



Request for Proposals for the Minnesota Insulin Safety Net Program's Public Awareness Campaign

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.

MNsure Project Overview

Purpose

MNsure ("State") is beginning a statewide public awareness campaign aimed at reaching all individuals and populations who need access to insulin as detailed in Minnesota's newly enacted Insulin Safety Net Program, per Minnesota Statutes, § 151.74. All proposals must be received by MNsure no later than 4 p.m. Central time, May 26, 2020. See the section titled "Proposal Instructions" for submission requirements.

This request for proposal (RFP) seeks proposals from qualified firms or contractors capable of leveraging existing efforts and initiatives and enhancing them with production, media buying and outreach analysis services to produce a statewide public awareness campaign to increase awareness of the Insulin Safety Net Program. Regional proposals are not eligible.

Approaches may include strategic planning, creative development (including but not limited to television, radio, print, digital and mobile), collateral and/or product development, promotions, account management, marketing strategy and support, and implementation.

The projected audience for the MNsure Insulin Safety Net Program marketing campaign includes: 1) Minnesotans who are unable to afford the life-saving drug insulin; 2) uninsured individuals; 3) the community of diabetics, caregivers, advocates and families; 4) those who currently purchase health insurance coverage on their own, including individuals who qualify for Medical Assistance, MinnesotaCare or a qualified health plan with or without tax credits; and 5) external stakeholders such as consumer assistance partners, pharmacies and physicians.

The State recognizes that some firms may have a higher level of expertise on a specific section of the scope of work outlined. Given that the statement of work crosses multiple marketing platforms and is targeted towards diverse populations, vendors may want to consider establishing partnerships with other entities that are experts and have experience in specialized areas. The State anticipates awarding only one contract from this RFP.

MNsure is seeking innovative and flexible proposals that increase applications for the affordable insulin program and raise awareness of the MNsure-certified assisters who can assist consumers with applications for the manufacturers' affordable insulin programs.

Per Minnesota Statutes, § 151.74, MNsure is setting a maximum cost limit of \$250,000 on proposal submissions, so it is important to note that price will be a significant consideration during the evaluation period; MNsure will evaluate proposals based on "best value." The proposals should include a cost breakdown between professional contract costs and statewide media buys for the State's affordable insulin program for FY2021-2023. FY2021 begins on July 1, 2020, and runs through June 30, 2021.

Background

MNSure is a marketplace where individuals and families can compare, choose and enroll in affordable, high quality health insurance. The mission of MNSure is to ensure all Minnesotans have access to quality, affordable health insurance.

On April 15, 2020, Governor Walz signed the Alec Smith Insulin Affordability Act, as a way to help Minnesotans who are facing an emergency need for insulin. Minnesotans who are eligible include those who are uninsured, under-insured, receiving Medicare and who do not have access to low co-pays.

Under this new program, MNSure is responsible for a public awareness campaign to create awareness of the Insulin Safety Net Program, including how Minnesotans can access insulin if an individual is in urgent need, as well as create awareness of the availability of insulin through manufacturers' patient assistance programs.

MNSure's executive leadership team prioritizes ingenuity, innovation, a commitment to equity, creative thinking, and a get-it-done attitude. As an organization, MNSure will be open, honest and inclusive as it looks to reach Minnesotans who are eligible for the Insulin Safety Net Program in Minnesota.

Responders must describe how they are a qualified Responder to this RFP, i.e., how they can run a statewide public awareness campaign (see "Proposal Content Cover Letter" below).

Time Frame

This RFP is seeking development of a public awareness campaign that will run from approximately July 2020 through June 2023. The State anticipates a contract will be executed during June 2020 with work commencing immediately thereafter, with an anticipated end date of June 30, 2023. MNSure reserves the right to extend the contract, in increments determined by MNSure, not to exceed a total contract term of five years. The contract will begin on the date stated in the contract or upon full execution of the contract, whichever is later, and will be completed by June 30, 2023.

Goal

The goal of this RFP is to obtain detailed cost, work plan and timeline proposals for the design and management of a comprehensive statewide public awareness campaign that will drive all eligible audiences to apply for the manufacturers' insulin programs through a MNSure-certified assister/navigator. This RFP is seeking innovative and flexible solutions for promoting access to affordable insulin, manufacturer insulin assistance programs, and MNSure assisters. Vendor must show ability to adapt to changing market realities throughout the course of the campaign. The incumbent will also work closely with MNSure's outreach team to help facilitate awareness of insulin application availability on www.mnsure.org, as well as with select navigator partners.

Key Objectives:

- Design and manage an innovative, flexible and multifaceted public awareness campaign that drives applications for the State's and manufacturers' insulin programs through MNSure-certified navigators.

- Effectively reach diverse audiences, including those who are traditionally more uninsured, underinsured and/or experiencing health disparities, as well as more affluent audiences who are still eligible for the State's insulin program and/or who currently purchase health insurance on their own.
- Maintain strong endorsement and support from key stakeholders and all Minnesotans.

Submitted proposals will be reviewed and a contractor selected based on the stated evaluation framework.

Sample Tasks (Scope of Work)

This RFP is seeking individuals or companies that will design, develop and produce a comprehensive statewide public awareness campaign for the State's insulin program.

Responders must be capable of working in close collaboration with MNsure staff and consultants to carry out contract deliverables within the established timeframe.

All Responders must produce detailed cost, a work plan and implementation timeline estimates as part of their proposal.

Responders are encouraged to propose additional tasks or innovative activities if they will substantially improve the results of the campaign. Proposed optional tasks or activities must be identified and separated from the required items on both the work plan and cost proposal.

The selected contractor will work closely with the following in performing its work: 1) the MNsure Senior Director of Public Affairs, 2) the MNsure Government Affairs Manager, 3) MNsure outreach staff, and 4) other MNsure staff and leadership.

Task 1: Design a Multi-faceted Statewide Public Awareness Campaign for the State's Insulin Program

Building upon market research and communications planning work already completed by MNsure, the selected vendor will develop and manage a results-oriented public awareness campaign. The proposed solution and approach should identify barriers to Insulin Safety Net Program service utilization, including but not limited to lack of understanding of the program or stigma associated with use of a limited public benefit, previous poor experience with services, as well as cultural, language and financial barriers to awareness and utilization. Service use and insulin program applications can be increased and driven by informational and educational promotions for the public, including persons with diabetes, and family, friends and neighbors who are caregiving. Informational and educational approaches and promotions will raise awareness, improve understanding of the program, and decrease stigmatization.

A focus on increasing insulin program applications as well as educational and informational projects to increase awareness of the insulin program can lead Minnesotans with diabetes to act, which ultimately decreases health care costs, improves quality of life for persons with diabetes, and improves access to lifesaving insulin. An effective, multi-faceted statewide public awareness campaign will include measurable steps used to increase awareness of the State's insulin program.

Educational promotions might use educational methods, presentations, self-assessments or the latest in remote technology innovations to aid outreach to the public. Awareness-raising

activities should be relevant to and reflect the background of the audience and may include reaching out to the community of advocates and caregivers, in addition to the community of persons with diabetes.

The proposed solution and approach shall be guided by several key strategies and supporting concepts:

1. A focus on increasing insulin program applications that targets:
 - a. The community of diabetics, caregivers, advocates and families
 - b. Individuals who currently purchase health insurance on their own / have no access to employer-sponsored coverage
 - c. Diverse communities that are typically uninsured or underinsured
 - d. Demographics that are typically uninsured or underinsured
 - e. Populations identified by the Minnesota Health Access Survey, conducted by the Minnesota Department of Health, outlines demographic and geographic information on Minnesota's uninsured population and is available here: <http://www.health.state.mn.us/health/economics>
2. Assisting individuals with insulin program applications who have previously enrolled in MNsure, including:
 - a. Qualified health plan enrollees
 - b. MinnesotaCare enrollees
 - c. Medical Assistance enrollees
3. A focus on Minnesotans who are unable to afford the life-saving drug insulin
4. Increasing applications for the insulin program by working with partner organizations including consumer assistance partners to increase applications through MNsure.

The campaign may include, but not be limited to, the following components:

1. Mass/paid media: radio, TV, digital, etc.
2. Social media
3. Earned media: news releases, PSAs, story placements including an editorial calendar
4. Promotions: key milestones through the campaign
5. Two campaign evaluations: one before launch and one following the campaign's completion
6. Focus groups for creative testing

Task 2: Development of Collateral Materials

To support marketing efforts, select collateral materials may need to be created on an ad-hoc basis; however, a comprehensive suite of materials is not needed. Collateral materials that may need to be created include, but are not limited to, signage, brochures, fact sheets, images and other population-specific collateral.

Commodity printing is not part of the scope of work under this contract. All collateral printing will be secured and overseen internally by MNSure.

Task 3: Media Buying Recommendations, Negotiations and Placement

The selected contractor will devise a paid media plan to achieve a best value for the investment.

The plan will include statewide placements as well as strategic placements to reach target populations.

The contractor will utilize research to ensure a diverse media mix. The research will include media audience, ratings/readership and value-added opportunities (e.g., on-air interviews, brochure distribution at media events, etc.).

Advertising will be placed through the following media, defined below, and align with the media usage of MNSure's audiences.

1. Television (e.g., 30-second TV ads)
2. Online
3. Radio (over air and internet, i.e., Pandora, iHeartRadio) (e.g., 15- and 30-second ads)
4. Additional media suggested by the Responder

Proposed recommendations should also include:

1. Identification of specific media to be used
2. Identification through which the Responder will reach Minnesota's minority populations
3. Timing, frequency, penetration and length of placement
4. Allocation of placement within selected media
5. Justification of media allocation and integration in campaign, cost effectiveness and return on investment
6. Itemization of media cost

Task 4: Accessibility

All documents, videos and other work products delivered by the contractor chosen under this RFP must be accessible in order to conform to the state accessibility standard and state video captioning requirements. Information about the standards can be found at

<https://mn.gov/mnit/about-mnit/accessibility/> and <https://www.revisor.mn.gov/statutes/?id=3251.05>.

For example, this requirement includes closed-captioned products for the deaf and hard of hearing.

When evaluating the technical proposals, as part of determining the scores of the Project Solutions and Approach (a category worth a total of 20% of the total score), MNSure will take into account whether a vendor's proposal states how it will address and reach diverse and

underserved communities, including a plan to translate materials or partner with community media.

General Proposal Information

The State reserves the right to interview any responder, which may include a presentation or demonstration (see "Proposal Evaluation" below). Any cost incidental for an interview, presentation or demonstration shall be borne entirely by the Responder. Interviews, presentations or demonstration may be remote, given the peacetime state of emergency related to COVID-19.

Projected Timeline

RFP published: May 4, 2020

Question submittal deadline: May 13, 2020, 4 p.m. Central time

Response to questions posted at MNSure.org: May 18, 2020, by 4 p.m. Central time

Proposals due: May 26, 2020, 4 p.m. Central time

Proposal reviews commence: May 27, 2020

Interviews, presentations and demos (optional): June 1-2, 2020

Finalist notified: June 5, 2020

Contract negotiations: June 8-June 29, 2020

The State anticipates work to commence on or shortly after July 1, 2020.

Questions

Prospective Responders who have any questions regarding this request for proposal should submit their questions in writing via email to Katie DeGrio Channing, legal director, at katie.degriochanning@state.mn.us, by 4 p.m. Central time on May 13, 2020.

Responses to all questions received will be made available by May 18, 2020, on MNSure.org at www.mnsure.org/about-us/rfp-contract/rfp.jsp.

Other personnel are **NOT** authorized to discuss this request for proposal with Responders, before the proposal submission deadline. Contact regarding this RFP with any personnel other than Katie DeGrio Channing, legal director, at katie.degriochanning@state.mn.us could result in disqualification.

This request for proposal does not obligate the State to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

Proposal Content

The following proposal requirements must be met and clearly attested to for the proposal to be considered. Proposals that do not comply with the following requirements will not be evaluated.

Proposals exceeding 15 pages in total will not be considered. The cover letter, short biographies, work samples and required forms are excluded from the page limit. Proposals must be submitted with single-spaced text in 11-point font with one-inch margins and pages consecutively numbered.

Responders must submit the following information:

1. Cover Letter

One-page cover letter identifying the main contact for the proposal, any proposed subcontractors and the Responder's eligibility as a responder to this RFP. Qualified Responders must describe how they are a qualified responder to this RFP and must describe whether their business and activities are positioned to provide statewide impact (services).

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. A digital signature is acceptable.

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 intentions and roles must be specifically identified in the cover letter. Final approval on actual subcontractors may be required by MNsure before work can begin.

2. Company Overview, Qualifications and Experience

- Company description
- Provide a list of personnel, including any proposed subcontractors and their roles, who will work on the campaign, detailing their training and work experience and the anticipated amount and/or portion of time each will devote to this project. Short biographies should be submitted for key personnel, including proposed subcontractors. **Resumes or other information about project personnel should not, if possible, contain personal telephone numbers, home addresses or home email addresses. If it is necessary to include personal contact information, please clearly indicate in the proposal that personal contact information is being provided.**
- Describe Responder's background and experience with similar projects; provide at least three references and work samples.
- Provide two samples of multi-platform campaigns completed within the past five years that demonstrate the Responder's capabilities of meeting the scope of services.
- If applicable, a list of subcontractors whose services will be used and the specific role(s) each subcontractor will have.

3. Project Solutions and Approach

- Describe Responder's understanding of the nature of the project and the public awareness campaign.

- Explain how the proposed solution will meet the project objectives and goals. Address each task item in the Sample Tasks section above.
- Include a sample media plan that demonstrates an approach to reach targeted diverse, multi-cultural and "hard to reach" populations.
- Responses to Attachment A.

4. Work Plan

- A description of the deliverables to be provided by the Responder along with a detailed work plan and timeline that identify the major tasks to be accomplished and be used as a scheduling and managing tool, as well as the basis for invoicing.
- Describe proposed project management and interaction/communication with MNsure staff and/or stakeholders for the project.

5. Detailed Cost Estimate

The cost proposal represents 30% of the total evaluation of your proposal. Provide the best financial proposal to complete the work for the duration of the contract based on the proposed work plan. The Responder must tie their cost breakout to specific milestones with the understanding that if the Responder is chosen for implementation, the contract may reference payment for these specific milestones. Identify any assumptions made to create your cost proposal. Travel or other costs must be factored into the bid, as no additional fees will be paid to perform this work.

Cost proposals should address the following points to ensure consistency in approach:

- Include any relevant one-time implementation costs.
- Include costs for anticipated media purchases.
- Include any anticipated additional costs that will become the responsibility of MNsure. Any costs that are included at the time of negotiation that are not included in this proposal may lead the vendor's proposal to be determined to be unresponsive.
- The State does not intend to pay commissions on media purchases. Therefore, Responders should not include commissions in the sample media plan or cost estimate. Mark-up rates for media buying should be clearly identified.

In a separate attachment, provide one copy of the cost proposal with a clearly marked cover letter that states "Cost Proposal" along with the firm's name. (See "Proposal Instructions" below.)

6. Required Forms

- A. Affidavit of Non-Collusion
- B. Certification Regarding Lobbying (if proposal exceeds \$100,000, including extension options)

- C. Workforce Certificate Information (if proposal exceeds \$100,000, including extension options)
- D. Equal Pay Certificate Form (if proposal exceeds \$500,000, including extension options)
- E. Veteran-Owned Preference Form (if applicable)
- F. Resident Vendor Form (if applicable)

Proposal Instructions

Proposals and the required attachments must be **emailed** to:

Katie DeGrio Channing, MNSure
katie.degriochanning@state.mn.us

All proposals must be received by MNSure no later than 4 p.m. Central time, May 26, 2020, as indicated by the time stamp on the email received.

Late proposals will not be considered.

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

Fax responses and mailed or hand-delivered proposals will **not** be accepted or considered.

Please use the following format in the email subject line and to identify *multiple* emails.

- Organization Name – Insulin RFP App #1
- Organization Name – Insulin RFP App #2

Submit a separate attachment of the technical proposal and one set of work samples.

Proposals must be submitted in a **separate attachment** from the cost proposal, with the Responder's name, address and email address on a cover letter. The technical proposal must be signed in ink, or signed with a digital signature, and then scanned by an authorized member of the firm, prior to emailing it to Katie DeGrio Channing.

Submit a separate attachment of the cost proposal with a clearly marked cover letter that states "Cost Proposal" along with the firm's name. For purposes of completing the cost proposal, the state **does not** make regular payments based upon the passage of time, it only pays for services performed or work delivered **after** it is accomplished.

Proposals will be evaluated on "best value" as specified below. Only the RFP administrator, Katie DeGrio Channing, and her staff if required, will have access to the cost proposal until the review committee finishes its evaluation of the technical proposals.

MNSure has estimated that the cost of this contract should not exceed \$250,000. Price will be a significant factor in the evaluation of proposals.

Proposal Evaluation

All responses received by the deadline will be evaluated by representatives of MNSure. Proposals will first be reviewed for responsiveness to determine if the minimum requirements have been met. Proposals that fail to meet minimum requirements will not advance to the next phase of the evaluation. The State reserves the right, based on the scores of the proposals, to create a short-listing of vendors who have received the highest scores to interview, or conduct

demonstrations/presentations. The state reserves the right to seek best and final offers from one or more Responders. A 100-point scale will be used to create the final evaluation recommendation.

Mandatory Requirements (scored as Pass/Fail)

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

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

Evaluation Factors (scored based on percentage or points as indicated)

The factors and weighting on which proposals will be judged are:

- | | |
|--|-----|
| 1. Project Solutions and Approach | 20% |
| 2. Work Plan | 35% |
| 3. Company Overview, Qualifications and Experience | 15% |
| 4. Cost detail | 30% |

Note: For procurements exceeding \$552,000, member countries of the World Trade Organization's Government Procurement Agreement must be treated on the same basis as U.S. companies under the terms of the treaty. Therefore, agencies are not advised to use this as an evaluation factor for procurements over the WTO threshold.

It is anticipated that the evaluation and selection will be completed by June 5, 2020.

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. 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 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 Office of Equity in Procurement (OSP), 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 organizational 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 OSP, 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 (TG) businesses and individuals submitting proposals as prime contractors will receive a 6% preference in the evaluation of their proposal, and certified Economically Disadvantaged (ED) businesses and individuals submitting proposals as prime contractors will receive a 6% preference in the evaluation of their proposal. Eligible TG businesses and ED businesses must be currently certified by the Office of Equity in Procurement (OEP) prior to the solicitation opening date and time. For information regarding certification, contact OEP at 651-201-2402 or procurement.equity@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 Office of Equity in Procurement 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.

Foreign Outsourcing of Work Prohibited

All services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers.

Workforce Certification

For all contracts estimated to be in excess of \$100,000, Responders are required to complete the attached Workforce Certificate Information form 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.

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 Responder 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 Responder 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 which 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 MN 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 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.

Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

Subcontractor Reporting

The State of Minnesota is committed to diversity and inclusion in public procurement. If the total value of your contract may exceed \$500,000, including all extension options, you must track and report, on a quarterly basis, the amount you spend with diverse small businesses. When this applies, you will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

Attachment A

State of Minnesota

MNsured Insulin Safety Net Program Awareness and Marketing Campaign

Responder Overview

- Number of employees:
- Number of employees in responding office:
- Number of employees assigned to MNsure account:
- Approximate annual billings:
- Approximate annual billings for responding office:

Responder Questions

1. What type of client is best served by your agency?
2. Describe how you would measure campaign success and what metrics you would use to assess the effectiveness of this campaign.
3. Describe how you would approach implementing the insulin affordability program public awareness campaign within the aggressive timeframe. What is your experience working with immediate and non-flexible timelines?
4. Describe how the firm goes about the development of basic creative strategies and your approach for innovative creative design.
5. Describe the methodology to justify creative and media investments and describe how a return on investment (ROI) is established and measured. What technologies have you developed and/or utilize in order to flawlessly execute and seamlessly track and report? Please provide a sample of a report or campaign analysis that MNsure would expect to see on an ongoing basis.
6. Describe any unique services the Responder thinks would be helpful in meeting the goals of this RFP.
7. Describe how you would design a campaign that would reach underserved communities in Minnesota.

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: _____

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.

Organization Name

Name and Title of Official Signing for Organization

By _____
Signature of Official

Date

State of Minnesota – Workforce Certificate Information

Required by state law for ALL bids or proposals that could exceed \$100,000

Complete this form and return it with your bid or proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minn. Stat. §363A.36.

BOX A – COMPANIES that have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months, check one option below:

- Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- Attached is our current Workforce Certificate issued by MDHR.
- We certify we are in compliance with federal affirmative action requirements.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- We attest we are exempt. If our company is awarded a contract, upon request, we will submit to MDHR within five (5) business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, I certify that the information provided is accurate and that I am authorized to sign on behalf of the company.

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name and Title: _____ Email: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

TC Metro: 651-539-1095

Toll Free: 800-657-3704

TTY: 651-296-1283

Web: <http://mn.gov/mdhr/>

Email: compliance.mdhr@state.mn.us

State of Minnesota – Equal Pay Certificate Form

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.

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.

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	

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% 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 Office of Equity in Procurement 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).

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

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 Office of Equity in Procurement 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.

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.

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.

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: _____

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

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.

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 principal 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. 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/VerifySubCertForm.doc>.
All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

22. Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

23. Subcontractor Reporting

If the total value of this contract may exceed \$500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount spent with diverse small businesses. When this applies, Contractor will be provided free access to a portal for this purpose, and the requirement will continue as long as the contract is in effect.

[Signatures as required by the State.]

SAMPLE

Contract Attachment 1 – Data Sharing Agreement

Data Sharing Agreement

1 Term of Agreement.

1.1 **Effective date:** see contract

1.2 Expiration date: see contract

2 Information Covered by this 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 Minn. Stat. § 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), data on any individual participating in MNSure, data on any individuals participating in MNSure as employees of an employer participating in MNSure, and data on employers participating in MNSure (as governed by Minn. Stat. § 62V.06, subdivision 3), and other not public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. Ch. 13;
- (b) Protected health information (“PHI”) (as defined in and governed by the Health Insurance Portability Accountability Act (“HIPAA”) and 45 C.F.R. § 160.103);
- (c) Federal Tax Information (“FTI”) (as defined by IRS Publication 1075);
- (d) Records (as defined by the Privacy Act of 1974 at 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 2; 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. Minn. Stat. § 13.05 subd. 3.
- (c) Comply with the MGDPA as if it were a government entity. All of the data created, collected, received, stored, used, maintained, or disseminated by Contractor while performing pursuant to its agreement with MNSure is subject to the requirements of Minn. Stat. Ch. 13 and the remedies in Minn. Stat. § 13.08 apply to Contractor.
- (d) Report to MNSure any privacy or security incident regarding the information of which it becomes aware. 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. The decision to notify and the actual notifications to the State’s data subjects affected by the security or privacy incident shall be at the direction of the State. Notwithstanding anything to the contrary in this Agreement, and in addition to Contractor’s indemnification obligations under Section 8, the Contractor shall indemnify, hold harmless and defend the State and its officers, and employees for and against any claims, damages, costs and expenses related to any privacy or security incident involving any State data. Contractor shall reasonably mitigate any harmful effects resulting from any privacy or security incident involving any State data.
1. For the purposes of this Agreement, “Privacy incident” means violation of the Minnesota Government Data Practices Act (MGDPA) and/or 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.
 2. For purposes of this Agreement, “Security incident” means the 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 protected information.
- (e) Unless provided for otherwise in this Agreement, if Contractor receives a request to release the information referred to in paragraph 2.1, Contractor must immediately notify MNSure. When appropriate, MNSure will give Contractor instructions concerning the release of the data to the requesting party before the data is released. MNSure reserves the right to respond directly to the request.
- (f) 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.
- (g) In accordance with Minn. Stat. § 62V.06, subd. 9, Contractor may not sell any data collected, created, or maintained by MNSure, regardless of its classification, for commercial or any other purposes.

- (h) Consistent with this Agreement, ensure that any agents (including contractors and subcontractors), analysts, and others to whom Contractor provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
- (i) 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); Minn. Stat. § 13.05.
 2. In addition to the incident reporting in paragraph 3.2(d), report any breach or security incident pursuant to the HIPAA Breach Notification Rule (45 C.F.R. Part 164, Subpart D). 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, but 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), ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
 4. Within ten (10) business days of a request from an individual, their designee or the State, 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 4 and 45 C.F.R. § 164.526.
 6. Document all 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 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. To the extent any data is PHI under HIPAA and the HITECH Act, 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.
- (j) To the extent that any protected information is FTI, ensure that these 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.
 - (k) Mitigate, to the extent practicable, any harmful effects known to Business Associate of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.
 - (l) Report and mitigate any fraudulent activities;
 - (m) Comply with any and all other applicable provisions of:
 1. The Final Exchange Privacy Rule at 45 C.F.R. § 155.260, including future amendments thereto;
 2. The current version of the Minimum Acceptable Risk Standards for Exchanges (MARS-E); and
 3. State of Minnesota Information Security Policies and Standards.

4 Security and Data Protection. Contractor is responsible for the security and protection of protected information subject to and related to Cloud Services in accordance with this Agreement. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Agreement.

For the purposes of this Security and Data Protection section, the following terms have the following meanings: "Cloud Services" includes "cloud computing" as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 and any other software, hosting service, subscription or other service or product by which Contractor stores, transmits, processes or otherwise has access to protected information.

4.1 Data Ownership.

- (a) The State solely and exclusively owns and retains all rights, title and interest, whether express or implied, in and to any and all protected information. Contractor has no and acquires no rights, title or interest, whether express or implied, in and to protected information.
- (b) Contractor will only use protected information for the purposes set forth in the Contract and Supporting attachments. Contractor will only access protected information as necessary for

performance of this Agreement. Contractor will not access State user accounts except to respond to service or technical problems or at the State's specific request.

4.2 Security Program.

- (a) Contractor will make all commercially reasonable efforts to protect and secure the protected information and the license data related to this Agreement, in accordance with this Agreement and this section. Specifically, Contractor will establish and maintain an Information Security Program ("Program") that includes an information security policy applicable to any and all Cloud Services ("Policy"). Contractor's Program and said Policy must align with appropriate industry security frameworks and standards and the primary standard is the current version of the Minimum Acceptable Risk Standards for Exchanges (MARS-E). Additionally, Contractor agrees in good faith to periodically review and update the Policy reasonably upon request based on other industry standards such as National Institute of Standards and Technology ("NIST") 800-53 Special Publication Revision 4 in accordance with this Agreement.
- (b) Upon the State's request, 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 not public data pursuant to Minnesota Statutes, section 13.37.

4.3 Data Management. Contractor will not use protected information, including production data, for testing or development purposes. Contractor has implemented and will maintain procedures to physically and logically segregate protected information, unless otherwise explicitly authorized by the State Chief Information Security Officer or delegate.

4.4 Data Encryption. Contractor must encrypt all protected information 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 protected information. Contractor shall secure and protect all encryption keys to protected information. Encryption keys to protected information shall only be accessed by Contractor as necessary for performance of this Agreement.

4.5 Data Storage. Contractor agrees that any and all protected information 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.

4.6 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 protected information only in the continental United States, (2) store, process and transmit protected information 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.

4.7 Security Audits & Remediation.

- (a) 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 2020;

2. will be performed in accordance with the current version of the Minimum Acceptable Risk Standards for Exchanges (MARS-E) or (alternatively if the Parties desire by mutual consent) the Statement on Standards for Attestation Engagements (“SSAE”) 16 Service Organization Control (“SOC”) 2, or the 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 not public data under Minnesota Statutes, section 13.37; and
 5. may be performed for other purposes in addition to satisfying this section.
- (b) Upon the State’s reasonable, advance written request, Contractor will provide to the State a copy of the Contractor Audit Report.
- (c) Contractor will make best efforts to remediate any control deficiencies identified by the State or known by Contractor, 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.

4.8 Insurance and Liability.

- (a) Contractor warrants that it has and will maintain the insurance described below in force and effect throughout the term of this Contract. An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor’s policy limits to satisfy the fully policy limits required by the Agreement, provided that Contractor warrants that the minimum requirements below are met.
1. 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 claims subject to the policy terms, conditions and exclusions 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 and \$2,000,000 annual aggregate.
 2. Cyber Liability insurance. Contractor must have a Cyber Liability policy in place within 90 days of contract execution and provide proof to the State’s authorized representative. Contractor is required to carry the following limits: \$1,000,000 per claim and event and \$1,000,000 as an annual aggregate.
- (b) 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 expiration or termination of this Contract. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.
- (c) 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. The State reserves the right to immediately terminate the Agreement if the Contractor is not in compliance with the insurance requirements of this sub-section and retains all rights to pursue any legal remedies against the Contractor.

(d) 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.

- 4.9 Subcontractors and Third Parties.** Contractor agrees that no protected information 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 protected information, agree in writing to be bound by the same restrictions and conditions under this Contract that apply to Contractor with respect to such data.
- 4.10 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.
- 4.11 Remedies.** Contractor acknowledges that the State, because of the unique nature of its data, would suffer irreparable harm in the event that Contractor breaches its obligations under this Agreement, and monetary damages may not adequately compensate the State for such a breach. In such circumstances, the State will be entitled, in addition to monetary relief, to injunctive relief or specific performance as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the State.
- 4.12 Business Continuity.** Contractor shall have written business continuity and disaster recovery plans that define the roles, responsibilities and procedures necessary to ensure that Cloud Services provided under this Agreement shall be maintained continuously in the event of a disruption to the Contractor's operations, regardless of the cause of the disruption. Such plans must, at a minimum, define the Contractor's actions to address the impacts of the following key areas likely to cause a disruption to Contractor's operations: loss of key personnel, loss of facility, and loss of information technology. Contractor must conduct testing and review of its business continuity and disaster recovery plan at least annually. Upon State request, Contractor must also participate, at mutually agreed upon times, in State business continuity and disaster recovery testing, training, and exercise activities.
- 4.13 Background Checks.** Contractor must conduct and will conduct background investigations into all of Contractor's agents, employees, and subcontractors that will have access to the State's protected information. Such background investigations must have been or will be conducted in the last 12 months by investigating local, state and federal criminal records; local, state and federal civil case records; and employment references.

If any provision of this sub-section is found to violate any applicable laws, rules, or State policies, then the Contractor will be relieved of all obligations arising under such provision.

Notwithstanding anything to the contrary in this sub-section, this sub-section is only applicable and effective to the extent that it is consistent with applicable laws, rules, and State policies.

4.14 Secure Coding. Contractor must scan all source code for vulnerabilities when any source code changes are made, remediate any and all vulnerabilities, and scan all source code again before being placed into production. Contractor must follow best practices for application code review and the OWASP top 10.

5 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.

6 Information Privacy and Security Responsible Authority.

MNSure's responsible party for the purposes of complying with data privacy and security for this Agreement is Emily Cleveland, MNSure Privacy Officer, emily.j.cleveland@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, or email, or his/her successor.

7 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.

8 Sanctions.

In addition to any liability under section 6 of 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.

9 Interpretation.

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

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 2 of this section or in any other applicable law. However, any requirement in this Agreement 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 Survival.

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

1. Contractor

By: _____
(With delegated authority)

Title: _____

Date: _____

2. MNSure

By: _____
(With delegated authority)

Title: _____

Date: _____