

Spreedly Partner GDPR Annex
Compliance with the EU General Data Protection Regulation
Esri Agreement No. 337168

Recitals:

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

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

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

1. For purposes of this Annex, “GDPR” means Regulation (EU) 2016/679, the General Data Protection Regulation, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities. Words and phrases in this Annex shall, to the greatest extent possible, have the meanings given to them in Article 4 of the GDPR. In particular:
 - (a) “Controller” has the meaning given to it in Article 4(7) of the GDPR: “means the natural 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 data.”
 - (b) “Personal Data” has the meaning given to it in Article 4(1) of the GDPR: “any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person,” but only to the extent such personal data pertains to residents of the European Economic Area (EEA) or are otherwise subject to the GDPR.
 - (c) “Personal Data Breach” has the meaning given to it in Article 4(12) of the GDPR: “[any] breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.”
 - (d) “Processing” has the meaning given to it in Article 4(2) of the GDPR: “any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.”
 - (e) “Subprocessor” means any processor as defined in Article 4(8) of the GDPR: “[any] natural or legal person, public authority, agency or other body which processes personal data” on behalf of the Processor (including any affiliate of the Processor).
 - (f) “Transfer” means to disclose or otherwise make Personal Data available to a third party (including to any affiliate or Subprocessor), either by physical movement of the Personal Data to such third party or by enabling access to the Personal Data by other means. Transfer also includes moving the Personal Data within a single party from an EU member State to a country not within the EU, or otherwise making such data accessible outside the EU.

2. In accordance with GDPR Article 28(1), Processor represents that it has implemented appropriate technical and organizational measures in such a manner that its Processing of Personal Data will meet the requirements of the GDPR and ensure the protection of the rights of the data subjects.
3. The Processor will maintain a current list of Subprocessors used throughout the service, including the Subprocessor's name and purpose of their processing. This list will be accessible via <http://www.spreadly.com/gdpr/subprocessors>. Controllers may receive notifications of new Subprocessors by emailing subprocessor@spreadly.com with the subject "Subscribe" and once subscribed in this manner that Controller will receive notification of new Subprocessors before those Subprocessors are authorized to process Personal Data on behalf of the Processor.

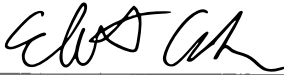
The controller may reasonably object to the Processor's use of new a Subprocessor by notifying the Processor in writing within ten business days of receiving the notice of intent to authorize via the mechanism specified in Section 3 above. This notice shall explain the reasonable grounds for objection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

4. In accordance with GDPR Article 28(3), the following terms are incorporated by reference into the Agreements:
 - (a) The Processor shall only process the Personal Data (i) as needed to provide the Services, (ii) in accordance with the specific instructions that it has received from the Controller, including with regard to any Transfers, and (iii) as needed to comply with law (in which case, the Processor shall provide prior notice to the Controller of such legal requirement, unless that law prohibits this disclosure);
 - (b) Processor shall ensure that persons authorized to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) Processor shall take all security measures required by GDPR Article 32, namely:
 - i. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Processor shall implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate: (a) the pseudonymisation and encryption of Personal Data; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.
 - ii. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data transmitted, stored or otherwise processed.
 - iii. The Processor shall take steps to ensure that any natural person acting under the authority of the Processor who has access to Personal Data does not process such Personal Data except upon instructions from the Controller, unless the Processor is required to do so by EEA Member State law.
 - (d) Taking into account the nature of the processing, Processor shall reasonably assist the Controller by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Controller's obligation to respond to requests for exercising the data subject's rights;

- (e) Taking into account the nature of processing and the information available to the Processor, Processor shall comply with (and shall reasonably assist the Controller to comply with) the obligations regarding Personal Data Breaches (as set forth in GDPR Articles 33 and 34), data protection impact assessments (as set forth in GDPR Article 35), and prior consultation (as set forth in GDPR Article 36);
 - (f) At the Controller's discretion, the Processor shall delete or return all the Personal Data to The Controller after the end of the provision of services relating to Processing, and delete existing copies unless applicable EEA member state law requires storage of the Personal Data;
 - (g) The Processor shall provide the Controller with all information necessary to demonstrate compliance with the obligations laid down in the GDPR, and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller; and
 - (h) The Processor shall immediately inform The Controller if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.
5. The Processor shall not Transfer any Personal Data (and shall not permit its Subprocessors to Transfer any Personal Data) without the prior consent of the Controller. The Processor understands that the Controller must approve and document that adequate protection for the Personal Data will exist after the Transfer, using contracts that provide sufficient guarantees (such as standard contractual clauses) unless another legal basis for the Transfer exists.
6. The Processor will promptly and thoroughly investigate all allegations of unauthorized access to, use or disclosure of the Personal Data. Processor will notify The Controller without undue delay in the event of any Personal Data Breach.
7. The Processor shall maintain all records required by Article 30(2) of the GDPR, and (to the extent they are applicable to Processor's activities for the Controller) Processor shall make them available to the Controller upon request.
8. The Processor will allow the Controller, or a third-party appointed by the Controller, to conduct audits (including inspections) to verify the Processor's compliance with the Agreements described in this document.
- (a) The Controller may request an audit by emailing success@spreadly.com.
 - (b) Following receipt of this request, the Processor and Controller will discuss and agree in advance on the reasonable scope, start date and duration of this audit, as well as any applicable security and confidentiality controls that may be required.
 - (c) The Processor may charge a fee (based on the Processor's reasonable costs) for any such audit. The Processor will provide the Controller with additional details of this fee including the basis of its calculation, in advance of the audit. Additionally, the Controller will be responsible for any fees charged by any third-party auditor appointed by the Controller for this audit.
9. In Accordance with GDPR Article 24(1), the following terms are incorporated by reference into the Agreements:
- Controller and Processor acknowledge that the Controller may engage a third-party payment gateway service provider and/or a third-party payment processing service provider to facilitate payment transactions in connection with the Agreements ("Third Party Gateway or Payment Service"). Any such Third Party Gateway or Payment Service engaged by the Controller shall not be deemed a Subprocessor of the Processor for purposes of this DPA. Accordingly, nothing in this DPA obligates the Processor to enter into a data protection agreement with such Third Party Gateway or Payment Service or to be responsible or liable for such Third Party Gateway or Payment Provider's acts or omissions.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this Spreadly Partner GDPR Annex as of the last date of signature below:

Spreadly, Inc.

By: 
Name: Eliot Cohen
Title: Compliance Manager
Date: 11/15/18

Customer

Environmental Systems Research Institute, Inc.

By: 
Name: Chris Johnson
Title: Manager, Commercial & Government Contracts
Date: 11/14/18