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**MEMORANDUM**  
**ADMINISTRATIVE SERVICES DEPARTMENT**

**TO:** Thomas Thomas, City Manager

**Number:** 12-016

**SUBJECT:** E-Mail SPAM Filtering Annual Renewal

**Date:** 11/17/11

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E-Mail SPAM & Virus Filtering has been provided to the City of Rock Island as a hosted cloud based service by Google – Postini for the last 4 years. This service has worked very well for Rock Island and would makes sense to continue the service. Annually the cost has been about \$6,500 to provide service for roughly 350 e-mail accounts, or roughly \$18/year per user.

The current service agreement will expire December 7, 2011. This year Google has proposed a solution to Rock Island named Google Apps for Government. Apps is a cloud-based solution that includes the previously separate SPAM & Virus filtering along with a host of other business services (see attached). To continue this well established working environment at the same rate, Google has proposed a 3-year agreement that would be facilitated by its partner Cloud Sherpas. The agreement is attached for your review.

The challenge for this proposal is that IT has budgeted only one year of service in FY 11/12 at \$6,600. Significant shuffling of remaining funds and budgeted services would have to take place to stay within this year's budget while still moving forward with this proposal. The good news is that IT might be able to postpone some expenses until next fiscal year, while lowering next year's operating service costs at the same time to cover this unplanned opportunity.

**Recommendation:** The Administrative Services Department recommends the City Council authorizes the City Manager sign contract documents with Cloud Sherpas for Google Apps for Government and pay invoice of \$18,847.50.

**Vendor:** 13417 Cloud Sherpas.

**Payment Amount:** \$18,847.50

**Account Chargeable:**

**Fund:** 101 General Fund

**Division:** 256081 Information Technologies

**Object Class:** 53822 Operating Services Contracts

**Project Number:** 0000000 – N/A

**Requisition Number:** 002832

**Purchase Order Number:**

**Submitted by:** John Thorson, Administrative Services Director  
Timothy Bain, Assistant Director - Information Technology Services

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**APPROVED:** Thomas Thomas, City Manager

## Google Apps for Government via Reseller Agreement

This Google Apps for Government via Reseller Agreement (the “Agreement”) is entered into by and between Google Inc., a Delaware corporation, with offices at 1600 Amphitheatre Parkway, Mountain View, California 94043 (“Google”) and City of Rock Island, a City formed under the laws of Illinois with an address at 1528 3rd Avenue, Rock Island, IL 61201 (“Customer”). This Agreement will be effective as of the date signed by Google below (the “Effective Date”). This Agreement governs Customer’s access to and use of the Service.

### 1. Services.

1.1 Facilities. All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Google stores and processes its own information of a similar type. Google has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access to or use of Customer Data.

1.2 Data Storage. As part of providing the Services Google will store the following Core Content, while permanently at rest, in the regions as described below, and as further detailed in Google’s FISMA security authorization package, which is referenced in Section 1.3.

- a. United States: Core Content for Gmail, Google Docs, Google Talk, and Google Calendar. Core Content for Gmail, Google Docs, Google Talk, and Google Calendar will be stored: (a) in servers dedicated to the Google Apps for Government Services; and (b) stored on encrypted drives using full disk encryption.
- b. United States and the European Union: Core Content for Google Contacts, Google Groups, Google Sites, and Google Video.

1.3 Federal Information Security Management Act (FISMA). The Google Apps Core Services received a FISMA “Authorization to Operate” for a Moderate impact system. Google will continue to maintain a System Security Plan (SSP) for the Google Apps Core Services, based on NIST 800-53 Rev. 3, or a similarly applicable standard. If Google does not maintain this SSP as stated, Customer’s sole and exclusive remedy, and Google’s entire liability, will be Customer’s ability to terminate the Agreement upon thirty days prior written notice.

### 1.4 Modifications.

- a. To the Services. Google may make commercially reasonable changes to the Services, from time to time. If Google makes a material change to the Services, Google will inform Customer, provided that Customer has subscribed with Google to be informed about such change.
- b. To URL Terms. Google may make commercially reasonable changes to the URL Terms from time to time. If Google makes a material change to the URL Terms, Google will inform Customer by either sending an email to the Notification Email Address or alerting Customer via the Admin Console, or will alert Reseller. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Google via the Help Center within thirty days after receiving notice of the change. If Customer notifies Google as required, or Reseller notifies Google on Customer’s behalf, then Customer will remain governed by the terms in effect immediately prior to the change until the end of the then-current term for the affected Services. If the affected Services are renewed, they will be renewed under Google’s then current URL Terms.

1.5 Customer Domain Name Ownership. Prior to providing the Services, Google or Reseller may verify that Customer owns or controls the Customer Domain Names. If Customer does not own, or control, the Customer Domain Names, then Google will have no obligation to provide Customer with the Services.

### 1.6 Ads.

- a. Default Setting. The default setting for the Services is one that does not allow Google to serve Ads. Customer or Reseller may change this setting in the Admin Console, which constitutes Customer’s authorization for Google to serve Ads. If Customer or Reseller enables the serving of Ads, it may revert to the default setting at any time and Google will cease serving Ads.
- b. Generally. Ads will comply with the AdWords Guidelines. Except as stated otherwise under this Agreement, Google will neither contact the End Users directly through email, nor authorize a third party to contact the End Users directly by email, for advertising purposes. If Google is authorized to serve Ads, any revenue generated from the display of Ads will be retained by Google and will not be subject to any revenue sharing.

## 2. Customer Obligations.

2.1 Compliance. Customer will use the Services in accordance with the Acceptable Use Policy. Google may make new applications, features or functionality available from time to time through the Services, the use of which may be contingent upon Customer’s agreement directly or through Reseller to additional terms. In addition, Google will make other Non-Google

Apps Products, separate from the Services, available to Customer and its End Users in accordance with the Non-Google Apps Product Terms and the applicable product-specific Google terms of service. Customer can enable or disable the Non-Google Apps Products at any time through the Admin Console. Customer agrees that its use of the Domain Service is subject to its compliance with the Domain Service Terms.

- 2.2 Aliases. Customer or Reseller is solely responsible for monitoring, responding to, and otherwise processing emails sent to the “abuse” and “postmaster” aliases for Customer Domain Names but Google may monitor emails sent to these aliases for Customer Domain Names to allow Google to identify Services abuse.
- 2.3 Customer Administration of the Services. Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. Customer and Reseller are responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Agreement. Customer agrees that Google’s responsibilities do not extend to the internal management or administration of the Services for Customer and that Google is merely a data-processor.
- 2.4 End User Consent. Customer’s Administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to allow: (i) Customer’s access, monitoring, use and disclosure of this data and Google providing Customer with the ability to do so, and (ii) Google to provide the Services.
- 2.5 Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services, and to terminate any unauthorized use. Customer or Reseller will promptly notify Google of any unauthorized use of, or access to, the Services of which it becomes aware.
3. Requesting End User Accounts; Services Term. Requesting End User Accounts, as well as initial and renewal terms for the Services, are to be decided upon between Customer and Reseller.
4. Payment. Customer will pay Reseller for the Services. As a result, all payment terms are to be decided upon between Customer and Reseller.
5. Technical Support Services.
  - 5.1 By Customer. Customer or Reseller will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer’s or End Users’ use of the Services. Customer or Reseller will use commercially reasonable efforts to resolve support issues before escalating them to Google.
  - 5.2 By Google. If Customer or Reseller cannot resolve a support issue consistent with the above, then Customer or Reseller (as applicable based on the agreement between Google and Reseller) may escalate the issue to Google in accordance with the TSS Guidelines. Google will provide TSS to Customer or Reseller (as applicable) in accordance with the TSS Guidelines.
6. Suspension.
  - 6.1 Of End User Accounts by Google. If Google becomes aware of an End User’s violation of the Agreement, then Google may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with Google’s request to Suspend an End User Account, then Google may do so. The duration of any Suspension by Google will be until the applicable End User has cured the breach which caused the Suspension.
  - 6.2 Emergency Security Issues. Notwithstanding the foregoing, if there is an Emergency Security Issue, then Google may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If Google Suspends an End User Account for any reason without prior notice to Customer, at Customer’s request, Google will provide Customer the reason for the Suspension as soon as is reasonably possible.
7. Confidential Information.
  - 7.1 Obligations. 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; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this 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.
  - 7.2 Exceptions. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

- 7.3 Required Disclosure. Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.
- 7.4 Third Party Requests. Customer is responsible for responding to Third Party Requests. Google will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request in a manner permitted by law; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first use the Admin Tool to access the required information, and will contact Google only if it is insufficient for Customer's needs.
8. Intellectual Property Rights; Brand Features.
- 8.1 Intellectual Property Rights. Except as expressly set forth herein, this 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, and Google owns all Intellectual Property Rights in the Services.
- 8.2 Display of Brand Features. Google may display only those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Services), and only within designated areas of the Service Pages. Customer may specify the nature of this use using the Admin Console. Google may also display Google Brand Features on the Service Pages to indicate that the Services are provided by Google. Neither party may display or use the other party's Brand Features beyond what is allowed in this Agreement without the other party's prior written consent.
- 8.3 Brand Features Limitation. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to this Agreement with written notice to the other and a reasonable period to stop the use.
9. Restrictions on Use. Unless Google specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services for High Risk Activities; or (e) use the Services to store or transfer any Customer Data that is controlled for export under Export Control Laws. Customer is solely responsible for any applicable compliance with HIPAA.
10. Publicity. Customer agrees that Google may include Customer's name or Brand Features in a list of Google customers. Customer also agrees that Google may verbally reference Customer as a customer of the Google products or services that are the subject of this Agreement. This section is subject to Section 8.3.
11. Government Purposes. The Services were developed solely at private expense and are commercial computer software and related documentation within the meaning of the applicable civilian and military Federal acquisition regulations and any supplements thereto. If the user of the Services is an agency, department, employee, or other entity of the United States Government, under FAR 12.212 and DFARS 227.7202, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, including technical data or manuals, is governed by the terms and conditions contained in this Agreement, which is Google's standard commercial license agreement.
12. Representations, Warranties and Disclaimers.
- 12.1 Representations and Warranties. Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable (including applicable security breach notification law). Google warrants that it will provide the Services in accordance with the applicable SLA. Customer represents and warrants that it is a state, city, or federal government entity.
- 12.2 Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES. 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 SERVICES CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.
13. Term and Termination.
- 13.1 Term. The term for the Services will be as decided upon between Reseller and Customer. This Agreement will remain in effect for the Term.
- 13.2 Termination for Breach. Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed

within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

- 13.3 Effects of Termination. If this Agreement terminates, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); (ii) Google will provide Customer or Reseller access to, and the ability to export, the Customer Data for a commercially reasonable period of time at Google's then-current rates for the applicable Services; (iii) after a commercially reasonable period of time, Google will delete Customer Data by removing pointers to it on Google's active servers and overwriting it over time; and (iv) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.

#### 14. Indemnification.

- 14.1 By Customer. Unless prohibited by applicable law and without waiving sovereign immunity, Customer will indemnify, defend, and hold harmless Google from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding Customer Data or Customer Domain Names; (ii) that Customer Brand Features infringe or misappropriate any patent, copyright, trade secret or trademark of a third party; or (iii) regarding Customer's use of the Services in violation of the Acceptable Use Policy.
- 14.2 By Google. Google will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that Google's technology used to provide the Services or any Google Brand Feature infringe or misappropriate any patent, copyright, trade secret or trademark of such third party. Notwithstanding the foregoing, in no event shall Google have any obligations or liability under this Section arising from: (i) use of any Services or Google Brand Features in a modified form or in combination with materials not furnished by Google, and (ii) any content, information or data provided by Customer, End Users or other third parties.
- 14.3 Possible Infringement.
- a. Repair, Replace, or Modify. If Google reasonably believes the Services infringe a third party's Intellectual Property Rights, then Google will: (a) obtain the right for Customer, at Google's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.
  - b. Suspension or Termination. If Google does not believe the foregoing options are commercially reasonable, then Google may suspend or terminate Customer's use of the impacted Services. If Google terminates the impacted Services, then Google will notify Customer or Reseller, or both.
- 14.4 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party has full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay any money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE A PARTY'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

#### 15. Limitation of Liability.

- 15.1 Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
- 15.2 Limitation on Amount of Liability. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO RESELLER FOR THE SERVICES DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- 15.3 Exceptions to Limitations. These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

#### 16. Miscellaneous.

- 16.1 Notices. Unless specified otherwise herein, (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 16.2 Assignment. Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

- 16.3 Change of Control. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).
- 16.4 Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 16.5 No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.
- 16.6 Severability. If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.
- 16.7 No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 16.8 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 16.9 Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 16.10 Governing Law.
- a. For State and City Government Entities. If Customer is a city or state government entity, then the parties agree to remain silent regarding governing law and venue.
  - b. For Federal Government Entities. If Customer is a federal government entity then the following applies: This Agreement will be governed by and interpreted and enforced in accordance with the laws of the United States of America without reference to conflict of laws. Solely to the extent permitted by federal law: (i) the laws of the State of California (excluding California's choice of law rules) will apply in the absence of applicable federal law; and (ii) FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.
  - c. For All other Entities. If Customer is any entity not set forth in Section 16.10(a) or (b) then the following applies: This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CLARA COUNTY, CALIFORNIA.
- 16.11 Amendments. Any amendment must be in writing and expressly state that it is amending this Agreement.
- 16.12 Survival. The following sections will survive expiration or termination of this Agreement: Section 7, 8.1, 13, 14, 15 and 16.
- 16.13 Entire Agreement. This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. If Customer is presented with a similar agreement on the same subject matter upon its log in to use the Services, this Agreement supersedes and replaces that agreement. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.
- 16.14 Interpretation of Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, and the terms located at any URL.
- 16.15 Counterparts. The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

## 17. Definitions.

"Acceptable Use Policy" means the acceptable use policy for the Services available at [http://www.google.com/a/help/intl/en/admins/use\\_policy.html](http://www.google.com/a/help/intl/en/admins/use_policy.html) or such other URL as Google may provide.

"Admin Account(s)" means the administrative account(s) provided to Customer by Google, or to Reseller by Customer, for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which Google will provide to Customer or Reseller.

"Admin Console" means the online tool provided by Google to Customer for use in reporting and certain other administration functions.

"Administrators" mean the Customer-designated technical personnel who administer the Services to End Users on Customer's behalf.

“Ads” means online advertisements displayed by Google to End Users.

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

“Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

“Confidential Information” means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer’s Confidential Information.

“Core Content” means the following subsets of Customer Data with respect to these individual components of the Services:

- GMail: messages and attachments;
- Google Calendar: events and descriptions of events;
- Google Contacts: content of the address book;
- Google Docs: content authored by the owner or collaborators of the doc, not including content hosted on (i) other Google products not referenced in Core Content or (ii) other third party websites;
- Google Groups: message and message search archive;
- Google Sites: content authored by the owners or collaborators of the site; not including content hosted on (i) other Google products not referenced in Core Content or (ii) other third party websites;
- Google Talk: archived “on the record” Talk conversations;
- Google Video: all copies and formats of video content, in addition to thumbnails, titles, descriptions and captions.

“Customer Data” means data, including email, provided, generated, transmitted or displayed via the Services by Customer, or Reseller on behalf of Customer.

“Customer Domain Names” mean the domain names owned or controlled by Customer, which will be used in connection with the Services.

“Domain Service” means a service provided by Google to Customer purely for Customer’s convenience, where Customer may, through a Google-provided interface, register domain names through, or transfer domain names to, Registrar Partners (as defined in the Domain Service Terms).

“Domain Service Terms” means the terms at: [http://www.google.com/a/help/intl/en/admins/domain\\_service\\_terms.html](http://www.google.com/a/help/intl/en/admins/domain_service_terms.html), or other such URL as may be provided by Google.

“Emergency Security Issue” means either: (a) Customer’s use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other customers’ use of the Services; or (iii) the Google network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

“End Users” means the individuals Customer permits to use the Services.

“End User Account” means a Google-hosted account established by Customer through the Services for an End User.

“Export Control Laws” means all applicable export and reexport control laws and regulations, including the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“ITAR”) maintained by the Department of State.

“Google Apps Core Services” means the following components of the Services: Gmail, Google Calendar, Google Docs, Google Talk, Google Sites, Google Video, as well as the supporting general support system.

“Help Center” means the Google help center accessible at <http://www.google.com/support/> or other such URL as Google may provide.

“High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.

“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.

“Non-Google Apps Products” means Google products which are not part of the Services, but which may be accessed by End Users using their End User Account login and password. The Non-Google Apps Products are set forth at the following URL: <http://www.google.com/support/a/bin/answer.py?hl=en&answer=181865>, or such other URL as Google may provide.

“Non-Google Apps Product Terms” means the terms found at the following URL: [http://www.google.com/apps/intl/en/terms/additional\\_services.html](http://www.google.com/apps/intl/en/terms/additional_services.html), or such other URL as Google may provide from time to time.

“Notification Email Address” means the email address designated by Customer to receive email notifications from Google. Customer may provide a Reseller email address for this purpose if it so chooses. Customer may change this email address through the Admin Console.

“Reseller” means the Google Apps reseller Customer is paying to provide access to and use of the Services.

“SDN List” is the US Treasury Department’s List of Specially Designated Nationals.

“Service Pages” mean the web pages displaying the Services to End Users.

“Services” means the Google Apps for Government Services provided by Google and used by Customer under this Agreement. The Services are as described here: [http://www.google.com/a/help/intl/en/users/user\\_features.html](http://www.google.com/a/help/intl/en/users/user_features.html), or other such URL as Google may provide.

“SLA” means the Service Level Agreement located here: [http://www.google.com/apps/intl/en/terms/reseller\\_sla.html](http://www.google.com/apps/intl/en/terms/reseller_sla.html), or such other URL as Google may provide from time to time.

“Suspend” means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

“Term” means the term of the Agreement, which will begin on the Effective Date and continue for as long as Customer is receiving Services from Google, unless terminated earlier pursuant to the Agreement, or pursuant to Customer’s agreement with Reseller.

“Third Party Request” means a request from a third party for records relating to an End User’s use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

“TSS” means the technical support services provided by Google to the Administrators during the Term pursuant to the TSS Guidelines.

“TSS Guidelines” means Google’s technical support services guidelines then in effect for the Services. TSS Guidelines are at the following URL: <http://www.google.com/a/help/intl/en/admins/tssg.html> or such other URL as Google may provide.

“URL Terms” means the Acceptable Use Policy, the SLA and the TSS Guidelines.

IN WITNESS WHEREOF, the parties have executed this Agreement by persons duly authorized as of the date signed by Google below.

Google Inc.  
By: \_\_\_\_\_  
(Authorized Signature)  
\_\_\_\_\_  
(Print Name)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Customer: City of Rock Island  
By: \_\_\_\_\_  
(Authorized Signature)  
\_\_\_\_\_  
(Print Name)  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## GOOGLE APPS SERVICE AGREEMENT

This **GOOGLE APPS SERVICE AGREEMENT** (this “**Agreement**”) is made effective as of the 10<sup>th</sup> day of December 2011 (“**Effective Date**”) by and between **CLOUD SHERPAS, INC.**, a Georgia Corporation (“**Cloud Sherpas**”), with principal offices at 3525 Piedmont Road, Building 8 Suite 710, Atlanta, Georgia 30305, and **THE CITY OF ROCK ISLAND** an Illinois local municipality with principal offices at 1528 3<sup>rd</sup> Avenue, Rock Island, IL 61201 (“**Customer**”). In consideration of the promises and the mutual obligations of the parties set forth herein, and for other good and valuable consideration, the parties agree as follows:

**1. Google Apps Services.** Customer agrees to purchase from Cloud Sherpas the services (the “**Services**”) specified in the “**Services Schedule**” attached hereto as **Attachment 1** at the price(s) (the “**Purchase Price**”) noted thereon. Customer acknowledges and agrees that this Agreement and the TOS (as defined in Section 3 below) govern Customer’s use of the Services, but do not govern the implementation and deployment services performed by Cloud Sherpas for Customer, if any, which will be performed under the terms of a separate Implementation and Deployment Agreement between Cloud Sherpas and Customer.

**2. Purchase and Payment.** Customer’s use of the Services is subject to a three year pre-payment of the Purchase Price prior to commencement of the initial Term and each Renewal Term. Unless otherwise agreed to by the parties, within six (6) business days after Cloud Sherpas’ receipt of the Purchase Price for the Initial Term, the Services will be provisioned for Customer (“**Provisioning**”) and Customer will be authorized to complete the process for activating Customer’s account. Customer may purchase additional End User Accounts (as defined in **Attachment 1** hereto) for existing customer domain names at any time. Such accounts shall have a pro-rated Term equal to the remainder of the then current Term. Customer may only decrease the number of End User Accounts prior to commencement of a Renewal Term and only upon written notice delivered to Cloud Sherpas at least thirty (30) days prior to the expiration of the then current Term. End User Accounts cannot be transferred from one Customer domain name to another until the next Renewal Term. Cloud Sherpas may revise the fees charged for the Services at any time with at least thirty (30) days prior written notice to Customer, effective for the next Renewal Term.

**3. TOS and Ownership.** The Services will be provided by Google Inc. (“**Supplier**”). Customer acknowledges that (a) its use of the Services is subject to (i) the terms of this Agreement, and (ii) the Google Terms of Service located at the end of this contract as attachment 3 and the policies referenced therein including without limitation the Acceptable Use Policy and the TSS Guidelines, as amended from time-to-time (collectively, the “**TOS**”), and (b) except for the rights granted herein and in the TOS, Customer has no rights in or to the Services except to access and use the Services pursuant to the TOS. Upon Customer’s first log in to the Services and before using the Services, Customer must accept the TOS. The TOS is a contract between Customer and Supplier describing important terms such as intellectual property ownership and indemnification. The Services and intellectual property rights relating thereto are and shall remain the exclusive property of Supplier as more particularly described therein. Cloud Sherpas is not responsible for the performance of Supplier or the Supplier-provided Services except as specifically provided in this Agreement.

**4. Term and Termination.**

**a.** This Agreement will commence upon the Effective Date and continue for an initial term of three (3) years (the “**Initial Term**”); provided that upon expiration of the Initial Term and on each anniversary of the Effective Date thereafter, this Agreement will automatically renew for successive one (1) year terms (each a “**Renewal Term**”, referred to collectively with the Initial Term herein as the “**Term**”) unless either party gives the other party written notice of non-renewal (which may be given with or without cause) at least sixty (60) days prior to the end of the then current Term.

**b.** Without prejudice to any other remedies, the parties will have the right to terminate this Agreement upon written notice if the other party fails to cure any material breach of this Agreement within thirty (30) days after receiving written notice of such breach, provided, however, that the period to cure a breach with respect to payment shall be ten (10) days. Material breaches include, but are not limited to, non-payment or any violation of law, the TOS or the confidentiality obligations set forth in Section 5 hereof. This Agreement is further



subject to early termination if (a) the reseller agreement between Supplier and Cloud Sherpas (“**Reseller Agreement**”) has or will be terminated, provided that Cloud Sherpas will provide Customer with advance notice of termination as soon as reasonably practicable if and as such notice has been provided by Supplier to Cloud Sherpas, (b) Cloud Sherpas determines that it is impracticable to continue providing the Services in light of applicable laws, provided Cloud Sherpas provides written notice to Customer, or (c) Supplier terminates the Services pursuant to the TOS. Except as explicitly stated otherwise, this paragraph describes the Customer’s sole and exclusive remedy for Cloud Sherpas’ material breach of this Agreement.

**c.** From and after any termination or expiration of this Agreement: (i) all rights and licenses granted by one party to the other will immediately cease; (ii) any and all provisions or obligations contained in this Agreement which by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement will survive the termination of this Agreement and remain binding upon and for the benefit of the parties; (iii) each party will promptly return to the other, or destroy and certify the destruction of, all of the other party’s Confidential Information; and (iv) all fees and any other monies due to Cloud Sherpas by Customer will become immediately due and payable.

**d.** In the event the Reseller Agreement is terminated due to Cloud Sherpas’ breach, then Supplier may offer Customer the option to migrate to a relationship either directly with Supplier or with another reseller. If Cloud Sherpas terminates the Reseller Agreement due to Supplier’s breach or the term of the Reseller Agreement expires, then Cloud Sherpas may offer Customer the option to migrate to a direct relationship with Supplier or with another reseller, or to a similar service provided by a third party or by Cloud Sherpas.

**5. Confidential Information.** “**Confidential Information**” is information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally under the circumstances be considered confidential information of the disclosing party. Confidential Information does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient, or that was rightfully given to the recipient by another party. For clarity, Customer’s Confidential Information shall include electronic messages of Customer that are subject to the Services. The recipient will not disclose the Confidential Information, except to affiliates, employees, suppliers and agents who need to know it and who have agreed in writing to keep it confidential. Those people and entities may use Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. The recipient may also disclose Confidential Information when required by law after giving reasonable notice to discloser. Confidential Information deemed “trade secret” under applicable law shall remain in effect for as long as the same remains a trade secret. Subject to the terms of the TOS, obligations with respect to Confidential Information that is not a trade secret shall remain in effect for a period of three (3) years following recipient’s receipt thereof. The obligations set forth under this Section shall survive termination of this Agreement.

**6. Changes.** Customer, Supplier and their respective licensors and/or service providers reserve the right to modify or enhance the Services with the objective of providing Customer with equal or enhanced Services, or complying with applicable laws or regulations (collectively, the “**Changes**”), at no additional cost to Customer and without Customer’s consent. In the event of any such Changes, Cloud Sherpas will provide as much notice to Customer as reasonably practical under the circumstances, which notice may be by email.

**7. Service Levels.** The TOS provides a service level agreement from Supplier to Customer for End User Accounts. In the event of a service level violation by Supplier, Cloud Sherpas will provide remedies to Customer on Supplier’s behalf. Cloud Sherpas will provide the remedies specified in the TOS, with no substitution, in accordance with the TOS. If Customer is purchasing the portion of the Services designed to process, filter and deliver and/or archive email (“**Email Processing Services**”), then Customer shall be entitled to the benefits of the service level terms noted on **Attachment 2** hereto, including the remedies noted thereon. Cloud Sherpas will provide no other remedies for service level violations. Cloud Sherpas will assist Customer with escalating critical Customer matters to Supplier, even if Supplier does not consider such Customer matters critical pursuant to TSS Guidelines (as defined in the TOS).

**8. WARRANTIES.** OTHER THAN AS SPECIFICALLY PROVIDED IN SECTION 7 HEREOF, CLOUD SHERPAS MAKES NO ANY WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT



LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT. TO THE EXTENT ANY EXCLUSION OF IMPLIED WARRANTIES DOES NOT APPLY AS A MATTER OF LAW, THEN ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE EFFECTIVE DATE.

**9. Customer Obligations.** During the term of this Agreement, Customer shall have the following obligations, in addition to those set forth elsewhere in this Agreement:

**a.** Customer is and will remain solely responsible for complying with all laws, rules and regulations regarding the management and administration of its electronic messaging system. Customer acknowledges and agrees that Cloud Sherpas' and Supplier's responsibilities and liability do not extend to the internal management or administration of Customer's electronic messaging system or messages and that Cloud Sherpas and Supplier are merely data-processors.

**b.** 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.

**c.** Customer shall use the Services only in the ordinary course of Customer's business. 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 user for which Customer will be routing email and/or archiving email, if any, through the Services, Customer shall establish an email account in the Admin Console (as defined in the TOS).

**d.** If the Services contain archiving functionality, Customer messages shall be retained for up to the retention period set forth in the Services Schedule, provided that Customer renews the applicable Services with Cloud Sherpas for each year of such retention period. The retention period shall apply to all data archived under the Services. Failure to renew the applicable Services during the retention period shall terminate the obligation to retain any of Customer's data or indexes.

**e.** Customer represents and warrants that, as of the Effective Date, it is not a current customer of Supplier.

**f.** IF CUSTOMER FAILS TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS SECTION 9, CLOUD SHERPAS SHALL NOTIFY CUSTOMER THEREOF AND RESERVES THE RIGHT TO SUSPEND THE SERVICES UNTIL SUCH FAILURE IS REMEDIED. NOTWITHSTANDING THE FOREGOING, THE FAILURE OF CUSTOMER TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS SECTION 9 MAY BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.

## **10. Indemnification.**

**a. Cloud Sherpas Indemnity.** To the extent that infringement indemnification is not available to Customer directly from Supplier under the TOS, Cloud Sherpas, at its expense, shall indemnify, defend and hold harmless Customer against any losses, costs and damages arising from a claim by a third party against Customer that the Services, or any part thereof, infringe any U.S. intellectual property or proprietary rights of such third party or misappropriates any protected trade secret of such third party. Cloud Sherpas's obligations under this Section 10.a. are subject to Customer providing Cloud Sherpas with (i) prompt written notice of the claim, (ii) sole control over the defense or settlement (provided, however, that any such settlement shall not result in financial liability on Customer or require its admission of any fault without its prior written consent), and (iii) reasonable support and cooperation with regard to the defense. In the event that Cloud Sherpas's right to provide the Services is enjoined or in Cloud Sherpas's reasonable opinion is likely to be enjoined, Cloud Sherpas may, at its expense, obtain the right to continue providing the Services, replace or modify the Services so that they become non-infringing but remain functionally equivalent, or if such remedies are not reasonably available, terminate this Agreement without liability to Customer. Notwithstanding the foregoing, Cloud Sherpas will have no liability for a claim of any kind to the extent that it results from the following (each an "**Indemnity Exclusion**"): (i) the combination, operation or use of the Services with equipment, devices, software or data not supplied by Cloud Sherpas, if a claim would not have



occurred but for such combination, operation or use; or (ii) Customer's use or resale of the Services other than in accordance with this Agreement.

b. **Customer Indemnity.** Customer will defend any action or proceeding brought against Cloud Sherpas and will indemnify and hold Cloud Sherpas harmless from and against any liability, damages and expenses (including court costs and reasonable attorneys' fees) to the extent arising out of or resulting from any third-party claim based on or otherwise attributable to: (i) any Customer data and/or Customer messages (other than claims described in Section 10.a.); (ii) any representations or warranties made by Customer to any third party; or (iii) any Indemnity Exclusion. Customer's obligations under this Section 10.b. are subject to Cloud Sherpas providing Customer with (i) prompt written notice of the claim, (ii) sole control over the defense or settlement (provided, however, that any such settlement shall not result in financial liability on Cloud Sherpas or require its admission of any fault without its prior written consent), and (iii) reasonable support and cooperation with regard to the defense.

**11. Limitation of Liability.** IN NO EVENT WILL CLOUD SHERPAS, ITS LICENSORS OR SUPPLIERS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA, LOSS OF GOODWILL, OR COSTS OF PROCURING SUBSTITUTE SERVICES), IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE, PERFORMANCE, NON-PERFORMANCE OR OPERATION OF THE SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, WHETHER OR NOT CLOUD SHERPAS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY APPLIES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. IN NO EVENT SHALL CLOUD SHERPAS' LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED THE AMOUNTS PAID BY CUSTOMER TO CLOUD SHERPAS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CAUSATION OF THE DAMAGES.

**12. Injunctive Relief.** Customer and Cloud Sherpas each acknowledge that remedies at law may be inadequate to provide full compensation in the event of a material breach of this Agreement, any confidentiality obligations contained herein or any intellectual property rights of a party, and that the non-breaching party shall therefore be entitled to seek injunctive relief in the event of any such material breach.

**13. Governing Law/Arbitration.** This Agreement shall be construed and governed in accordance with the laws of the State of Georgia of the United States of America, without regard to its rules regarding conflicts of law. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement. Customer agrees to submit to the personal and exclusive jurisdiction of the courts located within the state of Georgia. All disputes relating to this Agreement will be solely and finally settled by arbitration conducted pursuant to the Commercial Rules of the American Arbitration Association in Atlanta, Georgia. Judgment on the arbitral award is final and binding and may be entered in any court of competent jurisdiction.

**14. Waiver/Severability.** The failure of either party to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is for any reason held unenforceable or invalid then this Agreement shall be construed as if such provision were not contained in this Agreement.

**15. Assignment.** Customer cannot assign, sublicense, or transfer this Agreement without the prior written consent of Cloud Sherpas. Any attempt by Customer to sublicense, assign or transfer any rights, duties, or obligations hereunder is null and void. Cloud Sherpas may assign or transfer this Agreement at any time without notice and without the written consent of Customer. This Agreement and all obligations shall be binding upon and inure to the benefit of the parties' permitted successors and lawful assigns.

**16. Force Majeure.** Cloud Sherpas shall not be liable for inadequate performance to the extent caused by a circumstance beyond its reasonable control, including, without limitation, Domain Name Server issues outside its direct control, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages.



**17. Notices.** All notices, requests, consents, waivers, approvals, demands and other communications required or permitted under this Agreement must be in writing and shall be deemed to have been duly given upon the earliest to occur of (i) when delivered personally by hand to the recipient, (ii) when delivered by overnight courier (such as FedEx or UPS), (iii) when transmitted by electronic mail with the receipt of such electronic mail being confirmed by telephone, or (iv) five (5) days after having been mailed, certified or registered mail, with postage prepaid, in each case to the appropriate addresses set forth in the introductory paragraph of this Agreement and electronic mail addresses set forth on the signature page (or to such other addresses and electronic mail addresses as a party may designate by notice to the other parties).

**18. Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

**19. No Agency.** The parties hereto are independent contractors, and this Agreement does not create an agency, partnership or joint venture.

**20. Publicity.** Neither party may make any public statement regarding the relationship contemplated by this Agreement without the other party's prior written consent.

**21. Electronic Conduct of Business.** By executing this Agreement, Cloud Sherpas and Customer hereby agree to transact business by electronic means, including but not limited to transmittal of notices and execution of additional documents related to this Agreement.

**22. Entire Agreement / Modifications.** This Agreement and the attachments hereto comprise the entire agreement between Customer and Cloud Sherpas, and supersedes any other agreement or discussion, oral or written, with respect to the subject matter of this Agreement, and may not be changed except by a written agreement signed by both parties hereto.

**23. Third Party Beneficiaries.** Customer, Cloud Sherpas and Supplier have rights under this Agreement. Subject to the foregoing, no other person or entity shall have third party rights under this Agreement other than as specifically provided herein.

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

**IN WITNESS WHEREOF,** the parties have caused their authorized representatives to execute this Agreement effective as of the Effective Date.

**CLOUD SHERPAS INC.**

**THE CITY OF ROCK ISLAND**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_



## ATTACHMENT 1

### SERVICES SCHEDULE

#### 1. **End User Accounts - Google Apps for Government Services**

Customer is purchasing 350 Google-hosted accounts provided to Customer's users ("**End User Accounts**") through the Google Apps for Government Edition at a price of \$0 per End User Account for an aggregate purchase price of \$0. Customer may order additional End User Accounts and the fee shall be pro-rated to the upcoming anniversary of the Effective Date.

2. **Google Message Security /Customer is purchasing 350** Google-hosted Message Security accounts provided to Customer's users ("**Email Accounts**") through **the Google Apps** for Government Edition at a price of \$53.85 per Email Account for an aggregate purchase price of \$18,847.50. Customer may order additional Email Accounts for a three year term beginning on the date of an executed Order.

Customer will pay for Services in advance, following receipt of an invoice from Cloud Sherpas. Customer shall make payment to Cloud Sherpas within thirty (30) days after receipt of Cloud Sherpa's invoice. Cloud Sherpas may suspend the Services if payments are not received on a timely basis. If Customer breaches its obligation to make timely payment as provided hereunder, Customer agrees to pay all of Cloud Sherpa's costs of collection, including, without limitation, all court costs and attorneys' fees.



## ATTACHMENT 2

### **SERVICE LEVEL AGREEMENT FOR EMAIL PROCESSING SERVICES**

1. **Service Availability Commitment.** The Email Processing Services shall be operational at least 99.999% of the time in any given month during the term of the Agreement. The “Operational Percentage” means the percentage of the total time during any given month that the Email Processing Services are not subject to an Outage. An outage (“Outage”) means that Supplier fails to apply filtering in accordance with Cloud Sherpas’ configuration selection. Outage does not include service suspension (i) for reasons outside of Supplier’s or Cloud Sherpas’ sphere of control (as described in Section 4 of this SLA) or (ii) during times of maintenance (as described in Section 5 of this SLA). If a dispute arises about whether or not an Outage occurred, Supplier shall make a determination in good faith based on its system logs, monitoring reports and configuration records, which Supplier shall make available for auditing by Cloud Sherpas at Cloud Sherpas’ request. The “Outage Percentage” means the total duration of an Outage during a given month divided by the total time during such month.
2. **Outage Reporting Process.** Customer must inform Cloud Sherpas’ Customer Support Department in writing or by email within five (5) business days of the time it first notices an Outage or first believes that there has been an Outage. Failure to comply with this requirement will forfeit Customer’s right to receive a remedy for the Outage as described in Section 3 of this SLA.
3. **Remedy.** If the Operational Percentage is less than 99.999%, and if Customer has fulfilled all of its obligations under the Agreement and none of the exceptions in Section 4 of this SLA applies, Customer shall have the following sole and exclusive remedy: Cloud Sherpas will provide Customer with a pro-rata credit on Customer’s Email Processing Services fee for the month in which the Outage occurred. The pro-rata credit shall be calculated by multiplying the Outage Percentage with Customer’s total monthly Email Processing Services fee to Cloud Sherpas (for the applicable Customer Order) in the month during which the Outage occurred. For clarity, the Email Processing Services fee for an applicable Customer Order for a given month shall equal the following fee charged by Cloud Sherpas to Customer, as may be applicable, either (i) 100% of the Google Message Filtering fee for that month, (ii) 100% of the Google Message Security fee for that month or (iii) 33% of the Google Message Discovery fee for that month. Furthermore, if Customer experiences one (1) or more Outages in each of three (3) consecutive calendar months and/or three (3) or more Outages in any period of thirty (30) consecutive days, Customer can terminate the applicable Customer Order(s) upon thirty (30) days prior written notice.
4. **Exceptions.** Customer shall not have any remedies under the Agreement, including this SLA, in connection with any circumstances addressed in Section 16, “Force Majeure” of the Google Apps Services Agreement.
5. **Maintenance.** To ensure optimal performance of the Services, Cloud Sherpas and/or Supplier reserves the right to perform unscheduled emergency maintenance at any time. Additionally, Cloud Sherpas and/or Supplier reserves the right to perform scheduled maintenance that is designed not to impact the Services at any time. Cloud Sherpas and/or Supplier will make all reasonable attempts to schedule maintenance events that are expected to have an impact on the Services between 10:00 p.m. Pacific Time on Fridays and 12:00 p.m. Pacific Time on Sundays.