



SERVICE AGREEMENT

Part A: Parties

SPREEDLY

Name:	Spreedly, Inc.
Address:	300 Morris Street, Suite 400
City/State:	Durham, NC 27701

CUSTOMER

Name:	BMW Canada Inc.
Address:	50 Ultimate Drive
City/Country:	Richmond Hill, ON L4S 0C8

PRIMARY SPREEDLY CONTACT

Name:	Domingo Rogers
Title:	9194546987
Phone:	Customer Success Manager
Email:	domingo@spreedly.com

PRIMARY CUSTOMER CONTACT

Name:	Andrew Scott
Title:	Director, BMW Brand Management
Phone:	416-587-2728
Email:	Andrew.scott@bmwgroup.ca

SPREEDLY FINANCE CONTACT

Name:	Spreedly Accounting Department
Phone:	888-727-7750
Email:	accounting@spreedly.com

CUSTOMER BILLING CONTACT

Name:	Thomas Schertzer
Phone:	647-284-1023
Email:	Thomas.Schertzer@bmwgroup.ca

Part B: Terms

- This Service Agreement (including its exhibits, the "**Agreement**") is effective as of the last date of signing below ("**Effective Date**") and is between Spreedly, Inc. ("**Spreedly**"), and the customer listed above (the "**Customer**"). Except as otherwise provided herein, this Agreement is subject to the Spreedly Privacy Policy ("**Privacy Policy**"), which is incorporated herein by reference, and which can be viewed at <https://spreedly.com/>. To the extent that any term in the Privacy Policy conflicts with the terms of this Agreement or any inconsistency between the Privacy Policy and this Agreement exists, the terms of this Agreement shall prevail.
- Provision and Use of Service.
 - Spreedly hereby grants the Customer a worldwide, limited, non-exclusive, non-transferable license, without the right to sublicense, during the Term, to electronically access and use the Spreedly API (the "**Service**") to validate, tokenize and vault credit cards (and other payment types) and then process charges against those payment methods against one or more of the payment gateways that are integrated to the Service and/or third-party payment method receivers that Spreedly supports, and, where applicable, automatically update expired or lost credit cards. Spreedly is not a payment gateway or merchant account provider and Spreedly does not assume any direct or indirect liability or responsibility for Customer's agreements with payment gateways or merchant account providers supported on our Service. The foregoing license includes Customer's right to access and use Spreedly's website and any software programs, documentation, tools, internet-based services, components, and any updates (including software maintenance, service information, help content, bug fixes or maintenance releases) provided to Customer by Spreedly in connection with the Service.
 - Spreedly offers the Account Updater program as an optional offering within the Service. If Customer opts-in to the Account Updater program, Customer agrees to pay all applicable fees associated with the Account Updater program and to conform to the specific Account Updater program terms and requirements set forth in **Exhibit D**.

- c. Customer shall comply with all laws, directives, rules and regulations (collectively, "Laws") applicable to its use of the Service and Spreadly reserves the right to restrict access to the Service if it determines, in its sole discretion, that Customer is in violation of this requirement. Customer hereby grants Spreadly authorization to share information with law enforcement about Customer, Customer's transactions and Customer's Spreadly account, in each case if Spreadly reasonably suspects that Customer's use of the Service has been for an unauthorized, illegal, or criminal purpose.
- d. Spreadly reserves the right to not store or submit any transaction Customer submits that Spreadly believes is in violation of this Agreement or applicable Law, any other Spreadly agreement, or otherwise exposes Customer or other Spreadly users to harm, including but not limited to, fraud and other criminal acts.

3. Intellectual Property Rights.

- a. The Service is licensed and not sold. Spreadly reserves all rights not expressly granted to Customer in this Agreement. The Service is protected by copyright, trade secret and other intellectual property laws. Spreadly owns the title, copyright and other worldwide Intellectual Property Rights (as defined below) in the Service and all copies of the Service. This Agreement does not grant either Party any rights to the other Party's trademarks or service marks. For the purposes of this Agreement, "**Intellectual Property Rights**" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the Laws of any state, country, territory or other jurisdiction.
- b. Customer may submit comments or ideas about the Service, including without limitation, about how to improve the Service or other Spreadly products ("**Ideas**"). By submitting any Idea, Customer agrees that its disclosure is gratuitous, unsolicited and without restriction and will not place Spreadly under any fiduciary or other obligation, and that Spreadly is free to use the Idea without any additional compensation to Customer, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. Customer further acknowledges that, by acceptance of its submission, Spreadly does not waive any rights to use similar or related ideas previously known to Spreadly, or developed by its employees, or obtained from sources other than Customer.

4. Term and Termination.

- a. Unless otherwise terminated in accordance with this Agreement, the initial term of this Agreement shall be for a period of one (1) year from the Effective Date (the "**Initial Term**"). Thereafter, this Agreement may be renewed for successive one year periods upon written confirmation by the Customer (each, a "**Renewal Term**" and, together with the Initial Term, the "**Term**"). In order to ensure that Customer will not experience any interruption in the Services, in the event of non-renewal of this Agreement, Customer's account shall revert to a month-to-month subscription plan at the then current pricing and terms (currently found at <https://www.spreadly.com/pricing>) unless Customer provides Spreadly with at least thirty (30) days notice prior to the expiration of this Agreement.
- b. Either party may terminate this Agreement, by written notice to the other party effective as of the date specified in such notice, if the other party materially breaches this Agreement and such breach: (i) cannot be cured; or (ii) being capable of cure, remains uncured thirty (30) days after the breaching party receives written notice thereof. Without limiting the foregoing, in the event of a breach that gives rise to the right by Spreadly to terminate this Agreement, Spreadly may elect, as an interim measure, to suspend the Service until the breach is cured. Spreadly's exercise of its right to suspend performance shall be without prejudice to Spreadly's right to terminate this Agreement upon written notice to Customer.
- c. Upon termination of this Agreement, (i) Spreadly will immediately discontinue Customer's access to the Service; (ii) Customer shall complete all pending transactions and stop accepting new transactions through the Service; (iii) Customer will discontinue use of any Spreadly trademarks and immediately remove any Spreadly references and logos from Customer's website; and (iv) each party promptly returns to the other or, if so directed by the other party, destroys all originals and copies of any Confidential Information of the other party (including all notes, records and materials developed therefrom).

5. Representations.

- a. Each party to this Agreement represents and warrants to the other that: (i) it possesses the legal right and corporate power and authority to enter into this Agreement and to fulfill its obligations hereunder; and (ii) its execution, delivery and performance of this Agreement will not violate the terms or provision of any other agreement, contract or other instrument, whether oral or written, to which it is a party.
- b. Customer represents and warrant to Spreadly that: (i) it will not use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service; (ii) it will comply, at its own expense, with all Laws applicable to Customer, this Agreement, Customer's customer data and/or any card authorization, credit, ticket only, capture or settlement request, decline transaction, or other related transaction, completed or submitted under Customer's account, including without limitation: (A) the terms of service of the payment gateways, merchant service providers and/or API endpoints Customer connects with on the Service; (B) the operating rules, bylaws, schedules, supplements and addenda, manuals, instructions, releases, specifications and other requirements, as may be amended from time to time, of any of the payment networks including Visa, MasterCard, American Express, Discover Financial Services, and any affiliates thereof or any other payment network applicable to this Agreement; (C) PCI-DSS and PA-DSS, as applicable; and (D) any regulatory body or agency having jurisdiction over the subject matter hereof.

6. Pricing. Spreadly will charge Customer the fees outlined on Exhibit A for use of the Services.

7. Confidential Information.

- a. Each party may disclose or make available its Confidential Information (in such capacity, the “**Disclosing Party**”) to the other party (in such capacity, the “**Receiving Party**”). Subject to Section 7.b, “**Confidential Information**” means any and all technical and non-technical information, in any form or medium (whether in graphic, electronic, written or oral form), which: (i) if disclosed in writing or other tangible form or medium, is marked “confidential” or “proprietary”, (ii) if disclosed orally or in other intangible form or medium, is identified by the Disclosing Party or its Representative (as defined below) as confidential or proprietary when disclosed and summarized and marked “confidential” or “proprietary” in writing by the Disclosing Party or its Representative within 30 days after disclosure, or (iii) due to the nature of its subject matter or the circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary; including but not limited to, any trade secrets, methods, techniques, drawings, designs, descriptions, specifications, works of authorship (including, without limitation, any software), patent applications or other filings, models, inventions, know-how, processes, algorithms, software source documents, and formulae related to the current, future, and proposed technologies, products and services of the Disclosing Party, and also any information concerning research, experimental work, development, engineering, financial information, purchasing, customer lists, pricing, investors, employees, business and contractual relationships, business forecasts, business plans, individually identifiable personal information, sales and merchandising, marketing plans of or related to the Disclosing Party and information the Disclosing Party provides to the other regarding or belonging to third parties. For avoidance of doubt, Spreadly’s “Confidential Information” includes the source code for the Service and the methods, algorithms, structure and logic, technical infrastructure, techniques and processes used by Spreadly in developing, producing, marketing and/or licensing the Service.
- b. “Confidential Information” does not include any information which: (i) now or hereafter enters the public domain through no breach of an obligation of confidentiality or other fault of the Receiving Party; (ii) the Receiving Party independently knows free of any obligation of confidentiality at the time of receiving such information; (iii) a third party hereafter furnishes to the Receiving Party without restriction on disclosure and without breach of any confidentiality obligations; or (iv) employees or agents of a Receiving Party have independently developed without any use of, or reference to, any of the Disclosing Party’s Confidential Information and without breaching this Agreement.
- c. The handling, use, disclosure and re-use of Personal Information, as defined in section 9 a. below, is governed by the Personal Information Protection and Electronic Documents Act (“PIPEDA”). Spreadly acknowledges and agrees that it will comply with PIPEDA requirements.
- d. The Receiving Party shall: (i) only disclose the Disclosing Party’s Confidential Information to any of its and/or its affiliates’ employees, officers, directors, partners, consultants, contractors, agents and representatives (collectively, its “**Representatives**”) that have a need to know such Confidential Information and who have agreed to terms at least as restrictive as those stated in this Agreement; (ii) hold in strict confidence and not disclose any of the Disclosing Party’s Confidential Information to any third party, except as permitted herein and with prior written consent; (iii) protect and safeguard any and all of the Disclosing Party’s Confidential Information using the same standard of care as it uses to protect and safeguard its own Confidential Information, but in no event less than a reasonable standard of care; (iv) use the Disclosing Party’s Confidential Information only to the extent required for the purposes of this Agreement; (v) not reproduce the Disclosing Party’s Confidential Information in any form except as required for the purposes of this Agreement; (vi) not reverse-engineer, decompile, or disassemble any software or devices disclosed by the Disclosing Party; (vii) not directly or indirectly export or transmit any of the Disclosing Party’s Confidential Information to any country to which such export or transmission is restricted by regulation or statute; and (viii) promptly provide the Disclosing Party with notice upon discovery of any loss or unauthorized disclosure of the Disclosing Party’s Confidential Information. Each party shall be liable for any failure of its Representatives to abide by the provisions of this Agreement as if such failure was the act or omission of such party.
- e. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information: (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required or compelled by applicable Laws; or (ii) on a “need-to-know” basis and under an obligation of confidentiality to its legal counsel, accountants, banks and other financing sources and their advisors, or to a Qualified Security Assessor (“**QSA**”) for the purpose of assessing compliance with the Payment Card Industry Data Security Standards (“**PCI-DSS**”). If the Receiving Party or any of its Representatives is compelled to disclose the Disclosing Party’s Confidential Information pursuant to clause (i) above then, to the extent permitted by applicable Law, the Receiving Party shall: (x) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 7.c; and (y) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 7.d, the Receiving Party remains required by Law to disclose any of the Disclosing Party’s Confidential Information, the Receiving Party shall disclose only that portion of the Disclosing Party’s Confidential Information that the Receiving Party is legally required to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

- f. All Confidential Information (including all copies thereof) shall remain the property of the Disclosing Party. Upon the request of the Disclosing Party, the Receiving Party shall either (i) return such materials to the Disclosing Party; or (ii) certify in writing as to the destruction thereof.
 - g. Spreadly further acknowledges that Customer may be required to disclose to individuals that Personal Information has been disclosed by Customer to Spreadly, and that Spreadly agrees that Customer may make that disclosure.
 - h. Except as required by law enforcement, pursuant to court order, subpoena, or other legal process, Spreadly agrees to use the Confidential Information including Personal Information only for the purposes specified in this Agreement. Spreadly further agrees not to use the Confidential Information including Personal Information for its own benefit, business purposes or the benefit of third parties. Nothing in this Agreement is to be interpreted to grant Spreadly any right, title, or interest in the Personal Information. Customer makes no representation or warranty, explicit or implied, regarding the Personal Information or its fitness for a particular use or purpose. The confidentiality obligations of Spreadly under this Agreement are continuing obligations and shall survive the expiration or termination of this Agreement. Spreadly agrees to periodically test the efficacy of its security policies and procedures. Spreadly agrees to inform its employees, agents and independent contractors of the requirements related to the protection of Customer's Confidential Information including Personal Information.
 - i. Recordings and records relating to the services set out in this Agreement, including but not limited to audio recordings with customers, if any, will be considered Confidential Information and will be retained by Spreadly as per Spreadly's retention policy and in compliance with PIPEDA.
 - j. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under this Section would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, if such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other equitable relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
8. References to Relationship. Customer agrees that, from the Effective Date and subject to Customer's written approval, Spreadly may identify Customer as a customer of Spreadly and use Customer's name on our customers page (<https://spreadly.com/customers>) for the Term of this Agreement, subject to Customer's prior review and written approval of the use of the Customer's name.
9. PCI-DSS. Spreadly represents and warrants that, at all times during the Term of this Agreement, it shall be fully compliant with PCI-DSS and all other applicable standards and guidelines issued by the PCI Security Standards Council, LLC, (the "**Council**") as modified from time to time, and shall, on request or on a periodic basis in accordance with the Card Rules (as defined below), provide proof thereof. Spreadly agrees to provide evidence to Customer that the PCI-DSS is implemented at least annually by posting evidence of its certification at <https://www.spreadly.com/pci>. In addition:
- a. Spreadly covenants, represents and warrants that, at all times during the duration of this Agreement, it complies with and will comply with all applicable rules and guidelines regarding service providers, third-party agents and processors as issued by the Card Associations (the "**Card Rules**"), as updated from time to time, and including Card Rules applicable to U.S. and international credit card transactions. The term "**Card Associations**" means MasterCard, VISA, American Express, Discover, JCB or any other credit card brand or payment card network for or through which Spreadly Processes payment card transactions. "**Processes**," "**Processed**" or "**Processing**" shall mean any operation in relation to Personal Information irrespective of the purposes and means applied including, without limitation, access, collection, retention, storage, transfer, disclosure, use, erasure, destruction, and any other operation. "**Personal Information**" means any information that identifies or could reasonably be used to identify an individual person, including but not limited to names, cardholder data social security numbers, driver's license numbers, tax identification numbers, addresses and telephone numbers), or any information which is compiled or derived from any of the foregoing.
 - b. Spreadly represents and warrants that it validates its PCI-DSS compliance as required by the applicable Card Rules, and, as of the effective date of this Agreement, Spreadly has complied with all applicable requirements to be considered compliant with PCI-DSS, and has performed all necessary steps to validate its compliance with the PCI-DSS. Without limiting the foregoing, Spreadly represents and warrants: (i) that it undergoes an Annual On-Site PCI Data Security Assessment ("**Annual Assessment**") by a QSA and pursuant to its most recent Assessment, it is currently certified as compliant with the current version of PCI-DSS by the QSA; (ii) that it undergoes a quarterly network scan ("**Scan**") by an approved scanning vendor ("**ASV**") and that it has passed its most recent scan.
 - c. Spreadly will notify Customer within seven (7) days if it (i) receives a non-compliant Annual Assessment from a QSA; (ii) fails to undergo or complete any Annual Assessment prior to the expiration of the previous year's Annual Assessment; (iii) is unable to pass any of its Scans; or (iv) is no longer in compliance with PCI-DSS.
 - d. Spreadly agrees to supply Customer with evidence of its most recent Annual Assessment prior to or upon execution of this Agreement. Thereafter, Spreadly shall annually supply to Customer, or make available on www.spreadly.com, evidence of Spreadly's successful completion of its Annual Assessment and will, upon reasonable request, supply Customer with

additional evidence of its overall PCI-DSS compliance status.

- e. Spreedly shall, with respect to the Customer's data, use only validated third-party payment applications that have been certified as compliant with the Council's Payment Application Data Security Standards ("**PA-DSS**"), as updated from time to time.
 - f. Customer may elect at any time to perform an automatic export of any Card Data or other credit card or user information associated with Customer's account to a third party endpoint for which Spreedly supports third-party vaulting (a "**Supported TPV Endpoint**") as set forth at: <https://docs.spreedly.com/guides/third-party-vaulting/>. For any endpoint that is not a Supported TPV Endpoint, Customer may request that Spreedly perform one (1) free-of-charge manual export during the Term, of any Card Data or other credit card or user information associated with Customer's account to a recipient designated by Customer, provided the recipient has proven that it is PCI-DSS compliant and the transfer is not in violation of any applicable Laws. If Customer requires additional manual exports during the Term, each additional manual export shall incur a \$1,000 charge. Spreedly reserves the right to delete all of Customer's Card Data and any other account data stored on its servers 30 days after the effective date of termination of this Agreement (the "**Data Transfer Window**"). If Customer requires additional time to arrange the export of its Card Data to a PCI compliant third party, it may extend the Data Transfer Window for additional 30 day periods by paying the prorated Base Annual Fee as determined in accordance with Exhibit A of this Agreement.
10. **Multi-Client Capability**
- a. Information security requirements shall also serve to keep Customer's business information confidential from Spreedly's other customers and business partners. Spreedly therefore undertakes to put in place suitable technical and organizational precautions in order to ensure that services can be provided for different customers independently of each other and any instructions from the different customers can be followed independently of each other. Spreedly must establish procedures to verify the identity of a customer prior to exchange of any sensitive or confidential data.
11. **Business Continuity**
- a. The effectiveness and suitability of the contingency plan shall be demonstrated regularly, and at least once each calendar year, by means of appropriate tests and drills.
 - b. Spreedly shall produce and keep an up-to-date contingency plan which must be based on industry best practices where commercially practical.
 - c. Spreedly shall produce and keep up-to-date a contingency plan for the contractually agreed services to it, which shall contain detailed business continuity and business recovery plans and shall document contingency provision measures and ensure alternative solutions are available promptly in the event of an emergency.
12. **Security.** Without limiting the requirements of this Agreement, Spreedly agrees that all Customer Confidential Information (including Personal Information) will be secured from unauthorized access, use, disclosure, copying, loss, theft, use or modification and Processing using industry standard security practices and technologies.
13. Without limiting the foregoing, Spreedly represents and warrants the following:
- a. Spreedly has in place a comprehensive, written information security program designed to protect the information under its custody, management or control, including all Customer Confidential Information. Spreedly's information security program satisfies the requirements of all data security Laws applicable to Spreedly, and includes the following safeguards: (i) secure business facilities, data centers, servers, back-up systems and computing equipment including, but not limited to, all mobile devices and other equipment with information storage capability; (ii) network, device application, database and platform security; (iii) secure transmission, storage and disposal; (iv) authentication and access controls within media, applications, operating systems and equipment; (v) encryption of Customer Confidential Information placed on any electronic notebook, portable hard drive or removable electronic media with information storage capability, such as compact discs, USB drives, flash drives, tapes; (vi) encryption of Personal Information in transit and at rest; (vii) Personal Information must not be Processed in test, development or non-production environments; and (viii) Personnel security and integrity including, but not limited to, background checks consistent with applicable Law and the requirements of this Agreement. "**Personnel**" means a party's officers, directors, employees and authorized agents who contribute to the performance of such party's obligations under this Agreement. For purposes of the foregoing, a party and its officers, directors, employees and authorized agents shall not be deemed Personnel of the other party.
 - b. Spreedly shall regularly, but in no event less than annually, evaluate, test and monitor and document the effectiveness of its information security program and shall promptly adjust and/or update such programs as reasonably warranted by the results of such evaluation, testing, and monitoring.
 - c. Spreedly shall constantly monitor outsourced activities and identify and eliminate threats and vulnerabilities and ensure to propose and schedule necessary corrective measures as required. Spreedly must establish a suitable process for implementing measures to eliminate vulnerabilities. Spreedly may rely on existing independent third-party audit reports or certifications (e.g. annual PCI-DSS Level 1 certification audit and SOC-2 Type 2 certifications) to evidence its compliance

with this provision and will provide copies of the same to Customer at Customer's request.

- d. All Spreadly Personnel with access to Customer Confidential Information are provided appropriate information security and privacy training to ensure their compliance with Spreadly's obligations and restrictions under this Agreement, with applicable Laws and with Spreadly's information security program.

14. Breaches of Security.

- a. **"Breach of Security"** means (i) any loss, misuse, compromise, or unauthorized access to Personal Information that Spreadly collects, generates, or obtains from or on behalf of Customer, or (ii) any other act or omission that compromises or undermines the physical, technical, or organizational safeguards put in place by Spreadly in Processing such information or otherwise providing services under this Agreement.
- b. If there is a Breach of Security, Spreadly will (i) notify Customer within 24 hours of becoming aware of such occurrence and will provide such notice to Customer by contacting the primary Customer Contact set forth above, (ii) promptly investigate the Breach of Security to attempt to determine the root cause, (iii) consult with Customer in good faith about remediation and mitigation plans, and (iv) take all steps reasonably necessary to promptly remediate the effects of such occurrence, ensure the protection of those data subjects that are affected or likely to be affected by such occurrence, prevent the re-occurrence, and comply with applicable Laws.
- c. Spreadly will, at its own cost, make all notifications, including to data subjects, regulatory authorities and credit reporting agencies that are required by applicable Law or any Card Association. Spreadly shall not inform any third party of any Breach of Security, except other affected Spreadly customers or as may be required by applicable Law, without first obtaining Customer's prior written consent, which shall not be unreasonably withheld.

15. Audit

- a. Customer has the right, at Customer's sole expense, to audit the adherence to this Agreement and regulatory requirements by Spreadly at all times. Customer may request and Spreadly will make available to Customer copies of all relevant materials and documentation needed to complete the audit. In addition, upon request, Spreadly will provide summaries of audits, test results or other equivalent evaluations of its measures adopted to protect Customer's Confidential Information, including Personal Information.

16. Subcontractors

- a. Spreadly shall not assign its services hereunder to any subcontracted third party without Customer's prior written consent.
- b. In case of subcontracting, all covenants and arrangements with Spreadly, including the requirements set out herein, shall apply to services subcontracted by Spreadly to third parties if they relate to Confidential Information including Personal Information.
- c. Spreadly shall ensure compliance with its contractual requirements by subcontractors before services/tasks are subcontracted.
- d. Spreadly shall maintain a vendor management program to continuously monitor subcontractors' adherence to Spreadly's and regulatory requirements.

17. Insurance. At all times during the Term, Spreadly shall maintain (i) commercial general liability insurance with at least \$1,000,000 per occurrence and (ii) "errors and omission" (tech and cyber coverage) insurance in an amount not less than \$30,000,000. Upon Customer's request, Spreadly shall provide Customer with a copy of such policy or policies or a certificate of insurance evidencing the same.

18. Indemnification.

- a. Spreadly shall indemnify, defend and hold harmless Customer against any loss or damage that Customer may sustain or incur (including attorneys' fees and costs), in relation to any claim or action by a third party (including, without limitation, any regulatory or government authority) (each a **"Claim"**), arising out of or related to any of the following: (i) any claim that the Service infringes, violates or misappropriates a patent, copyright, trademark, trade secret or other intellectual property right of any third party (collectively, **"Third-Party IP Rights"**); (ii) any breach by Spreadly of Section 7 (Confidential Information), Section 9 (PCI-DSS) or Section 14 (Security); or (iii) any Breach of Security that is caused by Spreadly's material breach of its security obligations set forth in Section 12.
- b. Customer shall indemnify, defend and hold harmless Spreadly against any loss or damage that Spreadly may sustain or incur (including attorneys' fees and costs), in relation to any Claim arising out of or related to any of the following: (i) any breach by Customer of Section 7 (Confidential Information); and/or (ii) Customer's use of the Service in violation of the terms of this Agreement and/or any applicable Law.

- c. Each party shall promptly notify the other party in writing of any Claim for which such party believes it is entitled to be indemnified pursuant to Section 18.a or 18.b. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Claim and shall employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this Section 18.c will not relieve the Indemnitor of its obligations under this Section 18 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not enter into any settlement that imposes any liability or obligation on the Indemnitee without the Indemnitee’s prior written consent.


19. Limitation of Liability.

- a. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS, OR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS) ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 - b. SUBJECT TO SECTION 19.c BELOW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY’S LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT FOR DIRECT DAMAGES EXCEED THE AMOUNT OF FEES PAID (AND, WITH RESPECT TO CUSTOMER’S LIABILITY, DUE AND PAYABLE) TO SPREEDLY BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.
 - c. NOTWITHSTANDING SECTION 19.b, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY’S AGGREGATE LIABILITY TO FOR DIRECT DAMAGES RESULTING FROM EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 18 OR BREACHES OF ITS OBLIGATIONS UNDER SECTION 7 (CONFIDENTIAL INFORMATION) EXCEED THE GREATER OF \$1,000,000 OR FIVE (5) TIMES THE AMOUNT OF FEES PAID (AND, WITH RESPECT TO CUSTOMER’S LIABILITY, DUE AND PAYABLE) TO SPREEDLY BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.
 - d. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN SECTIONS 14.a AND 14.b DO NOT APPLY TO THE FRAUDULENT, CRIMINAL OR GROSSLY NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF A PARTY.
20. Assignment. The parties’ rights and obligations under this Agreement will bind and inure to the benefit of their respective successors and permitted assigns. Neither party shall assign or delegate its obligations under this Agreement either in whole or in part without the prior written consent of the other party; provided, however, that either party may assign this Agreement in its entirety, without the other party’s consent, to an entity that acquires all or substantially all of the business or assets of the assigning party relating to the subject matter of this Agreement, whether by merger, reorganization, acquisition, sale or otherwise.
21. Notices. Any notices required to be delivered in writing hereunder shall be sent to the party’s address set forth in Part A and shall be deemed delivered when (i) by personal delivery (when actually delivered); (ii) by overnight courier (upon written verification of receipt); or (iii) by certified or registered mail, return receipt requested (upon verification of receipt). Either party may change its address at any time by giving written notice of the change to the other party.
22. Force Majeure. Neither party will be liable for failure or delay in performance due to causes beyond its reasonable control, including without limitation acts of God, terrorism, war, riots, fire, earthquake, flood or failure of internet or communications infrastructure. Notwithstanding the foregoing, if any force majeure event lasts more than thirty (30) days, Customer will have the right to terminate the Agreement.
23. Survival. Sections 3.a (Ownership), 4.d (Effect of Termination), 7 (Confidential Information), 18 (Indemnification), 19 (Limitation of Liability), 23 (Survival) and 24 (Miscellaneous) will survive expiration or termination of this Agreement.
24. Miscellaneous. This Agreement shall be governed by the Laws of the State of Delaware (without regard to its choice of law provisions). The parties agree that the exclusive venue for any actions or claims arising under or related to this Agreement shall be in the appropriate state or Federal court located in Wake County, North Carolina. Each party irrevocably waive any and all rights they may have to trial by jury in any judicial proceeding involving any claim relating to or arising under this Agreement. This Agreement contains the final, complete and exclusive agreement of the parties relative to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter and may not be changed, modified, amended or supplemented except by a written instrument signed by both parties. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable Law or court decisions. The parties are independent contractors and this Agreement does not create an agency, partnership, joint venture, employee/employer or other similar relationship between them. The failure to require performance of any provision shall not affect a party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.


[SIGNATURES ON FOLLOWING PAGE]

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

Spreedly, Inc.

By: 
Name: Justin Benson
Title: CEO
Date: 6/1/2021

Customer

By: 
Name: Andrew Scott
Title: Director, BMW Brand Management
Date: 05/28/2021

Customer


By: 
Name: Ian Sideco
Title: Secretary
Date: May 31, 2021

EXHIBIT A

The initial term of this agreement is 12 months. Customer shall pay Spreadly a “**Base Annual Fee**” for each 12 months of service, which shall entitle Customer to the following:

Enterprise Pricing Table	
	Year 1
Enterprise Platform Fee:	\$60,000
Enterprise Assurance Agreement & SLAs	Included
Existing Spreadly Endpoints	Unlimited
PCI Compliant Card Storage Limit	Unlimited
Add New Standard PMD Endpoints	Included
Total Base Annual Fee:	\$60,000

API Usage Fee:

In addition to the Enterprise Platform Fee, Spreadly will bill Customer monthly in arrears at a rate of \$0.0075 per API call for the term of the contract.

Payment

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

All payment obligations hereunder are non-cancelable and all fees paid hereunder are non-refundable. Any late payments shall accrue a 1% monthly service fee applied to Customer’s outstanding balance. Previously assessed and unpaid service fees are included in the outstanding balance.

Fees do not include any taxes. If Spreadly is legally obligated to collect applicable taxes, such taxes shall be invoiced to and paid by Customer, unless Customer provides Spreadly with a valid tax exemption certificate authorized by the appropriate taxing authority.

All payments to be made under this Agreement shall be made in cleared funds, without any deduction or set-off, and free and clear of, and without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any government, fiscal or other authority, save as required by law. If Customer is compelled to make any such deduction, it will pay Spreadly such additional amounts as are necessary to ensure receipt by Spreadly of the full amount which Spreadly would have received but for the deduction.

All fees under the Agreement and this Exhibit shall be payable in United States Dollars.

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

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

Receiver:	Silicon Valley Bank
ABA/Routing #:	121140399
SWIFT Code:	SVBKUS6S
Beneficiary:	3301451580
	Spreadly, Inc.
	300 Morris Street, Suite 400
	Durham, NC 27701
	USA

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

EXHIBIT B

SERVICE LEVEL AGREEMENT

Service Level Agreement

The Transaction Processing Service (as defined below) shall be available 99.95%, measured monthly, excluding scheduled maintenance. For purposes hereof, “**Transaction Processing Service**” means Spreadly’s core API responsible for processing Customer’s payment transaction requests, and does not include any beta features or non-payment transaction Spreadly services such as dashboard reporting. For purposes of calculations, the following shall apply:

- Availability means that the services are up and running, accessible by Customer and its end users, without interruption or undue delay.
- Any downtime resulting from outages of third party connections or utilities or other reasons beyond Spreadly’s control will be excluded from any such calculation.
- Any unavailability resulting from Spreadly’s right to suspend the Service in accordance with the terms of the Agreement shall be excluded from any such calculation.
- Downtime shall begin to accrue as soon as the Transaction Processing Service is unavailable to Customer and/or its end users, and continues until the availability of the Transaction Processing Service is restored.
- Spreadly shall give no less than 5 business days prior written notice to Customer of all scheduled maintenance. Spreadly shall perform scheduled maintenance in such a way that any interruption of the Transaction Processing Service is kept to a minimum and will provide a maintenance window during which the scheduled maintenance will be carried out (which shall not exceed 60 minutes individually or 24 hours in the aggregate in any month).

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

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

Service Credits may not be redeemed for cash and shall be applied to Customer’s next applicable payment of Base Annual Fee. The issuance of Service Credits sets forth Spreadly’s sole obligation and liability and Spreadly’s sole remedy for any Service Level Failure.

Notwithstanding the foregoing, Spreadly has no obligation to issue any Service Credit unless Customer requests such Service Credit in writing within ten (10) days of the Service Level Failure.

EXHIBIT C

Support

Spreadly will provide email support between 8.30 am and 8.00 pm (US Eastern timezone). Customer and its employees and consultants can contact Spreadly at support@spreadly.com with questions about the Transaction Processing Service, to report errors or other problems with the Transaction Processing Service, or to otherwise request support or assistance with respect to the Transaction Processing Service. Spreadly will maintain a sufficient number of Spreadly Support Contacts to ensure timely responses to emails from Customer and to otherwise satisfy Spreadly's obligations under this [Exhibit C](#).

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

Category	Definition	Spreadly Acknowledgement Time	Resolution
Low	End-user or Customer complaint that requires investigation by Spreadly (including bugs not impacting API uptime)	Up to 48 hours	Next update
Serious	Customer's use of Transaction Processing Service is severely impaired due to Spreadly-side issue	Up to 4 hours	Within 3 days
Critical	Transaction Processing Service is unavailable due to Spreadly-side issue	Up to 60 minutes	Within 1 day

Spreadly has internal systems and procedures in place to notify support personnel of critical issues with the Transaction Processing Service 24 hours a day, 7 days a week.