



GOOGLE APPS FOR GOVERNMENT SERVICE AGREEMENT

This **GOOGLE APPS FOR GOVERNMENT SERVICE AGREEMENT** (this "**Agreement**") is made effective as of the 12th day of September, 2013 ("**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 **Connecticut Health Insurance Exchange dba Access Health CT**, a quasi-public agency created by the State of Connecticut (the "**State**") pursuant to Public Act 11-53, with principal offices at 280 Trumbull Street, 15th Floor Hartford, CT 06103 ("**Customer**"). 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 payment of the Purchase Price in accordance with the terms of this Agreement, including **Attachment 1** hereto. Following execution of this Agreement, the Services will be provisioned for Customer 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 by notifying Cloud Sherpas. Such accounts shall have a pro-rated Term equal to the remainder of the then current Term and Customer shall make payment to Cloud Sherpas for such additional End User Accounts no later than thirty (30) days after receipt of Cloud Sherpas's invoice. Customer may only decrease the number of End User Accounts prior to commencement of a Renewal Term (as defined below) 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. Customer shall make payment to Cloud Sherpas no later than thirty (30) days after receipt of Cloud Sherpas' invoice. Cloud Sherpas may suspend or terminate the Services immediately if any payments are not received when due. If Customer fails to pay any amount when due hereunder, Customer agrees to pay all of Cloud Sherpas's costs of collection, including, without limitation, all court costs and attorneys' fees.

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 Passthrough Terms attached hereto as **Attachment 2** and the policies referenced therein (the "**TOS**"). The TOS is a contract between Customer and Supplier. By execution of this Agreement, Customer hereby accepts the terms set forth in the TOS and agrees to be bound by the same. Cloud Sherpas will have no liability for performance of the Services by Supplier other than as set forth in this Agreement.

4. Term and Termination.

a. This Agreement will commence upon the Effective Date and continue for an initial term of one (1) year (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 and Cloud Sherpas shall have the option to suspend or terminate the Services in the event of such a breach. 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 Supplier terminates the Services pursuant to the TOS.

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 in its possession; and (iv) all fees and any other monies due to Cloud Sherpas by Customer will become immediately due and payable.

5. Confidential Information. The provisions of the TOS regarding Confidential Information, including the definition of the term "Confidential Information" as contained therein, are incorporated herein by reference and shall govern the exchange of Confidential Information between Cloud Sherpas and



Customer hereunder. The exchange of Confidential Information between Customer and Supplier will be governed by the TOS.

6. Support. Cloud Sherpas will assist Customer with escalating critical Customer matters to Supplier.

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.

8. WARRANTIES. CLOUD SHERPAS MAKES NO WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY AND NON-INFRINGEMENT.

9. Archiving. 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.

10. Indemnification. The TOS provides certain indemnification obligations of Supplier to Customer. Customer will indemnify Cloud Sherpas against third party claims to the same extent it indemnifies Supplier under the terms of the TOS.

11. Limitation of 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. NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO CLOUD SHERPAS FOR THE SERVICES DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY. 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.

12. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.

13. Governing Law/Arbitration. This Agreement shall be construed and governed in accordance with the laws of the State of Connecticut 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.

14. Waiver/Severability. Failure to enforce any provision of this Agreement will not constitute a waiver. If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.

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

17. Entire Agreement/Amendment. 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. Any amendment must be in writing and expressly state that it is amending this Agreement.

18. 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.

19. 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 executed this Agreement effective as of the Effective Date.

CLOUD SHERPAS, INC.

By: _____

Name: _____

Title: _____

Connecticut Health Insurance Exchange dba Access Health CT

By:  _____

Name: Peter A. Van Loon

Title: Chief Operating Officer

ATTACHMENT 1

SERVICES SCHEDULE

1. End User Accounts – Google Apps for Government Services

Customer is purchasing 328 Google-hosted accounts provided to Customer's users ("End User Accounts") through the Google Apps Premier Edition at a price of \$50.00 per End User Account for an aggregate purchase price of \$16,400.00. Customer may order additional End User Accounts and the fee shall be pro-rated to the upcoming anniversary of the Effective Date and invoiced to Customer.

The Customer's domain name is accesshealthct.com.

2. Google Apps Vault

Customer is purchasing 328 Google Apps Vault accounts at a price of \$50.00 per End User Account for an aggregate purchase price of \$16,400.00. Customer may order additional Google Apps Vault accounts and the fee shall be pro-rated to the upcoming anniversary of the Effective Date and invoiced to Customer.

Customer will pay for the Services annually in advance, following receipt of an invoice from Cloud Sherpas. Customer shall make payment to Cloud Sherpas no later than thirty (30) days after receipt of Cloud Sherpas's invoice. Cloud Sherpas may suspend or terminate the Services if payments are not received when due. If Customer fails to make any payment when due as provided hereunder, Customer agrees to pay all of Cloud Sherpas's costs of collection, including, without limitation, all court costs and attorneys' fees.

ATTACHMENT 2

Google Passthrough Terms

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 Connecticut Health Insurance Exchange dba Access Health CT, a quasi-public agency created by the State of Connecticut (the "State") pursuant to Public Act 11-53 formed under the laws of Connecticut with an address at 280 Trumbull Street, 15th Floor Hartford, CT 06103 ("Customer"). This Agreement will be effective as of the earlier of the date Customer receives access to the Services or the effective date of Customer's agreement with Reseller (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 Google Apps Core 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, and Google Sites.
- 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.

1.7 **Google Apps Vault.** If Customer purchases Google Apps Vault, the following additional terms apply:

- a. **Retention.** Google will have no obligation to retain any archived Customer Data beyond the retention period specified by Customer (other than for any legal holds). If Customer does not renew Google Apps Vault, Google will have no obligation to retain any archived Customer Data.
- b. **Partial Provisioning.** If the number of End User Accounts Customer purchases for Google Apps Vault is less than the number of End User Accounts Customer purchases (or has previously purchased) for Google Apps for Government Customer may not use more End User Accounts of Google Apps Vault than it has purchased. Google may audit Customer's account at any time to ensure that Customer is not violating this Section. If Google determines that Customer is violating this Section, Customer will be in material breach of this Agreement.

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 the International Traffic in Arms Regulations (ITAR). 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 NON-INFRINGEMENT. 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 New York 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 NEW YORK.

- 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 New York 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 NEW YORK.

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 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.

"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, 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.

“Google Apps Core Services” means the following components of the Services: Gmail, Google Calendar, Google Contacts, Google Docs, Google Groups, Google Talk, Google Sites, 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, 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, as applicable, the Google Apps for Government Services and Google Apps Vault 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, or other such URL as Google may provide. For the purposes of this Agreement, the Google Apps Core Services are listed in the definition of “Google Apps Core Services” above.

“SLA” means the Service Level Agreement located here: 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/issg.html> or such other URL as Google may provide.

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

ATTACHMENT 3

A. Nondiscrimination and Affirmative Action

a) For purposes of this Section A of this Attachment 3, the following terms are defined as follows:

- i. "Commission" means the Commission on Human Rights and Opportunities;
- ii. "Contract" and "contract" include any extension or modification of this Agreement;
- iii. "Consultant" and "Consultant" include any successors or assigns of the Consultant or Consultant;
- iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
- v. "Good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- vi. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- vii. "Marital status" means being single, married, widowed, separated or divorced as recognized by the State of Connecticut;
- viii. "Mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders," or a record of or regarding a person as having one or more such disorders;
- ix. "Minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which are owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
- x. "Public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include an agreement where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Connecticut General Statutes § 1-120, (3) any other state, including but not limited to, any federally recognized Indian tribal governments, as defined in Connecticut General Statutes § 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

- b) CLOUD SHERPAS agrees and warrants that in the performance of the Contract it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity or expression, genetic information, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by CLOUD SHERPAS that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and CLOUD SHERPAS further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity or expression, genetic information, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by CLOUD SHERPAS that such disability prevents performance of the work involved; (2) CLOUD SHERPAS agrees, in all solicitations or advertisements for employees placed by CLOUD SHERPAS or on behalf of the Client, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) CLOUD SHERPAS agrees to provide each labor union

or representative of workers with which CLOUD SHERPAS has a collective bargaining agreement or other contract or understanding and each vendor with which CLOUD SHERPAS has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of CLOUD SHERPAS commitments under this Section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) CLOUD SHERPAS agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) CLOUD SHERPAS agrees to provide the Commission with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Consultant as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, CLOUD SHERPAS agrees and warrants that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- c) Determination of the CLOUD SHERPAS's good faith efforts shall include, but shall not be limited to, the following factors: CLOUD SHERPAS's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d) CLOUD SHERPAS shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e) CLOUD SHERPAS shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and/or the Exchange and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. CLOUD SHERPAS shall take such action with respect to any such subcontract or purchase order the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided if CLOUD SHERPAS becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Consultant may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- f) CLOUD SHERPAS agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

B. Certain State Ethics Requirements.

- a) For all State contracts as defined in P.A. 07-01 having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contributions and solicitation prohibitions and will inform its principals of the contents of the notice.
- b) For all State contracts having a value in a calendar year of \$50,000 or more or a combination or series of such agreements within a twelve month period having a value of \$50,000 or more, pursuant to Governor M. Jodi Rell's Executive Order No. 1, paragraph 8, and Governor M. Jodi Rell's Executive Order No. 7C, paragraph 10(a), CLOUD SHERPAS must submit a contract certification annually to update previously-submitted certification forms for state contracts. Consultants must use the Gift and Campaign Contribution Certification (CT HIX Ethics Form 1) for this purpose, attached as Appendix A. The first of these Ethics Form 1 certifications is due on the first annual anniversary date of the execution of this Agreement and subsequent certifications are due on every succeeding annual anniversary date during the time that this Agreement is in effect, including the first anniversary date following the termination or expiration of this Agreement or conclusion of the Services. This provision shall survive the termination or expiration of this Agreement in order for the Consultant to satisfy its obligation to submit the last certification.

C. Applicable Executive Orders of the Governor.

The Consultant shall comply, to the extent applicable, with the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings, Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace and Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms. These Executive Orders are incorporated into and are made a part of this Agreement as if they had been fully set forth in it. At CLOUD SHERPAS's request, the Exchange shall provide a copy of these orders to Thomas Byrne Associates.

D. Freedom of Information Act.

CLOUD SHERPAS acknowledges that the Exchange is subject to the Connecticut Freedom of Information Act ("FOIA"). As a result, no information provided to the Exchange by CLOUD SHERPAS or any Consultant Agent, regardless of its form, shall be considered confidential, even if marked as such. In no event shall the Exchange have any liability for the disclosure of documents or information in its possession which the Exchange believes it is required to disclose pursuant to FOIA or any other law.

E. Trafficking Victims Protections Act of 2000, as amended.

Neither CLOUD SHERPAS nor its employees shall:

- i. engage in severe forms of trafficking in persons during the term of this Agreement;
- ii. procure a commercial sex act during the term of this Agreement; or
- iii. use forced labor in the performance of this Agreement.

E. Cost Principles for State, Local and Tribal Governments

As a Subcontractor of a federal grant recipient, Contractor is subject to the federal cost principle requirements as set forth in Title 2 Part 225, State, Local, and Indian Tribal Governments (previously A-87), if applicable.

F. Subcontractor Reporting and Executive Compensation.

As a Subcontractor of a federal grant recipient, Contractor is subject to the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252 and implemented by 2 CFR Part 170, if applicable. Subcontractors of a federal grant recipient must report information for each first tier subaward of \$25,000 or more in Federal funds and executive total compensation for the recipient's and subrecipient's five most highly compensated executives as outlined in Appendix A to 2 CFR Part 170. Information about the Federal Funding and Transparency Act Subaward Reporting System (FSRS) is available at www.fsrs.gov.

G. Central Contractor Registration and Universal Identifier Requirements.

As a Subcontractor of a federal grant recipient, Contractor is subject to the requirements of 2 CFR part 25, Appendix A, if applicable.