

**Appendix D to DIR Contract No. DIR-SDD-1776**  
**SADA Systems, Inc.**  
**GOOGLE APPS for Government CUSTOMER AGREEMENT**

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This **GOOGLE APPS FOR GOVERNMENT CUSTOMER AGREEMENT** (this "GAC Agreement"), is made and entered into as of [EFFECTIVE DATE] (the "Effective Date"), between SADA Systems Inc., a corporation organized under the laws of the state of California, with offices at 5250 Vineland Avenue, North Hollywood, CA 91601 ("SADA"), and [CUSTOMER NAME], a [TYPE OF GOVERNMENTAL ENTITY] organized under the laws of the [STATE/JURISDICTION] with an address at [CUSTOMER ADDRESS] ("Customer").

**1. SERVICES AND TERMS OF SERVICE**

**1.1 Service.** This GAC Agreement and the Agreement into which it is incorporated establish the terms under which SADA, as an authorized reseller of Google, Inc. ("Google"), will provide Customer with access to Google hosted services set forth in Exhibit A (the "Services").

**1.2 Support.** Customer will respond to questions and complaints from the individuals Customer permits to use the Services (such individuals, "End Users") or third parties relating to Customer's or End Users' use of the Services. SADA will provide front-line technical support directly to Customer's technology administrators with respect to questions, complaints and other support issues that Customer cannot resolve, and SADA is hereby authorized by Customer to submit Customer support issues to Google on behalf of Customer. Customer may also contact Google with respect to technical support issues in accordance with Google's technical support guidelines (the "TSSG") available at <http://www.google.com/apps/intl/en/terms/tssg.html> or such other URL as may be provided by Google..

**1.3 Google Apps for Government Terms of Service.** Customer understands and agrees that Customer will be required to agree to Google's Terms of Service to obtain access to the Services (the "Terms of Service"). The Terms of Service govern Customer's access to and use of the Services and will be effective as of the date signed or accepted by Google.

**1.4 Service Levels.** The Google Apps Covered Services (as defined in the Google SLA) will meet the requirements set forth in the Google Apps Service Level Agreement found at <http://www.google.com/apps/intl/en/terms/sla.html> (the "Google SLA"). In the event of a breach of the such service levels, as Customer's sole and exclusive remedy, Customer will be provided the remedy set forth in the Google SLA.

**2. CUSTOMER REPRESENTATIONS AND OBLIGATIONS**

**2.1 Customer Eligibility.** Customer represents and warrants that it is a state, city or federal government entity: (A) with a budget supported by public funds; (B) that represents, is comprised of, or whose function is to support a municipal corporation, city, county, state or nation in the United States; and (C) whose representation or support referenced in clause (B) is exercised by virtue of power delegated to it for that purpose by the general government of the state or nation.

**2.2 Compliance with Law; Compliance with Applicable Terms and Policies.** Customer will comply with all laws, rules and regulations applicable to its use of the Services, including those regarding the management and administration of its electronic messaging system. Customer acknowledges and agrees that SADA and Google are serving as a data processor and their responsibilities and liability do not extend to the internal management or administration of Customer's electronic messaging system or messages. Customer is responsible for ensuring that it and its End Users use the Services in accordance with the Terms of Service and Acceptable Use Policy, as set forth in Section 1.3 and Section 2.6.

**2.3 Customer Administration of the Services.** Customer is responsible for: (A) maintaining the confidentiality of the password and administrative account provided to Customer by Google for the

purpose of administering End User accounts; (B) designating those of Customer's employees and SADA's employees who are authorized to access the administrative account; and (C) ensuring that all activities that occur in connection with Customer's administrative account comply with the Terms of Service.

**2.4 Privacy.** Customer agrees to protect the privacy rights of its End Users in accordance with all applicable laws and regulations.

**2.5 Unauthorized Use.** Customer will use commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer will promptly notify SADA or Google of any unauthorized use of, or access to, the Services of which it becomes aware.

**2.6 Acceptable Use Policy.** Customer agrees that its use of the Services is subject to its compliance with Google's Acceptable Use Policy, which is available at [http://www.google.com/a/help/intl/en/terms/use\\_policy.html](http://www.google.com/a/help/intl/en/terms/use_policy.html) (or such URL as Google may provide) and which may be updated from time to time.

**2.7 Intended Use; Email Accounts.** The Services are for use with normal business messaging traffic only, and may not be used for any other purpose, including use of the message encryption services (if applicable) with machine generated message encryption and delivery. For each end user for which Customer will be routing email and/or archiving email, if any, through the Services, Customer shall establish an email account in Google's identity management systems. Failure to abide by the terms of this Section may be considered a material breach of this GAC Agreement and, if not cured by Customer following notice by SADA, may result in a suspension of Services until such failure is remedied.

**2.8 No Resale.** Customer agrees that it shall not resell the Services or create or offer derivative versions of the Services, either directly or through a third party.

### **3. CHARGES AND PAYMENT**

**3.1 Fees.** Unless Customer has chosen to finance its access to the Services through SADA's Cloud Subscription service, Customer will pay SADA the fee(s) set forth on Exhibit A to this GAC Agreement in accordance with Section 3.2. SADA will have the right to change the fee once each year, effective with the next renewal date. SADA will notify Customer of any fee increase at least 45 days prior to the expiration of the then-current term. Pricing shall be in accordance with Appendix C, Pricing Index of DIR Contract No. DIR-SDD-1776.

**3.2 Support Charges.** Any support to be provided by SADA under Section 1.2 of this GAC Agreement will be performed on business days between the hours of 9:00 a.m. to 6:00 p.m. Pacific Time, at no additional cost. Any support services requested by Customer outside these hours will be billed to Customer at an hourly rate of \$292.50. Charges shall be subject to the discount set forth in Appendix C, DIR-SDD-1776.

**3.3 Payments.** Payments shall be made in accordance with Section 6C of Appendix A, DIR Contract No. DIR-SDD-1776.

**3.4 Currency.** Customer will make all payments in U.S. dollars.

**3.5 Taxes.** As per Section 151.309, Texas Tax Code, Government Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

### **4. TERM, TERMINATION AND ADDITIONAL END USER ACCOUNTS**

**4.1 Term.** The term of this GAC Agreement will begin on the Effective Date and will continue for an initial period as set forth in Exhibit A (such period, the "Initial Term"). At the end of the Initial Term, this

GAC Agreement may be renewed upon mutual written agreement of the parties (provided 30 days' prior to the expiration of the then-current term) for consecutive renewal terms of 12 months (each, a "Renewal Term"). All terms and conditions of this GAC Agreement shall apply during each Renewal Term, except for the fees. The fee for each Renewal Term will be the rates then in effect as described in Section 3.1.

**4.2 Termination.** Termination shall be in accordance with Section 9B of Appendix A, DIR Contract No. DIR-SDD-1776; provided that this GAC Agreement will also terminate in the event of termination of Customer's right to use the Services as a result of a termination of the Terms of Service by Google.

**4.3 Effects of Termination.** If this GAC Agreement terminates, then the rights granted hereunder by any party to the other will cease immediately and Customer's access to the Services will cease; provided that Customer will have access to, and the ability to export, Customer Data for a commercially reasonable period of time at Google's then-current rates for the Services, as provided in the Terms of Service.

**4.4 Additional End User Accounts.** Customer may alter the number of End User Accounts per Customer domain at any time. For End User Accounts added during the Initial Term or any Renewal Term, the initial term for such End User Accounts will be pro-rated, beginning on the date of the applicable order and ending on the expiration of the applicable term. Customer may request End User Accounts by notifying its designated SADA account manager. For each purchase of End User Accounts, SADA will issue a quote to Customer. End User Accounts automatically renew in accordance with the terms of this GAC Agreement, unless terminated by either party in accordance with the terms of this GAC Agreement. SADA cannot transfer End User Accounts from one Customer domain name to another.

**4.5 Archived Messages.** If the Services include archiving functionality, Customer messages will be retained for up to the period set forth in Exhibit A, provided that Customer renews the applicable Services with SADA for each year of such retention period. The retention period will apply to all data archived under the Services. Failure to renew the applicable Services during the retention period will terminate SADA's and Google's obligation to retain any of Customer's data or indexes.

## **5. CUSTOMER DATA AND CONFIDENTIAL INFORMATION**

**5.1 Customer Data.** SADA will treat all Customer Data in accordance with local laws and regulations applicable to the data and will implement policies and procedures with respect to the Customer Data no less protective of the rights of Customer or its End Users as those found in Google's Privacy Policy (located at <http://www.google.com/intl/en/privacy/privacy-policy.html>) or Google's Privacy Notice (located at [http://www.google.com/apps/intl/en/terms/users\\_privacy.html](http://www.google.com/apps/intl/en/terms/users_privacy.html)). Changes to the Privacy Policy and Privacy Notice will be made as stated in the applicable policy. For purposes of this GAC Agreement, "Customer Data" means all data and information provided by Customer's End Users via the sign up process for the Services, as well as data, including electronic messages and any attachments provided, generated, transmitted or displayed via the Services by Customer or its End Users.

**5.2 Confidential Information.** To the extent authorized by the Texas Public Information Act, each party will: (A) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and (B) not disclose the other party's Confidential Information, except to affiliates, employees, agents and professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. Each party (and any affiliates, employees and agents to whom the Confidential Information was disclosed) may use such Confidential Information only to exercise rights and fulfill obligations under this GAC Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this Section. For purposes of this GAC Agreement, to the extent authorized by the Texas Public Information Act, "Confidential Information" is information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. In particular, Customer Data and SADA's pricing are Confidential Information.

**5.3 Exceptions.** Confidential Information does not include information that: (A) is or subsequently becomes published or available to the public through no fault of the recipient, (B) is received by the

recipient from a third party without a duty of confidentiality; (C) is independently developed by recipient, or (D) was in the recipient's possession or was known to the recipient before it was disclosed to the recipient by the disclosing party.

**6. INTELLECTUAL PROPERTY RIGHTS.** Except as expressly set forth herein, this GAC Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data. The parties acknowledge and agree that Google owns all Intellectual Property Rights in the Services. For purposes of this GAC Agreement, "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law and other similar rights.

**7. DISCLAIMER OF WARRANTIES.** TO THE FULLEST EXTENT PERMITTED BY LAW, SADA AND GOOGLE MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR NONINFRINGEMENT. SADA AND GOOGLE MAKE NO REPRESENTATION ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICE. CUSTOMER ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

**8. INDEMNIFICATION.** Indemnification shall be in accordance with Section 8A, Appendix A, DIR Contract No. DIR-SDD-1776.

**9. LIMITATION OF LIABILITY.** Limitation of Liability shall be in accordance with Section 8K of Appendix A, DIR Contract No. DIR-SDD-1776.

## **10. GENERAL PROVISIONS**

**10.1 Notices.** Notices shall be in accordance with Section 10A of Appendix A, DIR Contract No. DIR-SDD-1776.

**10.2 Governing Law.** This GAC Agreement will be governed by and construed in accordance with the laws of the state of Texas, with venue in the courts of Travis County, without regard to its choice of law principles. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

**10.3 Binding Nature and Assignment.** Assignment shall be in accordance with Section 3D of Appendix A, DIR Contract No. DIR-SDD-1776.

**10.4 Third Party Beneficiary.** The parties agree that Google is a third party beneficiary of this GAC Agreement.

**10.5 Waiver of Default.** No delay or omission by either party to exercise any right or power under this GAC Agreement will be construed to be a waiver thereof. A waiver by either party of any breach or covenant will not be construed to be a waiver of any succeeding breach thereof or of any other covenant.

**10.6 Survival.** Survival shall be in accordance with Section 3E of Appendix A, DIR Contract No. DIR-SDD-1776. In addition, the provisions of Article 6, Article 7, Article 8, Article 9 and this Article, as well as any other provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement will survive expiration or termination of this Agreement and continue in full force and effect for the period set forth therein, or if no period is set forth therein, indefinitely

**10.7 Force Majeure.** Force Majeure shall be defined in accordance with Section 9C of Appendix A, DIR Contract No. DIR-SDD-1776.

**10.8 Severability.** If any provision of this GAC Agreement is found to be illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the parties in accordance with applicable law. The remainder of this GAC Agreement will remain in full force and effect.

**10.9 Entire Agreement; Amendment and Waiver.** DIR Contract No. DIR-SDD-1776 and this GAC Agreement and any exhibits referred to herein, each of which is incorporated herein for all purposes, constitutes the entire agreement of the parties with respect to the subject matter hereof. No change, waiver or discharge hereof will be valid unless made in writing and signed by an authorized representative of the party against which such change, waiver of discharge is sought to be enforced.

**10.10 Counterparts.** The parties may enter into this GAC Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

**CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS GAC AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE LEGALLY BOUND BY IT.**

**IN WITNESS WHEREOF,** this GAC Agreement has been executed by the parties through their duly authorized officers as of the date set forth above.

**SADA Systems, Inc.**

**[CUSTOMER]**

\_\_\_\_\_

\_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Print title: \_\_\_\_\_

Print title: \_\_\_\_\_

**EXHIBIT A**

Under the terms of the GAC Agreement of which this Exhibit is a party, SADA will provide the following Google products to Customer in the indicated quantity and at the indicated pricing:

<b>Item</b>	<b>Quantity</b>	<b>Price Per Item</b>	<b>Total</b>
<b>Google Apps Postini GMD 1-Year</b>			
<b>Google Apps Postini GMD 10-Year</b>			
<b>Google Message Encryption</b>			
<b>Google Message Security only</b>			
<b>Google Apps End User Accounts</b>			

The Initial Term of this GAC Agreement will be \_\_\_\_\_ months.

**Overage Charge**

Customer shall notify SADA in the event that Customer exceeds the number of mailboxes/units set forth above for any Postini, message encryption or message security product, such notice to be provided to SADA within 10 days of the occurrence of such overage. Upon becoming aware of any such overage (whether from Customer or otherwise), SADA will charge Customer an "Overage Charge" for each month during which an overage exists. Such Overage Charge will be equal to the product of (A) the number of excess mailboxes and (B) 1/12 of the annual charge per mailbox, which Overage Charge will be invoiced to Customer by SADA monthly in arrears.