clears it from all Spreedly storage. There is no automated process for this use case as it is handled at the time of the customer's redact request.

## Account Cancellations

If the customer cancels their Spreedly account, all sensitive data related to their account will be redacted after 30 days.

Every day an [automated process](#) will be run which finds customer accounts that have been cancelled 30 days ago or more and have payment methods with retained restricted cardholder data. Customer support personnel will be notified of these accounts to allow for a manual review process that ensures the customer is in fact prepared to lose all of their vaulted payment methods. If the data is to be redacted, the support personnel will trigger the redaction.

## Data Retention Confirmation

Every 3 months, triggered by a [recurring JIRA task](#), we will spot-check to confirm that data retention is functioning per the policies defined in this doc. The technical steps for this are contained in: [Spot Check Redacted Data](#)

## Review / Change Log

Document Owner (Team)	Last Document Review Date	Next Document Review Date
Engineering/Core Services	June 2022	May 2023
Engineering/Core Services	July 2021	May 2022

Change/Review	Date	Reviewed by
Annual Document Review	10 Jun 2022	Adriana Feng
Annual Document Review	15 July 2021	Tanya Jajodia



## SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (together with Exhibits, the “**Agreement**”) is made as of (the “**Effective Date**”), by and between The New York Times Company with its principal place of business at 620 Eighth Avenue, New York, NY 10018 (“**Company**”) and **Spreadly, Inc.**, with its principal place of business at [REDACTED] (“**Vendor**”). Company and Vendor are referred to herein collectively as the “**Parties**,” and each as a “**Party**.”

It is agreed that the following terms and conditions shall govern with respect to the software services and related services, deliverables, and documentation to be provided to Company by or on behalf of Vendor in accordance with each Service Order (as defined below) and each Task Order (as defined below) executed by the Parties and referencing this Agreement.

**1. Definitions.** The following definitions apply:

**1.1. “Accept” or “Acceptance”** means the first to occur of the date on which (a) Company notifies Vendor that certain Software Services, Professional Services, or Work Product have satisfactorily been performed or provided and meet the relevant Acceptance Criteria, or (b) Company accepts the Services or deliverables as non-conforming (each in accordance with **Section 2.3** below).

**1.2. “Acceptance Criteria”** means, as to any Software Services, Professional Services, and Work Product, compliance with the specifications in this Agreement, the applicable Exhibit, Documentation, and Task Order or Service Order.

**1.3. “Affiliate”** means, with respect to a Party, any present or future entity that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with that Party.

**1.4. “Aggregated, Anonymized, and De-Identified”** means information or data that (a) does not identify, is not capable of identifying, and cannot reasonably be used to infer information about, or otherwise be linked to, a user, household, browser, application, computer, or device; (b) is anonymous, de-identified, and aggregated under Applicable Laws, (c) is non-attributable to an individual; and (d) is not be capable of being reverse-engineered. Vendor shall (x) take reasonable measures to ensure that the Aggregated, Anonymized, and De-Identified information or data cannot be associated with an individual, household, or device, (y) publicly commit to maintain and use that information or data in aggregated, anonymized, and de-identified form and not to attempt to reidentify the information, and (z) contractually obligate any recipients of the information or data to comply with all provisions of this paragraph.

**1.5. “Applicable Laws”** means any and all applicable laws, regulations, rules, ordinances, guidelines or judicial or administrative orders now in effect or hereinafter enacted or adopted, as amended from time to time, in any jurisdiction.

**1.6. “Authorized Users”** means the Company and Company Affiliate and Representative personnel who are authorized to use the Software Services and Documentation and have been supplied user identifications and passwords, or other means of accessing the Software Services, by Company (or by Vendor at Company’s request).

**1.7. “Change Request”** has the meaning set forth in **Section 2.2**.

**1.8. “Company Data”** means any or all of the following, and all copies thereof, regardless of the form or media in which such items are held: (a) content, data and information (including Personal Information

(as defined below)) provided or submitted by or on behalf of Company or any Company Affiliate to the Software Services or to Vendor or its Affiliates or Representatives; (b) any content, data, information or other output created, collected, generated, Processed, or stored by the Software Services or in connection with use of the Software Services or delivery or receipt of any other Services (including Personal Information, SLA measurements, reports, and metadata); and (c) any content, data, or information provided to Company or any Company Affiliate by or on behalf of Vendor. For clarity, Company Data does not include data or information that is Aggregated, Anonymized, and De-Identified.

**1.9. “Computer Environment”** means the networks, servers, systems, computers, databases and applications of a Party, including any such assets owned, licensed, leased or subscribed to by a Party, including, with respect to Vendor’s Computer Environment, the Software Services and associated systems.

**1.10. “Confidential Information”** means all proprietary or confidential information, including: Personal Information, technical data, trade secrets or know-how, research, product plans, products, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) either directly, indirectly, in writing, orally or by drawings or inspection of parts and equipment. It may include information proprietary to a third party, including the Disclosing Party’s Subcontractors or third-party software suppliers. In addition, any and all information related to the Disclosing Party’s business which is labeled or identified as “confidential” or “proprietary” or that the Receiving Party otherwise knows, or would reasonably be expected to know, that the Disclosing Party considers to be confidential or proprietary or the Disclosing Party has a duty to treat as confidential shall be deemed Confidential Information. Company’s Confidential Information includes Company Data and all Work Product. Notwithstanding the foregoing, Confidential Information does not include information that: (a) is publicly available through means other than a breach of this Agreement (with the exception of Personal Information, which shall always be Confidential Information even if publicly available); (b) is already in the Receiving Party’s possession on the Effective Date of this Agreement and was not obtained from the Disclosing Party; (c) is developed by the Receiving Party outside the scope of any agreement with the Disclosing Party, and without reference to or use of the Disclosing Party’s Confidential Information; (d) is obtained lawfully from third parties free to disclose the information without confidentiality obligations to the Disclosing Party; or (e) is independently obtained or developed in the conduct of Company’s newsgathering operations.

**1.11. “Documentation”** means (a) the user and technical documentation relating to the installation, configuration, use and functionality of the Software Services, and (b) any written requirements of Company agreed by the Parties.

**1.12. “Fees”** has the meaning set forth in **Section 4**.

**1.13. “Force Majeure Event”** means an unforeseeable condition beyond the reasonable control of the Party experiencing such condition, including fire, explosion, epidemic which significantly puts at risk and endangers the health of the affected Party’s Representatives, cyclone, acts of government, acts of public enemies, acts of terrorism, war, legally binding demand or requirement of any government or any subdivision authority or representative of any such government, which condition (a) could not have been prevented, avoided or remedied by the affected Party taking reasonable precautions, incurring reasonable expenditure or using alternate resources or means; (b) has not been caused by or contributed to in any way by the affected Party, including any of its Representatives; and (c) makes the performance of the obligations under this Agreement by the affected Party impossible, not merely onerous or uneconomic.

**1.14. “Intellectual Property Rights”** means all forms of intellectual property and proprietary rights and protections throughout the world, whether currently existing or hereafter developed or acquired and whether

now known or hereafter recognized, including all right, title and interest arising under any Applicable Laws in and to all (a) patents, patent applications, and related filings and rights; (b) trade secrets, rights in know-how, rights in technical information, rights in databases, and equivalent rights; (c) copyrights, copyright registrations, design registrations and applications therefor, moral rights, other literary property or author rights, whether or not protected by copyright or as a mask work; and (d) proprietary indicia, trademarks, service marks, trade names, brand names, trade dress, logos, symbols, domain names, and all goodwill associated therewith.

**1.15. “Other Products”** means content, software, materials or other items, including open source, “free,” or publicly available software or middleware that is owned or controlled by a person or entity other than Vendor or Company.

**1.16. “Payment Schedule”** means the payment schedule contained in a Service Order or a Task Order.

**1.17. “Personal Information”** means any information owned or provided by or on behalf of Company, in any form, format or media (including paper, electronic and other records), that Vendor has access to, creates, collects, obtains, uses, maintains or otherwise Processes or handles in connection with the performance of Services, including partial copies thereof, that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer, household, or device, including, without limitation, any inferences drawn or derivatives thereof, or that is otherwise defined or regulated as personal information, personally identifiable information, personal data or otherwise under Applicable Laws.

**1.18. “Policies”** means any Company policies communicated to Vendor, and any updated versions thereof communicated to Vendor, including Company’s Employees and Non-Employees Responsibilities to Protect Information Policy, attached hereto as **Exhibit D**.

**1.19. “Process” or “Processing”** means any operation or set of operations that is performed upon Company Data, whether or not by automatic means, including, without limitation, acquiring, accessing, collecting, consulting, recording, copying, organizing, storing, maintaining, preserving, structuring, transferring, adapting, altering, developing, creating, modifying, retrieving, restricting, searching, consulting, using, transmitting, messaging (including “texting,” emailing and chatting), disclosing, disseminating, making available, aligning, combining, blocking, deleting, erasing, discarding, disposing of or destroying Company Data.

**1.20. “Professional Services”** means consulting, installation, implementation, configuration, Work Product development, and/or training services provided by Vendor under this Agreement, as documented in a Task Order. For the avoidance of doubt, all Professional Services unrelated to the Software Services provided under this Agreement shall be governed by a separate, stand-alone agreement executed by the Parties.

**1.21. “Representatives”** means officers, directors, employees, consultants, contractors, Subcontractors, suppliers, service providers, agents, successors and assigns of a Party.

**1.22. “Security Incident”** has the meaning set forth in the Security Exhibit.

**1.23. “Services”** means the Software Services, Professional Services, Support Services, and the Termination Assistance Services, as well as all Work Product, Documentation, and any other deliverables provided as part of such services.

**1.24. “Service Order”** means an order for Software Services, in a form substantially similar to **Exhibit A**, executed by Company and Vendor.

**1.25. “SLAs”** means the service level standards and requirements specified in **Exhibit C**.

**1.26. “Software Services”** means the software products provided on a hosted or software-as-a-service basis to Company or its Affiliates, including all Updates thereto.

**1.27. “Subcontractor”** includes Vendor’s subcontractors used to facilitate the performance of this Agreement (including any third-party hosting services provider), and the subcontractors of such Vendor subcontractors.

**1.28. “Support Services”** means the maintenance and support services for the Software Services, as described in **Exhibit C**.

**1.29. “Task Order”** means a task order, in a form substantially similar to **Exhibit B**, executed by Company and Vendor.

**1.30. “Term”** (as well as **“Initial Term”** and **“Renewal Term”**) have the meanings set forth in **Section 3.1**.

**1.31. “Termination Assistance Services”** means the services described in subsection (b) of **Section 3.5**.

**1.32. “Treated”** means and includes the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

**1.33. “Updates”** means any and all modifications, additions, or updates to the Software Services, including those to correct bugs, deficiencies, or errors; to conform to regulatory or industry requirements; to perform required maintenance; or to incorporate product upgrades to improve operability or new functionalities, including any new version.

**1.34. “Vendor Reserved IP”** means content, software, materials, or other items that Vendor (a) owns or controls prior to performing the applicable Services, or (b) creates, or obtains the ownership or control of, outside the scope of the Services and this Agreement. Vendor Reserved IP expressly includes the Software Services (including Updates) and the Documentation.

**1.35. “Work Product”** means all inventions, concepts, ideas, improvements, modifications, processes, methods, designs, analysis, discoveries, and other creations conceived or made in the performance of Services under this Agreement, including any deliverables provided by Vendor to Company.

## **2. Services.**

**2.1. Software Services.** Vendor hereby grants Company and its Affiliates and Representatives a non-exclusive, transferable, royalty-free, world-wide right and license to access and use the Software Services and Documentation during the Term. Except as otherwise provided in this Agreement or authorized by Vendor, Company shall not: (a) modify, copy, or make derivative works based on the Software Services or Documentation (except that Company is permitted to make a reasonable number of copies of the Documentation); (b) decompile, disassemble, reverse-engineer or otherwise intentionally access any source code or underlying algorithms in the Software Services; (c) rent, lease, sell or otherwise transfer or distribute copies of the Software Services or Documentation; (d) knowingly permit use of the Software Services by

anyone other than Company and its Affiliates and Representatives; or (e) intentionally remove Vendor's (and as applicable its licensors') copyright, trademark, trade name, and other proprietary rights notices from the Software Services and Documentation. Vendor shall provide access to the Software Services and Documentation immediately upon execution of this Agreement, including any required user identifications and passwords.

**2.2. Professional Services.** The Professional Services to be performed by Vendor and its Vendor Representatives shall be described under "Scope of Work" on one or more Task Order(s) as requested by Company during the Term. Upon execution by Company and Vendor, each Task Order shall be subject to and governed by this Agreement. Company may request changes to the scope of Professional Services under any Task Order ("**Change Request**"), and in response to a Change Request, Vendor shall provide a written quotation including changes to scope, schedule, materials, prices and expenses in order to accommodate the Change Request. If accepted by Company, the Parties shall execute a new Task Order or an amendment to the existing Task Order, setting forth the terms of the Change Request, which shall become binding only upon execution by both Parties. Notwithstanding the foregoing, Company may reduce the scope of Services in any Task Order upon notice to Vendor, and Vendor shall accept any such changes that reduce or do not affect the cost of performance. Vendor is not the exclusive provider of any services to Company, and Company makes no commitment to use Vendor for any minimum amount or duration of services. Vendor shall engage Vendor Representatives with the proper skill, training, and experience to provide the Services, and shall at all times provide a sufficient number of Vendor Representatives to perform the Services in accordance with the terms of this Agreement and the applicable Task Order. Vendor shall ensure that Vendor Representatives are not listed on the Office of Inspector General provider database, the Excluded Parties List System posted to SAM.gov, or the Office of Foreign Asset Control exclusion list. Vendor shall conduct such searches at least annually throughout the Term, and promptly notify Company in writing if any Vendor Representative appears on any of the foregoing lists. Vendor agrees to furnish the professional resumes of Vendor Representatives to be assigned to Company projects upon request. Company shall have the right to interview all Vendor-proposed Vendor Representatives prior to start of the Services, and Company reserves the right to approve or request without cause the withdrawal or replacement of any Vendor Representatives working under this Agreement. Before performing any Services (or receiving Company's Confidential Information, including Company Data) all Vendor Representatives must agree to complete confidentiality compliance training and undergo a criminal background check, in accordance with industry standards.

**2.3. Acceptance.** Vendor shall notify Company as soon as each Service, including any Software Service or Work Product is completed or available for use. If not otherwise specified in the applicable Task Order or Service Order, Company shall have thirty (30) days after receipt of Vendor's notice to test and Accept or reject the Service. If Company rejects the Service, then Company shall reasonably detail the deficiencies so that Vendor is able to understand and correct the claimed deficiencies. Vendor shall re-perform the applicable Service or correct the deficiencies within ten (10) days of Company's rejection notice at no additional charge. This process shall be repeated until all Services have been Accepted; provided that Company shall have the right at any time if Vendor has failed after two (2) attempts to re-perform or correct the Service to: (a) issue a final rejection notice, in which case (i) Company may terminate the applicable Services, Task Order, Service Order, or this Agreement, and (ii) Vendor shall refund all amounts previously paid to Vendor by Company with respect to the rejected Services (and, if the Task Order, Service Order, or Agreement is terminated, any other prepaid amounts); or (b) Accept the Service as nonconforming subject to an equitable reduction in price agreed upon by the Parties, considering the effect of such non-conformance on the overall value of the Service to Company.

**2.4. Service Levels.** Vendor shall provide the Software Services in accordance with the SLAs. Credits for failure to comply with the SLAs shall be as set forth in **Exhibit C**.

**2.5. Updates.** Vendor shall provide Updates at no additional charge to Company. Vendor shall provide Company with notice prior to implementing any Update, and Vendor shall not make any Update that decreases the features, security, and/or functions of the Software Services.

**2.6. Support Services.** As part of the Software Services, Vendor shall provide Support Services to Company, its Affiliates, and Authorized Users.

### **3. Term; Termination.**

**3.1. Term.** This Agreement commences on the Effective Date and continues for one (1) year from the Effective Date, unless earlier terminated in accordance with the terms of this Agreement (“**Initial Term**”). The Parties may mutually agree in writing to renew this Agreement for subsequent one-year renewal terms (each agreed-upon renewal term, a “**Renewal Term**”). “**Term**” means the Initial Term together with all Renewal Term(s). The term of each Task Order and Service Order shall be specified in such Task Order or Service Order and Task Orders and Service Orders executed before the end of the Term shall survive termination of this Agreement, unless earlier terminated in accordance with the terms of this Agreement (in which case the terms of this Agreement shall survive throughout the term of such Task Orders and Service Orders, solely for purposes of applying to such Task Orders and Service Orders).

**3.2. Termination.** Company may terminate this Agreement or any Task Order or Service Order for convenience at any time on thirty (30) days’ written notice to Vendor. Either Party may terminate this Agreement upon written notice if the other Party materially breaches this Agreement and fails to correct the breach (as reasonably determined by the non-breaching Party) within ten (10) days following written notice specifying the breach. Either Party may terminate this Agreement immediately upon written notice if the other Party files a petition for bankruptcy or reorganization, or such petition is filed against it, or if it becomes insolvent or makes an assignment for the benefit of creditors.

**3.3. Effect of Termination.** In the event that this Agreement or any Task Order or Service Order is terminated before the end of the Term:

- 3.3.1. If payment has been made in excess of Services completed or provided and Accepted under a terminating Task Order or Service Order, including but not limited to any advance deposits paid by Company to Vendor, then Vendor shall, within thirty (30) days of termination, refund to Company any amounts not earned through the date of termination;
- 3.3.2. If Services have been rendered and Accepted without payment under a terminating Task Order or Service Order, and termination occurs for reasons other than Vendor’s breach, then Company shall, in accordance with Section 4 (Payment for Services), pay Vendor for all such Services completed through the date of termination;
- 3.3.3. Vendor shall transfer to Company any Work Product or other material developed pursuant to this Agreement, including, but not limited to, working papers, narrative description, reports, data, etc.; and
- 3.3.4. Vendor shall immediately pay to Company in the form of a check any unpaid service credits owed pursuant to **Exhibit C**.

**3.4. Confidential Information and Company Data.** Upon termination or expiration of this Agreement, or otherwise upon Company’s request, Vendor and Vendor Representatives shall immediately cease to use all Company’s Confidential Information (including any Company Data) and shall promptly return or delete (at Company’s option, and via secure method) all of Company’s Confidential Information in its or any Vendor Representative’s possession, certifying in writing that all Company Confidential

Information has been returned or destroyed, as applicable. Notwithstanding the foregoing, if returning or destroying the Company's Confidential Information is not feasible, the protections of this Agreement shall extend to any of Company's Confidential Information that is retained by the Vendor or its Representatives, and Vendor shall limit further uses of such Company Confidential Information solely to those purposes that make the return or destruction of the Company Confidential Information infeasible.

**3.5. Termination Assistance.** After termination of this Agreement or any portion of the Software Services by either Party for any reason, upon Company's request and for ninety (90) days after such termination (or such longer period as may be agreed to in writing by the Parties): (a) Company may, at no additional charge, access the Software Services for the purposes of extracting any Company Data from the Software; and (b) Vendor shall assist Company and its third party service providers, if applicable, in transferring any Company Data to Company or such other service provider, together with any other reasonably requested services ("**Termination Assistance Services**"). The Termination Assistance Services shall be set forth in a Task Order. If the termination is for Vendor's uncured breach, all Termination Assistance Services shall be provided by Vendor free of charge; in all other cases, Company shall pay those hourly rates of Vendor set forth in the Service Order or Task Order (as applicable).

**4. Payment for Services.** Company agrees to pay Vendor all undisputed fees for Services performed or provided and Accepted under a Task Order or Service Order, at the rates set forth in such Task Order or Service Order ("**Fees**") and in accordance with the applicable Payment Schedule. Company may dispute any portion of an invoice in good faith by notifying Vendor in reasonable detail as to the basis for such dispute at any time prior to the due date of payment, and the Parties shall use commercially reasonable efforts to promptly resolve such dispute. If the Parties mutually determine that any portion of the disputed Fees are actually due to Vendor, Company shall pay Vendor such agreed upon Fees within sixty (60) days following the resolution of such dispute. For clarity, Vendor shall continue to perform all Services in accordance with this Agreement during any such dispute.

## **5. Invoicing.**

**5.1. Fees; Payment.** Vendor shall invoice Company in accordance with the Payment Schedule. Each invoice shall reflect charges for the period being billed. Terms of payment are net sixty (60) days. Invoices shall be submitted to the individual named in the Payment Schedule.

**5.2. Taxes.** The Fees set forth in a Task Order or Service Order do not include any amounts for sales, use or other similar taxes. If any such taxes are found at any time to be required, Vendor shall add such taxes to the amounts payable pursuant to the Agreement, and such taxes shall be set forth in the applicable invoice in order for Company to pay such taxes to Vendor. Notwithstanding the foregoing, Vendor shall be responsible for all taxes based on Vendor's income or business operations generally (e.g., employee withholdings, unemployment, social security, workers' compensation, etc.).

**5.3. Expenses.** Each invoice shall include any travel, living and related expenses incurred during the applicable invoicing period that were pre-approved in writing for payment by Company (both as to type and dollar amount). Concurrently with each applicable invoice, Vendor shall provide copies of receipts and other documentation reasonably evidencing its payment of such expenses. Any such expenses that are not invoiced to Company within sixty (60) days of accrual shall be payable by Vendor and not reimbursed by Company. Vendor shall estimate the type and dollar amount of all such expenses in each Task Order. In no event shall such expenses exceed ten percent (10%) of the Fee payable for Services under the applicable Task Order without prior, written consent from Company. All other costs and expenses incurred by Vendor in performing the Services shall be Vendor's sole responsibility.

**5.4. Records.** During the Term and for a period of two (2) years thereafter, Vendor shall maintain accurate and complete books and records regarding the Services (including Work Product), Fees, and expenses. Company or its designated third-party auditor may inspect, copy, verify, and audit such books and records during normal business hours, in a manner that does not unreasonably interrupt Vendor's normal business activities, at any time upon not less than thirty (30) days' prior notice to Vendor. Vendor shall reimburse Company for any reasonable expenses incurred by Company in connection with any audit that results in the correction of a billing error by Vendor that resulted in an overcharge to Company of two percent (2%) or more. In the event that the audit reveals an overpayment by Company, Vendor shall promptly (but in no event later than sixty (60) days after the audit) remit to Company the amount of such overpayment.

## **6. Representations and Warranties; Indemnification.**

### **6.1. Vendor Representations and Warranties.** Vendor represents and warrants that:

- 6.1.1. Vendor has the right to enter into this Agreement and to provide the Services described herein and in the Task Orders and the Service Orders and grant all rights granted herein;
- 6.1.2. Vendor and its Representatives shall comply with all Applicable Laws, including in the provision of Services pursuant to this Agreement, and shall ensure all Services and Company's (and its Affiliates' and Representatives') use and receipt thereof, as contemplated in this Agreement, comply with Applicable Laws;
- 6.1.3. the Services shall comply with all Acceptance Criteria;
- 6.1.4. the Services shall not contain any virus, trap door, worm or any other device that is injurious or damaging to any hardware or software or systems;
- 6.1.5. the Services shall be performed in a timely, professional and workmanlike manner, in accordance with applicable industry standards;
- 6.1.6. Vendor owns or has acquired rights to all Intellectual Property and other proprietary interests necessary to provide the Services (including the Software Services and Work Product), and convey the Intellectual Property Rights, licenses, and access rights set forth in this Agreement, and shall provide the Services to Company free of all liens, claims, encumbrances, and other restrictions (except any restrictions specifically set forth herein); and
- 6.1.7. there are no threatened, pending, or actual suits, actions, proceedings or causes alleging that Vendor or its Affiliates or Subcontractors has infringed any third party's intellectual property, privacy, or proprietary rights.

**6.2. Vendor's Failure to Meet the Acceptance Criteria.** In addition to any other remedies available to Company, Vendor, at its sole and exclusive expense, shall cure any failure to meet the Acceptance Criteria without undue delay, and if Vendor fails to cure such failure to Company's satisfaction within a reasonable time, then Company may, in addition to any other remedies available to Company, terminate the Agreement and/or applicable Task Order or Service Order, in accordance with **Section 3**, and Vendor shall refund to Company any pre-paid, unused fees for the applicable Services, as well as any other fees paid for the applicable Services.



**6.3. Indemnification.** Vendor agrees to hold harmless, indemnify, and defend Company and its Representatives and Affiliates (collectively “**Company Indemnitees**”) against any and all damages, liabilities, penalties, costs and expenses, including reasonable attorneys’ fees, arising out of (a) third party claims, actions, disputes, demands, orders, suits, or other proceedings (collectively “**Claims**”) arising from or related to (i) death, bodily injury, or property damage caused by Vendor’s or Vendor’s Representative’s acts, or omissions; (ii) a breach of Vendor’s representations, warranties, or obligations under this Agreement; (iii) any negligent or willful act or omission by Vendor or its Representatives in the performance of the Services; (iv) the placement of any Vendor Representative with Company to perform the Services; (v) any claim that the Services (including the Software Services and all Work Product), or use by Company thereof, infringe or misappropriate any Intellectual Property Rights or other proprietary right (including right of publicity or privacy) of any third party or violate any Applicable Law; (b) any breach of Vendor’s privacy, security, or confidentiality obligations hereunder, including but not limited to breach of the Privacy Exhibit or Security Exhibit; and (c) a Security Incident (including reimbursement of any out-of-pocket costs related to any investigation and remediation of such Security Incident such as forensics, notifications, communications, and credit reporting services).

**6.4. Vendor’s Mitigation.** In the event of a third-party allegation that the Services (including the Software Services and Work Product) infringe or otherwise violate such third party’s Intellectual Property Rights or other proprietary right, Vendor, at its option and sole expense, in addition to fulfilling the indemnification obligation set forth above, shall (a) modify the infringing portion of the Services so as to make it non-infringing and non-violating, while maintaining equivalent functionality that is reasonably satisfactory to Company; (b) replace the infringing portion of the Services with a non-infringing and non-violating solution of equivalent functionality reasonably satisfactory to Company; (c) obtain the right for Company to continue using the infringing or violating portion of Services; or (d) if Vendor cannot provide Company with option (a), (b), or (c) above within a reasonable timeframe, refund to Company any fees that Company has pre-paid for the affected Services and any other fees that Company has paid for such Services.

**6.5. Indemnification Procedures.** After receipt of any written claim or notice of a Claim giving rise to a claim for indemnification, Company shall provide Vendor notice of the Claim (provided that failure to so notify Vendor shall not relieve Vendor of its indemnification obligations, except to the extent that the failure is prejudicial to Vendor’s ability to defend such claim or action). Company shall, at Vendor’s expense, provide reasonable cooperation and assistance in the defense or settlement of the Claim, and Vendor shall have control over the defense and settlement of the same (provided that Company shall be entitled to participate in the defense and settlement of the Claim and to employ counsel at its own expense to assist in the handling of the Claim, and provided further that Company does not invoke its right to defend pursuant to **Section 6.6**. Vendor shall not agree to any settlement or compromise affecting the financial or legal obligation of a Company Indemnatee (including a settlement or compromise that (a) results in any admission of guilt on the part of a Company Indemnatee; (b) imposes any obligation or liability on a Company Indemnatee; or (c) has a judicially binding effect on any Company Indemnatee) without the Company’s prior written consent.

**6.6. Company’s Right to Defend.** If Company reasonably determines that Vendor has failed to diligently assume and maintain a prompt and vigorous defense of any Claim, Company may, at its own expense, option, and discretion, assume sole control of the defense of any Claim and all related settlement negotiations with counsel of its own choosing and without waiving any other rights to indemnification. If Company provides evidence to support its right to defend pursuant to this **Section 6.6**, Vendor shall pay all costs and expenses (including reasonable attorneys’ fees) incurred by Company in the defense.

## **7. Limitation of Liability.**

**7.1. LIMITATIONS.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY LOSS OF INCOME OR PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF, OR HAD REASON TO KNOW OF, THE POSSIBILITY OF SUCH DAMAGES.

**7.2. EXCEPTIONS.** THE LIMITATIONS IN SECTION 7.1 (LIMITATIONS) DO NOT APPLY TO AND SHALL NOT LIMIT ANY LIABILITY WITH RESPECT TO: (i) VENDOR'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT; (ii) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY IN THIS AGREEMENT; (iii) VENDOR'S PRIVACY AND SECURITY OBLIGATIONS OR BREACH THEREOF OR VIOLATION OF APPLICABLE LAWS; (iv) A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD; OR (v) A PARTY'S VIOLATION OF THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY.

## **8. Rights and Title.**

**8.1. Vendor's Proprietary Rights; Other Products.** Vendor Reserved IP, and (subject to any Company Data) any derivative works thereof and Intellectual Property Rights therein, are proprietary to Vendor and shall remain Vendor's exclusive property. Except for the Software Services and Documentation, Vendor shall not use any Vendor Reserved IP or Other Products in connection with providing the Services or developing or providing Work Product without Company's prior, written approval or as specifically set forth in a Task Order. If Vendor is required to license or otherwise obtain the right to use or own any Other Products or other Intellectual Property Rights in connection with providing the Services or Work Product, or to comply with the terms of this Agreement or a Task Order, then Vendor shall obtain Company's prior, written approval of the financial, contractual, licensing and other terms relating to such use or ownership. Failure to obtain Company's prior review, consent, and written approval shall be a material breach of this Agreement and relieve Company from any obligation to make payment with respect to such items. Such review, consent or approval from Company shall in no way diminish any of Vendor's obligations under this Agreement, including its warranties and indemnification obligations. In addition, and notwithstanding anything to the contrary in a Task Order, Company reserves the right to negotiate directly with other vendors and third parties to obtain such rights. To the extent that any Vendor Reserved IP or Other Products are included in the Services or Work Product, and Company has not agreed to a separate license therefor, then Vendor shall grant to, or obtain the necessary rights to grant to, Company and its Affiliates, and Vendor does hereby grant to Company and its Affiliates, a nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable, worldwide license, with rights to sublicense to other parties, to reproduce, manufacture, modify, distribute, use, display, perform, import, create derivative works from, communicate to the public, and otherwise exploit the Vendor Reserved IP and Other Products solely in connection with Company's and its Affiliates' use of the Services or Work Product without notice or payment to Vendor or any other person or entity.

**8.2. Work Product.** Except for Vendor Reserved IP and Other Products incorporated therein, Company is and shall be the sole and exclusive owner of all right, title, and interest in and to all Services and Work Product (including any deliverables). To the fullest extent not prohibited by Applicable Laws, any and all copyrightable aspects of the Services and Work Product shall be considered "works made for hire" (as such term is used in Section 101 of the U.S. Copyright Act, as amended). To the extent any Services or Work Product are not "works made for hire", Vendor hereby assigns (and shall cause its Representatives to assign) to Company all right, title, and interest that Vendor and such Representatives may now or hereafter possess in or to the Services and Work Product, including all Intellectual Property Rights. Vendor hereby waives any and all claims that Vendor may now or hereafter have in any jurisdiction

to “moral rights” or other similar concepts with respect to the Services or Work Product, Vendor shall take such actions and execute such instruments as Company reasonably may request to evidence, establish, maintain or protect Company’s rights in and ownership of the Services and Work Product. Vendor shall obtain a written agreement from each individual or entity that is engaged for or on behalf of Vendor to perform any portion of the Services prior to the commencement of such performance as shall be necessary to ensure that Company shall have the ownership rights in the Services and Work Product as provided for in this Section.

**8.3. Company Data.** Notwithstanding any provision of this Agreement to the contrary, Vendor acknowledges that Company is and shall be the sole and exclusive owner of all right, title, and interest in and to all Company Data and any derivative works thereof and Intellectual Property Rights therein. Vendor shall not claim or assert title in or to any Company Data, or attempt to transfer any rights or title to any Company Data to any other third party. Vendor may access, use or disclose the Company Data solely as necessary to provide the Services to Company and its Affiliates pursuant to the terms of this Agreement, and for no other purpose. For the avoidance of doubt, Vendor shall not use any Company Data for aggregation or benchmarking purposes. Vendor is prohibited to use, retain or disclose the Company Data for any purpose other than for performing the Services for Company or complying with Applicable Laws. Vendor certifies that it understands these limitations and other restrictions contained in this **Section 8.3** and shall comply with them.

**8.4. No Implied Rights.** Except as expressly provided in this Agreement, the execution or performance of this Agreement does not provide either Party with any interest in, or right or license to use, any Intellectual Property Rights, logo, brand features, color combination, insignia, or device owned or used by the other Party.

**9. Equal Opportunity.** Vendor shall not discriminate against any employee, applicant for employment, agent or Subcontractors, or in the selection thereof, because of race, religion, color, national origin, marital status, sex, disability, sexual orientation or age. Vendor shall take such actions as are reasonably necessary to ensure that employees, applicants for employment, agents or Subcontractors, are Treated without regard to their race, religion, color, national origin, marital status, sex, sexual orientation or age.

## **10. Confidentiality.**

**10.1. Ownership.** As between the Disclosing Party and the Receiving Party, the Disclosing Party shall solely and exclusively own the Confidential Information that it discloses under this Agreement. The Receiving Party shall only use Confidential Information disclosed by the Disclosing Party as is necessary in connection with performing its obligations under this Agreement and the Task Orders and Service Orders. This Agreement and the existence of this Agreement or any Task Order and Service Order shall be considered the Confidential Information of both Parties.

**10.2. Protection and Use.** The Receiving Party shall hold the Disclosing Party’s Confidential Information in strict confidence, using the same safeguards that it uses to protect its own Confidential Information of a similar character, which in all cases shall be no less than reasonable safeguards and accepted industry practices. The Receiving Party shall not, without the prior consent of the Disclosing Party, disclose or allow the disclosure of any Confidential Information to any other person or entity or use any such Confidential Information for its own benefit (except for performing its obligations under this Agreement or a Task Order or Service Order) or for the benefit of any third party. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the Receiving Party’s Representatives and to third parties, in each case who have a need to know such information in connection with this Agreement; provided that the Receiving Party has imposed confidentiality obligations on such

Representatives and third parties, including requiring such Representatives and third parties to enter into a written agreement to protect all Confidential Information in a manner consistent with the requirements of this Agreement (including during the term of their employment or engagement and thereafter). The Receiving Party shall be and remain liable for any disclosure made by the Receiving Party to any of its Representatives or to any other third party, and for any such Representative's or third party's acts and omissions with respect to the Confidential Information.

**10.3. Disclosure Required by Law.** In the event the Receiving Party is required by Applicable Law or a valid and effective subpoena or order issued by either a court of competent jurisdiction or a governmental body to disclose any of the Disclosing Party's Confidential Information, the Receiving Party shall promptly notify the Disclosing Party in writing of the existence, terms and circumstances surrounding such required disclosure so that the Disclosing Party may seek a protective order or other appropriate relief from the proper authority. The Receiving Party shall cooperate with the Disclosing Party in seeking such order or other relief. If the Receiving Party is nonetheless required to disclose the Disclosing Party's Confidential Information, it shall furnish only that portion of the Confidential Information that is legally required and shall exercise all reasonable efforts to obtain reliable assurances that such Confidential Information shall be treated confidentially to the extent possible.

**10.4. Trade Secrets.** Notwithstanding any other provision of this Agreement, Vendor shall not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (a) is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding. If Vendor files a lawsuit for retaliation by Company for reporting a suspected violation of law, Vendor may disclose Company's trade secrets to Vendor's attorney and use the trade secret information in the court proceeding if Vendor: (c) files any document containing the trade secret under seal; and (d) does not disclose the trade secret, except pursuant to court order.

**10.5. Personal Information.** If Vendor or any Vendor Representative will have access to, or otherwise Process, any Personal Information in connection with the Services or this Agreement, Vendor shall comply with the terms of the Privacy Exhibit posted at <https://nytco.com/PrivacyandDataProtection/> using the following password: NYT!dpa#@ccss (the "Privacy Exhibit"). This exhibit shall govern the Processing of Personal Information by Vendor on behalf of Company. The scope of the Vendor's and its approved Affiliates' or subcontractors' Processing or transfer of Personal Information is set forth in Exhibit E attached hereto. Company may make reasonable amendments to Exhibit E by written notice to Vendor from time to time as Company reasonably considers necessary to meet those requirements or as otherwise mutually agreed by the parties.

**10.6. Security Requirements.** Vendor shall at all times comply with the measures set forth in the Security Exhibit posted at <https://nytco-assets.nytimes.com/2021/09/securityexhibitforcontract.pdf> using the following password NYT!dpa#@ccss.

**10.7. Remedies for Breach.** Each Party acknowledges that the breach of this **Section 10** will likely result in irreparable injury to the other Party, for which money damages alone would be an inadequate remedy and that, in addition to its other remedies, the non-breaching Party shall be entitled to equitable relief, including specific performance and an injunction to restrain any threatened or continued breach of this Agreement in any court of competent jurisdiction. No bond or other security shall be required in obtaining any equitable relief.

## **11. Independent Contractor.**

**11.1.** Vendor, in performance of its obligations under this Agreement, is acting as an independent contractor, and the personnel supplied to Company are engaged solely by Vendor and not by Company. Vendor Representatives are not employees or agents of Company, and neither Vendor nor its employees or agents shall be subject to the direction, control or supervision of Company with respect to that time spent or procedures followed in the performance of the Services hereunder, and has no right or power, express or implied to do any act or thing that would bind Company. Neither Vendor nor its Vendor Representatives are authorized to (and they shall not) make any agreements or representations on Company's behalf.

**11.2.** Vendor acknowledges that Vendor is providing Services under this Agreement as an independent contractor and as such warrants that any individuals supplied by Vendor to provide Services shall not be eligible for any Company employee benefits including, but not limited to, medical coverage, life and disability insurance, retirement benefits or stock purchase program, nor be eligible for any fringe benefits nor be entitled to any rights that would otherwise accord to Company's employees under the law, and Vendor shall defend and indemnify Company from any claims made in connection therewith.

**11.3.** Vendor shall provide for all necessary liability insurance for the period of service hereunder for damages caused (or contributed to) by Vendor, provide all medical coverage for its personnel, collect, pay and be responsible for all payroll taxes, including, but not limited to being solely and directly responsible for all costs of self-employment, including federal, state and local income tax payments for Vendor and any employees Vendor deems necessary. Vendor also shall be directly responsible for all returns and reports required by any governmental body, including charges or premiums for F.I.C.A., workers compensation insurance, unemployment insurance and other taxes (including penalties and interest).

**11.4.** Vendor warrants that any personnel Vendor supplies to Company in connection with performing its obligations under this Agreement are employees of Vendor and not of Company, and that Vendor is fully responsible for and shall pay any and all payments, including, but not limited to any and all taxes, withholdings and insurance premiums required by law, regulation or employment agreement, in connection with such personnel; and that upon request, Vendor shall provide proof, to Company's satisfaction, of such personnel's employment status, and of Vendor's fulfillment of its obligations regarding such payments. Vendor shall contractually require its Vendor Representatives who are not Vendor's personnel to comply with this **Section 11**. Vendor agrees to defend and indemnify Company in connection with any and all claims against Company including but not limited to, any claims regarding or relating to any claim of employment and/or the status and/or relationship of such personnel to Company.

**12. Subcontracting.** Upon the prior, written consent of Company, Vendor may use the services of Subcontractors in the performance of Services, provided that (a) Vendor shall ensure each Subcontractor complies with all relevant terms of this Agreement applicable to Vendor, (b) prior to rendering any Services, the Subcontractor must agree in writing to perform those Services in a manner consistent with the terms and conditions of this Agreement; (c) Vendor shall remain liable for (i) any and all performance required hereunder, and (ii) the acts and omissions of each Subcontractor to the same extent as if such acts or omissions were by Vendor; and (d) Vendor shall only use Subcontractors who are qualified to perform the Services and shall identify in writing the Subcontractor performing such Services and the specific Services to be performed by such Subcontractor. Subcontractor may not be located or perform Services outside of the United States of America without Company's express prior written consent. At Company's request, Vendor shall provide Company with a copy of Vendor's agreement with any such Subcontractor. Such

copy may be redacted to eliminate any applicable financial information, and Company shall treat such agreement as Vendor's Confidential Information.

**13. Governing Law.** This Agreement has been made in and shall be construed and enforced in accordance with the laws of the State of New York applicable to agreements executed and wholly to be performed therein. Any action to enforce this Agreement shall be brought in the federal or state courts located in the City of New York, and each Party (a) submits to the exclusive jurisdiction of these courts; (b) agrees not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum; and (c) waives any objection to venue in such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**14. Policy.** Vendor shall cause Vendor Representatives to observe the working hours, working rules, security regulations and holiday schedules of Company's premises and the Policies. Vendor agrees to perform its Services in accordance with these Policies. All Policies shall be considered the Confidential Information of Company.

**15. Supremacy of this Agreement.** The provisions, terms and conditions of this Agreement, including the Service Order and any Task Orders, represent the entire Agreement between the Parties and supersede and cancel any prior or contemporaneous written agreement or understanding not incorporated herein. This Agreement or any Task Orders or Service Orders may not be modified or extended except by a written agreement signed by an authorized representative of each Party. In the event that inconsistencies exist between this Agreement and any Task Order or Service Order, the terms of this Agreement shall prevail, except to the extent a Task Order or Service Order specifically references the section of this Agreement which such Task Order or Service Order intends to modify or amend (and any such modification or amendment in a Task Order or Service Order shall apply solely for purposes of such Task Order or Service Order). In the event that inconsistencies exist between the documents that make up this Agreement (including inconsistencies between any Exhibits), then the following order of precedence shall apply: (a) Privacy and Data Protection Exhibit, referenced above, shall prevail over this Software Services Agreement and any other Exhibits with respect to Personal Information, and (b) the Security Exhibit, referenced above, shall prevail over this Software Services Agreement.

**16. Right of Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned by either Party hereto without the consent of the other; provided, however, that each Party shall have the right to assign this Agreement without the other Party's consent in connection with the purchase or sale of its business (and in the case of Vendor, Vendor shall provide Company with reasonable prior notice). This Agreement shall inure to the benefit of and be binding upon the Parties and their representative successors and assigns. Nothing shall prevent the use by or for sublicense to, or assignment, in whole or in part, of this Agreement to Company's parent company or to its (or Company's) subsidiaries or other Affiliates.

**17. Interpretation; Counterparts; Severability.** Unless otherwise specifically noted, the word "including" and its correlative terms means inclusion without limitation. This Agreement may be executed in counterparts. Exact copies of original signatures, or any electronic signature or mark intended as a signature, shall have the same effect as originals. If any provision of this Agreement is held by a governmental authority to be unenforceable, unreasonable, or overbroad, then (a) the Parties desire that such governmental authority enforce such provision to the maximum extent it is deemed to be reasonable and not overbroad; (b) the Parties desire that such governmental authority modify such provision so that it

is enforceable as nearly as possible to the intent of the original provision; and (c) the remainder of this Agreement shall be unaffected and shall continue in full force.

**18. No Waiver.** No failure, delay, or omission by a Party to exercise any right, remedy or power it has under this Agreement shall impair, or be construed as a waiver of, such right, remedy, or power. A waiver by a Party of any breach of covenant shall not be construed to be a waiver of any succeeding breach of such covenant or a breach of any other covenant. Any valid waivers must be in writing and signed by an authorized representative of the waiving Party.

**19. Insurance.** During the Term and for three (3) years thereafter, Vendor shall purchase and maintain insurance of a form and with companies with an A.M. Best Rating of at least A- VII and who are authorized to do business in any state where Services are to be provided. Unless otherwise stated the required insurance shall be maintained at all times during the course of this Agreement. All policy forms must provide coverage at least as broad as the current form promulgated by the Insurance Services Office. If no such form is available, the policy is subject to approval by Company. In the event of a breach of the insurance procurement obligations by Vendor, it must pay for Company's attorney's fees, expenses and liability as a result of any claim or lawsuit. Vendor shall provide and maintain in effect the following types and minimum amounts of insurance:

**19.1.** Worker's Compensation Insurance, including Employer's Liability Insurance in the limit of not less than \$100,000 per person per accident, in compliance with all state statutory requirements, with a minimum of \$50,000 for any states or other locations requiring less than \$50,000.

**19.2.** Commercial General Liability Insurance ("CGL"), including contractual liability, insuring the indemnity agreement set forth in this Agreement, written on an occurrence basis with limits of \$1,000,000 per occurrence and \$5,000,000 aggregate utilizing standard unmodified coverage forms, applicable to the services contemplated under this Agreement. Company shall receive additional insured status under the CGL policy and this policy must also provide for a waiver of subrogation of the carrier's rights in favor of Company.

**19.3.** Errors & Omissions / Technology Professional Liability: Vendor shall maintain errors and omissions, or equivalent professional liability coverage, covering the Services to be performed in connection with this Agreement. The policy shall expressly provide, but not be limited to, coverage for the following perils: (i) unauthorized use/access of a computer system or database (such as Vendor's Computer Environment); (ii) defense of any regulatory action involving a breach of privacy or similar rights; (iii) failure to protect from disclosure, information (including Company's Confidential Information) that is deemed confidential by law or agreement; (iv) notification and remedial action costs in the event of an actual or perceived Security Incident, whether or not required by statute; (v) damages arising out of erroneous acts, errors or omissions of any individual when acting under Vendor's supervision, direction, or control; and (vi) claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. Such policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations on a worldwide basis. The coverage shall respond on a claims-made basis and shall remain in effect for a period of three (3) years after completion of all Services under this Agreement. The coverage must provide minimum limits of \$5,000,000.00 per claim with a per project aggregate of no less than \$5,000,000.00 to respond to the subject matter of this Agreement. Company shall receive additional insured status under this policy and this policy must also provide for a waiver of

subrogation of the carrier's rights in favor of Company. If such insurance is cancelled, appropriate tail coverage shall be purchased by Vendor.

**19.4.** General conditions applying to all insurance coverage are that: 1) no policy shall contain a self-insured retention; 2) no policy shall contain a deductible in excess of \$25,000; 3) satisfaction of any/all deductibles shall be the sole responsibility of Vendor; and 4) for any claims related to this Agreement Vendor's insurance coverage shall be primary insurance coverage.

**19.5.** It is the responsibility of Vendor to secure evidence of the same coverage from any engaged Subcontractors or to ensure that Vendor's policies cover such Subcontractors. Shortly after the full execution of the Agreement, Vendor shall furnish certificates of insurance to the applicable Company business owner of this Agreement as evidence of the above policies. Such certificate(s) shall include a clause obligating the insurer(s) to give not less than thirty (30) days prior written notice of any material change in, cancellation of, or intent not to renew the insurance.

**20. Vendor Equipment.** Vendor shall bear the full and complete responsibility for risk of damage or loss of equipment, products, or money due to its negligence. Company shall not be liable for any equipment, materials, supplies, temporary structures, or other property owned or rented by Vendor (or its Representatives). Vendor and its Representatives assume such risks of property damage or loss, and waive all rights of recovery they may have against Company for damage to such items, and any policy of insurance covering the Vendor's or its Representatives' own tools, equipment, facilities, and other property against loss by physical damage or theft.

**21. Force Majeure.** Neither Party shall be liable for any delay in the performance or non-performance of its obligations solely to the extent such delay or non-performance is caused by a Force Majeure Event; provided, however, that such excuse from liability shall be effective only to the extent and for the duration of the Force Majeure Event, and provided further that the affected Party shall continue to use diligent, good faith efforts to avoid the effects of the Force Majeure Event and to perform its obligations. In the event a Force Majeure Event is affecting a Party, Company shall have the right to terminate this Agreement or any Task Order(s) or Service Order(s) (without penalty) by providing written notice to that effect and Company shall be released from its obligations under the Agreement or the Task Order(s) or Service Order(s) and shall not be obligated to make any further payments (and Vendor shall refund any advance payments) under this Agreement or the Task Order(s) or Service Order(s) (as applicable), all in accordance with **Section 3.3**.

**22. No Use of Company's Name.** Vendor agrees not to use Company's name in its publicity, advertising, mailings or any promotional activity and agrees not to indicate that its relationship with Company is an endorsement of Vendor, Vendor's Representatives, or any services or equipment, without prior written approval of Company.

**23. Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and shall be effective: (a) when personally delivered; (b) the next business day following deposit with a reputable courier service for overnight delivery; or (c) five (5) business days following deposit in the United States mail, first class postage prepaid, registered or certified. All notices shall be addressed as follows:

If to Company: ATTN: [REDACTED]  
The New York Times Company  
620 8th Avenue  
New York, NY 10018

With a copy to: ATTN: General Counsel at the same address.



If to Vendor: ATTN: [REDACTED]

**24. Survival.** The following provisions and exhibits shall survive expiration or termination of the Agreement: 1 (Definitions), 3 (Term; Termination), 5.4 (Records), 6 (Representations and Warranties; Indemnification), 7 (Limitation of Liability), 8 (Rights and Title), 10 (Confidentiality), 11 (Independent Contractor), 12 (Subcontracting), 13 (Governing Law), 15 (Supremacy of this Agreement), 16 (Right of Assignment), 17 (Interpretation; Counterparts; Severability), 18 (No Waiver), 19 (Insurance), 20 (Vendor Equipment), 22 (No Use of Company's Name), 23 (Notices), and 24 (Survival).

IN WITNESS WHEREOF the Parties hereto have signed this Agreement, effective as of the Effective Date written above.

**THE NEW YORK TIMES COMPANY**


**Spreadly, Inc.**

DocuSigned by:  
  
9D34B7982A714F0...  
Signature

Lisa Kamm  
Name

Senior Vice President, Product  
Title

12/22/2022  
Date

DocuSigned by:  
  
BE108849DB824F9...  
Signature

Nellie Vail  
Name

Chief Financial Officer  
Title

Chief Financial Officer  
Date

**EXHIBIT A**

**Form Service Order**

This service order (“**Service Order**”) shall be governed by the Software Services Agreement (“**Agreement**”) dated as of **[DATE]** by and between The New York Times Company (“**Company**”) and **[VENDOR]** (“**Vendor**”). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the Agreement.

**Software Services:** *Insert description*

**Service Order Term:** *Insert term of the service order, software subscription, etc.*

**Number of Users:** *Insert number of Authorized Users*

**Fees (fees are inclusive of all Software Services):** *Insert fee amount*

**Payment Schedule:** *Insert payment schedule*

**Invoicing:** Please contact Company’s business contact for details.

**Hourly Rates (applicable only to Termination Assistance Services agreed to in a Task Order):** *Insert Vendor’s rates*

This Service Order may be executed in counterparts. Exact copies of original signatures, or any electronic signature or mark intended as a signature, shall have the same effect as originals.

Agreed and accepted:

**The New York Times Company**

**[VENDOR]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT B****Form Task Order****Task Order No. [ ]**

This Task Order No. [ ] (“**Task Order**”) to the Software Services Agreement (“**Agreement**”) dated as of [DATE] by and between The New York Times Company (“**Company**”) and [VENDOR] (“**Vendor**”) is entered into and made effective as of [DATE] (“**Task Order Effective Date**”) and shall be governed by the terms and conditions set forth in the Agreement. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the Agreement.

Project Name: [NAME] (the “**Project**”)

1. Scope of Work: The following Professional Services shall be provided by Vendor to Company for the Project:

*[Provide scope, execution approach, assumption and dependencies, wherever applicable, quality assurances, requirements, and other components of the Project]*

2. Key Vendor Representatives:

2.1 The following are key Vendor Representatives who have been assigned to perform the Professional Services as of this Task Order Effective Date:

Name	Title	Phone Number	Email Address
* [ ]	[ ]	[ ]	[ ]
* [ ]	[ ]	[ ]	[ ]
* [ ]	[ ]	[ ]	[ ]

\*The individuals listed above are employees of Vendor, unless otherwise indicated.

2.2 The following roles are assigned to perform the Professional Services as of the Task Order Effective Date: *[Provide team structure, roles and responsibilities, wherever applicable]*

Name	Role	Duration	Rate
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

2.3 Location of Key Vendor Representatives: All Key Vendor Representatives shall be assigned to the Professional Services during the term of this Task Order, and, unless otherwise approved in advance by Company, shall work primarily at Vendor’s facilities, unless otherwise directed by Company or mutually agreed upon by the Parties.

The Professional Services shall be performed by Vendor Representatives at the location(s) set forth in the table below. For clarification purposes, Vendor must list the location(s) where the Vendor Representatives, if any, shall be physically located when performing the Professional Services – not just

Vendor's main office location or Company's office location. For example, if an assigned Vendor Representative is performing work from a home office, then that home office location must be listed below and indicated in the invoice when those Professional Services are billed to Company.

Owner / Operator & Type of Facility	Street Address	City, State, Country ZIP

Key Vendor Representatives may travel to Company's offices as often as [Number] per calendar month for meetings as requested and scheduled by Company.

2.4 Permitted Subcontractors: In accordance with the Agreement, Company hereby approves the following Subcontractors (other than the ones listed above in this Section 2), for purposes of performing the Professional Services, in accordance with the Agreement, including all Exhibits, as applicable: **[IF NOT USING SUBCONTRACTORS, INDICATE "NONE"]**

2.5 Company Project Manager: **[At a minimum, list name, title, phone number, and email]**

2.6 Time Keeping: If requested by Company, Vendor shall cause each of its personnel to enter time worked in connection with the Professional Services into Company's time collection system in accordance with Company's reasonable instructions.

3. Fee: In full consideration for the performance of Professional Services hereunder, and for any rights granted or relinquished by Vendor hereunder, Company shall pay to Vendor the following Fee, in accordance with the payment terms in the Agreement:

**[Provide the fee structure for the Services]**

4. Deliverables: Vendor shall provide the following deliverables created specifically for Company as part of the Project to Company:

**[NYT to provide acceptance criteria and/or acceptance test plan. If NYT would like different acceptance language, including a different acceptance timeline, than what is set forth in the SSA, please include that language here.]**

5. Schedule of Performance and/or Milestone Schedule: Vendor shall perform Professional Services in accordance with the following acceptance schedule and/or milestone schedule. The Parties agree that, upon Company's sole discretion and express prior written approval, all dates are subject to change.

**[The parties shall identify the acceptance schedule and/or /milestone chart (or attach as Annex 1 hereto)]**

6. Term: The term of this Task Order shall commence on the Task Order Effective Date and continue until [DATE], unless otherwise terminated as provided in the Agreement.

7. Reporting: At a minimum, Vendor hereby agrees to give weekly status reports to the Company Project Manager, or anyone else whom Company may designate. In addition, Vendor shall provide

Company with any other reports or information as the Company Project Manager shall deem necessary, in addition to any other reporting duties under the Agreement, to be delivered either pursuant to the Agreement or as the Company Project Manager prefers.

8. Other Terms: *The parties shall provide, if any*

This Task Order may be executed in counterparts. Exact copies of original signatures, or any electronic signature or mark intended as a signature, shall have the same effect as originals.

IN WITNESS WHEREOF the parties hereto have signed this Task Order, effective as of the Task Order Effective Date written above.

**The New York Times Company**

**VENDOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## **EXHIBIT C**

### **Service Level Agreement**

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the Agreement. Compliance with this Service Level Agreement is not an alternative to performance of the obligations set forth in the Agreement.

#### **1. Definitions.** The following definitions apply:

**“Available”** or **“Availability”** means the ability to access and use the Software Services to the full extent to which Company is entitled under this Agreement without defect or error.

**“Excused Downtime”** means where the Software Services are not Available due to Scheduled Maintenance.

**“Noncompliant”** or **“Noncompliance”** as such term is used herein, shall mean the occurrence of any one or more of the following with respect to any single reported problem: (a) Vendor’s Response Time with respect to a reported problem exceeds the Response Time set forth in the table contained in **Section 5 (a)** below (Response and Resolution Requirements); (b) Vendor fails to assign the appropriate support personnel to address the reported problem and/or fails to provide Company with an action plan detailing the process by which Vendor shall approach resolution of the reported problem; or (c) Vendor fails to Resolve and/or Restore the reported problem to Company’s reasonable satisfaction within the agreed upon time period.

**“Resolve”** means that the Software Services are made Available with a permanent solution. This may occur simultaneously with Restore, unless the Restore is by means of a workaround suitable only for temporary use and Company determines that a more suitable permanent solution can be provided.

**“Response Time”** means the time from which Company or any Authorized User places the call or email until Vendor responds to the same.

**“Restore”** means that the Software Services are made Available with a temporary solution.

**“Scheduled Maintenance”** means any scheduled outages or down-time for maintenance, upgrades, enhancements or changes to the Software Services.

**“Service Interruptions”** means that the Software Services are not Available.

#### **2. Support.**

(a) **Standard Support.** Vendor shall, at no additional cost, make available to Company, its Affiliates and Authorized Users support and training comparable to those that Vendor is offering to other customers, including live help, online self-help and/or on-site training for Authorized Users designed to assist Authorized Users with implementation and use of the Software Services.

(b) **Telephone Support Requirements.** Vendor shall make available to Company, its Affiliates and Authorized Users, qualified personnel knowledgeable in the Software Services in order to: (i) provide advice and counsel on the configuration and use of the Software Services, (ii) respond to Service Interruptions and error reporting, and (iii) troubleshoot, 24 hours a day, 7 days a week (excluding holidays recognized by Company) at telephone numbers designated by Vendor from time to time.

**3. Continuous Monitoring.** Vendor agrees to continuously monitor for status events on all servers and network devices including but not limited to network availability, process status, file system capacity and backup success. Additionally, Vendor agrees to implement a monitoring solution to ensure Availability that includes datacenter monitoring, point to point monitoring and Authorized User monitoring through automated scripts running at an interval of no less than hourly. If at any time Vendor fails or anticipates that it shall fail to perform its obligations in accordance with the Service Level Agreement, Vendor shall advise Company as soon as possible of such failure and of the steps that Vendor shall take to address such failure.

**4. Availability.** During the Term of the Agreement Vendor shall make the Software Services Available twenty-four (24) hours a day, seven (7) days a week, at least 99.99% of the time as measured on a monthly basis, excluding Excused Downtime. Availability is measured in accordance with the following formula:

$$a = \frac{[(b - c) - d] \times 100}{b - c}$$

“a” = the actual % of the Availability in such month; “b” = the total number of hours in such month;

“c” = the total number of Excused Downtime hours in such month; and

“d” = the total number of hours of Service Interruption in such month.

<b><u>Availability Percentage</u></b>	<b><u>Service Credit</u></b>
Below 99.99% but over 99.0%	25% of monthly fee
Below or equal to 99.0% but over 97.5%	50% of monthly fee
Below or equal to 97.5%	100% of monthly fee

(a) **Notifications of Scheduled Maintenance.** Vendor shall provide at least five (5) days’ notice of any Scheduled Maintenance. Scheduled Maintenance shall be performed during a maintenance window commencing at 3:00 AM Eastern time and ending at 5:00 AM Eastern time. All emergency outages shall be communicated to Company and each of its Authorized Users.

(b) **Service Level Remedies.** In the event Vendor fails to meet the required levels of Availability in any given calendar month, Company shall automatically receive a cash rebate equal to the corresponding percentage noted above (each, a “**Service Credit**”) to be paid within thirty (30) days. The Parties may mutually agree to apply such accrued Service Credits to a future purchase or amount owing, however, Company is under no obligation to do so. These Service Credits represent negotiated amounts on the basis of reduced performance of service levels and shall not be deemed or construed as a measure of damages. Any Service Credits shall be made without limitation of any of Company’s other rights and remedies pursuant to the Agreement. Company shall have the right to terminate the Agreement for Vendor’s material breach in the event of Service Credits for any two (2) months in a twelve (12) month period.

## **5. Service Interruption Response.**

(a) **Response and Resolution Requirements.** Upon being informed by Company or an Authorized User of a Service Interruption not attributable to Excused Downtime, Vendor shall Resolve and Restore such Service Interruption pursuant to the requirements and within the target turnaround time indicated for its priority level (as outlined in the table below) and provide periodic status reports to Company regarding the Service Interruption. Vendor shall use priority categories set forth below to provide a consistent classification of Service Interruptions, which allows for better communication with Company regarding the nature of the Service Interruption.

Priority	Description	Response Time	Resolve/ Restore
Critical	Highest priority. Used for Service Interruptions where the Authorized User is unable to access or use the Software Services or when significant and substantial adverse operational impact occurs preventing any useful work from being done. Vendor shall work on Service Interruption continually and diligently 24 hours a day, 7 days a week until the Service Interruption is Restored in a manner satisfactory to Company. Thereafter Vendor shall continue working diligently during normal business hours until the Software Services are Resolved.	15 minutes or less	Restore: within 5 hours  Resolve: within 25 days
Significant	Used for Service Interruptions where the Authorized User's production and use of the Software Services is severely impaired or degraded, preventing major functions from being performed. Vendor shall work continually and diligently during normal business hours until the Service Interruption is Restored in a manner satisfactory to Company. Thereafter Vendor shall continue working diligently during normal business hours until the Software Services are Resolved.	15 minutes or less	Restore: within 11 hours  Resolve: within 150 days
Other	Used for Service Interruptions where the Authorized User's production and use of a non-critical or non-essential function of the Software Services is disabled or impaired. Vendor shall work on Service Interruption using commercially reasonable efforts during normal business hours until the Service Interruption is Resolved in a manner satisfactory to Company.	45 minutes or less	Resolved: time period mutually acceptable to Vendor and Company

(b) **Remedies for Non-Compliance.** If, in any given month during the Term of the Agreement, Vendor is Noncompliant on one (1) occasion in connection with a reported problem of Critical Priority, or two (2) occasions in connection with a reported problem of Significant Priority, or three (3) or more occasions in connection with a reported problem of Other Priority, then Vendor, after receiving notification of Noncompliance by Company, shall immediately refund to Company in the form of a check, an amount equal to one hundred percent (100%) of fee paid by Company for that calendar month. In addition, Company may terminate the Agreement for Vendor's material breach if, in any given six (6) month period during the Term, Vendor is Noncompliant on four (4) or more occasions.

(c) **Updates.** Vendor shall provide, at no additional cost to Company, Updates to the Software Services. Other than in exceptional circumstances (for example, in an emergency response to a security threat), Vendor Updates shall occur during notified maintenance periods only.

**6. Reports.** Vendor shall give to Company monthly electronic or other written reports and updates of: (i) its service level performance, including without limitation, its response, resolution, restoration and Availability metrics as measured against the requirements herein; and (ii) any Service Credits to which



Company has become entitled (and, with respect to (i) and (ii), a reliable manner in which Company may audit or confirm the same).

## **Exhibit D**

### **Company's Employees and Non-Employees Responsibilities to Protect Information Policy**

#### **HOW TO PROTECT COMPANY INFORMATION: YOUR RESPONSIBILITIES**

Every employee and those with whom we do business and who are given access to Company Information are responsible for helping to protect its security and confidentiality. "Company Information" includes:

- Confidential company information, such as business plans and strategies, financial data, customer data, and sensitive, non-public information, that could be harmful to us or others if disclosed; and
- Personal information that can identify an individual or relates to an identifiable individual (e.g., contact information, IP address, government ID, payment card details, race, or sexual orientation).

#### **Basic Safeguards**

- Secure Company Information physically (if it's in paper form) and electronically (by using passwords/encryption).
- Protect any laptops, phones or other devices containing Company Information from theft, damage and misuse and unauthorized access or acquisition.
- Comply with Company requirements for remote access (e.g., setting up and using the designated VPN).
- Only collect, access, use, maintain, transport or disclose the *minimum* amount of Company Information necessary to perform your job or engagement.
- Only disclose personal information to individuals who are authorized to access it.
- Dispose of Company Information securely, in accordance with Company policy.
- Hold Company Information in strict confidence, both during and after your employment or engagement.

#### **Report Security Incidents**

If you suspect or become aware that an information security incident has or may have occurred, you must not engage in your own investigation or other activities, but immediately report such incident to the **Information Security team** by:

- Emailing **security@nytimes.com**; or
- Calling **Help Desk**.

An information security incident includes any incident—large or small—in which the security of Company Information, a Company information system, or a Company facility may have been compromised.

For example, an incident might involve a lost/stolen laptop or mobile device, missing papers, a misdirected email, a phishing email, a facility break-in, or a compromised website or mobile application.

To ensure efficient handling of the incident, please limit your initial report to a description of the facts as you understand them, and a representative of the Information Security team will promptly follow up to gather more information.

Non-compliance with this may result in disciplinary action up to and including termination for employees and termination of your engagement for non-employees.

**Exhibit E**

List of Parties.

Data exporter(s):

- Name: The New York Times Company, for itself and on behalf of its subsidiaries
- Address: 620 Eighth Avenue, New York, NY 10018, USA
- Contact person's name, position and contact details: [please complete with the name of NYT business owner of the relationship with Vendor]
- Activities relevant to the Personal Information Processed/transferred: [NYT please complete]
- Signature and date: as set forth in the Service Agreement.
- Role: Controller

Data importers(s):

- Name: [Vendor name] on behalf of itself and its authorized Affiliates which act as data importers to the data exporter(s).
- Address: [please complete]
- Contact person's name, position and contact details: [please complete with the name of business owner of the relationship with NYT on Vendor side]
- Name, position and contact details of data protection officer, if any, or person responsible for data protection: [Vendor please complete with the name and contact information of Vendor's DPO or the person responsible for data protection]
- Activities relevant to the Personal Information Processed/transferred: [Vendor please complete]
- Signature and date: as set forth in the Service Agreement.
- Role: Processor

Categories of Individuals whose Personal Information is Processed or transferred. [Parties please complete by indicating whether the Personal Information is of employees, consumers, visitors to digital properties, and/or other categories of individuals]

Categories of Personal Information. [Parties please complete by providing an exhaustive list of all Personal Information processed or transferred hereunder]

Types of Sensitive Information and the applied restrictions or safeguards. [Parties please complete by providing an exhaustive list of all Sensitive Information processed or transferred hereunder. Please also specify the restrictions or safeguards Vendor will implement, taking into consideration the nature of the data and the risks involved. For example, strict purpose limitation, access restrictions (including access only for staff having followed specialized training), keeping a record of access to the data, restrictions for onward transfers, and/or additional security measures.]

Frequency of the transfer: [Parties please complete either continuous or one-off basis].

Nature and Purpose of the transfer and processing, including with respect to any subprocessors. [Parties please complete by detailing the nature and purpose of the processing and/or transfer(s) of the Personal Information. A blanket statement like "to perform the Service Agreement" is insufficient. ]

Maximum data retention periods, if applicable: [Vendor please complete. If the duration of the processing cannot be determined at this time, include the criteria that will be used to determine that period.]