



Amended and Restated Master Agreement

The following agreement (the “**Agreement**”) is entered on the Effective Date stated below by and between the following Parties:

SPIDAWeb LLC (“SPIDA”) 560 Officenter Pl. Gahanna, Ohio 43230 Effective Date:	City of Riverside Public Utilities (“Client”) Mission Square, 4 th Floor 3750 University Avenue Riverside, California 92501
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Each Party will be referred to as a “**Party**” and collectively as the “**Parties**.” For good and valuable consideration, the consideration of which is acknowledged by the Parties, the Parties agree as follows.

AGREEMENT

1. SCOPE, DEFINITIONS AND ORDER FORMS.

1.1 **Scope.** This Agreement provides the framework under which SPIDA will provide certain software, applications, cloud services, and professional services as ordered from time to time by the Client. SPIDA will provide, perform and deliver during the Term all Services described in a valid Order Form (defined below) issued under this Agreement.

1.2 **Definitions.** The following definitions apply to this Agreement:

1.2.1 **SPIDA Data** means data which has been (a) collected and processed by SPIDA regarding the performance of its Services to Client and (b) usage data and other (c) data independently obtained by SPIDA that does not disclose Client’s Confidential Information or other information that discloses Client as the source of any data.

1.2.2 **Applications** collectively mean SPIDA’s (a) software made available to Client for download for purposes of facilitating Clients access to, operation of, or use with the Services, which includes machine readable instructions and data, components, files, modules, audio visual content and related licensed materials such as keys and documentation, (b) mobile device applications, (c) application programming interfaces and accompanying or related documentation, source code, executable applications and other materials made available by SPIDA and (d) web or other software services or applications that access SPIDA’s Cloud Services or interact with SPIDA’s application programming interfaces.

1.2.3 **Authorized Users** has the meaning set forth in Section 2.2 below.



- 1.2.4 **Client Data** means data that is unique to Client supplied by the Client to SPIDA regarding the Services provided by SPIDA under this Agreement; provided that such data shall not include data available from third party sources, that is .
- 1.2.5 **Cloud Services** means the services, solutions, Applications, platform, and hosting services made available through a centrally hosted Web portal pursuant to an Order Form.
- 1.2.6 **Confidential Information** means all trade secrets, know-how, non-public technical information, designs, computer software, marketing strategies, plans, plans for products, customer or supplier lists, business and financial information and other proprietary information or data disclosed to one Party by the other or incorporated in materials or products provided to one party by the other and marked or indicated to be confidential. "Confidential Information" does not include any information that the receiving Party can demonstrate is: (a) rightfully known prior to disclosure; (b) rightfully obtained from a third Party authorized to make such a disclosure; (c) independently developed by the receiving Party; (d) publicly available; or (e) disclosed by court order or as otherwise required by law.
- 1.2.7 **Intellectual Property** means all rights in, to and under patents, trade secrets, copyrights, trademarks, service marks, trade dress and similar rights of any type under the laws of any government authority.
- 1.2.8 **Order Form** means a separate document executed by the Parties, governed by this Agreement, by which Client orders the Services.
- 1.2.9 **Professional Services** means the separate consultation services that SPIDA may provide to Client under an applicable Order Form.
- 1.2.10 **Services** means collectively the Applications, Cloud Services and/or Professional Services that SPIDA will provide under an applicable Order Form.
- 1.3 **Order Form**. Each Order Form will be executed by each Party, become a part of this Agreement, and will detail the applicable fees for the Services, payment terms, the number of permitted users, a description of the Services and the length of the subscription term.
- 1.4 **Change Order**. Either Party may request changes to an Order Form by providing the other Party with a written document that describes the requested changes. No change order is effective until agreed to in writing by both Parties.
- 1.5 **Territory**. Applications and Cloud Services may be used and installed only inside the United States of America or Canada. Exportation of code in any form or access of



Application outside of these boundaries is strictly prohibited without written authorization from SPIDA.

1.6 **Professional Services.** The terms of this Agreement as supplemented by the additional terms and conditions attached as Addendum A shall govern each Party's rights and obligations for any Professional Services provided by SPIDA under an applicable Order Form.

2. LICENSE.

2.1 **Services.** For the period during which the Services are provided and subject to Client's payment obligations, SPIDA grants Client a non-exclusive, non-assignable, limited right within the Territory to (a) download, install, access and use the Applications ordered by Client and delivered to Client as part of the Services and (b) to access and use the Services solely for Client's internal business operations and subject to the terms of this Agreement.

2.2 **Authorized Users.** Client may use the Services for its intended purpose, provided that the Services may only be used by Client's employees, and by subcontractors under written authorization from SPIDA, and only in accordance with this Agreement ("Authorized Users"). The Services may be installed on the number of computers equal to or less than the number of seat licenses purchased and shall only be installed on Client-owned computers that are part of Client's computer network (including portable computers). Client is responsible for the Authorized Users' compliance with this Agreement.

2.2 **Copies.** Except as set forth in this Agreement, this license transfers to Client neither title nor any proprietary or intellectual property rights to the Applications. Client may make a reasonable number of copies of the Applications for installation and for back-up and disaster recovery purposes for non-operation use, subject to the terms and conditions of this Agreement. All copies of the Applications must include SPIDA's trademark, copyright, and other proprietary markings.

2.3 **Third-Party Software.** Use of the Services may require that Client have certain third-party operating systems or supporting application software installed and operating properly on its computer system, which are the sole responsibility of the Client.

3. CLIENT OBLIGATIONS.

3.1 **Cooperation.** Client will provide SPIDA all necessary cooperation to implement the Services as specified by SPIDA.

3.2 **Restrictions.** Unless otherwise provided for in this Agreement, Client may not directly or indirectly:

3.2.1 Use the Services for service bureau use, outsourcing, renting or time-sharing;



- 3.2.2 Allow any party other than the Client or its authorized users to access the Services;
- 3.2.3 Sell, rent, sublicense, transfer or assign the Services;
- 3.2.4 Copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract the source code of the Services or any component of such applications;
- 3.2.5 Use the Services as a whole, or any of its components, as a basis for the creation of another software product or service that has the same or similar functionality as the Services.
- 3.2.6 Use unauthorized modified versions of the Applications, including (without limitation) to build a similar or competitive product or service or for obtaining unauthorized access to the Applications;
- 3.2.7 Export or re-export the Applications in violation of any United States export law or regulation;
- 3.2.8 Use the Services in violation of this Agreement, applicable laws and regulations, or in violation of any third-party rights; or
- 3.2.9 Use any means, including without limitation, automated means such as spiders, robots, crawlers, data mining tools, or the like to download or scrape data or code from SPIDA's computer network and systems.

3.3 **Delays.** SPIDA is not in breach of this Agreement or any milestone for delays caused by Client. In the event of any such delay by Client (a) all of SPIDA's deadlines are extended as necessary and (b) Client will continue to make timely payments of all license fees as specified in the Order Form.

3.4 **Access.** Client agrees to secure and protect the access to the Services and copies thereof in a manner consistent with the maintenance of the proprietary rights of SPIDA, including without limitation, hosting the Applications in a secure environment with limited access. Client agrees to take appropriate action, by instruction or agreement with its employees who are permitted access to the Services, to protect unauthorized proliferation of the Services. Client is solely responsible for (i) maintaining the confidentiality and security of its access credentials (e.g., User IDs), password(s), security question(s) and answer(s), account number(s), login information, and any other security or access information, used by Client to access the Services. Client shall indemnify SPIDA for any breach of Client's obligations under this Section.

3.5 **License.** Client hereby grants to SPIDA a non-exclusive license to copy, reproduce, store, distribute to Authorized Users, adapt, and translate the Client Data to the extent reasonably required for the performance of SPIDA's obligations and the exercise of SPIDA's rights under this Agreement



4. UPDATES AND MAINTENANCE.

4.1 **Application Updates.** SPIDA may, but is not required to, issue service packs or bug fix updates to Client without additional charge. SPIDA may, but shall not be obligated to, provide additional support to Client at SPIDA's standard hourly rates in effect at the time of the additional support.

4.2 **Application Maintenance.** As set forth in an applicable Order Form, the Client may purchase maintenance for SPIDA's then-current maintenance fee. SPIDA will invoice Client for any renewals at the beginning of each maintenance cycle. If the Client has purchased and paid for optional software maintenance, SPIDA will provide support to Client as follows:

- a. SPIDA will provide email and telephone support during normal SPIDA business hours; 8:00 am to 5:00 pm Eastern, Monday through Friday. The current telephone number for support is; 614-470-9882. SPIDA's support is limited to the Services and its functioning with the following operating systems: Windows XP Pro, Windows Vista Business, Windows 7, Windows 8, Windows 10 Pro and Windows 10 Home.
- b. SPIDA will provide periodic bug fixes, patches or routine updates for the Applications in SPIDA's absolute and uncontrolled discretion. SPIDA may have an additional charge for major version changes.

5. FEES.

5.1 **Fees.** The applicable Order Form will set forth the subscription fees (the "Fees") and payment terms for the Services. Client agrees to pay the fees as specified in an Order Form ("Fees"). Client will make the first payment of fees upon execution of this Agreement. Unless otherwise provided in an Order Form, all other payments shall be made no later than thirty (30) days from the date of invoice.

5.2 **Past Due Accounts.** SPIDA may assess an additional 1.0 percent late charge (or the highest amount allowed by law, whichever is lower) per month if Client's payment is more than 30 days past due. Client is liable for any fees, including attorney and collection fees, incurred by SPIDA in its efforts to collect any remaining balances from Client.

5.3 **Suspension of Services.** In addition to the other remedies available to SPIDA, SPIDA may suspend the delivery of Cloud Services and Professional Services if Client is more than thirty (30) late in payment.

5.4 **Taxes.** Client agrees to pay all applicable sales, use and any other taxes imposed by a federal, state, provincial, local or other government entity that are based on the Services, excluding taxes based on SPIDA's income (collectively, "Taxes"). Client will provide SPIDA with a tax exemption certificate if applicable.

6. PROPRIETARY RIGHTS; DATA RIGHTS.



6.1 **SPIDA Ownership.** The Services are licensed, not sold. All right, title, and interest in the (a) Intellectual Property embodied in the Services, (b) the methods by which the Services are performed, (c) the processes that make up the Services and (d) SPIDA Data, shall belong solely and exclusively to SPIDA or its suppliers or licensors.

6.2 **Client Ownership.** Client owns all right, title, and interest in the (a) Intellectual Property of Client and (b) Client Data.

6.3 **Security.** Client agrees to secure and protect the Services and copies thereof in a manner consistent with the maintenance of the proprietary rights of SPIDA, including without limitation, hosting the Applications in a secure environment with limited access. Client agrees to take appropriate action, by instruction or agreement with its employees who are permitted access to the Service, to protect unauthorized access to the Services. Client is solely responsible for (i) maintaining the confidentiality and security of its access credentials (e.g., User IDs), password(s), security question(s) and answer(s), account number(s), login information, and any other security or access information, used by Client to access the Services. Client shall indemnify SPIDA for any breach of Client's obligations under this Section.

6.4 **Audit.** SPIDA, or its designee(s), shall, during regular business hours at Client's offices and in such a manner that does not interfere with Client's normal business activities, have the right to inspect and audit, or have an inspection and audit, of the number of copies of Applications used or distributed by Client, the computers on which the Applications, if any, is installed and the number of users using any such Services. If any audit discloses underpayments of five percent (5%) or more of the amount of Fees Client should have paid to SPIDA, Client shall (a) pay the Fees applicable to the additional usage of the Applications and (b) bear all the costs of the audit.

7 CONFIDENTIAL INFORMATION.

7.1 **Confidentiality.** Neither Party will use any Confidential Information of the disclosing Party except as expressly permitted in this Agreement or as expressly authorized in writing by the disclosing Party or as otherwise provided by law. The receiving Party of Confidential Information agrees to use the Confidential Information solely in connect with the performance of this Agreement. The receiving Party will limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives who have a need to know such information in connection with this Agreement.

7.2 **Disclosure Required by Law.** The receiving party of Confidential Information may disclose Confidential Information if required by applicable law to do so, provided that it must use all reasonable efforts to advise the other Party in writing prior to making such disclosure, and will disclose Confidential Information to the minimum extent required to comply with such requirement.

8. SECURITY; SERVICE LEVELS.



8.1 **Security.** SPIDA will employ security measures in accordance with applicable industry practices (both technical and organizational) against unlawful or unauthorized processing of Client Data and against loss or corruption of that Client Data.

8.2 **Service Levels.** SPIDA will provide the Service Levels for the Cloud Services as described in Addendum B.

9. **TERM.**

9.1 **Term.** Unless otherwise provided below or in an Order Form, the term of this Agreement begins on the Effective Date and expires in five years ("**Initial Term**"). Any renewal or extension terms ("**Renewal Term**") will be as a result of a new agreement executed by the parties. The Initial Term and each Renewal Term collectively are referred to as the "**Term.**" Each Order Form will specify a term (that is, length of time) that each Order Form is in effect.

9.2 **Termination.** Either party may terminate this Agreement for the breach of any material term by the other party if such breach remains uncured for thirty (30) days after receipt of written notice, describing in reasonable detail the nature of the breach. Such termination shall be in addition to any other remedies that may be available to the non-breaching party. SPIDA may terminate this Agreement and/or any Order Form automatically with no further action, if Client breaches any material obligation respecting SPIDA's proprietary rights. Provided all applicable fees have been paid in full, Client may terminate this Agreement at the end of any Term.

9.3 **Effect of Termination.** Upon expiration or termination of the Agreement or an Order Form, Client's license to access and use the Services shall terminate. Upon termination or expiration of the Agreement or an Order Form, SPIDA may take such technical and legal remedies as necessary to terminate access to the Services.

10. **LIMITATION OF LIABILITY.**

10.1 **NO SPECIAL DAMAGES.** EXCEPT FOR (A) VIOLATIONS OF SECTION 5 OR 6 OF THE AGREEMENT AND (B) FOR EACH PARTY'S DUTY TO INDEMNIFY THE OTHER, IN NO EVENT WILL EITHER PARTY, ITS REPRESENTATIVES, LICENSORS, SUCESSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF BUSINESS, LOSS OF USE OR OF DATA, REVENUE OR ANTICIPATED SAVINGS.

10.2 **Limitations.** In no event will either Party's liability to the other for damages exceed the license fees paid by Client during the then applicable license term to SPIDA under this Agreement. SPIDA's liability under this Agreement is limited to warranty remedy to the extent set forth in the Limited Warranty and the remedy for infringement specifically set forth in this Agreement.



11. WARRANTIES AND DISCLAIMERS.

11.1 **Mutual Warranties.** Each Party warrants to each other (a) that it has the right and authority to perform under this Agreement and (b) neither this Agreement nor such Party's performance of its obligations hereunder will place such Party in breach of any other contract or obligation and will not violate the rights of any third party.

11.2 **Limited Warranty.** SPIDA warrants that for a period of sixty (60) days from the date of shipment from SPIDA: (i) the media on which the Applications are furnished will be free of defects in materials and workmanship under normal use; (ii) the Applications substantially conforms to its published specifications ("Limited Warranty") and (iii) the Cloud Services and Applications will be free of known viruses and other harmful code. This limited warranty extends only to Client as the original licensee. Client's sole and exclusive remedy and the entire liability of SPIDA and its suppliers under this Limited Warranty and otherwise under this Agreement will be, at SPIDA's option, repair, replacement, or refund of the Applications. In no event does SPIDA warrant that the Services are error free or that Client will be able to operate the Services without problems or interruptions.

11.3 **Exceptions to Limited Warranty.** The Limited Warranty does not apply if the Applications (a) have been altered in violation of the license, (b) have not been installed, operated, repaired, or maintained in accordance with instructions supplied by SPIDA, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultra-hazardous activities.

11.4 **Exclusive Remedy.** Client's sole and exclusive remedy and the entire liability of SPIDA and its suppliers under this Limited Warranty and otherwise under this Agreement will be, at SPIDA's option, repair, replacement, or refund of the Services. Except as stated in this limited warranty and to the maximum extent permitted by law, SPIDA licenses the Services and provides any support "as is", with all faults.

11.5 **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, EACH PARTY EXPRESSLY DISCLAIMS AND THE OTHER PARTY HEREBY EXPRESSLY WAIVES ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. INDEMNIFICATION.

12.1 **Mutual Indemnification.** Each Party agrees to indemnify, defend and hold harmless each other from and against any and all actual or threatened claims, actions, damages, liabilities, costs and expenses, including without limitation reasonable attorney's fees and expenses, arising out of or in connection with: (a) the breach of any representation, warranty or obligation under this Agreement, (b) negligent or willful misconduct, or (c) the other party's failure to comply with any applicable law or regulation.



12.2 **Infringement.** SPIDA will protect Client from infringement liability as set forth below. If any infringement claim or action is brought or threatened, SPIDA will, at its sole option and expense: (a) procure for Client the right to continue using the Services; or (b) modify or amend the Services provided that such modified Services will have substantially the same capabilities, or replace the Services with another SPIDA application having substantially the same capabilities; or, if neither of the foregoing is commercially practicable, (c) terminate this Agreement and repay Client a portion, if any, of the license fee based on four year straight line amortization. If terminated, the Parties will be released from any further obligation under this Agreement, except for obligations that survive termination. Client may not settle or compromise such claim or action, except with the prior written consent of SPIDA. This provision will not apply to the extent the infringement arises because of a combination of the Services with products not provided or authorized by SPIDA. The foregoing states SPIDA's entire liability and Client's sole and exclusive remedy with respect to claims and liability for infringement of intellectual property rights or licenses granted under this Agreement.

12.3 **Process.** The Party seeking indemnification (the "**Indemnified Party**") will notify the other Party (the "**Indemnifying Party**") in writing of any third party claim subject to indemnification within ten (10) business days that the pleading, demand letter or other notice is served upon the Party; and cooperate in a reasonable manner with the Party providing the indemnification.

13. GENERAL.

13.1 **References.** Client agrees that SPIDA may identify Client as a recipient of services and use Client's logo in sales presentations, marketing materials and press releases. SPIDA shall have the right to use Client's name and trademark in its advertising, customer lists and marketing materials. Nothing in this Section 13.1 gives SPIDA any right, title or interest in Client's name, logos and trademarks.

13.2 **Assignment.** Neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the consent of the other Party, which consent will not unreasonably withhold consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.

13.3 **Amendment; Waiver.** This Agreement may be modified only in a writing signed and/or authenticated by each Party. No failure or delay by either Party in exercising any right or remedy under this Agreement constitutes a waiver of any such right or remedy.

13.4 **Governing Law; Venue.** THE LAWS OF OHIO GOVERN THE TERMS OF THIS AGREEMENT. EACH PARTY AGREES TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF OHIO AND VENUE IN FRANKLIN COUNTY, OHIO.

13.5 **Notice.** All notices must be in writing and refer to the title and Effective Date of this Agreement. The Parties shall give all notices and communications between the



parties by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid, (iv) fax or (v) electronic mail to the Party's address specified in this agreement, or to the address that a Party has notified to be that Party's address for the purposes of this section.

13.6 **Independent Contractors.** This Agreement does not create an employment, agency, partnership or joint venture relationship.

13.7 **Severability.** Any provision of this Agreement that is held to be unenforceable in any jurisdiction shall be removed and the remaining terms of the Agreement will stay in force and effect.

13.8 **Force Majeure.** Except for Client's obligations to make payments under this Agreement, neither Party will be in breach of this Agreement, for any failure or delay in performance caused by reasons beyond its reasonable control, caused by the other Party or by an act of God, war, civil disturbance, court order, or other cause beyond its reasonable control, including without limitation failures or fluctuations in power, heat, light, air conditioning or telecommunications equipment.

13.9 **Equitable Relief.** Each Party acknowledges that a breach or threatened breach by it of Section 6 or 7 of this Agreement will result in the non-breaching Party suffering irreparable harm which cannot be calculated or fully or adequately compensated by recovery of damages alone. Accordingly, the non-breaching Party is entitled to equitable relief, including interim and permanent injunctive relief, specific performance, and other equitable remedies, in the event of any breach of the provisions of this Agreement, in addition to any other remedies available to it.

13.10 **Export Compliance.** Client acknowledges that the Services is subject to the United States export control laws. Client will comply with all applicable export laws, obtain any applicable export licenses and will not export or re-export any part of the Services to any country in violation of such restrictions, or any country that may be subject to an embargo by the United States.

13.11 **Entire Agreement.** This Agreement constitutes final and complete agreement between the parties regarding the subject matter of this Agreement. This Agreement may be executed electronically and in counterparts.

13.12 **Survival.** Sections 6, 7, 9 through 13 survive termination of this Agreement.

13.13 **Existing Agreements.** As of the Effective Date of this Agreement, the terms of this Agreement cancels, replaces and supersedes the Software License Agreement dated January 27th, 2016 executed by the Parties.

WHEREFORE, the parties enter into this Agreement as of the Effective Date.



AGREED:

SPIDAWeb LLC By: <u>William F. Schulze</u> 7F489AC943E0431... Print Name: <u>William F. Schulze</u> Title: <u>President</u>	[Client] By: <u>Todd L Jorgensen</u> Print Name: <u>Todd L Jorgensen</u> Title: <u>Interim General Manager</u>
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CERTIFIED AS TO FUNDS AVAILABILITY:

BY: [Signature]
Chief Financial Officer / City Treasurer

APPROVED AS TO FORM:

BY: Susan Nelson
ASSISTANT CITY ATTORNEY



ADDENDUM A

Professional Services Supplemental Terms

The following supplemental terms and conditions apply to Professional Service that SPIDA will provide under an applicable Order Form. The Master Agreement is incorporated into these supplemental terms by reference. All defined terms in the Agreement apply here.

1. **Services.** SPIDA shall provide to Client the Professional Services set out in one or more Order Form to be issued by Client and accepted by SPIDA. The Order Form shall include, among other things, a description of the Services, fees, and milestones for deliverables.
2. **Personnel.** SPIDA shall designate personnel that it determines, in its sole discretion, who can fill the following positions:
 - a. A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement.
 - b. A number of personnel that it deems sufficient to perform the Professional Services set forth in each Order Form.
3. **Client's Responsibilities.** Client shall designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement, with such designation to remain in force unless and until Client appoints a successor.
4. **Fees.** Client shall pay the fees set forth in the applicable Order Form and in accordance with the terms of the Agreement.
5. **Expenses.** Client shall reimburse SPIDA for all reasonable expenses incurred in accordance with the Order Form. SPIDA shall accompany each invoice with receipts and reasonable supporting documentation.
6. **Additional Limited Warranties for Professional Services.** SPIDA warrants that it shall perform the Services:
 - a. In accordance with the terms and subject to the conditions set forth in the respective Order Form and the Agreement;
 - b. Using personnel of commercially reasonable skill, experience, and qualifications; and
 - c. In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.



7. **Remedy.** Client's sole and exclusive liability and Client's sole and exclusive remedy for breach of this warranty shall be as follows: SPIDA shall use reasonable commercial efforts to promptly cure any such breach; provided, that if SPIDA cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving written notice of termination.
8. **Disclaimer.** SPIDA MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 7 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.
9. **Independently Created Works.** SPIDA and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Independently Created Works (defined below), provided with the Professional Services including all Intellectual Property Rights therein. SPIDA hereby grants Client a limited, irrevocable, fully paid-up, royalty-free, non-transferable license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Independently Created Works to the extent incorporated in, combined with or otherwise necessary for the use of the Professional Services solely to the extent reasonably required in connection with Client's receipt or use of the Professional Services. All other rights in and to the Independently Created Works are expressly reserved by SPIDA. Client shall retain all ownership rights in Client's Intellectual Property as set forth in the Agreement.
10. **"Independently Created Works"** means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by SPIDA in connection with performing the Services, in each case developed or acquired by the SPIDA prior to the commencement or independently of this Agreement.
11. **Conflict.** In the event of any conflict between this Addendum and the Agreement, the terms of this Addendum shall apply.
12. **Insurance.**

12.1 **General Provisions.** Prior to Client's execution of this Agreement, SPIDA shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by Client's Risk Manager or Client Attorney, or a designee, unless such modification is prohibited by law.



12.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on SPIDA's indemnification obligations under Section 11 hereof.

12.1.2 Ratings. Any insurance policy or coverage provided by SPIDA or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

12.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to Client by certified or registered mail, postage prepaid.

12.1.4 Adequacy. Client, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by SPIDA pursuant to this Agreement are adequate to protect SPIDA. If SPIDA believes that any required insurance coverage is inadequate, SPIDA will obtain such additional insurance coverage as SPIDA deems adequate, at SPIDA's sole expense.

12.2 Workers' Compensation Insurance. By executing this Agreement, SPIDA certifies that SPIDA is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. SPIDA shall carry the insurance or provide for self-insurance required by California law to protect said SPIDA from claims under the Workers' Compensation Act. Prior to Client's execution of this Agreement, SPIDA shall file with Client either 1) a certificate of insurance showing that such insurance is in effect, or that SPIDA is self-insured for such coverage, or 2) a certified statement that SPIDA has no employees, and acknowledging that if SPIDA does employ any person, the necessary certificate of insurance will immediately be filed with Client. Any certificate filed with Client shall provide that Client will be given ten (10) days' prior written notice before modification or cancellation thereof.

12.3 Commercial General Liability and Automobile Insurance. Prior to Client's execution of this Agreement, SPIDA shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure SPIDA against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of SPIDA. Client, and its officers, employees and agents, shall be named as additional insureds under the SPIDA's insurance policies.

12.3.1 SPIDA's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.



12.3.2 SPIDA's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of SPIDA's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with SPIDA's performance of this Agreement, which vehicles shall include, but are not limited to, SPIDA owned vehicles, SPIDA leased vehicles, SPIDA's employee vehicles, non-SPIDA owned vehicles and hired vehicles.

12.3.3 Prior to Client's execution of this Agreement, copies of insurance policies or original certificates along with additional insured endorsements acceptable to Client evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with Client and shall include Client and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for Client of Riverside.

12.3.4 The insurance policy or policies shall also comply with the following provisions:

- a. The policy shall be endorsed to waive any right of subrogation against Client and its sub-consultants, employees, officers and agents for services performed under this Agreement.
- b. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed.
- c. The policy shall specify that the insurance provided by SPIDA will be considered primary and not contributory to any other insurance available to Client and Endorsement No. CG 20010413 shall be provided to Client.

12.4 **Errors and Omissions Insurance.** Prior to Client's execution of this Agreement, SPIDA shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect Client from claims resulting from the SPIDA's activities.

12.5 **Subcontractors' Insurance.** SPIDA shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss that may be caused by the subcontractors' scope of work and activities provided in furtherance of this Agreement, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon Client's



request, SPIDA shall provide Client with satisfactory evidence that Subcontractors have obtained insurance policies and coverages required by this section.



ADDENDUM B

Service Levels

1. Subject to Sections 2 and 3 below, SPIDA guarantees the Cloud Services will be available no less than 99.95% during a given calendar month. For the purposes of this document, a "web service outage" is defined as a period of time during which no traffic can ingress or egress from all instances of the intended Services for ten consecutive minutes.
2. The uptime and response guarantees set forth above do not apply to any unavailability, suspension, or termination of Services, or any other Service performance issues resulting from, but not limited to, the following;
 - a. A suspension of an account;
 - b. Factors outside of SPIDA reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of the Service such as acts of war, terrorism and foreign enemies, natural disaster of overwhelming proportions, grand-scale discontinuation of electrical supply, or any other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected Party to take precautions and which the affected Party cannot avoid even by using its best efforts;
 - c. Any action or inaction of Client or any third party;
 - d. Client's equipment, software, other technology, and/or third-party equipment (other than third party equipment within our direct control);
 - e. SPIDA's suspension or termination of Client's right to use the Cloud Services in accordance with the Agreement;
 - f. The lack of wireless or Internet connection for Client; or
 - g. Scheduled maintenance by SPIDA.
3. In the case of one or more "web service outages" that individually result in less than 99.95% uptime (but at least 99%) during a given calendar month, SPIDA will grant a credit of one (1) additional week of the Service to the account at the current plan (each, a "Credit"). Only one Credit will be provided for a calendar month. The remedies provided in this Addendum B shall constitute Client's sole remedy for web service outages.