



# MNsured Grant Services Contract With County Navigator/In-Person Assister Attachment A

State of Minnesota

---

## 1. MNsured Duties. MNsured shall:

- 1.1 Develop and administer a certification and recertification training program and maintain documentation of certification and recertification completion;
- 1.2 Maintain an Assister Directory;
- 1.3 Provide technical assistance to the Contractor;
- 1.4 Provide MNsured's policies and procedures to the Contractor as new or updated policies and procedures are released;
- 1.5 Provide the current versions of marketing and communications materials;
- 1.6 Monitor the Contractor utilizing qualitative and quantitative evaluation tools;
- 1.7 If applicable, conduct monitoring visits according to [OGM 08-10](#);
- 1.8 If applicable, evaluate Contractor's performance according to [OGM 08-13](#); and
- 1.9 Provide notification within ten (10) business days of any proposed and final changes to Minnesota Rules, chapter 7700.

## 2. Contractor Duties.

- 2.1 Duties. The Contractor, who is not a State employee, shall:
  - 2.1.1 Facilitate the determination of eligibility for health insurance programs offered through MNsured by providing the following services:
    - (a) Inform consumers of health insurance programs and the value of coverage, in addition to reviewing insurance options available through MNsured;
    - (b) Inform individuals of application and renewal processes, required documentation, mandated requirements, and any exemption criteria;
    - (c) Gauge eligibility through the Minnesota Eligibility System (METS) by assisting applicants with the entry of information;
    - (d) Provide referrals to such applicants to appropriate support services or programs for further assistance, such as free health clinics;
    - (e) Explain program eligibility rules to applicants and provide them application assistance for Medicaid/Childrens' Health Insurance Plan (CHIP), MinnesotaCare, premium tax credits, cost-sharing reductions, and qualified health plans;

- (f) Assist consumers in complying with their responsibility to report changes that could impact program eligibility, including assisting with the renewal process;
  - (g) Provide nonmedical referrals, to the extent possible, according to MNsure referral guidance;
  - (h) Facilitate referrals to community organizations, counties, or other appropriate nonprofit or public entities when individuals and families require technical expertise and assistance beyond the scope of this Contract;
  - (i) Advise American Indians and Alaskan Natives on benefits specified by the Affordable Care Act, such as cost-sharing reductions, income exclusions, special open enrollment periods, and exemption from minimum health care coverage mandate; and
  - (j) Answer questions regarding the submission of eligibility verification documentation; and
- 2.1.2 Facilitate the enrollment in qualified health plans (QHPs) offered through MNsure for individuals eligible to purchase a QHP by providing the following services:
- (a) Explain, discuss, and interpret coverage and policies with consumers to facilitate plan selection;
  - (b) Assist with plan comparisons based upon individual priorities, including but not limited to metal tier levels, quality ranges, providers including, but not limited to, specialty care, pharmaceutical, dental and eye care, and total cost estimation including utilization and health status;
  - (c) Assist with the entry of information into enrollment tools and resources, including final submission of information;
  - (d) Facilitate referrals to brokers for individuals and families enrolling in qualified health plans through MNsure and requesting plan enrollment assistance beyond the scope of this Contract; and,
  - (e) If available, provide information and referrals to small employers on enrollment in the Small Business Health Options Program (SHOP) and any tax provisions, including credits and penalties, potentially affecting small employers.
- 2.2 Physical presence. Contractor will maintain a physical presence in the MNsure service area so that face-to-face assistance can be provided to applicants and enrollees.
- 2.3 Employee Roster. Contractor will maintain a roster of all employees, agents, and volunteers who require certification to perform the services outlined in this Contract in the Agency Management Program (AMP). Contractor will notify MNsure without delay and no later than (5) business days when an individual on the Contractor's roster is terminated, separates, or otherwise ceases to perform services under this Contract by updating their roster in AMP.
- 2.4 Oversight.
- 2.4.1 Contractor will provide oversight of all of the Contractor's employees, agents, and volunteers engaged in this process, ensuring that they:
- (a) Successfully complete all certification requirements prior to providing services under this Contract, including training and background check completion;
  - (b) Complete any background check or background study process in the time frame and manner prescribed by MNsure or the Department of Human Services (this may include an additional background study for currently certified navigators, in-person assisters, and certified application counselors upon State's determination that an additional background study using the online NETStudy 2.0 system operated by the Department of Human Services

is required);

- (c) Successfully complete the annual recertification process required for continuing to provide services under this Contract;
- (d) Are informed of and comply with all procedures as outlined in MNSure's policies and procedures; and
- (e) Are informed of and comply with all provisions of this Contract including the information privacy and security requirements in Attachment B.

2.4.2 If additional costs are incurred due to a background check or background study process that is not timely completed by the Contractor's employees, agents, or volunteers after such background check or background study process has been initiated, the Contractor will be responsible for paying for the costs associated with any subsequent or additional background study process for that employee, agent, or volunteer (i.e., if a first background study is not timely completed and another background study is required).

- (a) State will not pay any additional costs for a background check or background study process if the first background study cannot be completed due to any errors in the application submitted by the background study subject in the NETStudy 2.0 system.
- (b) The State will not pay any additional fees for fingerprinting and photographing that is not completed using the coupon code supplied by MNSure at a MNSure or Department of Human Services approved fingerprint and photo service location in Minnesota.

## 2.5 Conflict of Interest.

2.5.1 Contractor certifies that it does not have any conflict of interest related to this Contract as applicable under 45 C.F.R. § 155.210, Minn. R. 7700, and [State of Minnesota OGM Policy 08-01](#).

### 2.5.2 Disclosure.

- (a) Contractor will disclose to MNSure all affiliations that may present a conflict of interest or a potential conflict of interest (including any individual conflict of interest or organizational conflict of interest), and as part of this disclosure, must include submission of a written attestation that the Contractor is not a health insurance issuer or issuer of stop loss insurance, a subsidiary of a health insurance issuer or issuer of stop loss insurance, or a professional association that includes members of or lobbies on behalf of the insurance industry according to 45 C.F.R. § 155.210(d) and Minn. R. 7700.0070.
- (b) The Contractor shall immediately notify MNSure if a potential conflict of interest arises but in no case later than five (5) business days of discovery of the conflict. The Contractor remains under a continuing obligation to notify MNSure's Authorized Representative and disclose a potential conflict of interest at any time it may arise.

2.6 No compensation policy. Contractor will maintain and enforce a policy that no compensation, benefit, or gift is received directly or indirectly by the Contractor, its employees, subcontractors, agents, and volunteers from any health insurance issuer or issuer of stop loss insurance in connection with the enrollment of any individuals or employees in a qualified health plan or a nonqualified health plan as specified in 45 C.F.R. 155.210(d)(4).

2.7 Contractor will maintain expertise in eligibility, enrollment, and program specifications, and conduct public education activities.

2.8 Contractor will provide referrals to any applicable office of health insurance consumer assistance or

health insurance ombudsman established under section 2793 of the Public Health Service Act, or any other appropriate state agency or agencies for any enrollee with a grievance, complaint, or question regarding an enrollee's health plan, coverage, or a determination under such plan or coverage.

- 2.9 Contractor will provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by MNsure including individuals with limited English proficiency; and ensure accessibility and usability of tools and functions for individuals with disabilities according to the Americans with Disabilities Act and section 504 of the Rehabilitation Act.
- 2.10 Contractor will provide targeted assistance to serve underserved or vulnerable populations, as identified by MNsure, within the state of Minnesota.
- 2.11 Contractor will provide information and services in a fair, accurate, and impartial manner.
- 2.12 Contractor will comply with Title VI of the Civil Rights Act of 1964, section 1557 of the Americans with Disabilities Act, and other applicable federal laws and regulations.
- 2.13 Contractor will report any actual or suspected instances or evidence of fraud, waste, or abuse discovered in the course of conducting business with MNsure to the MNsure fraud and ethics anonymous hotline 1-844-466-7873 or email address ([mnsurecompliancehotline@mnsure.org](mailto:mnsurecompliancehotline@mnsure.org)) immediately and in no case later than seven (7) business days from discovery.
- 2.14 Contractor will use the current versions of State-provided applications, forms and outreach materials, and adhere to the publicity guidelines in Section 12 of this Attachment for distribution of any outreach or other materials not provided by MNsure.
- 2.15 Contractor will ensure that consumers are informed, prior to receiving assistance, of the functions and responsibilities of a navigator/in-person assister, including that individuals certified by MNsure are not acting as tax advisors or attorneys when providing assistance under this Contract and cannot provide tax or legal advice within their capacity as a certified navigator/in-person assister in accordance with 45 C.F.R. § 155.210(e)(6)(i).
- 2.16 Contractor will provide authorization in a form and manner as determined by MNsure prior to obtaining access to an applicant's personally identifiable information and maintain a record of the authorization provided in a form and manner as determined by MNsure in accordance with 45 C.F.R. § 155.210(e)(6)(ii).
- 2.17 Contractor will attempt to provide assistance to all consumers who contact the Contractor or refer them to assistance.
- 2.18 Upon request, Contractor will make its staff available to the State during monitoring visits and allow the State observation of Contractor's MNsure-related activities and training pursuant to [OGM 08-10](#). Based on Contractor's performance of duties under this Contract and the monitoring visit, the State may impose additional mitigation and monitoring activities to support the Contractor and ensure compliance with all requirements of this Contract. Failure to comply with this provision may lead to immediate termination of this Contract consistent with Clause 15.2 of this Attachment.
- 2.19 Contractor will cooperate and provide any documentation necessary to facilitate the State's evaluation of Contractor's performance, if applicable, according to [OGM 08-13](#);
- 2.20 Contractor will comply with all required grants management policies and procedures set forth through Minn. Stat., § 16B.97, subd. 4(a)(1) and applicable provisions in [Office of Grant Management Policies](#); Minnesota Statutes, chapter 16B; Minnesota Rules, chapter 7700; and 45 C.F.R. §§ 155.210 and 155.215.

2.21 Prohibited Activities. The Contractor, including Contractor's employees, agents, and volunteers, is prohibited from performing the following activities:

- (a) Performance of services which require licensure under Minnesota Statutes, chapter 60K;
- (b) Charging of any applicant or enrollee, or requesting or receiving any form of remuneration from or on behalf of an individual application or enrollee, for application or other assistance related to duties under this Contract in accordance with 45 C.F.R. § 155.210(d)(5);
- (c) Providing gifts of any value as an inducement for enrollment to an applicant or potential enrollee in accordance with 45 C.F.R. § 155.210(d)(6);
- (d) Using MNSure funds to purchase gifts or gift cards, or promotional items that market or promote the products or services of a third party, that would be provided to any applicant or enrollee in accordance with 45 C.F.R. § 155.210(d)(7);
- (e) Soliciting any consumer for application or enrollment assistance by going door-to-door, using an automatic dialing system, or through other unsolicited means of direct contact, unless the individual has a pre-existing relationship with the individual navigator/in-person assister or Contractor entity in accordance with 45 C.F.R. § 155.210(d)(8), (d)(9); and
- (f) Providing choice counseling or enrollment services as defined in 42 C.F.R. § 438.810 to individuals who have been determined eligible for Medical Assistance or MinnesotaCare unless otherwise authorized to do so.

**3. Time.** The Contractor must comply with all the time requirements described in this grant contract agreement. In the performance of this grant contract agreement, time is of the essence.

**4. Consideration and Payment.**

4.1 **Consideration.** The State will pay the Contractor for each successful determination of eligibility for a qualified health plan resulting from the submission of an application through METS, or a qualified health plan enrollment completed through MNSure.

- (a) Compensation. The Contractor will be paid in accordance with the initial payment rate and any subsequent changes to the payment rate as published in the State Register.
- (b) The payment shall be one-hundred and 00/100 dollars (\$100.00) per applicant for a successful determination of eligibility or enrollment in a qualified health plan.

4.2 **Payment.**

- (a) Reports. The State will pay the Contractor based on a State-run report run at least quarterly identifying the number of successful eligibility determinations and enrollments performed by a certified navigator or in-person assister on their roster during the period of time from the date of the previous report or the effective date of the Contract if there is no previous report. The State will pay the Contractor within sixty days of the close of the reporting period.
- (b) If at any time funds become unavailable, this Contract shall be terminated immediately upon written notice of such fact by the State to the Contractor. In the event of such termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.
- (c) 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.

**4.3 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.

**4.4 Contracting and Bidding Requirements.**

- (a) Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.
- (b) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.
- (c) The grantee must not contract with vendors who are suspended or debarred in MN: <https://mn.gov/admin/osp/government/suspended-debarred/>

**5. Third Party Beneficiary.** Both parties agree that the Minnesota Department of Human Services ("DHS") shall be, and is hereby, named as an express third-party beneficiary of this Contract, with full rights as such. The Parties specifically acknowledge and agree that DHS has standing to and may take any appropriate action for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of this Contract. DHS is entitled to and may recover reasonable attorney's fees and costs and disbursements associated with any action taken under this Section that is successfully maintained.

**6. Assignment, Amendments, Waiver, and Contract Complete.**

- 6.1 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 or their successors in office.
- 6.2 Amendments.** Except where otherwise addressed in Clause 2.1(b) of Attachment B and within this Clause, 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. The State reserves the right to modify Attachment A and/or Attachment B without amendment as necessary to comply with federal or state law or regulation not addressed within Clause 2.1(b) of Attachment B. The State must provide the Contractor notice of the need to update Attachment A and/or Attachment B within a reasonable time prior to the update being completed. All necessary updates will be posted on the MNsure.org website.
- 6.3 Waiver.** If the State fails to enforce any provision of this Contract, that failure does not waive the provision or the State's right to enforce it.
- 6.4 Contract Complete.** The Contract, this Attachment A and Attachment B contain all negotiations and agreements between the State and the Contractor. No other understanding regarding the Contract and this Attachment A and Attachment B, whether written or oral, may be used to bind either party or the Third Party Beneficiary.

**7. Indemnification**

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

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

7.2 The Indemnifying Party is defined to include the Contractor, Contractor's reseller, any third party that has a business relationship with the Contractor, or the Contractor's agents or employees, and to the fullest extent permitted by law. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of MNSure's, or DHS's, or the State's sole negligence. This clause will not be construed to bar any legal remedies the Indemnifying Party may have for the State's failure to fulfill its obligation under this Contract.

7.3 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

7.4 MNSure's and DHS' liability, if any, are governed by Minn. Stat. § 3.736.

## **8. State Audits**

Under Minn. Stat. § 16B.98, subd. 8, the Contractor's books, records, documents, and accounting procedures and practices of the Contractor or other party relevant to this grant contract agreement or transaction are subject to examination by the Commissioner of Administration, by the State granting agency and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

Upon request, the Contractor must provide the State with any documentation necessary to facilitate payment for services and to maintain certification requirements.

The Contractor will make its staff available to State during audits and allow the State observation of Contractor's MNSure-related activities and training.

## **9. Intellectual Property**

9.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

9.1.1 "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.

9.1.2 "Pre-Existing Intellectual Property" means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.

9.1.3 "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.

9.2 Ownership. 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 Documents shall 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.

9.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor’s Pre-Existing Intellectual Property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Contract.

#### 9.4 Obligations.

9.4.1 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.

9.4.2 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.

9.4.3 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, 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.

9.4.4 License Reserved for U.S. Department of Health and Human Services. Because federal funds are used in funding this Contract, in accord with 45 C.F.R., sec. 92.34, for Works and Documents created and paid for under this Contract, the U.S. Department of Health and Human Services will have a royalty free, non-exclusive, perpetual and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the Works or Documents created and paid for under this Contract for federal government purposes.

### 10. Workers’ Compensation Insurance

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 and any claims made by any third party as a consequence of any act



or omission on the part of these employees are in no way the State's obligation or responsibility.

#### **11. Debarment by State, 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 the State's 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.

#### **12. Publicity and Endorsement**

**12.1 Publicity.** The Contractor may use MNSure and State-created materials. MNSure provides its express approval for Contractor to use the MNSure Partner Badge in relation to activities arising out of the Contract and in accordance with MNSure's policies and procedures. The MNSure Partner Badge is provided to the Contractor by MNSure upon request.

**12.2 Endorsement.** The State will publicly identify the Contractor as a MNSure Community Assistance Partner but does not endorse Contractor's products or services. The Contractor must not claim that the State endorses its products or services.

#### **13. 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.

#### **14. 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 tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Contractor to file state tax returns and pay delinquent state tax liabilities, if any.

#### **15. Termination and Suspension.**

**15.1 Termination by either Party.** Either party may terminate this Contract at any time, without cause, upon thirty (30) days' written notice to the other party. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**15.2 Termination for Cause.** The State may immediately terminate this Contract if the State finds that there has been a failure to comply with the provisions of this Contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

**15.3 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. Insufficient funding for a specific compensation program as identified in Clause 4.2 of this Attachment and this Clause will be sufficient to terminate compensation for that specific program. Termination must be by written, fax, or e-mail 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 receiving that notice.

**15.4 Termination by The Commissioner of Administration.** The Commissioner of Administration may immediately and unilaterally cancel this grant contract agreement if further performance under the Contract would not serve agency purposes or is not in the best interest of the State.

**15.5 Suspension.** If funding from the Minnesota Legislature or other funding source is canceled, withdrawn, or terminated, or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here, the State may, at its option, according to Minn. Stat. § 16B.98, subd. 5(4)(f), suspend performance under the contract until funding is restored. The State is not obligated to pay for any services that are provided after notice and effective date of suspension. 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 suspended because of the decision of the Minnesota Legislature, or other funding source, to cancel, withdraw, or terminate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State receiving that notice.

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

The Contractor will comply with applicable provisions in Minn. Stat. § 181.59.

## **17. Affirmative Action Requirements.**

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

**17.1 Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the Contractor employed 40 or more 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.

**17.2 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.

**17.3 Disabled Workers.** The Contractor must comply with the following affirmative action requirements for disabled workers.

### **AFFIRMATIVE ACTION FOR DISABLED WORKERS**

**17.3.1** 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.

- 17.3.2 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.
- 17.3.3 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.
- 17.3.4 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.
- 17.3.5 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.
- 17.4 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.
- 17.5 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.

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

If the value of this Contract, 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.

#### **19. Counterparts**

This Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.