



# Request for Proposals for Consumer and Small Business Shopping, System of Record, and Enrollment Decision Support Tools for MNSure

## **Minnesota's Commitment to Diversity and Inclusion**

The state of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to [www.mn.gov/admin/oep](http://www.mn.gov/admin/oep).

## **MNsure Project Overview**

MNsure, the state of Minnesota's health insurance marketplace, is requesting proposals to provide consumer friendly shopping, enrollment system of record, and enrollment decision support tools to consumers who purchase insurance in the Minnesota individual and small business marketplaces. Specifically, MNsure seeks to enhance its consumer shopping experience and upgrade its support technology systems (i.e., enrollment system of record and enrollment decision support system) and make these tools available to consumers beginning November 1, 2018.

The request for proposals (RFP) is separated into three separate sections representing the different sections for response. Each section will be scored separately as described within the RFP.

Responders are invited to respond to one or more of the RFP Sections. This RFP may result in a contract award to a single contractor/provider or multiple contractors/providers. Responders may include, but are not limited to, traditional vendors, government entities including other states or local governments, public/private partnerships, non-governmental organizations, or other eligible entities able to demonstrate an ability to meet the deliverables sought.

Proposals are due to MNsure on Wednesday, July 12, 2017, 3 p.m. Central Time.

### **Responder Eligibility**

Responder must meet requirements in accordance with 42 C.F.R. 18031(f)(3)(B). Specifically, the Responder may not be a health insurance issuer or be treated under subsection (a) or (b) of section 52 of Title 26 of the Internal Revenue Code as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer.

### **Goals**

MNsure is publishing this RFP with the goal of identifying solutions that can replace the plan shopping and system of record technologies that currently support the individual market exchange. The RFP project will also identify solutions to replace the technology that currently supports the small business market (SHOP), either as a standalone SHOP solution or one that is integrated with the solution(s) proposed for the individual market.

MNsure intends to contract with a vendor or vendors for cost effective marketplace solutions that are currently available in the private marketplace. Interested Responders with a demonstrated record of success are encouraged to submit responses to one, two or each of the 3 solutions sought.

This RFP is designed to provide Responders with sufficient information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Responders are encouraged to expand upon the specifications, and to demonstrate service capability and expertise. MNsure is interested in vendors who are able to demonstrate evidence of a proven track record, preferably with strong experience in providing services related to the solutions sought in this RFP.

The RFP is delineated into three distinct areas for response:

Solution 1: Consumer Shopping, Enrollment System of Record and Decision Support Tools

Solution 2: SHOP

Solution 3: Program Oversight and Integration

## Time Frame

MNsure anticipates the resulting contract(s) will be fully executed and that work will begin between July and August 2017, and will extend, at a minimum, through December 2018. Timing is deemed critical since MNsure intends to make these enhanced solutions available to consumers beginning November 1, 2018. MNsure reserves the right to extend the contract, in increments determined by MNsure, not to exceed a total contract term of five years.

## Background

MNsure is an online health-insurance marketplace that facilitates the comparison, choice and purchase of health care coverage for individuals and small businesses. Through MNsure, individuals and small businesses access comparable information on costs, benefits, health care providers and quality and customer satisfaction for an array of coverage options. With this information, individuals and small employers choose and enroll in the health benefit plan(s) that best fits their personal, family and employees' needs. Also, MNsure is the only health insurance marketplace within the state of Minnesota where eligible individuals and small businesses may receive an advanced premium tax credit and cost-sharing reductions. By engaging consumers in a one-stop shopping experience with transparent information, MNsure helps make purchasing health insurance easier and more understandable, putting more control and choice in the hands of individuals and employees of small businesses, and, ultimately creating greater market competition.

## Vendor Tasks and Responsibilities – Project Approach and Technical Requirements

The summaries for each solution can be downloaded from [the MNsure RFP page](#).

Solution 1: Consumer Shopping, Enrollment System of Record and Decision Support Tools

Solution 2: SHOP

Solution 3: Program Oversight and Integration

The Successful Responder **must** be able to meet the time requirements identified within this RFP. MNsure is seeking Solutions that are implementation-ready and which may be hosted by the Responder. MNsure seeks Solution(s) that demonstrates a proven track record of successful implementation and adaptability. In the event time requirements or performance standards are not met, MNsure may, if necessary, direct the successful Responder to submit a revised invoice that reflects liquidated damages.

## Proposal Sections and Content Requirements

Proposal must be separated into and include the following, distinguishable sections. If responding to more than one Solution area, include a separate Technical Proposal (10 copies) and Cost Proposal (1 copy) proposal for each Solution. See "Proposal Instructions" below for additional instructions on response submissions.

### Section 1: Cover Letter

Cover letter identifying the following:

Vendor company name

Street address

Mailing address (if different)

Company contact person

Contact person's direct email address and telephone number

Responder must describe why it is an eligible responder to this RFP. The letter must be signed by an individual who is authorized to bind the company to all statements in the proposal and the services and requirements as stated in the RFP. Proposals from single organizations equipped to perform all the tasks or from a lead contractor with subcontractors are welcome. If an organization proposes to carry out actions associated with this RFP with the assistance of subcontractors, those subcontractors and their roles must be specifically identified in the Cover Letter.

Additionally, complete and submit the RFP Cover Form, Appendix A, which identifies the number of Solution(s) and cost proposals included by the Responder.

## **Section 2: Organizational Experience**

In no more than one page, Responder must **demonstrate that it has successfully completed, at a minimum, two projects consisting of** work similar to that described in this RFP. For each project, identify the client's name, contact person, direct telephone number, direct email address and dates identifying total duration. Responders to this RFP are encouraged to notify references that they may be contacted by MNSure. Past performance with the State may be considered as part of experience.

*Section 2 is worth 75 points*

## **Section 3: Financial Stability**

In a narrative not to exceed one page double-spaced, explain how your organization can meet or exceed the financial demands necessary to complete the work described in this RFP. Include information about pending litigation and/or litigation resolved within the past two years that relates to the provision of services by your organization and/or its employees. If such litigation exists, please include the date of the lawsuit, nature of the lawsuit, and the dollar amount being requested as damages, and if resolved, what the resolution was (e.g. settled, dismissed, withdrawn by plaintiff, verdict for plaintiff with \$x damages awarded, verdict for Responder, etc.).

Submit your organization's current financial statement or a copy of an independent audit conducted within the last year, documentations of cash reserves to carry you through shortages or delays in receipt of revenue, and/or other documents sufficient to substantiate responsible fiscal management. In the event a Responder is either substantially or wholly owned by another corporate entity, the proposal must also include the most recent detailed financial report of the parent organization, and a written guarantee by the parent organization that it will unconditionally guarantee performance by the Responder in each and every term, covenant, and condition of such contract as may be executed by the parties.

*Section 3 is worth 75 points*

## **Section 4: Project Approach and Technical Requirements**

Part 1: Submit an organizational chart identifying the proposed team structure, including roles and responsibilities of those employees who would be assigned lead responsibilities on the MNSure project.

Part 2: Identify how the Responder will accomplish and meet the deliverables in this RFP. Identify **any deliverables or work efforts not included in the RFP solicitation that should be included to assure success.**

Part 3: Identify how the Responder will meet the technical requirements described for the Solution(s).

*Section 4 is worth 250 points*

### **Section 5: Consumer Experience and Functionality Review (Applicable to Solution 1 and Solution 2 only)**

Responder must provide MNsure access to a functional version of the proposed Solution to allow MNsure to conduct a hands-on review of consumer experience and technical functionality. The review must occur on a version of the Solution that allows for interactive use by the evaluation team, including user-generated data. Submission of only video demonstrations, static screenshots or PowerPoint presentations will be considered nonresponsive to the RFP. Additionally, failure to provide the access to such a Solution described herein will eliminate Responder from consideration.

Access to the Solution can include, but is not limited to the following methods:

- Web link to a publicly available tool with test data
- Web link to a publicly available tool currently in use with “live” data
- Web link to a privately accessible tool in a testing environment or other similar environment

*Section 5 is worth 200 points*

### **Section 6: Accessibility (Applicable to Solution 1 and Solution 2 only)**

Complete and submit the two Voluntary Product Assessment Templates (VPAT) forms included as appendices B and C. Additional guidance for Vendors completing the VPAT documents is available at this link: <https://mn.gov/mnit/programs/accessibility/it-procurement.jsp>. See the link titled, “Vendor VPAT Guidance.”

The response must contain adequate information to evaluate the responsiveness to the accessibility standards (i.e., a completed VPAT or equivalent). Proposed Solutions must provide as many accessibility options as possible. MNsure is committed to providing Solutions as accessible to as many consumers with unique accessibility concerns as possible. Responders must complete the attached VPATs and return these forms with their proposal (See Appendices B and C). The level of compliance with applicable accessibility standards will be reflected in scores related to the proposed functionality.

*Section 6 is worth 75 points*

### **Section 7: Required Documents**

Complete and submit the following forms:

- Affidavit of Non-Collusion (Attachment 1)
- Certificate Regarding Lobbying (Attachment 2)
- Affirmative Action Certification (Attachment 3)
- Equal Pay Certificate Form (Attachment 4)
- Veterans Preference Form, if applicable (Attachment 5)
- Resident Vendor Form, if applicable (Attachment 6)
- Exceptions to Terms and Conditions Form (Attachment 7)

## **Section 8: Cost Proposal (to be placed in separate, sealed envelope)**

Provide the best financial proposal to complete the work for each Solution you are responding to.

**Note: for Responders including a cost proposal for more than one Solution, pay close attention to the following directions:**

- Identify any costs savings Responder would apply if more than one Solution is purchased. The Evaluation process will review and score the standalone cost proposals and the discounted cost proposals. For example, if you are submitting three proposals, you may have three cost proposals for each Solution. This approach will allow MNsure to evaluate for best value. Note: Preference will be given to those Responders responding to all three Solutions.

**In addition, all cost proposals should address the following points to ensure consistency in approach:**

- Identify any assumptions made to create your Cost Proposal(s)
- Include any relevant onetime implementation costs
- Include annual and biannual costs as applicable, if these costs are separate from onetime implementation costs
- Assume a contract that will include extensions of up to four years (factor in total costs for five years in total)
- Factor travel or other costs into the bid
- If applicable, include costs for both a Solution hosted by the Vendor and a Solution hosted by MNsure
- Include any anticipated additional costs that will become the responsibility of MNsure. Any costs that are included at the time of negotiation which are not included in this proposal may lead the vendor's Proposal to be determined to be unresponsive

*Section 8 is worth 300 points*

## **RFP Schedule and Question and Proposal Submission Information**

### **RFP Schedule**

Request for Proposals (RFP) solicitation published	Monday June 5, 2017
Deadline for submission of questions (via email only)	Friday, June 16, 2017, 3 p.m. Central Time
Questions and answers posted on MNsure website	Wednesday June 28, 2017
Deadline for submission of proposal	Wednesday July 12, 2017, 3 p.m. Central Time
Proposal evaluations commence	Friday, July 14, 2017
Award decision	July 28, 2017 (estimated)

### **RFP Questions**

All questions must be submitted via email no later than 3 p.m. Central Time on Friday, June 16, 2017, to: Greg Jonsen, Director of Information Technology for MNsure.

Email address: [greg.jonsen@state.mn.us](mailto:greg.jonsen@state.mn.us)

Email subject line: MNsure RFP Question(s)

Note: Other persons, regardless of position, are not authorized to discuss this RFP or its requirements with anyone throughout the solicitation, evaluation and awarding processes and responders must not rely on information obtained from non-authorized individuals. MNSure reserves the right to disqualify from consideration any proposal if it discovers a Responder contacted MNSure or state staff other than the individual above.

### **Proposal Instructions**

Proposals must be submitted in hard copy and mailed, expressed or personally delivered to:

MNSure  
Attn: Greg Jonsen, Director of Information Technology for MNSure  
81 East Seventh Street, Suite 300  
Saint Paul, Minnesota 55101

If shipping proposal via express service, identify 651-539-1380 as the telephone number on the shipping label.

All proposals must be received by MNSure no later than 3 p.m. Central Time on Wednesday, July 12, 2017. All proposals will be date and time stamped when they are received by MNSure.

The following **will not** be accepted and/or considered: Late proposals; proposals submitted via fax; or proposals submitted electronically via email.

All costs incurred in responding to this RFP will be borne by the responder.

**Technical Proposal.** Submit ten (10) paper copies of the technical proposal. Technical proposals must be submitted in a sealed mailing envelope or package with the responder's name and address identified on the outside of the shipping container. Each copy of the proposal must be signed in ink by an authorized member of the firm.

**Cost Proposal.** Submit one (1) copy of the cost proposal in a sealed envelope separate from the technical proposals. The envelope must be marked "Cost Proposal" on the outside. The cost proposal will not be provided to the Evaluation Committee until all the technical proposals are evaluated and scored.

### **Proposal Evaluation**

All responses received by the deadline will be evaluated. The evaluation team will evaluate the responses to determine which proposal(s) provides the "best value" to MNSure and the State. In determining "best value," the evaluation team will consider price and other criteria. A 1000-point scale (see below) will be used to create the final evaluation recommendation.

**Note:** MNSure reserves the right, based on the scores of the proposals, to create a short-listing of Responders who have received the highest scores to interview, or conduct demonstrations/presentations. MNSure also reserves the right to seek the best and final offer from more than one responder in order to achieve the best value for MNSure and the State.

### **Mandatory Requirements (Scored as Pass/Fail)**

The following will be considered on a pass/fail basis:

Proposals must be received on or before the due date and time specified in this solicitation.

### **Evaluation and Scoring Factors**

Proposals will be scored separately for each Solution according to the following scoring factors:

**Scoring Factors: Solution 1 and Solution 2**

1. Organizational Experience	100 points	10.0%
2. Financial Stability	75 points	7.5%
3. Project Approach and Technical Requirements	250 points	25.0%
4. Consumer Experience and Functionality Review	200 points	20.0%
5. Accessibility	75 points	7.5%
6. Cost	<u>300 points</u>	<u>30.0%</u>
	1,000 points	100.0%

**Scoring Factors: Solution 3**

1. Organizational Experience	100 points	14.0%
2. Financial Stability	75 points	10.0%
3. Project Approach and Technical Requirements	250 points	34.5%
4. Cost	<u>300 points</u>	<u>41.5%</u>
	725 points	100.0%

**General Requirements**

**Affidavit of Noncollusion**

Each responder must complete the attached Affidavit of Noncollusion and include it with the response.

**Conflicts of Interest**

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship and a discussion of the conflict.

**Proposal Contents**

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

**Disposition of Responses**

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,



- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

### **Contingency Fees Prohibited**

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### **Sample Contract**

You should be aware of the State's standard contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Services Contract is attached for your reference; see Attachment 8. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions on the required form, "Exceptions to Terms and Conditions Form (Attachment 7)", in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

### **Reimbursements**

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Employee Relations. Reimbursements will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

### **Organizational Conflicts of Interest**

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances that could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD"), which must include a

description of the action that the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms “contract,” “contractor,” and “contracting officer” modified appropriately to preserve the State’s rights.

### **Preference to Targeted Group and Economically Disadvantaged Business and Individuals**

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email at [mmdhelp.line@state.mn.us](mailto:mmdhelp.line@state.mn.us). For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

### **Veteran-Owned Small Business Preference**

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, subd. 6a, the Commissioner of Administration will award a 6% preference in the amount bid on state procurement to certified small businesses that are majority owned and operated by veterans.

A small business qualifies for the veteran-owned preference when it meets one of the following requirements. 1) The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business. 2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation). See Minn. Stat. § 16C.19(d).

Submit the appropriate documentation with the solicitation response to claim the veteran-owned preference. Statutory requirements and documentation must be met by the solicitation response due date and time to be awarded the preference.

### **Work Force Certification**

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by Minnesota Rule 5000.3600, “It is hereby agreed between the parties that Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from the contracting agency.”

### **Equal Pay Certification**

If the Response to this solicitation could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A responder is exempt if it has not employed more than 40

full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

### **Certification Regarding Lobbying**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must complete the attached **Certification Regarding Lobbying** and submit it as part of its proposal.

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions**

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **Insurance Requirements**

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
  1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:
    - \$100,000 – Bodily Injury by Disease per employee
    - \$500,000 – Bodily Injury by Disease aggregate
    - \$100,000 – Bodily Injury by AccidentIf Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the state of Minnesota, Contractor

must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

- 2. Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death and for care and loss of services as well as from claims for property damage, including loss of use that may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence  
\$2,000,000 – annual aggregate  
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable, please list \_\_\_\_\_

State of Minnesota named as an Additional Insured, to the extent permitted by law

- 3. Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired and non-owned autos that may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired and Non-owned Automobile

- 4. Professional/Technical, Errors and Omissions and/or Miscellaneous Liability Insurance**

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error or omission related to Contractor's professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event  
\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

C. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the state of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

E. The successful responder is required to submit Certificates of Insurance acceptable to the State of Minnesota as evidence of insurance coverage requirements prior to commencing work under the contract.

**E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

By submission of a proposal for services in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired

employees in the United States who will perform work on behalf of the State. In the event of contract award, Contractor shall be responsible for collecting all subcontractor certifications and may do so utilizing the [E-Verify Subcontractor Certification Form](http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc) available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

### **Special Notices**

1. This request for proposal (RFP) does not obligate the State of Minnesota or MNSure to award a contract or complete the proposed program and MNSure reserves the right to cancel this RFP if it is considered to be in its best interest. Proposals must be clear and concise. Proposals that are difficult to follow or that do not conform to the RFP format specifications may be rejected. Responding contractors must include the required information identified in this RFP. MNSure reserves the right to reject a proposal if required information is not provided or is not organized as directed.
2. Travel or other costs must be factored into the bid because no additional fees will be paid to perform this work.
3. The contract will be awarded on a “best value” basis and MNSure reserves the right to award a contract other than to the lowest bidder.
4. MNSure reserves the right, based on the scores of the proposals, to create a short-listing of Responders who have received the highest scores to interview, or conduct demonstrations/ presentations.
5. MNSure reserves the right to seek the best and final offer from more than one responder to achieve the best value for MNSure and the State.

Affidavit of Non-Collusion (Attachment 1)

## State of Minnesota Affidavit of Noncollusion

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership) or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the \_\_\_\_\_ request for proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the request for proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's firm name: \_\_\_\_\_

Authorized representative (please print) \_\_\_\_\_

Authorized signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

Notary public signature: \_\_\_\_\_

My commission expires: \_\_\_\_\_



Certificate Regarding Lobbying (Attachment 2)

## **Certification Regarding Lobbying**

*For State of Minnesota Contracts and Grants over \$100,000*

The undersigned certifies, to the best of his or her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization Name

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Name and Title of Official Signing for Organization

By \_\_\_\_\_  
Signature of Official

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Date

Affirmative Action Certification (Attachment 3)

## State Of Minnesota —Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.

**BOX A – For companies that have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.**

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B – For those companies not described in BOX A**

Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C – For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the Responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance & Community Relations

Mail: The Freeman Building, 625 Robert Street North, Saint Paul, MN 55155

TC Metro: (651) 296-5663

Toll Free: 800-657-3704

Fax: (651) 296-9042

TTY: (651) 296-1283

Web: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)

Email: [compliance.mdhr@state.mn.us](mailto:compliance.mdhr@state.mn.us)

Equal Pay Certificate Form (Attachment 4)

## State of Minnesota – Equal Pay Certificate

If your response could be in excess of \$500,000, please complete and submit this form with your submission. **It is your sole responsibility to provide the information requested and when necessary to obtain an Equal Pay Certificate (Equal Pay Certificate) from the Minnesota Department of Human Rights (MDHR) prior to contract execution. You must supply this document with your submission.** Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

**Option A:** If you have employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the applicable box below:

- Attached is our current MDHR Equal Pay Certificate.
- Attached is MDHR's confirmation of our Equal Pay Certificate application.

**Option B:** If you have not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the box below.

- We are exempt. We agree that if we are selected we will submit to MDHR within five (5) business days of final contract execution, the names of our employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

The State of Minnesota reserves the right to request additional information from you. **If you are unable to check any of the preceding boxes, please contact MDHR to avoid a determination that a contract with your organization cannot be executed.**

Your signature certifies that you are authorized to make the representations, the information provided is accurate, the State of Minnesota can rely upon the information provided, and the State of Minnesota may take action to suspend or revoke any agreement with you for any false information provided.

Authorized signature	Printed name	Title
Organization	MN/FED Tax ID#	Date
Issuing entity	Project # or lease address	

Veterans Preference Form, if applicable (Attachment 5)

## State of Minnesota Veteran-Owned Preference Form

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the State will award a 6 percent preference on state procurement to certified small businesses that are majority owned and operated by veterans.

### **Veteran-Owned Preference Requirements—See Minn. Stat. § 16C.19(d):**

1. The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.  
*or*
2. The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation).

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Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

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### **Claim the Preference**

#### **By signing below, I confirm that:**

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. By making this claim, I verify that:

- The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.  
*or*
- My company's principal place of business is in Minnesota and the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business (supported by attached documentation).

Name of company: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized signature: \_\_\_\_\_ Telephone: \_\_\_\_\_

Printed name: \_\_\_\_\_ Title: \_\_\_\_\_

**Attach documentation, sign and return this form with your solicitation response to claim the veteran-owned preference.**

Resident Vendor Form, if applicable (Attachment 6)

## STATE OF MINNESOTA RESIDENT VENDOR FORM

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a "Resident Vendor" means a person, firm or corporation that:

1. is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
2. has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
3. has a business address in the state; and
4. has affirmatively claimed that status in the bid or proposal submission.

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To receive recognition as a Minnesota Resident Vendor ("Resident Vendor"), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

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### I hereby certify that the company listed below:

1. Is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*  
 Yes  No (must check yes or no)
2. Has paid unemployment taxes or income taxes in the state of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.  
 Yes  No (must check yes or no)
3. Has a business address in the state of Minnesota.  
 Yes  No (must check yes or no)
4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.  
 Yes  No (must check yes or no)

**By signing below**, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of company: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized signature: \_\_\_\_\_ Telephone: \_\_\_\_\_

Printed name: \_\_\_\_\_ Title: \_\_\_\_\_

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**If you are claiming resident vendor status, sign and return this form with your bid or proposal submission.**

Exceptions to Terms and Conditions Form (Attachment 7)

## EXCEPTIONS TO TERMS AND CONDITIONS

A Responder shall be presumed to be in agreement with the terms and conditions of the RFP unless the Responder takes specific exception to one or more of the conditions identified on this form.

**INSTRUCTIONS:** Responders **must** explicitly list all exceptions to state terms and conditions and general provisions (including those found in the attached sample contract, Attachment 8, if any). Reference the actual number of the State's term and condition and page number for which an exception(s) is being taken. Some exceptions may not be negotiable.

**Responder Name:**

**Term & Condition Number/Provision**

**Explanation of Exception**

**If no exceptions to general and contract provisions, please apply a signature certifying this below.**

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**Name**

**Date**

*If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.*

# Professional and Technical Services Contract

State of Minnesota

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its \_\_\_\_\_ (“State”) and \_\_\_\_\_ (“Contractor”).

## Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of \_\_\_\_\_
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

## Contract

### 1. Term of Contract

- 1.1 **Effective date:** \_\_\_\_\_ or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State’s Authorized Representative to begin the work.
- 1.2 **Expiration date:** \_\_\_\_\_ or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of terms:** The following clauses survive the expiration or cancellation of this Contract: 8. Indemnification; 9. State audits; 10. Government data practices and intellectual property; 14. Publicity and endorsement; 15. Governing law, jurisdiction and venue; and 16. Data disclosure.

### 2. Contractor’s duties

The Contractor, who is not a State employee, will:

\_\_\_\_\_

### 3. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

### 4. Consideration and payment

**4.1 Consideration.** The State will pay for all services performed by the Contractor under this Contract as follows:

- (a) *Compensation.* The Contractor will be paid \$\_\_\_\_\_.
- (b) *Travel expenses.* Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$\_\_\_\_\_; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner’s Plan" established by the Commissioner of Minnesota

Management and Budget, which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.

- (c) *Total obligation.* The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$\_\_\_\_\_.

#### 4.2 Payment.

- (a) *Invoices.* The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule:

- (b) *Retainage.* Under Minn. Stat. § 16C.08, subd. 2(10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.

- (c) *Federal funds.* (Where applicable, if blank this section does not apply.) Payments under this Contract will be made from federal funds obtained by the State through\_\_\_\_\_. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

#### 5. Conditions of payment

All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state and local laws, ordinances, rules and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state or local law.

#### 6. Authorized Representative

The State's Authorized Representative is \_\_\_\_\_, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is \_\_\_\_\_, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

#### 7. Assignment, amendments, waiver and contract complete

**7.1 Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

**7.2 Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

**7.3 Waiver.** If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

**7.4 Contract complete.** This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.



## 8. Indemnification

In the performance of this Contract by Contractor, or Contractor's agents or employees, the Contractor must indemnify, save and hold harmless the State, its agents and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's:

- (a) Intentional, willful or negligent acts or omissions; or
- (b) Actions that give rise to strict liability; or
- (c) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

## 9. State audits

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

## 10. Government data practices and intellectual property

**10.1 Government data practices.** The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

Additionally, Contractor and State must comply with the requirements contained in Attachment 1, which is attached and incorporated into this Contract.

### 10.2 Intellectual property rights.

(a) *Intellectual property rights.* The State owns all rights, title and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the works and documents created and paid for under this Contract. The "works" means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents and subcontractors, either individually or jointly with others in the performance of this Contract. "Works" includes documents. The "documents" are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents or subcontractors, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Contractor assigns all right, title and interest it may have in the works and the documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the works and documents.

#### (b) *Obligations*

- (1) Notification. Whenever any invention, improvement or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will

immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the State's Authorized Representative with complete information and/or disclosure thereon.

- (2) **Representation.** The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages, including but not limited to, attorney fees. If such a claim or action arises or in the Contractor's or the State's opinion is likely to arise, the Contractor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

#### **11. Workers' compensation and other insurance**

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

#### **12. Debarment by State, its departments, commissions, agencies or political subdivisions**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

#### **13. Certification regarding debarment, suspension, ineligibility and voluntary exclusion**

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

#### **14. Publicity and endorsement**

**14.1 Publicity.** Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications or services provided resulting from this Contract.

**14.2 Endorsement.** The Contractor must not claim that the State endorses its products or services.

#### **15. Governing law, jurisdiction and venue**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**16. Data disclosure**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws, which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

**17. Payment to subcontractors**

(If applicable) As required by Minn. Stat. § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

**18. Termination**

**18.1 Termination by the State.** The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**18.2 Termination for insufficient funding.** The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

**19. Non-discrimination (In accordance with Minn. Stat. § 181.59)**

The Contractor will comply with the provisions of Minn. Stat. § 181.59, which require:

*“Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district or any other district in the state, for materials, supplies or construction shall contain provisions by which the contractor agrees:*

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier or vendor, shall, by reason of race, creed or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (2) that no contractor, material supplier or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed or color;*
- (3) that a violation of this section is a misdemeanor; and*
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.”*

*[Delete this section if your total Contract value is under \$100,000]*

**20. Affirmative action requirements for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business**

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

**20.1 Covered contracts and contractors.** If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**20.2 Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

**20.3 Minn. R. 5000.3400-5000.3600.**

- (a) *General.* Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (b) *Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.
- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
  - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.
- (d) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

**21. E-Verify certification (In accordance with Minn. Stat. § 16C.075)**

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the *E-Verify Subcontractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

**[Signatures as required by the State.]**

SAMPLE

## Data Sharing Agreement

### 1. Term of Data Sharing Agreement.

See Contract

### 2. Information Covered by this Data Sharing Agreement (“Agreement”).

- 2.1 Under this Agreement, MNsure will be sharing with Contractor one or more types of private information, collectively referred to as “protected information,” concerning individuals, employers, and/or employees participating in MNsure. “Protected information,” for purposes of this Agreement, may include any or all of the following:
- (a) Private data (as defined in Minnesota Statutes § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
  - (b) Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act (“HIPAA”), 45 C.F.R. § 160.103);
  - (c) Federal Tax Information (“FTI”) (as defined by IRC § 6103);
  - (d) Records (as defined by the Privacy Act of 1974, 5 U.S.C. § 552a; and
  - (e) Other data subject to applicable State and federal statutes, rules and regulations affecting the collection, storage, use or dissemination of private or confidential information.

### 3. Duties.

#### 3.1 MNsure Duties. MNsure shall:

- (a) Only release information that it is authorized by law or regulation to share with Contractor.
- (b) Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with Contractor.
- (c) Notify Contractor of limitations, restrictions, changes or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect Contractor’s use or disclosure of protected information.
- (d) Not request Contractor to use or disclose protected information in any manner that would not be permitted under law if done by MNsure.

#### 3.2 Contractor Duties. Contractor shall:

- (a) Be responsible for ensuring proper handling and safeguarding by its employees, subcontractors and authorized agents of protected information collected, created, used, maintained or disclosed on behalf of MNsure. This responsibility includes:
  - 1. Conducting appropriate screening and monitoring of its employees and agents to protect information privacy;
  - 2. Ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in clause 1; and
  - 3. Implementing administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any **protected**

information at rest and in transit that it creates, receives, maintains or transmits on behalf of MNSure.

- (b) Comply with the “minimum necessary” access and disclosure rule set forth in the MGDPA. The collection, creation, use, maintenance and disclosure of protected information shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government. Minnesota Statutes § 13.05 subdivision 3.
- (c) Report to MNSure any privacy or security incident regarding the information of which it becomes aware. For purposes of this Agreement, “security incident” means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system. Security incident shall not include pings and other broadcast attacks on Contractor’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above when using Contractor equipment and infrastructure; so long as such incidents do not result in unauthorized access, use or disclosure of MNSure’s information. “Privacy incident” means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be made in writing and submitted to MNSure immediately and in no case more than 2 days after learning of such incident.
- (d) Unless provided for otherwise in this Agreement, if Contractor receives a request to release the information referred to in this Clause, Contractor must immediately notify MNSure. MNSure will give Contractor instructions concerning the release of the data to the requesting party before the data is released.
- (e) Not use or further disclose protected information created, collected, received, stored, used, maintained or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.
- (f) In accordance with Minnesota Statutes § 62V.06, subdivision 9, Contractor may not sell any data collected, created or maintained by MNSure, regardless of its classification, for commercial or any other purposes.
- (g) Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (h) To the extent that any protected information is PHI:
  - 1. Comply with the minimum necessary rule and limit the collection, creation, use, maintenance and disclosure of PHI to “that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government.” See 45 C.F.R. §§ 164.502(b) and 164.514(d).
  - 2. Report any breach or security incident pursuant to the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E). This report must be in writing and sent to MNSure not more than 2 days after learning of such non-permitted use or disclosure. Such a report will at least:
    - (A) Identify the nature of the non-permitted use or disclosure;
    - (B) Identify the PHI used or disclosed;

- (C) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure;
  - (D) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures;
  - (E) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and
  - (F) Provide such other information, including any written documentation, as MNSure may reasonably request.
  - (G) Provide notice required by 45 C.F.R. §§ 164.404 through 164.408 to affected individuals, news media and/or the Office of Civil Rights, Department of Health and Human Services, only upon direction from and in coordination with MNSure.
3. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions and requirements that apply to the business associate with respect to such information.
  4. Within ten (10) business days of a request from an individual or their designee, make available protected health information in a designated record set, consistent with Minn. Stat. § 13.04, subdivision 3, and 45 C.F.R. § 164.524.
  5. Within ten (10) business days, forward any request to make any amendment(s) to protected health information in a designated record set to MNSure in order for MNSure to satisfy its obligations under Minnesota Statutes § 13.04, subdivision 3 and 45 C.F.R. § 164.526.
  6. Document such disclosures of PHI and information related to such disclosures as would be required for MNSure to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Maintain and make available no later than fifteen (15) days after receipt of request from MNSure, the information required to provide an accounting of disclosures to MNSure as necessary to satisfy MNSure's obligations under 45 C.F.R. § 164.528, or upon request from MNSure respond directly to individual's request for an accounting of disclosures.
  7. To the extent the business associate is to carry out one or more of MNSure's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to MNSure in the performance of such obligation(s).
  8. Make its internal practices, books and records available for purposes of determining compliance with the HIPAA Rules.
  9. Contractor may not use or disclose protected health information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by MNSure.
  10. Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws.
  11. Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.
- (i) To the extent that any protected information is FTI, ensure that this data only be used as authorized under the Patient Protection and Affordable Care Act and the Internal Revenue



Code, 26 U.S.C. § 6103(C), and IRS Publication 1075, and restrict from use for any other purpose.

- (j) Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure or breach of security with respect to protected information by it in violation of this Agreement.
- (k) Report and mitigate any fraudulent activities;
- (l) Comply with any and all other applicable provisions of the Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto.

#### **4. Disposition of Data upon Completion, Expiration or Agreement Termination.**

Upon completion, expiration or termination of this Agreement, Contractor will return to MNSure or destroy all protected information received or created on behalf of MNSure for purposes associated with this Agreement. A written certification of destruction or return to the MNSure Authorized Representative is required. Contractor will retain no copies of such protected information. If both parties agree that such return or destruction is not feasible, or if Contractor is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, Contractor will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as Contractor maintains the information.

#### **5. Information Privacy and Security Responsible Authority.**

MNSure's responsible party for the purposes of complying with data privacy and security for this Agreement is Lindsey Millard, MNSure Privacy and Security Manager, [Lindsey.M.Millard@state.mn.us](mailto:Lindsey.M.Millard@state.mn.us), or her successor.

Contractor's responsible party for the purposes of complying with data privacy and security for this Agreement is [Name, title, and email], or his/her successor.

#### **6. Amendments.**

Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

#### **7. Sanctions.**

In addition to any liability under this Agreement, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

#### **8. Interpretation.**

Any ambiguity in this Agreement shall be resolved to permit the parties to comply with HIPAA, MDGPA, and other applicable state and federal statutes, rules, and regulations affecting the collection, storage, use and dissemination of private or confidential information.

#### **9. DHS Information Security Policy.**

Additional information regarding the handling and, as appropriate, destruction (upon expiration or termination of a contract or agreement) of protected information obtained from MNSure is available at <https://edocs.dhs.state.mn.us/lfserver/Public/DHS-4683-ENG>.

#### **10. Effect of Statutory Amendments or Rule Changes.**

The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the laws listed in paragraph 1 of this section or in any other applicable law. However, any requirement in this Agreement or in the DHS Information Security

Policy that is based upon HIPAA Rules or upon other federal or state information privacy or security laws means the requirement as it is currently in effect, including any applicable amendment(s), regardless of whether the Agreement has been amended to reflect the amendments(s).

## 11. Security and Data Protection.

Contractor is responsible for the security and protection of the State data related to this Contract. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of this Contract, if in conflict. This Security and Data Protection section survives the completion, termination, expiration, or cancellation of this Contract.

- 11.1 Data Ownership. The State solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to the State data. For purposes of this section, "data" has the meaning of "government data" in Minnesota Statutes section 13.02, subdivision 7. Contractor has no and acquires no right, title or interest, whether express or implied, in and to the State data. Contractor shall only use State data for the purposes set forth in this Contract. Contractor shall only access State data as necessary for performance of this Contract. Contractor will not access State user accounts except to respond to service or technical problems or at the State's specific request.
- 11.2 Security Program. Contractor must make all commercially reasonable efforts to protect and secure the State data related to this Contract. Contractor will establish and maintain an Information Security Program ("Program") that includes an information security policy applicable to any and all cloud computing or hosting services ("Policy"). Contractor's Program and Policy must align with appropriate industry security frameworks and standards such as National Institute of Standards and Technology ("NIST") 800-53 Special Publication Revision 4, Federal Information Processing Standards ("FIPS") 199, Federal Risk and Authorization Management Program ("FedRAMP"), or Control Objectives for Information and Related Technology ("COBIT"). For purposes of this section, "cloud computing" has the meaning defined by the [U.S. Department of Commerce, NIST Special Publication 800-145](http://csrc.nist.gov/publications/nistpubs/800-145), currently available online at: <http://csrc.nist.gov/publications/nistpubs/800-145/SP800-145.pdf>.
- Contractor will make its Policy available to the State on a confidential, need-to-know basis, along with other related information reasonably requested by the State regarding Contractor's security practices and policies. Unless inconsistent with applicable laws, Contractor and the State must treat the Policy and related information on security practices and policies that are specific to the State as confidential information and as not public data pursuant to Minnesota Statutes section 13.37.
- 11.3 Data Management. Contractor will not use State data, including production data, for testing or development purposes. Contractor has implemented and will maintain procedures to physically and logically segregate State data, unless otherwise explicitly authorized by the State Chief Information Security Officer or delegate.
- 11.4 Data Encryption. Contractor shall encrypt all State data at rest and in transit, in compliance with FIPS Publication 140-2 or applicable law, regulation or rule, whichever is a higher standard. All encryption keys shall be unique to State data. Contractor shall secure and protect all encryption keys to State data. Encryption keys to State data shall only be accessed by Contractor as necessary for performance of this Contract.
- 11.5 Data Storage. Contractor agrees that any and all State data will be stored, processed, and maintained solely on designated servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes.
- 11.6 Data Center and Monitoring/Support Locations. During the term of this Contract, Contractor agrees to: (1) locate all production and disaster recovery data centers that store, process or

transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all monitoring and support of all the cloud computing or hosting services only in the continental United States. The State has the right to on-site visits and reasonable inspection of the data centers upon notice to Contractor of seven calendar days prior to visit.

- 11.7 Security Audits & Remediation. Contractor will audit the security of the systems and processes used to provide any and all cloud computing or hosting services, including those of the data centers used by Contractor to provide any and all cloud computing or hosting services to the State. This security audit: (1) will be performed at least once every calendar year beginning with 2015; (2) will be performed according Statement on Standards for Attestation Engagements (“SSAE”) 16 Service Organization Control (“SOC”) 2, International Organization for Standardization (“ISO”) 27001, or FedRAMP; (3) will be performed by third party security professionals at Contractor’s election and expense; (4) will result in the generation of an audit report (“Contractor Audit Report”), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act; and (5) may be performed for other purposes in addition to satisfying this section.

Upon the State’s reasonable, advance written request, Contractor will provide to the State a copy of the Contractor Audit Report.

Contractor will make best efforts to remediate any control deficiencies identified in the Contractor Audit Report in a commercially reasonable timeframe.

If the State becomes aware of any other Contractor controls that do not substantially meet the State’s requirements, the State may request remediation from Contractor. Contractor will make best efforts to remediate any control deficiencies identified by the State or known by Contractor, in a commercially reasonable timeframe.

- 11.8 Insurance and Liability. In addition to any other insurance required under this Contract, the Contractor shall maintain the insurance described below in force and effect throughout the term of this Contract.

Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):

This policy will provide coverage for all claims Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to this Contract.

Contractor is required to carry the following minimum limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and, unless Contractor maintains an audited net worth of at least \$100 million, the deductible may not exceed \$100,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources. The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years following expiration or termination of this Contract. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Contract. If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State. Contractor is responsible for payment of Contract related insurance premiums and deductibles. If Contractor is self-insured, a Certificate of Self-Insurance must be provided to the State. Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category ("FSC") VII or better, and authorized to do business in the State of Minnesota. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

Notwithstanding any limitation of liabilities in the Contract, the Contractor shall be liable for damages to the extent such damages are within the insurance limit. For purposes of clarification, the foregoing sentence shall in no way limit the Contractor's liability.

- 11.9 Subcontractors and Third Parties. Contractor agrees that no State data shall be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by the State Chief Information Security Officer or delegate. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides State data, agree in writing to be bound by the same restrictions and conditions under this Contract that apply to Contractor with respect to such data.
- 11.10 Compliance with Data Privacy and Security Laws and Standards. Contractor shall comply with all applicable State and federal data privacy and data security laws, rules, and regulations.

## **12. Survival.**

The obligations of Contractor under this Attachment shall survive the termination of this Agreement.