



AMENDMENT TO SERVICE AGREEMENT

This Amendment ("**Amendment**") is entered with an effective date of March 1, 2019 ("**Amendment Effective Date**"), pursuant to the Service Agreement, dated March 1, 2016 (the "**Agreement**"), between Spreedly, Inc., a North Carolina corporation having its principal place of business at 733 Foster Street, Suite 100, Durham, NC 27701 ("**Spreedly**", "**we**" or "**us**") and Gingerbread Shed LLC (now Elevate Tickets LLC), an Arizona corporation having its principal place of business at 425 S Mill Ave., Suite 201, Tempe, Arizona 85281 ("**Customer**" or "**you**"). Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Agreement.

The parties hereby agree as follows:

1. The parties hereby mutually agree to begin a new 12-month Term on the Amendment Effective Date.
2. The Agreement shall be amended to automatically renew for a successive one year period at the end of each Term unless either party provides written notice of its intent to not renew this Agreement not less than sixty (60) days prior to the expiration of the then current Term.
3. The following terms will be added to the Agreement in Part B.
 15. Insurance. At all times during the Term, Spreedly shall maintain (i) commercial general liability insurance with at least \$1,000,000 per occurrence and (ii) "errors and omission" (technology and cyber coverage) insurance in an amount not less than \$10,000,000. Upon Customer's request, Spreedly shall provide Customer with a copy of such policy or policies or a certificate of insurance evidencing the same. Spreedly shall provide Customer with sixty (60) days advance notice of any material change in such policy or policies.
 16. Indemnification.
 - a. Spreedly 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 Spreedly of Section 7 (Confidential Information), Section 10 (PCI-DSS) or Section 11 (Security); or (iii) any Breach of Security that is caused by Spreedly's material breach of its security obligations set forth in Section 12.
 - b. Customer shall indemnify, defend and hold harmless Spreedly against any loss or damage that Spreedly 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 of Section 7 (Confidential Information); and/or (iii) 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 16.a or 16.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 16.c will not relieve the Indemnitor of its obligations under this Section 16 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.

4. Any credit owed to the Customer, based on fees paid for services not yet received under the Agreement shall be applied to the first invoice of this Amendment.
5. Exhibit A shall be replaced in full with the following terms:

EXHIBIT A

PRICING

Customer shall pay Spreadly a “**Base Annual Fee**” of \$62,000 for each 12 months of service, which shall entitle Customer to the following for the duration of the Term:

| Enterprise Pricing Table | |
|---------------------------------------|-----------------|
| Enterprise Platform Fee: | \$50,000 |
| Enterprise Assurance Agreement & SLAs | Included |
| Existing Spreadly End Points | Unlimited |
| PCI Compliant Card Storage Limit | Unlimited |
| Add new standard PMD endpoint/s | Included |
| API Usage Fee: | \$12,000 |
| Included Non-Partner API Calls | 2,400,000 |
| Total Base Annual Fee | \$62,000 |

The API Usage Fee in the table above includes an initial allotment of 2,400,000 API calls. The following API calls made to partner gateways will not be counted against that allotment as long as partner remains in good standing in the Spreadly gateway partner program:

- A Purchase API call against the partner gateway
- A Capture API call against the partner gateway
- A Refund API call against the partner gateway
- A Void API call against the partner gateway
- An Authorization API call against the partner gateway

In the event Customer’s actual API usage of the Service exceeds the included volumes used to determine the Base Annual Fee, Spreadly will bill Customer monthly in arrears for overages at a rate of \$0.02 per additional API call during months one through ten and at a rate of \$0.005 per additional API call during months eleven and twelve of an annual term.

Enterprise Account Management

Enterprise Account Management included: All enterprise accounts benefit from support prioritization and a named account manager.

Payment

Customer will pay the Base Annual Fee for the first year of the Term in full within 15 days of the Amendment 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.

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 governmental, 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.

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

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

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

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

6. Exhibit B shall be added to the agreement as follows:

EXHIBIT B

SUPPORT; 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.

Support

Spreadly will provide email support between 8.30 am and 8.00 pm (US Eastern time zone). 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 B.

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.


7. **Representations**. Each party to this Amendment represents and warrants to the other that (i) it possesses the legal right and corporate power and authority to enter into this Amendment and to fulfill its obligations hereunder; and (ii) its execution, delivery and performance of this Amendment 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.
8. **No Other Consents; Conflicting Terms**. Except as expressly set forth in this Amendment, the Agreement will remain unchanged and in full force and effect. In the event of a conflict between the terms of this Amendment and the Agreement, this Amendment will govern the relationship between the parties.
9. **Governing Law**. This Amendment shall be governed by the laws of the State of Delaware (without regard to its choice of law provisions).
10. **Counterparts**. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic format (e.g., "pdf" or "tif" file format) shall be effective as delivery of a manually executed counterpart of this Amendment.

11. Incorporation of Miscellaneous Provision. Section 14 of the Agreement shall apply hereto as if fully set forth herein, *mutatis mutandis* (it being understood that references therein to “this Agreement” shall be deemed references to “this Amendment”).


[SIGNATURES ON FOLLOWING PAGE]

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

Spreedly, Inc.

By: 
Name: Justin Benson
Title: CEO
Date: 03/11/2019

**Customer: Elevate Tickets, LLC (formerly
Gingerbread Shed, LLC)**

By: 
Name: Jack McCarty
Title: President
Date: March 8 2019

| | |
|-------------|--|
| TITLE | Elevate - Speedly Amendment 1903 |
| FILE NAME | Elevate - Speedl...t 1903 signed.pdf |
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Document History



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from helen@spreadly.com
IP: 174.109.126.74



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19:42:58 UTC

Viewed by Justin Benson (justin@spreadly.com)
IP: 70.250.119.131



SIGNED

03/11/2019
19:43:16 UTC

Signed by Justin Benson (justin@spreadly.com)
IP: 70.250.119.131



COMPLETED

03/11/2019
19:43:16 UTC

The document has been completed.