

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "Agreement") is entered into this 18th day of March, 2014 (the "Effective Date") between the 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 an office at 280 Trumbull Street, Hartford, Connecticut 06103 (the "Exchange") and Shipman & Goodwin LLP, a Connecticut limited liability partnership, with an office at One Constitution Plaza, Hartford, CT 06103-1919 (the "Contractor").

WHEREAS, the Contractor possesses experience and qualifications in performing the services described below and provides these services to various companies and organizations;

WHEREAS, the Exchange wishes to engage the Contractor to perform the services described below.

NOW, THEREFORE, the parties agree as follows:

1. Scope of Services. The Exchange desires the Contractor to perform, and the Contractor agrees to perform, the services specified in Exhibit A (the "Services").
2. Administration.
 - a) The individuals in charge of administering this Agreement on behalf of the Exchange and the Contractor, respectively, are set forth on Exhibit A.
 - b) If the Exchange requests that a staff member of the Contractor no longer provide services to the Exchange under this Agreement, the Contractor shall remove such staff member from the assignment within seven (7) days. Upon the request of the Exchange, the Contractor shall augment the remaining staff with staff acceptable to the Exchange.
3. Time of Performance and Term.
 - a) The Contractor shall perform the Services at such times and in such sequence as may be reasonably requested by the Exchange. The Contractor shall comply with any timeline or deadlines set forth in Exhibit A.
 - b) Except as otherwise set forth in Exhibit A, this Agreement will run from its Effective Date until the Services are completed to the satisfaction of the Exchange, unless sooner terminated in accordance with the provisions herein.
4. Termination.
 - a) Notwithstanding any other provision of this Agreement, the Exchange may terminate this Agreement at any time for any reason. The Exchange shall notify the Contractor in writing, specifying the effective date of the termination and the extent to which the Contractor must complete performance of the Services prior to such date.

- b) Upon receipt of written notification of termination from the Exchange, the Contractor shall immediately cease to perform the Services (unless otherwise directed by the Exchange in the notice). The Contractor shall assemble and deliver to the Exchange all Records (as defined in Section 8(a) below) in its possession or custody, as soon as possible and no later than the fifteenth (15th) day following the receipt of a written termination notice, together with a final invoice for Services performed to date.
- c) The Exchange shall, within forty-five (45) days of final billing, pay the Contractor for its performance rendered and accepted by the Exchange and any out-of-pocket costs to which the Contractor is entitled pursuant to Exhibit A. Notwithstanding any other term of this Agreement, the Contractor shall not be entitled to receive, and the Exchange shall not be obligated to tender to the Contractor, any payments for anticipated or lost profits.
- d) The Contractor reserves the right to terminate representation for nonpayment of fees should bills become unpaid after ninety days or for other reasons upon reasonable notice to the Exchange consistent with applicable court rules and the Rules of Professional Conduct.

5. Payment.

- a) The Exchange agrees to compensate the Contractor as set forth in Exhibit A.
- b) Compensation will be paid only after the submission of itemized documentation, in a form acceptable to the Exchange. Unless otherwise specified in Exhibit A, the Contractor shall bill the Exchange on a monthly basis. The Exchange may, prior to authorizing payment under this Section, require the Contractor to submit such additional accounting and information as it deems to be necessary or appropriate.
- c) The Exchange agrees to reimburse the Contractor for those out-of-pocket disbursements and expenses (at cost), as are detailed in Exhibit A, or as otherwise approved in writing in advance by the Exchange. The Exchange shall not reimburse the Contractor for any overhead-related expenses, including, but not limited to, duplicating, secretarial, facsimile (other than long-distance telephone line charges), clerical staff, proofreading staff, meals and in-state transportation costs. The Contractor shall be reimbursed for reasonable expenses for transportation, parking and reasonable lodging and meals associated with interstate travel (specifically excluding first or business class airfare), as approved in writing in advance by the Exchange. Reimbursable interstate travel shall not include travel to meet with staff of the Exchange, and all such meetings shall be conducted in Hartford, Connecticut, unless otherwise specified by the Exchange.
- d) In addition to all other remedies that the Exchange may have, the Exchange may set off any costs or expenses that the Exchange incurs resulting from the Contractor's unexcused non-performance under this Agreement against any amounts that are due or may become due from the Exchange to the Contractor under this Agreement or any other agreement that the Contractor has with the Exchange. This right of setoff shall not be deemed to be the Exchange's exclusive remedy for the Contractor's breach of this Agreement, all of which shall survive any setoffs.

6. Cross Default.

6.1 If the Contractor breaches, defaults or in any way fails to perform satisfactorily under this Agreement, then the Exchange may treat any such event as a breach, default or failure to perform under any other agreements or arrangements ("Other Agreements") that the Contractor has with the Exchange. Accordingly, the Exchange may then exercise any and all of its rights or remedies provided for in this Agreement or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any other rights or remedies of the Exchange, as if the Contractor had breached the Other Agreements.

6.2 If the Contractor breaches, defaults or in any way fails to perform satisfactorily under any Other Agreements with the Exchange, then the Exchange may, without any action whatsoever required of the Exchange, treat any such event as a breach, default or failure to perform under this Agreement. Accordingly, the Exchange may then exercise any and all of its rights or remedies provided for in the Other Agreements or this Agreement, either selectively or collectively and without such election being deemed to prejudice any other rights or remedies of the Exchange, as if the Contractor had breached this Agreement.

7. Representations and Warranties. The Contractor represents and warrants to the Exchange for itself and for the Contractor Agents (as defined in Section 10(d) below), as applicable, that:

- a) The Contractor and Contractor Agents possess the experience, expertise and qualifications necessary to perform the Services;
- b) The Contractor and Contractor Agents are duly and validly existing under the laws of their states of organization and are authorized to conduct business in the State of Connecticut in the manner contemplated by this Agreement. The Contractor has taken all necessary action to authorize the execution, delivery and performance of the proposal and this Agreement and has the power and authority to execute, deliver and perform its obligations under this Agreement;
- c) The execution, delivery and performance of this Agreement will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the state; or (3) any agreement, document or other instrument to which the Contractor is a party or by which it may be bound;
- d) Neither the Contractor nor any Contractor Agent is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions with any governmental entity;
- e) Neither the Contractor nor any Contractor Agent has, in any of their current or former jobs or assignments, been convicted of, or had a civil judgment rendered against them, for commission of fraud or a criminal offense in connection with obtaining or performing a transaction or contract with any governmental entity;
- f) Neither the Contractor nor any Contractor Agent is presently indicted or, to the best of the Contractor's knowledge, under investigation for, or otherwise criminally or civilly charged by, any governmental entity with commission of any of the offenses listed above; and

- g) Neither the Contractor nor any Contractor Agent has had one or more contracts with any governmental entity terminated for cause.

8. Records/Intellectual Property.

- a) The term "Records" means all working papers and such other information and materials as may have been accumulated or generated by the Contractor or Contractor Agents in performing under this Agreement, including, but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form, including by magnetic or electronic means.
- b) The Contractor, upon the request of the Exchange, shall promptly give to the Exchange all original Records, or, in the sole discretion of the Exchange, copies thereof. The Contractor shall otherwise maintain all original Records, or copies thereof, for a period of six (6) years after the termination of this Agreement. Unless the Exchange designates otherwise in writing, all Records are the exclusive property of the Exchange and no one else shall have any right, including, but not limited to, any copyright, trademark or other intellectual property rights, in those Records.
- c) The Exchange shall own all work product of the Contractor under this Agreement. To the extent that Contractor creates work product that is copyrightable under the laws of the United States, such work product shall be "work made for hire" as defined in the copyright law, and the Exchange shall own the copyright therein. If for any reason any such work product does not qualify as a "work made for hire," Contractor hereby assigns to the Exchange, without any right of reversion, the copyright therein.
- d) The Contractor represents and warrants that the Services and any products of the Services (except the accurate reproduction of information or materials supplied by the Exchange) shall not infringe any third-party copyright, patent, trademark, trade secret or other proprietary right, including the rights of publicity and privacy.

9. Insurance.

9.1 Before commencing performance of the Services, the Contractor shall obtain and maintain at its own cost and expense for the duration of this Agreement, the following insurance:

- (a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the work covered by this Agreement or the general aggregate limit shall be twice the occurrence limit.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the Contractor does not own an automobile, but one is used in the performance of the Services, then only hired and non-owned coverage is required.

- (c) Workers' Compensation and Employers Liability: coverage in compliance with applicable workers compensation laws. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (d) Professional Liability: If the Contractor performs a service for which professional liability insurance or errors and omissions coverage is available, the Contractor shall secure and maintain such coverage in a form acceptable to the Exchange in the minimum amount of Thirty Million Dollars (\$30,000,000), with a deductible not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000.00).

9.2 Promptly upon a request by the Exchange, the Contractor shall furnish to the Exchange on a form or forms acceptable to the Exchange, a Certificate(s) of Insurance, including amendment(s), fully executed by an insurance company or companies satisfactory to the Exchange for the insurance policies required above.

10. Indemnification.

- a) The Contractor shall indemnify, defend and hold harmless the Exchange, the State and their respective successors and assigns from and against all actions (pending or threatened and whether at law or in equity in any forum), liabilities, damages, losses, costs and expenses, including but not limited to reasonable attorneys' and other professionals' fees, resulting from (i) misconduct or negligent or wrongful acts (whether of commission or omission) of the Contractor or any of its members, directors, officers, shareholders, representatives, agents, servants, employees or other persons or entities under the supervision or control of the Contractor while rendering professional services to the Exchange under this Agreement, or (ii) any breach of non-performance by the Contractor of any representation, warranty, duty or obligation of the Contractor under this Agreement ((i) and (ii), each and collectively, the "Acts"). The Contractor shall use counsel reasonably acceptable to the Exchange in carrying out its obligations under this Section. The Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopied compositions.
- b) The Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of this Agreement, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the Exchange or the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- c) The term "Claims" means all actions, suits, claims, demands, investigations and proceedings of any kind, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any form.
- d) The term "Contractor Agents" means the Contractor's members, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants,

employees, or any other person or entity whom the Contractor retains to perform under this Agreement in any capacity.

11. Independent Contractor. The Contractor is an independent contractor of the Exchange. This Agreement shall not create the relationship of employer and employee, a partnership or a joint venture between the Contractor and the Exchange. The Contractor shall be solely liable for all wages, benefits and tax withholding for its employees and shall comply with all applicable laws relating to its employees. The Contractor is not an agent of the Exchange and shall have no authority to bind the Exchange.

12. Compliance with Laws. The Contractor and Contractor Agents will comply with all applicable state and federal laws and municipal ordinances in satisfying obligations under this Agreement, including, but not limited to, Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics.

13. Notice of Special Compliance Requirements. The Contractor shall comply with all provisions set forth on Exhibit B with respect to Nondiscrimination and Affirmative Action, Certain State Ethics Requirements, Applicable Executive Orders of the Governor, and the Trafficking Victims Protection Act, and shall comply as applicable with the Cost Principles for State, Local and Tribal Governments, Subcontractor Reporting and Executive Compensation, and General Contractor Registration and Universal Identifier Requirements.

14. Confidentiality.

14.1 In the event and to the extent that the Contractor has access to information which is confidential or of a proprietary nature to the Exchange, including, but not limited to, Records, enrollment lists and personal data, technical, marketing and product information and any other proprietary and trade secret information, whether oral, graphic, written, electronic, or in machine readable form ("Confidential Information"), the Contractor agrees to keep all Confidential Information strictly confidential and not to use or disclose to others the Confidential Information without the Exchange's prior written consent. If the Contractor is required to disclose Confidential Information by law or order of a court, administrative agency, or other governmental body, then it shall provide the Exchange with prompt notice of the order or requirement, so that the Exchange may seek a protective order or otherwise prevent or restrict such disclosure.

14.2 The Contractor acknowledges that the Exchange is subject to the Connecticut Freedom of Information Act ("FOIA"). As a result, no information provided to the Exchange by the Contractor or any Contractor 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.

15. Notices. Any notice required or permitted to be given under this Agreement shall be deemed to be given when hand delivered or one (1) business day after pickup by any recognized overnight delivery service. All such notices shall be in writing and shall be addressed as follows:

If to the Exchange:

Connecticut Health Insurance Exchange

280 Trumbull Street
Hartford, CT 06103
Attention: General Counsel

If to the Contractor:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103-1919
Attention: Attorney Joan Feldman

16. Miscellaneous.

16.1 This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut, without regard to its conflicts of law principles. The parties irrevocably consent to the exclusive jurisdiction and venue of any state or federal court of competent jurisdiction in Hartford County, Connecticut in any action, suit, or other proceeding arising out of or relating to this Agreement, and waive any objection to venue based on the grounds of *forum non conveniens* or otherwise.

16.2 This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Notwithstanding the foregoing, the Contractor may not assign this Agreement or delegate its duties without the Exchange's prior written permission. Any assignment in violation of this provision will be null and void. The Exchange may transfer or assign its rights and obligations under this Agreement without the prior written consent of the Contractor.

16.3 If any provision of this Agreement, or application to any party or circumstances, is held invalid by any court of competent jurisdiction, the balance of the provisions of this Agreement, or their application to any party or circumstances, shall not be affected, provided that neither party would then be deprived of its substantial benefits hereunder.

16.4 The Exchange and the Contractor shall not be excused from their obligations to perform in accordance with this Agreement except in the case of force majeure events and as otherwise provided for in this Agreement. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance. "Force majeure events" means events that materially affect the time schedule within which to perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.

16.5 The Contractor shall not refer to the Services provided to the Exchange for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without the Exchange's prior written approval.

16.6 The Contractor shall cooperate fully with any and all audit or review of billing by the Exchange or any other agency, person or entity acting on behalf of the Exchange, and shall, upon request, provide billing in a format which will facilitate audit or review.

16.7 The Contractor shall continue to perform its obligations under this Agreement while any dispute concerning this Agreement is being resolved.

16.8 Neither the failure nor the delay of any party to exercise any right under this Agreement on one or more occasions shall constitute or be deemed a waiver of such breach or right. Waivers shall only be effective if they are in writing and signed by the party against whom the waiver or consent is to be enforced. No waiver given by any party under this Agreement shall be construed as a continuing waiver of such provision or of any other or subsequent breach of or failure to comply with any provision of this Agreement.

16.9 The parties acknowledge and agree that nothing in any request for proposal or this Agreement shall be construed as a modification, compromise or waiver by the Exchange of any rights or defenses or any immunities provided by federal or state law to the Exchange or any of its officers and employees. To the extent that this Section conflicts with any other section, this Section shall govern.

16.10 The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope of content of any of its provisions.

16.11 Any provision of this Agreement, the performance of which requires that it be in effect after the expiration and/or termination of this Agreement, shall survive such expiration and/or termination.

16.12 This Agreement constitutes the entire agreement between the parties and supersedes all other agreements, promises, representations, and negotiations, regarding the subject matter of this Agreement.

16.13 No amendment or modification of this Agreement or any of its provisions shall be effective unless it is in writing and signed by both parties.

16.14 This Agreement may be executed in any number of counterparts and by facsimile signature. All of such counterparts taken together shall, for all purposes, constitute one agreement binding upon all of the parties.

IN WITNESS WHEREOF, this Agreement has been read and signed by the duly authorized representative of each party.

**THE CONNECTICUT HEALTH
INSURANCE EXCHANGE**

By: 
Name: Kevin J. Counihan
Title: CEO

SHIPMAN & GOODWIN LLP

By: 
Name: Joan Fedman / Partner
Title:

Exhibit A

Purpose of Engagement

Connecticut Public Act 12-166 established the All-Payer Claims Database (APCD). As a result of this legislation, health insurers and other payers of health care services are required to report all medical claims data to the APCD. The reported claims data will be utilized to develop various types of reports to inform consumers, policymakers, researchers, and insurers about different aspects of health care utilization, including cost, quality, and other metrics.

In June 2013, responsibility for implementing and administering the APCD was transferred from the Office of Health Reform to the Connecticut Health Insurance Exchange, with the passage of Public Act 13-247. This legislation maintained the same requirements and objectives for the APCD as were contained in PA 12-166. To implement the APCD, in December 2013, the Exchange adopted the Policy and Procedure: All Payer Claims Database. This policy sets out the manner and form in which a Reporting Entity shall report health care information for inclusion in the All-Payer Claims Database and includes the APCD Data Submission Guide

Funding for APCD implementation was secured as part of the Connecticut Health Insurance Exchange's Level II grant from the Center for Consumer Information and Insurance Oversight. This grant funding is set to expire at the end of 2014. The Exchange established its APCD implementation timeline based on state legislation and federal grant funding. To meet these deadlines the Exchange must not only work along multiple parallel paths but must strike an effective balance with its stakeholder partners in both the public and private sectors.

To accomplish these objectives, legal services are required in several key areas including but not limited to: further development of Policies and Procedures for governance of the APCD; advice on compliance with applicable laws and regulations including HIPAA; counsel at various advisory committee meetings on issues such as privacy and security; and assistance in drafting and negotiating the contract for the Exchange's data management vendor.

Qualifications

As Chair of Shipman & Goodwin's Health Law Practice Group, Joan W. Feldman has represented health care providers on healthcare, business, regulatory and administrative law matters. She has served as general and special counsel to acute, general, specialty, academic medical center and chronic disease hospitals, skilled nursing facilities, home health agencies, hospice providers, behavioral health providers, durable medical equipment providers, clinical laboratories, organ procurement organizations, and physician certification boards. As such, she has advised clients on state and federal regulatory issues, including Medicare and Medicaid reimbursement, fraud, abuse, and Stark and Anti-kickback issues; corporate compliance, governmental audits and investigations (e.g., state and federal recovery audit contractors); and privacy and HIPAA issues, as well as state and federal investigations relating to privacy breaches. She has also advised clients on corporate governance, best practices, corporate and business issues and combinations, physician/hospital strategic alliances; information technology and software licensing; medical staff and credentialing matters; medical ethics, quality of care regulatory matters, and the development of quality improvement and assessment programs; and on clinical research matters, including regulatory compliance and medical ethics. She has a deep understanding of the issues involved in the collection, classification, use and protection of health data. Attorney Feldman's broad expertise in

business practices and healthcare will help the Exchange to meet its requirements and goals for its APCD.

Services

Contractor shall provide the following legal services to the Exchange in support of the implementation of the All-Payer Claims Database (APCD):

- Development of Policies and Procedures governing the privacy, security, and utilization of data from the APCD, including a process for approval of data requests;
- Advice and counsel regarding compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), other applicable federal and state laws and regulations, and judicial and regulatory decisions;
- Development of data use agreements with entities which utilize APCD data;
- Support on procurement and contracting with APCD vendors;
- Participation in APCD Advisory Group and subcommittee meetings, and other meetings with APCD stakeholders;
- Explanation of legal issues to Exchange staff, board members, and other APCD stakeholders;
- And other legal services as may be necessary in support of implementing and administering the APCD.

Staffing

The staff member of the Contractor primarily responsible for the performance of this Agreement is Joan Feldman. The Contractor may not change this individual without the prior written consent of the Exchange. Such consent will not be unreasonably withheld. If appropriate, the Contractor may use associates and paralegals to perform certain services at lower billing rates. Use of such employees is subject to the Exchange's consent, which shall not be unreasonably withheld.

Administration

The individual in charge of administering this Agreement on behalf of the Exchange is Tamim Ahmed, Executive Director, APCD in consultation with Virginia Lamb, General Counsel.

The individual in charge of administering this Agreement on behalf of the Contractor is Joan W. Feldman.

Deadlines/Timeline

Contractor shall perform the Services in a timely manner consistent with the needs of the Exchange, recognizing that time is of the essence. If not sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall expire March 31, 2015.

Compensation

The Exchange shall pay the Contractor on an hourly basis at the rates set forth below for a sum not to exceed one hundred and fifty thousand dollars (\$150,000.) for the Services rendered under this Agreement.

Contractor's discounted hourly rate is as follows:

Joan W. Feldman: \$440/hr

The discounted hourly rate ranges for other legal personnel who may provide services under this Agreement are as follows:

Associates: \$ 220 - \$ 370/hr

Paralegals: \$ 115 - \$ 235/hr

If this Agreement is still in effect on January 1, 2015, Contractor may increase these hourly rates upon written notice to the Exchange, provided that such increase shall not exceed three percent (3%). Contractor will provide at least sixty (60) days notice of any such increase in rates.

The Exchange agrees to reimburse the Contractor for the cost of the following out-of-pocket disbursements and expenses: long distance telephone calls, conference calls, courier services, overnight delivery, filing fees, transcripts, computer research, fees for experts retained by Contractor that are requested and approved by Exchange and out-of-state travel-related expenses requested and approved by the Exchange.

Billing

The Contractor shall submit invoices on a monthly basis. Invoices shall, at a minimum, include the Contractor name, the billing period, the name of the individual providing the Services, the dates worked, the number of hours worked each day (billed to the tenth of an hour within a single workday) with a brief synopsis of the work performed and the rate being charged for the individual.

Exhibit B

A. Nondiscrimination and Affirmative Action

- a. For purposes of this Section A of this Exhibit B, 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. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
 - 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) The Contractor agrees and warrants that in the performance of the Contract such Contractor 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 such Contractor 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 the Contractor 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 the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this Section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor 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 Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor 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 Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor'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) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e) The Contractor 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. The Contractor 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 such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor 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) The Contractor 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), the Contractor must submit a contract certification annually to update previously-submitted certification forms for state contracts. Contractors 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 Contractor to satisfy its obligation to submit the last certification.

C. Applicable Executive Orders of the Governor.

The Contractor 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 the Contractor's request, the Exchange shall provide a copy of these orders to the Contractor.

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

Neither the Contractor nor the Contractor's 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.

Appendix A

Required Ethics and Non Discrimination Certifications

Form C: Non Discrimination Representation



**CONNECTICUT HEALTH INSURANCE EXCHANGE
CERTIFICATION OF STATE AGENCY OFFICIAL OR EMPLOYEE
AUTHORIZED TO EXECUTE CONTRACT**

Certification to accompany Connecticut Health Insurance Exchange contract, having a value of \$50,000 or more, pursuant to Connecticut General Statutes §§ 4-250 and 4-252(b), and Governor M. Jodi Rell's Executive Order 7C, Paragraph 10

INSTRUCTIONS:

Complete all sections of the form. Sign and date in the presence of a Commissioner of the Superior Court or Notary Public. Submit to the awarding State agency at the time of contract execution.

CERTIFICATION:

I, the undersigned Kevin J. Counihan of the **Connecticut Health Insurance Exchange ("CTHIX")**, certify that (1) I am authorized to execute the attached contract on behalf of **CTHIX**, and (2) the selection of the contractor named below was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

Sworn as true to the best of my knowledge and belief, subject to the penalties of false statement.

Shipman and Goodwin, LLP

Contractor Name

Connecticut Health Insurance Exchange

By 

3/18/14
Date

Kevin J. Counihan

CEO

Printed Name

Title

Sworn and subscribed before me on this 18th day of March, 2014.



Virginia A. Lamb, Juris # 418723

Commissioner of the Superior Court

Documentation of Need to Sole Source Contract.
Shipman & Goodwin, LLP

Access Health Analytics (AHA), a division of the Connecticut Health Insurance Exchange d/b/a Access Health CT (AHCT), requires the services of a consultant to provide legal support in the implementation of the Connecticut All-Payer Claims Database (APCD).

Connecticut Public Act 12-166 established the APCD in June 2012. As a result of this legislation, health insurers and other payers of health care services are required to report all medical claims data to the APCD. Reported claims data will be used to develop various types of reports to inform consumers, policymakers, researchers, and insurers about different aspects of health care utilization, including quality, cost and other metrics. In June 2013, responsibility for implementing and administering the APCD was transferred from the Office of Health Reform to the Connecticut Health Insurance Exchange, with the passage of Public Act 13-247. This legislation maintained the same requirements and objectives for the APCD as were contained in PA 12-166.

Funding for APCD implementation was secured as part of the Connecticut Health Insurance Exchange's Level II grant from the Center for Consumer Information and Insurance Oversight. This grant funding which is currently the only source of revenue for the APCD is set to expire at the end of 2014. As such Access Health Analytics needs to complete the work required to establish a functioning APCD prior to December 2014. Such work includes not only developing the infrastructure for the APCD but the policies and procedures necessary to support on-going operations of the APCD. To date, (December 2013) the Exchange has adopted the Policy and Procedure: All Payer Claims Database. This policy sets out the manner and form in which a Reporting Entity shall report health care information for inclusion in the All-Payer Claims Database and includes the APCD Data Submission Guide. Many other policies and procedures, however, still need to be developed. Access Health Analytics will be working with stakeholders on the All Payer Claims Database Advisory Group and the two subcommittees of that group on Privacy and Security, and on Data Enhancements to develop policies for recommendation to the Exchange Board, for the management and protection of APCD data. In addition the Exchange needs to select and contract with a vendor for data management.

Given its funding restrictions, the Exchange has established an aggressive implementation timeline. To meet its goals, Access Health Analytics must not only work along multiple parallel paths but must strike an effective balance with its stakeholder partners in both the public and private sectors. To accomplish these objectives, legal services are required in several key areas including: further development of Policies and Procedures for governance of the APCD; advice on compliance with applicable state and federal privacy laws and regulations including HIPAA; counsel at various advisory committee meetings on issues such as privacy and security; and assistance in drafting and negotiating the contract for the Exchange's data management vendor.

The short implementation timeframe necessitates the immediate retention of an attorney experienced in privacy and security issues, healthcare business practices and contracting. The short time frame makes a formal RFP process impracticable, since it would leave almost no time to get the required work done. Attorney Joan Feldman of Shipman & Goodwin is uniquely

prepared to provide the required specialized legal support to meet Access Health Analytics timelines. As Chair of Shipman & Goodwin's Health Law Practice Group, she has advised clients on state and federal regulatory issues, including Medicare and Medicaid reimbursement, fraud, abuse, and Stark and Anti-kickback issues; corporate compliance, governmental audits and investigations (e.g., state and federal recovery audit contractors); and, privacy and HIPAA issues, as well as state and federal investigations relating to privacy breaches. She has also advised clients on corporate governance, best practices, physician/hospital strategic alliances; information technology and software licensing; medical staff and credentialing matters; medical ethics, quality of care regulatory matters and the development of quality improvement and assessment programs; and on clinical research matters, including regulatory compliance. Her knowledge of the issues involved in the collection, classification, use and protection of health data and of clinical practices is extensive. She has represented acute, general, specialty, academic medical center and chronic disease hospitals, skilled nursing facilities, home health agencies, hospice providers, behavioral health providers, durable medical equipment providers, clinical laboratories, organ procurement organizations, and physician certification boards. When required, Attorney Feldman can also draw upon Shipman and Goodwin's teams of attorneys in business, finance, tax, labor and employment and employee benefits including ERISA, intellectual property, and business and commercial litigation.