



MASTER SERVICE AGREEMENT

This Master Service Agreement (including its exhibits, schedules and addenda, the “**Agreement**”) is effective as of the Order Effective Date (“**Effective Date**”) of the first Order Form hereunder and is between **Spredly, Inc.**, a Delaware corporation having a place of business at 733 Foster Street, Suite 100, Durham, NC 27701 (“**Spredly**”), and **Delivery Hero SE**, a corporation organized under the laws of Germany having a place of business at Oranienburger Straße 70 10117 Berlin Germany (the “**Parent**”). Except as otherwise provided herein, this Agreement is subject to the Spredly Privacy Policy (“**Privacy Policy**”), which is incorporated herein by reference, and which can be viewed at <https://spredly.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.

1. Provision and Use of Service.

- a. Spredly hereby grants Parent and each of its Affiliate Customers (as defined in Section 1.c) a worldwide, limited, non-exclusive, non-transferable license, without the right to sublicense, during the Term, to electronically access and use the Spredly 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 Spredly supports, and, where applicable, automatically update expired or lost credit cards. Spredly is not a payment gateway or merchant account provider and Spredly 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 Spredly’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 Spredly in connection with the Service.
- b. Each of Parent and each applicable Contract Affiliate shall, for purposes of their respective Order Forms, be deemed “**Customer**” for purposes of this Agreement and such Order Forms. Customer shall, with respect to each of its applicable Order Forms, be responsible and liable to Spredly for the acts, omissions and non-compliance with the terms of this Agreement of all Permitted Affiliates identified in such Order Forms to the same extent that as if such performance, acts, omissions and/or non-compliance were by such Customer.
- c. For purposes hereof:
 - (i) “**Affiliate**” means, with respect to a party to this Agreement, an entity that directly or indirectly, Controls, is Controlled by, or is under common Control with such party, but only for so long as such Control exists, and where “**Control**” means ownership of more than 50% of the stock or other equity interests entitled to vote for the election of directors or an equivalent governing body;
 - (ii) “**Affiliate Customers**” means, collectively, the Contract Affiliates and the Permitted Affiliates.
 - (iii) “**Contract Affiliate**” means each Affiliate that executes an Order Form hereunder.
 - (iv) “**Order Form**” means each order form, in form and substance acceptable to Spredly, executed by Spredly and Parent or the applicable Contract Affiliate. Each Order Form shall be deemed to incorporate all of the terms and conditions of this Agreement.

(v) **“Permitted Affiliate”** means each Affiliate that is otherwise identified as a “permitted Affiliate” customer in an applicable Order Form.

- d. Spreadly offers the Account Updater program as an optional offering within the Service. If Customer opts-in to the Account Updater program (as identified in an applicable Order Form), 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.
- e. 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 according to Section 3e., sentence 2 of this Master Services Agreement 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, with at least five (5) days notice unless prohibited by law, Customer’s transactions and Customer’s Spreadly account, in each case only if Spreadly reasonably suspects that Customer’s use of the Service has been for an unauthorized, illegal, or criminal purpose.
- f. 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, , or otherwise exposes Customer or other Spreadly users to harm, including but not limited to, fraud and other criminal acts. However, , Spreadly shall notify Customer about these situations immediately but within 1 (one) working day at the latest.

2. 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 Customer any rights to any Spreadly 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. Unless differently agreed upon in another document executed by the Parties, 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.

3. Term and Termination.

- a. This Agreement shall become effective as of the Order Effective Date and shall continue in effect until terminated in accordance with this Section 3.a (the **Term**). Spreadly or Parent may terminate this Agreement at any time that there are no active Order Forms by providing the other party with thirty (30) days’ prior written notice.
- b. Unless otherwise terminated in accordance with this Agreement, the initial term of each Order Form shall be specified in such Order Form (the **“Initial Order Term”**). Thereafter, each Order Form

may be renewed for successive one year periods (each, a “**Renewal Order Term**” and, together with the Initial Order Term, the “**Order Term**”) provided that Spreadly and the applicable Customer have mutually agreed in writing their intent to renew such Order Form at least thirty (30) days prior to the expiration of the applicable Order Term.

- c. Spreadly or the applicable Customer may terminate an Order Form, without cause and for convenience, by providing the other party with thirty (30) days’ prior written notice. In the event of an early termination of an Order Form for convenience by Customer, Customer shall remain liable for the Base Annual Fee under such Order Form for the duration of such Order Form’s Order Term.
- d. Additionally, Spreadly or the applicable Customer may terminate an Order Form, by written notice to the other party effective as of the date specified in such notice, if the other party materially breaches the terms of this Agreement or the applicable Order Form and such breach: (i) cannot be cured; or (ii) being capable of cure, remains uncured ten (10) days after the breaching party receives written notice thereof. Without limiting the foregoing, in the event of a breach that gives rise to Spreadly’s right to terminate an Order Form, Spreadly may elect, as an interim measure, to suspend the applicable Customer’s access and use of the Service until the breach is cured, and all fees shall continue to accrue during the period of such suspension. Spreadly’s exercise of its right to suspend performance shall be without prejudice to Spreadly’s right to terminate such Order Form upon written notice to the applicable Customer.
- e. Upon termination of an applicable Order Form by any cause: (i) Spreadly will immediately discontinue the applicable Customer’s and all of its Permitted Affiliates’ access to the Service; (ii) the applicable Customer shall complete all pending transactions and stop accepting new transactions through the Service; (iii) Spreadly and the applicable Customer will discontinue use of the other party’s trademarks and immediately remove the other party’s references and logos from its website; and (iv) Spreadly and the applicable Customer shall promptly return to the other or, if so directed by the other party, destroy all originals and copies of any Confidential Information of the other party (including all notes, records and materials developed therefrom); (v) Spreadly must deliver all tokens and relevant information for the applicable Customer to continue working as usual, to the vault indicated by such Customer in a commercially reasonable time, not to exceed five (5) working days.

4. Representations.

- a. Each of Spreadly and Customer 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.

- c. Spreedly represents and warrant to Customer that: (i) it will comply, at its own expense, with all Laws applicable to the Service and this Agreement, and (ii) it has all legal rights and authorizations to provide the Service.
- 5. Pricing. Spreedly will charge Customer the fees outlined in Customer's Order Form(s), in accordance with the payment terms specified in such Order Form(s).
- 6. Confidential Information.
 - a. For the purposes of this Agreement, "**Confidential Information**" means any and all non-public information, whether in graphic, electronic, written or oral form, disclosed or made available by either Spreedly or the Customer to the other party, which is labeled or marked as "Confidential," "Proprietary" or with a similar proprietary legend, or that ought reasonably to be understood as confidential or proprietary given the nature of the information or the circumstances surrounding its disclosure to be confidential, including any ideas, techniques, drawings, designs, descriptions, specifications, works of authorship, 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 each of the parties, 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, Personal Information, sales and merchandising, marketing plans of or related to Spreedly or the Customer and information either party provides to the other regarding or belonging to third parties. For avoidance of doubt, Spreedly's Confidential Information includes the Spreedly API and the methods, algorithms, structure and logic, technical infrastructure, techniques and processes used by Spreedly in developing, producing, marketing and/or licensing the Service. "Confidential Information" does not include any information which: (i) now or hereafter enters the public domain through no breach of an obligation of confidentiality or other fault of a party; (ii) the receiving party independently knows free of any obligation of confidentiality at the time of receiving such information; (iii) a third party hereafter furnishes to the receiving party without restriction on disclosure and without breach of any confidentiality obligations; or (iv) employees or agents of a receiving party have independently developed without any use of or reference to any Confidential Information and without breaching this Agreement.
 - b. Each of Spreedly and Customer shall: (i) only disclose 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 Confidential Information to any third party, except as permitted herein; (iii) protect and safeguard any and all Confidential Information using the same standard of care as it uses to protect and safeguard its own confidential and/or proprietary information, but in no event less than a reasonable standard of care; (iv) use such Confidential Information only to the extent required for the purposes of this Agreement; (v) not reproduce Confidential Information in any form except as required for the purposes of this Agreement; (vi) not reverse-engineer, decompile, or disassemble any software or devices disclosed by the other party; (vii) not directly or indirectly export or transmit any Confidential Information to any country to which such export or transmission is restricted by regulation or statute; and (viii) promptly provide the other party with notice upon discovery of any loss or unauthorized disclosure of the Confidential Information. Each party shall be liable for any failure of its Representatives to abide by the provisions of this Agreement as if such failure was the act or omission of such party.
 - c. Notwithstanding the foregoing, the receiving party may disclose Confidential Information: (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by applicable Laws; or (ii) on a "need-to-know" basis 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**").

- d. All Confidential Information (including all copies thereof) shall remain the property of the disclosing party. Upon the request of the disclosing party, the receiving party shall either: (i) return such materials to the disclosing party; or (ii) certify in writing as to the destruction thereof.
7. References to Relationship. Customer agrees that, from the Effective Date, Spreadly may identify Customer and any applicable Affiliate Customers as a customer of Spreadly and use Customer's and such Affiliate Customers' logo(s) on Spreadly's customers page (<https://spreadly.com/customers>) for the Term of this Agreement. Customer may revoke such consent at any time on justifiable grounds.
8. 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. 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; and (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 immediately but at the latest within one (1) day 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. In such case, the Customer can immediately terminate the Agreement subject to the conditions of Section 3.d.
 - 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. Spreadly shall, with respect to an applicable 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 its Card Data (as defined below) 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 of its Card Data 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 thirty (30) days after the effective date of termination of such Customer’s applicable Order Form(s) (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 thirty (30) day periods by paying the prorated Base Annual Fee(s) set forth in such Customer’s applicable Order Form(s). “**Card Data**” means, with respect to an applicable Customer, such Customer’s and its Permitted Affiliates’ credit card data and other user information associated with such Customer’s account.

9. 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, loss, theft and Processing using industry standard security practices and technologies. Without limiting the foregoing, Spreedly represents and warrants the following:

- a. Spreedly has in place 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 atrest; (vii) Personal Information must not be Processed in test, development or non-production environments; and (viii) Personnel security and integrity including, but not limited to, background checks consistent with applicable Law and the requirements of this Agreement. “**Personnel**” means a party’s officers, directors, employees and authorized agents who contribute to the performance of such party’s obligations under this Agreement. For purposes of the foregoing, a party and its officers, directors, employees and authorized agents shall not be deemed Personnel of the other party.
- b. Spreedly shall regularly, but in no event less than annually, evaluate, test and monitor the effectiveness of its information security program and shall promptly adjust and/or update such programs as reasonably warranted by the results of such evaluation, testing, and monitoring.
- c. All Spreedly Personnel with access to Customer Confidential Information are provided appropriate information security and privacy training to ensure their compliance with Spreedly’s obligations and restrictions under this Agreement, with applicable Laws and with Spreedly’s information security program.

10. Breaches of Security.

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

- b. If there is a Breach of Security, Spreadly will: (i) notify the affected Customer within 24 hours of becoming aware of such occurrence and will provide such notice to such Customer by contacting the primary "Customer Contact" for such Customer (as set forth in the applicable Order Form), (ii) promptly investigate the Breach of Security to attempt to determine the root cause, (iii) consult with such affected 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 the affected Customer's prior written consent, which shall not be unreasonably withheld.
- 11. 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 \$10,000,000. Upon Customer's request, Spreadly shall provide Customer with a copy of such policy or policies or a certificate of insurance evidencing the same.
- 12. Indemnification.
 - a. Spreadly shall indemnify, defend and hold harmless Parent and each of its Affiliate Customers (collectively, the "**Customer Indemnified Parties**") against any loss or damage that the Customer Indemnified Parties 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 6 (Confidential Information), Section 8 (PCI-DSS) or Section 9 (Security); or (iii) any Breach of Security that is caused by Spreadly's material breach of its security obligations set forth in Section 9.
 - b. Each applicable 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 such Customer of Section 6 (Confidential Information); and/or (ii) such Customer's use of the Service in violation of the terms of this Agreement and/or any applicable Law.
 - c. Each party seeking indemnification hereunder 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 12.a or 12.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 12.c will not relieve the Indemnitor of its obligations under this Section 12 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.
- 13. Limitation of Liability.
 - a. IN NO EVENT WILL SPREADLY OR ANY CUSTOMER 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 AND/OR ANY ORDER FORM, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- b. UNDER NO CIRCUMSTANCES SHALL SPREEDLY'S OR AN APPLICABLE CUSTOMER'S LIABILITY FOR DIRECT DAMAGES WITH RESPECT TO EACH ORDER FORM HEREUNDER EXCEED TWICE (2X) THE AMOUNT OF FEES PAID (AND, WITH RESPECT TO THE APPLICABLE CUSTOMER'S LIABILITY, DUE AND PAYABLE) TO SPREEDLY BY SUCH CUSTOMER UNDER SUCH ORDER FORM DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.
- c. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN SECTIONS 13.a AND 13.b DO NOT APPLY TO THE FRAUDULENT, CRIMINAL OR GROSSLY NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF SPREEDLY OR ANY CUSTOMER.

14. Assignment. Except as expressly provided in this Section 14, (i) each of Spreadly and Parent shall not assign or transfer any of its rights, duties and obligations under this Agreement, either in whole or in part, without the prior written consent of the other party, and (ii) each of Spreadly and the applicable Customer to an Order Form shall not assign or transfer any of its rights, duties and obligations under such Order Form, either in whole or in part, without the prior written consent of the other party.

Notwithstanding the foregoing, (i) Spreadly may assign this Agreement in its entirety, including all of its rights, duties and obligations hereunder, without the consent of the applicable Customers, to any entity that acquires all or substantially all of Spreadly's business or assets relating to the subject matter of this Agreement, whether by merger, reorganization, acquisition, sale or otherwise, and (ii) Parent may assign this Agreement in its entirety, including all of the Customers' rights, duties and obligations under this Agreement and all applicable Order Forms in their entirety, without the consent of Spreadly, to any entity that acquires all or substantially all of the Customers' or an Affiliate's business or assets relating to the subject matter of this Agreement, whether by merger, reorganization, acquisition, sale or otherwise. For avoidance of doubt, no Customer shall be entitled to assign or transfer its rights, in whole or in part, under an individual Order Form without Spreadly's prior written consent, which shall not be unreasonably withheld. The parties' rights and obligations under this Agreement and each applicable Order Form will bind and inure to the benefit of the applicable party's respective successors and permitted assigns. Any attempted assignment or transfer in violation of this Section 14 shall be null and void.

15. Notices. Any notices required to be delivered in writing hereunder shall be sent to the notice address set forth in the applicable Order Form 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). A party may change its address at any time by giving written notice of the change to the other party in accordance with the terms of this Section.
16. 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 results in Spreadly's inability to provide the Service hereunder for ten (10) days or more, Customer will have the right to terminate its applicable Order Form(s) subject to the conditions of Section 3.c.
17. Survival. Sections 2.a (Ownership), 3.e (Effect of Termination), 6 (Confidential Information), 12 (Indemnification), 13 (Limitation of Liability), 17 (Survival) and 18 (Miscellaneous) will survive expiration or termination of this Agreement.
18. Miscellaneous.

- a. **Governing Law.** This Agreement and the rights and obligations of each applicable party under this Agreement and each Order Form shall be construed and interpreted in all respects in accordance with the laws of the State of New York, without regard to the principles of conflicts of law.
- b. **Dispute Resolution:** All disputes, controversies and claims arising under, out of, in connection with, or in relation to this Agreement and/or an applicable Order Form, or the making or validity of this Agreement and/or an Order Form, or its interpretation, or any breach thereof, or any related matters or any legal relationship associated therewith or derived therefrom (collectively “**Disputes**”) will be referred to and finally resolved by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with such Rules. The arbitration shall take place in New York, United States and shall be conducted in the English language. Any awards rendered in the arbitration are final and binding, and judgment thereon may be entered in any court having jurisdiction for its enforcement. Each Party will bear its own costs and expenses of the arbitration and an equal share of the arbitrator’s and administrative fees, provided, however, that the prevailing Party will be entitled to an award of its share of the arbitrator’s and administrative fees and its reasonable attorneys’ fees and expenses. Notwithstanding, without resorting to prior arbitration and in addition to any other remedies provided by law, each party to this Agreement shall be entitled to seek temporary and permanent injunctive relief against any threatened or actual breach of this Agreement (and/or any Order Form) or the continuation of any such breach by the other party in any court of competent jurisdiction.
- c. Each party irrevocably waives 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, together with the applicable Order Form(s), 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.

Name: Justin Benson

Title: CEO

Signature: 7A112462B65448B...

Date: 09.04.2020

Delivery Hero SE

Name: Niklas Östberg

Title: CEO


Signature: EB52E9C05AD1448...

Date: 09.04.2020

Delivery Hero SE

Name: Emmanuel Thomassin

Title: CFO

Signature: 4D976030F7104C2...

Date: 09.04.2020

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EXHIBIT A

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% | 15% of 1/12th of Base Annual Fee |
| Less than 99.90% but greater than or equal to 99.80% | 20% of 1/12th of Base Annual Fee |
| Less than 99.80% but greater than or equal to 99.70% | 25% of 1/12th of Base Annual Fee |
| Less than 99.70% | 30% of 1/12th of Base Annual Fee |

Service Credits may not be redeemed for cash and shall be applied to Customer’s next applicable payment of Base Annual Fee. The issuance of Service Credits sets forth Spreadly’s primary obligation without prejudice to any other statutory remedies 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 thirty (30) days of the Service Level Failure.

EXHIBIT B**SUPPORT****Support**

Spreadly will provide email support between 8.30 am and 8.30 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 A.

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.

**Speedly Partner GDPR Addendum
Compliance with the EU General Data Protection Regulation**

Recitals:

Speedly, 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 2 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.